

NAAN | National Training Pack

Version 2.2 (2018)



Introduction

This document is the revised national training pack for appropriate adults, developed and published by the National Appropriate Adult Network with funding from the UK Home Office.


It draws on:


- the experience and expertise of appropriate adult scheme co-ordinators in England and Wales;
- legislation, codes of practice, and guidance published by the UK Government
- national standards and guidance published by the Youth Justice Board, the College of Policing and the Crown Prosecution Service
- research, policy and reports by academics, inspectorates and others.

The pack has been revised in order to:

- bring it in line with changes to legislation, in particular the amendments to PACE 1984 and the Codes of practice in relation to 17 year olds and the EU Directive relating to rights and entitlements. Current versions of the PACE Codes can be found here on [GOV.UK](https://www.gov.uk)
- make it easier to use, particularly when in electronic form, with a clearer formatting and easier navigation
- provide more extensive guidance to training facilitators, particularly those who are new to the subject matter
- include links to external resources that will enhance the training of appropriate adults

Navigating the training pack

There's no need for endless scrolling through the training pack. If you use [Adobe Acrobat Reader](#) to open the file, you can use the bookmarks function to easily move between sections. To open the bookmarks, just click on this icon  then click on the title of the Module or Activity that you want to view and you'll be taken straight there. You can also expand and collapse the directory of bookmarks. Earlier versions of Acrobat may have a different method for opening bookmarks.

Alternatively, you can click on Modules and Activities in the contents page below. You can easily return to the contents pages by clicking on the  symbol in the bottom left of every page.

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Version control

Version	Amendments	Date
1.0	-	24/09/2009
1.5	Consultation version of major refresh. Significant changes throughout the pack.	17/11/2016
2.0	Final version. Sections with significant updates from 1.5: This version includes changes made to the Police and Criminal Evidence Act 1984 by the Policing and Crime Act 2017 and commenced in April 2017	05/05/2017
2.001	<ul style="list-style-type: none"> Module 5 Activity plan: Hyperlink to article on legal privilege amended 	
2.002	<ul style="list-style-type: none"> Module 6 Activity 5: Reference to Code C 11.6 corrected to Code C 16.1 	09/06/2017
2.003	<ul style="list-style-type: none"> Module 5 Activity 7 (confidentiality): Minor changes to wording and typographical correction. 	14/07/2017
2.1	<ul style="list-style-type: none"> Added Module 9 (Terrorism) 	25/01/2018
2.101	<ul style="list-style-type: none"> Amended Module 2 Activity 3 Handout 2; Module 2 Activity 4 Handout 3; and Module 8 Activity 7 Handout 8 New Annex H (legal status of PACE Codes) 	07/02/2018
2.102	<ul style="list-style-type: none"> Updated links due to Concordat on Children in Custody in Module 8 Activity plan (p.144) and Activity 6 (p.153); Annex E (p.211) 	25/04/2018
2.2	<p>Combination of general updates and correction along with refresh in line with July 2018 revisions to PACE. Due to changes in terminology there are small changes throughout pack. However, page numbering has been maintained with the exception of some annexes. The following sections have been edited (numbers relate to handout numbers).</p> <ul style="list-style-type: none"> Contents pages Summary of learning outcomes Module 2: 1, 3, 4, 6 Module 3: 1, 2, 3, 4, 6 Module 4: 10 Module 5: Overview, 1, 3, 4, 5, 7, 8, 9, 10 (and activity 6 facilitator notes) Module 6: Overview, 2, 3, 4, 5, 7, 8 Module 7: Overview, 1, 4, 5, 6, 7, 8, 9, 10, 19 Module 8: 1, 6, 9 Module 9: 8 Annex A (added data protection) Annex B Annex D Annex C Annex E (content moved to iKAAN and replaced with content on vulnerability under PACE), Annex F 	21/09/2018

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Summary of learning outcomes

By the end of this training programme learners should be able to: -

Module 1: Course introduction

- Describe the overall structure of the course
- Explain their motivations for becoming an AA
- Describe their expectations and anxieties about the AA role

Module 2: Introduction to the appropriate adult role

- Describe the purpose of the appropriate adult role
- Explain why it is important to support and protect vulnerable people who have been detained
- Describe the practical responsibilities of an appropriate adult

Module 3: People and procedures in police custody

- Outline the standard processes carried out at a police station, for example for explaining rights and entitlements, interview and charging
- Describe how a custody officer determines if an appropriate adult is required in custody
- Give examples of different custodial situations when an appropriate adult would be required
- Explain how the appropriate adult role is distinct from other sources of support available to a person detained in a police station

Module 4: Effective communication

- Explain the importance of clear communication
- Describe the different factors which may help or hinder communication
- Describe some of the tools and strategies an appropriate adult can use to support effective communications

Module 5: Ensuring the vulnerable person's rights (Part 1)

- Describe the procedures that should be carried out by both the custody sergeant and the appropriate adult before and during an interview
- Describe the caution and the legal rights of a person who has been detained and the guidelines for detention under the Police and Criminal Evidence Act (PACE) 1984
- Explain how an AA can ensure that a person understands their rights, including those associated with the caution
- Explain how an appropriate adult can act to ensure that the person's rights are being respected, giving examples of appropriate actions (e.g. intervening in an interview)
- Describe the responsibilities of an appropriate adult in relation to confidentiality

Module 6: Ensuring the vulnerable person's rights (Part 2)

- Describe the procedures that should be carried out by both the custody sergeant and the appropriate adult before and during an interview
- Describe the caution and the legal rights of a person who has been detained and the guidelines for detention under the Police and Criminal Evidence Act (PACE) 1984
- Explain how an AA can ensure that a person understands their rights, including those associated with the caution
- Explain how an appropriate adult can act to ensure that the - person's rights are being respected, giving examples of appropriate actions (e.g. intervening in an interview)
- Describe the different disposal options available

Module 7: Mental health and vulnerability

- Define the term 'vulnerable person' as used in a custodial context, giving examples of different groups of adults who may be described as 'vulnerable'
- Give reasons why adults with learning difficulties or disabilities may need the support of an appropriate adult in a custodial setting
- Describe how different learning difficulties or disabilities or behavioural issues may affect a young person in custody
- Explain the importance of being able to communicate effectively with a person with a learning difficulty or disability in custody, giving examples of appropriate approaches for a given individual
- Give reasons why an adult with mental health needs may require the support of an appropriate adult in a custodial setting
- Explain the importance of being able to communicate effectively with a person with mental health needs in custody, giving examples of appropriate approaches for a given individual
- Describe some of the key tools and strategies an appropriate adult can use to support adults with learning difficulties or disabilities in different custodial situations
- Describe appropriate strategies an appropriate adult can use to support a young person with learning difficulties or disabilities or behavioural issues while they are in custody
- Describe some of the key tools and strategies an appropriate adult can use to support an adult with mental health needs in different custodial situations

Module 8: Children and young people

- Describe the role of the appropriate adult within the youth justice system
- Describe the different social, educational and environmental problems which may affect a young person in custody
- Explain how an appropriate adult can identify and work to resolve problems affecting a young person in custody

Module 9: Terrorism

- Describe the differences in people and procedures under TACT 2000 versus PACE 1984
- Give examples of how detention under TACT may impact on a person's vulnerability.
- Explain how the rights and welfare of a vulnerable person detained in a TACT suite can be ensured

Module 1: Course introduction

Overview

Module objective	To provide an overview of the purpose and nature of the appropriate adult role
Learning outcomes	By the end of this module, learners should be able to: - <ul style="list-style-type: none">• Describe the overall structure of the course• Explain their motivations for becoming an AA• Describe their expectations and anxieties about the AA role
Suggested timing	2 hours
Method	<ul style="list-style-type: none">• Activity 1 – Welcome• Activity 2 - Structure and content of the training• Activity 3 - Motivations, expectations and concerns• Activity 4 - What is it like to be an AA?
Resources	<ul style="list-style-type: none">• Photocopied activity sheets and handouts• Flip chart and pens
Facilitator's notes	<p>The purpose of this session is to develop initial relationships between the facilitator and all the learners, including setting and understanding expectations. It is an opportunity for the facilitator to provide an overview of the structure and content of the course. The facilitator should aim to create a 'safe space' which encourages learners to reflect on, and share, what they hope to get out of the training. Where the learners have never met before, facilitators should consider adding in their favourite ice-breaking activities as appropriate for the group.</p> <p>The key challenge for the facilitator is to avoid getting bogged down in answering questions that will be dealt with later in the pack. Recording the fears and expectations learners have about the role (and the course itself) will help the facilitator to shape an effective course and provide a helpful checklist that can be returned to as the course progresses.</p>

Activity Plan

Activity 1	Welcome	Handout
Step 1	Share your own background and experience in relation to appropriate adult provision and training	
Step 2	Ask each learners to introduce themselves or insert any appropriate ice-breaking activities.	
Activity 2	Structure and content of the training	
Step 1	Provide a brief overview of what is contained in the training pack and what will be covered in the training course.	
Activity 3	Motivations, expectations and concerns	1
Step 1	Split learners into pairs.	
Step 2	Share the worksheet and ask learners to note down two or three answers for each section. Explain that you will be asking them to feedback their partner's answers.	
Step 3	Ask each learner to feedback their partner's top responses.	
Activity 4	What is it like to be an AA?	
Step 1	Working with the whole group, ask learners what their key questions are about being an AA. What would they like answered by the end of the training?	
Step 2	Record answers on a flipchart. As you progress through the rest of the training, ask the learners whether they are happy for you to 'tick off' questions you have covered.	
Activity 5	Experiences of AAs	2
Step 1	Before the training session, ask a relatively new AA and a more experienced AA from your scheme to describe their experiences in writing. Replace the handout template with this content.	
Step 2	Share the handout with learners. Either ask them to read it now or take it home to read later.	
Variation	Ask your AAs to share their experience verbally with your learners.	

Activity 3: Motivation, expectations and concerns

Question Sheet (Handout 1)

I would like to be an AA because...

My expectations of the role are...

The issues I'm most concerned about (and would like covered in the training) are...

Activity 5: Experiences of AAs
Handout 2 (template)

Experiences of a new AA

Experiences of an experienced AA

Module 2: Introduction to the appropriate adult role

Overview

Module objective	To provide an overview of the purpose and nature of the appropriate adult role
Learning outcomes	By the end of this module, learners should be able to: - <ul style="list-style-type: none">• Describe the purpose of the appropriate adult role• Explain why it is important to support and protect juveniles and vulnerable persons who have been detained• Describe the practical responsibilities of an appropriate adult
Suggested timing	2 hours
Method	<ul style="list-style-type: none">• Activity 1 - Review of Module 1 and Overview of Module 2• Activity 2 - Introduction to the Role of the AA• Activity 3 - Police powers• Activity 4 - The need to protect people with vulnerabilities• Activity 5 - Roles and responsibilities of an AA
Resources	<ul style="list-style-type: none">• Photocopied activity sheets and handouts• Flip chart and pens
Facilitator's notes	The purpose of this session is to provide an overview and introduction to the key aspects of the AA role. Issues are likely to be raised which will be covered in more detail in subsequent sessions. For example, introducing some of the practical responsibilities of the role may prompt questions which can be returned to later. By the end of the module, learners should have a clear outline of the role in their minds. However, they should also begin to gain a sense of the complexity of some aspects of the role.

Activity Plan

Activity 1	Review of Module 1 and Overview of Module 2	Handout
Step 1	Facilitator reminds learners of what has been covered in previous module	
Activity 2	Introduction to the role of the AA	
Step 1	Ask learners read handout and note down areas for clarification.	1
Step 2	Ask the group to feedback questions and note these down on a flipchart. These can be discussed and dealt with immediately or used later in the training to check that issues have been covered.	
Activity 3	Police powers	
Step 1	Briefly outline the structure of PACE and the Codes of Practice and the basic rights of people who are detained.	
Step 2	Share the handout	2
Activity 4	The need to protect people with vulnerabilities	
Step 1	Ask learners to read the handout	3
Step 2	Lead a whole group discussion on the experience for the vulnerable suspect, starting with the following questions: <ol style="list-style-type: none"> 1. What worries/concerns/questions do you think that a vulnerable suspect may have about the process of being in custody? 2. What issues may arise for a juvenile or someone who may be mentally disordered or otherwise mentally vulnerable? 	
Step 3	Ask learners to read through case study handout	4
Step 4	Divide learners into 3 groups. Assign each group one of the questions attached to the case study.	
Step 5	Ask groups to feedback their responses and give them the opportunity to contribute to the other questions.	
Step 6	Share the handout which provide suggested answers to the questions	5
Activity 5	Roles and responsibilities of an AA	
Step 1	Share the handout. Acting individually, ask learners to fit each responsibility into one of the categories in the table	6
Step 2	For each responsibility, ask learners to suggest out which category they would assign it to. Rather than giving yes/no responses, use the information in Handout 8 to prompt a discussion and to provide more information on the roles, responsibilities and parameters of an AA. Be careful not to get led into delivering the entire course content at this point – explain that complex issues will be covered later.	
Step 3	Share handout with suggested answers.	7

Activity 2: Introduction to the role of the AA (Handout 1)

The role of the appropriate adult (AA) was introduced by the Police and Criminal Evidence Act 1984 (PACE) and its accompanying Codes of Practice. PACE was developed in the wake of public concern over the detention, treatment and questioning of people detained by the police, especially those who are particularly vulnerable. There was a recognition that convictions of vulnerable people risked being unsafe where guidelines for working with them were not fully understood or implemented.

For example, Anthony Everett confessed to 391 burglaries and thefts during interrogation by Essex police. He was charged and went to prison. After treatment for his mental health problem, he realised that he could not have been guilty of many of the offences as he had actually been in prison when most of them had been committed. Stefan Kiszko, a tax clerk from Rochdale was convicted of the murder of schoolgirl Lesley Molseed in 1975. He served 16 years before being cleared on appeal in 1992 after it was discovered that medical evidence, which had been withheld from his defence team, proved him incapable of being the killer. Sadly, Kiszko died a year after being released, with his mother, who had campaigned tirelessly for his release dying six months after that.

PACE introduced a number of new procedures to strengthen the fairness and reliability evidence (particularly confessions). This included formalising the concept of the AA: an independent third party called in when a 'juvenile' or vulnerable adult was detained or questioned. The AA could be a parent, family member, social worker, or anyone over 18 (with some exceptions). The police must now secure an AA whenever they detain, or otherwise interview, people under the age of 18 and adults with mental ill health, learning disabilities or other mental vulnerabilities. The AA role continues to be undertaken by a wide range of people including relatives, guardians, youth offending team staff, social workers and mental health professionals. There are also many dedicated schemes which provide trained specialist AAs, either as volunteers or paid staff.

The *direct* involvement of AAs is limited in scope because they only covers police interviews and detention. However, the actions they take at this earliest stage of the criminal justice system impact the fairness of the whole process. As of July 2018, the role has been set out in a single section in the Codes of Practice, enabling practitioners to have a clear expectation of the responsibilities. Section 1.7 from Code C of the Police and Criminal Evidence Act 1984, defines the AA role thus:

"The role of the appropriate adult is to safeguard the rights, entitlements and welfare of juveniles and vulnerable persons.....to whom the provisions of this and any other Code of Practice apply. For this reason, the appropriate adult is expected, amongst other things, to:

- *support, advise and assist them when, in accordance with this Code or any other Code of Practice, they are given or asked to provide information or participate in any procedure;*
- *observe whether the police are acting 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 them 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 them to understand their rights and ensure that those rights are protected and respected."*

The Crime and Disorder Act 1998 describes the role as being to "safeguard the interests of children and young persons detained or questioned by police officers". In summary, the AA is involved to ensure that the process is fair by ensuring a vulnerable person's rights, welfare, understanding and effective participation.

Activity 3: Police powers (Handout 2)

The role of the AA was formalised in the Codes of Practice which the Home Secretary is required issue under the Police and Criminal Evidence Act (PACE) 1984. The statutory provisions of PACE set out the range of core powers, procedures and requirements which enable the police to prevent, detect and investigate crime. These do not create any offences. The Codes of Practice are separated into the following:

- **Code A:** Exercise by police officers of statutory powers to **search a person or a vehicle** without first making an arrest and the need for a police officer to make a record of a stop or encounter
- **Code B:** Police powers to **search premises and to seize and retain property** found on premises and persons
- **Code C:** Requirements for the **detention, treatment and questioning** of suspects not related to terrorism in police custody by police officers. Includes the requirement to explain a person's rights while detained
- **Code D:** Main methods used by the police to **identify people** in connection with the investigation of offences and the keeping of accurate and reliable criminal records
- **Code E:** **Audio recording** of interviews with suspects in the police station
- **Code F:** **Visual recording** with sound of interviews with suspects - there is no statutory requirement on police officers to visually record interviews, but the contents of this code should be considered if an interviewing officer decides to make a visual recording with sound of an interview with a suspect
- **Code G:** **Powers of arrest** under section 24 the Police and Criminal Evidence Act 1984 as amended by section 110 of the Serious Organised Crime and Police Act 2005
- **Code H:** Requirements for the detention, treatment and questioning of suspects related to **terrorism** in police custody by police officers. Includes the requirement to explain a person's rights while detained in connection with terrorism

Both the person who is being detained and the AA have the right to consult the Codes of Practice. The main Code for AAs is C. However, they are also mentioned in D, E, F, and H.

The Codes are revised frequently. The latest versions are available at <https://www.gov.uk/guidance/police-and-criminal-evidence-act-1984-pace-codes-of-practice>.

For information on the legal status of the Codes, see [Annex H](#).

Activity 4: The need to protect people with vulnerabilities (Handout 3)

People who require an AA

In many ways anyone in police custody is vulnerable. However, the PACE Codes define two groups for which the police are required to secure an appropriate adult.

- Juveniles (Children and young people under the age of 18); and
- Vulnerable adults.

The requirement for an AA is not affected by any other factors. For example, the police cannot choose not to call an AA due to the seriousness of the offence, the presence of a legal advisor, the availability of AAs, or even the vulnerable suspect's wishes

People who require support other than an AA

An AA is not required because a person is deaf or hearing impaired, blind or visually impaired, cannot read or write, unable to speak or has difficulty orally because of a speech impediment, or cannot understand English. However, such assistance may be provided by an AA, legal representative or other person.

An interpreter should be called for any person with language difficulties. The police must ensure appropriate arrangements are in place for the provision of a suitably qualified and independent interpretation at the police station for a person who is hearing impaired or who does not understand English. This provision includes anyone who is acting in the AA role. Interpretation can be delivered remotely via 'live-link' as long as this does not disadvantage the person (see PACE Code C 13).

Chief Officers have discretion when selecting interpretation and translation services for their force, provided the result is compliant with a person's rights. The Ministry of Justice has commercial agreements for interpretation and translation services which can be used. These offer a minimum standard of training and quality assurance via a Code of Conduct, standards of competence and professional skills, and disciplinary proceedings.

Case study: Paul Blackburn (Handout 4)

Appeal victory after 25 years' jail: Conviction quashed as judge casts doubt on police testimony

By Richard Jinman - The Guardian - Thursday May 26, 2005

A man who served 25 years in prison for the attempted murder of a nine-year-old boy fought back tears yesterday after his conviction was quashed by the Court of Appeal.

Paul Blackburn was 15 when he was found guilty at Chester crown court in 1978. He was sentenced to life, but always protested his innocence while serving time in 18 different prisons.

After his conviction was ruled unsafe by the court yesterday, 41-year old Mr Blackburn said he felt both elation and fury.

"Of course I'm feeling angry," he said. "I've always felt angry. But what do you do with that? Do you destroy your own life by being angry all the time? You can't. I tried that when I was in prison and it's just so destructive and damaging."

Mr Blackburn, from Warrington, Cheshire, was released on life licence in March 2003. He always maintained his innocence and since leaving prison has struggled to pick up the pieces of his life.

"What is a normal life after 25 years in there being treated like shit, being treated like an animal?" he said. "I'm still very unsettled and have great difficulty with relationships and being around people. There are times when I need to find a lot of space and isolation for myself."

Mr Blackburn lost an earlier appeal against his conviction in 1981, but has always said he did not receive a fair trial.

His QC, Tim Owen, argued that his detention had been "clearly prolonged" by his persistent assertions that he was wrongly convicted, but Mr Blackburn felt he had no other option.

"That's the truth and that's what happened," he said yesterday. "What am I supposed to do about that other than fight it?"

His case was referred back to the Court of Appeal for a fresh review by the Criminal Cases Review Commission, the independent body which investigates possible miscarriages of justice.

In his judgment yesterday, Lord Justice Keene said the Crown had conceded that linguistic evidence was now available suggesting there was "significant police involvement" in the wording of the admissions Mr Blackburn wrote in July 1978. That evidence called into question the credibility of both the senior police officers who carried out the crucial interview and testified on oath that they sat quietly while Blackburn wrote his own statement.

"We are conscious we have not heard from them as they have not been called, but we cannot escape the conclusion that they cannot have told the truth on the subject of the written confession," the judge said.

Mr Blackburn, who was a teenager at the time, should have been told of his right to consult a solicitor and been given the opportunity to do so, the judge said. The interview should have taken place at a police station where notices about the right to legal advice would have been displayed and not at the approved school where Mr Blackburn was in care.

A parent or his assigned social worker should have been present as the house warden there on his behalf did little to safeguard his interests. And Mr Blackburn was questioned for more than three hours without a break before he made any admission.

"Such a lengthy questioning of a 15-year-old boy without a parent or guardian present gives us real cause for concern," the judge said.

He concluded that Mr Blackburn would have regarded a reference by the officers to an earlier incident and a possible further charge as a threat to be made good if he did not cooperate. "When we put all these circumstances together ... we are clear that none of the appellant's admissions should have gone before the jury," the judge said. "Certainly, in the light of current standards, they cannot be seen as reliable."

Outside the court, Mr Blackburn said he could remember little about his police interview. "I was a young kid. They say there was nothing mentally wrong with me, but I was in an approved school for setting fire to my own school. Is that normal? Well of course it isn't normal. It was a very confusing, scary and frightening time for me."

Mr Blackburn said he was waiting to hear from his legal team if there would be an application for compensation. Asked about his immediate plans he replied: "Get drunk."

Questions

- 1. How could the investigative process, used in this case, have been unfair to a suspect who was a child or had mental vulnerabilities?**

- 2. In which ways could an AA have assisted in this case?**

- 3. Under current PACE guidelines what rights do you think that Paul Blackburn was denied?**

1. How could the investigative process, used in this case, have been unfair to a suspect who was a child or an otherwise vulnerable person?

- Lack of familiarity with police processes and power imbalance between police and vulnerable suspect can lead vulnerable suspect to go along with incorrect procedures without knowing they were wrong or being in a position to raise a challenge or make a complaint
- Interview was not carried out at a police station so vulnerable suspect may not have understood his rights, or that this was a criminal matter
- Vulnerable suspect did not have anyone to advocate on his behalf
- Did not know of, or take up his right, to legal advice
- Vulnerable suspect was questioned for 3 hours without a break – far too long for anyone to maintain concentration.

2. In which ways could an AA have assisted in this case?

- Explain procedure
- Insist on access to legal advice
- Ensure vulnerable suspect understands procedure, caution and interview questions
- AA can ensure police follow PACE codes and can check and challenge unfair or incorrect practice
- AA can insist on breaks during interview for rest and refreshment
- AA can record any concerns about the vulnerable suspect's level of understanding (this is not the same as making a 'diagnosis' but it draws attention to concerns and can lead to further assessment as necessary)
- AA can support and reassure the vulnerable suspect
- AA should ask questions if anything is unclear

3. Under current PACE guidelines what rights do you think that Paul Blackburn was denied?

- Right to free legal advice at police station
- Right to have an AA as juvenile
- Right to breaks in interview

Activity 5: Roles and responsibilities of the appropriate adult

Roles and responsibilities of an AA – Question Sheet (Handout 5)

Match the following responsibilities with the categories in the table below.

1. To explain to a person what will happen to them while in custody
2. To ensure that police follow proper procedures
3. To make sure a person understands why they are detained and the possible implications
4. To advise a person on what to say or on whether to make a confession
5. To contact family/friends on behalf of a person
6. To pass on concerns about a person to social services
7. To interrupt a police interview if the person becomes distressed
8. To 'befriend' a person
9. To interrupt a police interview if the person is interrupted or rushed in their statement
10. To let the custody officer know if you are concerned about the person's health
11. To stay with the person while they are being strip searched
12. To make sure that the person has a clear understanding of their rights
13. To make sure that the person has reasonable breaks
14. To make sure that the person has refreshments
15. To interrupt a police interview if vulnerable suspect is asked closed or leading questions
16. To advise the person about help available, e.g. local mental health charity, Drug Intervention Programme (DIP), youth and community centre
17. To make sure that the cells are clean
18. To give legal advice
19. To pass on to the legal representative any information given to you by the person
20. To sign any documents as requested by the custody officer
21. To take the person home.

Advise the juvenile or vulnerable suspect	
Observe whether or not the interview is being conducted properly and intervene when necessary	
Facilitate communication between the juvenile or vulnerable suspect and the police	
Look after juvenile or vulnerable suspect's welfare	
Provide information about the juvenile or vulnerable suspect's rights and ensure that these are protected	
Activities that are <u>not</u> part of the AA role	

Roles and responsibilities of an AA – Answer Sheet (Handout 6)

Advise the juvenile or vulnerable suspect	1 3 12
Observe whether or not the interview is being conducted properly and intervene when necessary	2 7 9 13 15
Facilitate communication between the juvenile or vulnerable suspect and the police	7 9
Look after juvenile or vulnerable suspect's welfare	(6) 10 13 14 (17)
Provide information about the juvenile or vulnerable suspect's rights and ensure that these are protected	2 3 11 12 13 14 (20)
Activities that are not part of the AA role	4 5 8 16 17 18 19 (20) 21

1. To explain to a juvenile or vulnerable suspect what will happen to them while in custody

Yes, the AA should explain procedures during detention but should not predict the outcome.

2. To ensure that police follow proper procedures

Yes, the AA should ensure the police follow the procedures set out in the PACE Codes of Practice.

3. To make sure that the person understands why they are detained and the possible implications

Yes, the AA should make sure the vulnerable suspect understands why they have been arrested and detained and what might happen as a result. The AA should ensure they give factual information about possible outcomes without giving legal advice or making predictions. The AA should ensure access to legal advice whenever they consider it to be in the best interests of the vulnerable suspect.

4. To advise the person what to say or whether to make a confession

No, the AA should not direct the person as to what to say or whether or not to make a confession.

5. To contact family/friends on behalf of the person

No, this is not part of the AA role under PACE. Depending on the scheme's policies or the AA's professional role (e.g. social worker), it *may* be possible. However, there is a risk that the AA could unwittingly pass on information that affects the investigation so the police should be asked.

6. To pass on concerns about a detained to social services

Although this is not defined in PACE, the AA should report any child or adult safeguarding concerns according to their scheme's policies on safeguarding and data protection. Safeguarding is everyone's responsibility and it should not be assumed that other agencies (e.g. the police) will automatically pass on concerns.

7. To interrupt a police interview if the juvenile or vulnerable suspect becomes distressed

Yes, the AA should interrupt the interview whenever necessary. Exactly when and how to interrupt will vary from case to case. It is not always necessary to stop an interview as soon as a person becomes distressed – it will depend on how they are coping generally and their individual needs and abilities. Some comments and enquiries (e.g. “Are you feeling OK?”) can be made while the interview is still being recorded but at other times the AA will need to ask for a break.

8. To befriend a juvenile or vulnerable suspect

No, the AA should not ‘befriend’ a person but should establish a rapport based on respect. The AA is not their friend but a friendly, kind, helpful and supportive manner is necessary to support effective participation. The AA role does not extend beyond the police station or voluntary interview location.

9. To interrupt a police interview if the juvenile or vulnerable suspect is being interrupted or rushed in their statement

Yes, the AA should interrupt the interview if anything impacts on the vulnerable suspect’s ability to listen, understand and to reply in their own words and at a pace they can manage.

10. To let the custody officer know if you are concerned about the juvenile or vulnerable suspect’s health

Yes, if you have any concerns about the vulnerable suspect’s physical or mental health you should bring this to the custody officer’s attention. Unless it would be likely to result in harm to the vulnerable suspect or others, you should normally tell the vulnerable suspect what you are going to do. It is helpful if you can be specific about what is causing you concern; note or describe the symptoms or the behaviour. If the vulnerable suspect says they feel ill or have any injuries you should also pass this information on, even if you cannot see any evidence for yourself.

11. To stay with the juvenile or vulnerable suspect while they are being strip searched

Yes, the AA is required to be present while the vulnerable suspect is strip searched unless a) it is an urgent case where there is risk of serious harm to the vulnerable person or others and the AA is not yet available, or b) in the case of a child only, they signify in the AA’s presence that they do not wish them there for the search and the AA agrees, a record is made and the AA signs the record. The AA must be of the same sex as the person for a *strip search* unless they specifically request an AA of the opposite sex. The AA must be of the same sex as the person for an *intimate search* unless; the person requests someone of the opposite sex who is readily available, or they state in the presence of the AA that they do not want one present.

It is a matter for local AA schemes and police as to how compliance is achieved.

12. To make sure that the juvenile or vulnerable suspect has a clear understanding of their rights

Yes, the AA should try to make sure the vulnerable suspect understands his/her rights. However, this role may need to be shared with the police and the legal advisor. Where there seem to be particular difficulties the AA may need to suggest a medical or other assessment.

13. To make sure that the juvenile or vulnerable suspect has reasonable breaks

Yes, the AA should make sure the vulnerable suspect has reasonable breaks in interview, at least every 2 hours – the frequency will depend to some extent on the individual needs of the vulnerable suspect considering age, mental health, learning disability, maturity and emotional state.

14. To make sure that the juvenile or vulnerable suspect has refreshments

Yes, the AA should make sure the vulnerable suspect has access to suitable refreshments, but cannot force the vulnerable suspect to eat or drink anything. Any concerns should be noted.

15. To interrupt a police interview if the juvenile or vulnerable suspect is being asked closed or leading questions

Yes, generally. Closed questions give the interviewer control and restrict the vulnerable suspect's account. But not all closed questions are inappropriate. The AA will need to judge whether the vulnerable suspect is likely to have understood the questions and should intervene to check if there is any doubt.

16. To advise the juvenile or vulnerable suspect to get some help from an organisation, e.g. MIND, drug rehabilitation service, youth and community centre

It is not technically part of the AA role under PACE. However, an AA can provide links to services that they think may assist person. Check your scheme arrangements for any referral policies.

17. To make sure that the cells are clean

It is not the AA's job to clean the cells but if a cell or vulnerable suspect's room is dirty the AA should make representations to the Custody Sergeant, or Inspector in necessary, to ensure the person is held in appropriate conditions. Unresolved concerns should be recorded.

18. To give legal advice

No, the AA must not give legal advice. They must ensure the vulnerable suspect can exercise his/her right to free legal advice at any time. If the person declines legal advice, the AA can still require the police to call a solicitor to the station if they consider in their best interests.

19. To pass on to the legal representative any information given to you by the juvenile or vulnerable suspect

No, your discussions with the vulnerable suspect are subject to the common law duty of confidentiality. This means that they must remain confidential unless (a) instructed by a court, (b) it is more in the public interest or (c) you have the consent of the vulnerable suspect. You may find the person happily gives their consent and you can share information, concerns and questions in a three-way discussion when the legal advisor arrives. Be aware that because AAs do not have 'legal privilege' solicitors may be wary of including you in legal consultations.

20. To sign any documents as requested by the custody officer

The AA should not sign any documents without asking what they are. It is appropriate to sign to confirm that: the rights have been given in their presence; that an interview record or statement is accurate; or that consent for a procedure was sought in their presence. The AA must not sign to give consent to anything on behalf of the vulnerable suspect (except in relation to support for people who are blind, seriously visually impaired or unable to read (see PACE Code C 3.20)). If in doubt, ask the police to explain, speak to a legal advisor or contact your manager or scheme co-ordinator.

21. To take the juvenile or vulnerable suspect home

No, it is not the AA's role to take the vulnerable suspect home. To do so can raise safety issues for both the AA and the person. However, if the AA is a social worker or YOT worker it may be part of their role to provide transport for the vulnerable suspect. Check with your scheme or manager.

Module 3: People and procedures in police custody

Overview

Module objective	To understand the processes and procedures in police custody and how the appropriate adult (AA) role fits within them
Learning outcomes	<p>By the end of this module, learners should be able to: -</p> <ul style="list-style-type: none"> • Outline the standard processes carried out at a police station, for example for explaining rights and entitlements, interview and charging • Describe how a custody officer determines if an appropriate adult is required in custody • Give examples of different custodial situations when an appropriate adult would be required • Explain how the appropriate adult role is distinct from other sources of support available to a person detained in a police station
Suggested timing	2 hours
Method	<ul style="list-style-type: none"> • Activity 1 - Review of Module 2 and overview of Module 3 • Activity 2 - Sequence of procedures at the police station • Activity 3 - The decision to call an appropriate adult • Activity 4 - Who may act as an AA? • Activity 5 - Roles at the police station
Resources	<ul style="list-style-type: none"> • Photocopied activity sheets and handouts • Flip chart and pens
Facilitator's notes	<p>This module moves learners towards being conversant with the custody process, personnel and procedures and some thresholds. For participants that have not been through or experienced custody this may have some challenges in terms of orientation and the realities of working in this environment. It may allow learners to voice scenarios which whilst important to them can veer too far from the material and learning outcomes. You will undoubtedly be asked about SmartWater and can find out more at www.smartwater.com/forensic-spray/.</p>

Activity Plan

Activity 1	Review of Module 3 and Overview of Module 4	Handout
Step 1	Facilitator reminds learners of what has been covered in previous module	
Activity 2	Sequence of procedures at the police station	
Step 1	Ask the whole group: “If a suspect has been arrested and conveyed to a police station, what procedures do you think may take place?” Record answers on the flipchart.	
Step 2	Still as a large group, learners answer the following questions: 1. In what order would these take place? 2. Would all procedures always take place? 3. Which would be significant moments for the AA? Make sure all the procedures listed in the handout are covered, focusing on the key moments for the AA.	
Step 3	Share the handout	1
Activity 3	The decision to call an appropriate adult	
Step 1	Divide the group into three. Share the handout and assign each small group three questions from it.	2
Step 2	Ask each group to feed back to the whole group	
Step 3	Provide clarification and extra information based on the information in the answers handout. Share the handout	3
Activity 4	Who may act as an AA?	
Step 1	Ask the whole group, “Who may act as an AA?” and record suggestions on a flipchart.	
Step 2	Lead a discussion on the perceived advantages and disadvantages of different people fulfilling the AA role. This will differ depending on your group but could cover volunteers, parents and/or social workers.	
Step 3	Ask the whole group, “Who <u>cannot</u> act as an AA?” and discuss	
Step 4	Share the handout	4
Activity 5	Roles at the police station	
Step 1	Divide learners into small groups to work on the handout	5
Step 2	Ask for feedback from each group. Provide additional information and provide clarity using the information provided and local knowledge	
Step 3	Share the handout with suggested answers	6

Activity 2: Sequence of procedures at the police station (Handout 1)

All actions and procedures listed below can happen. However, they will not all always happen. Please note that these procedures may not occur in the order listed.

Detention and booking in

- Arrested
- Conveyed to Police Station
- Booked into Custody (rights and entitlements)
- Placed in cell or other suitable accommodation
- Call to Solicitor/legal representative
- Call for Appropriate Adult

Gathering evidence

- Interview
- Fingerprints
- Photograph
- DNA
- Searches
- Intimate samples
- Non intimate samples
- SmartWater
- Footwear

Outcomes

- Charged (released on bail to attend court; or remanded in custody)
- Released with no further action
- Transferred to hospital under the Mental Health Act 1983
- Released pending further investigation*
- Released pending advice or a charging decision from the Crown Prosecution Service*
- Community Resolution
- Fixed Penalty Notice (*18+ only*)
- Caution or Conditional Caution (*18+ only*)
- Attend Youth Offending Service for a triage assessment for possible diversion out of the criminal justice system* (*under 18 only*)
- Youth Caution (*first caution only; under 18 only*)
- Statutory assessment by YOT for prospective Youth Conditional Caution or additional Youth Cautions (*under 18 only*)*

* Pre-charge bail may, in some circumstances, be applied to these outcomes.

Please note that specific procedures and disposal options change frequently and can vary locally.

Activity 3: The decision to call an appropriate adult

Question Sheet (Handout 2)

The custody officer is responsible for determining if an AA is required under the PACE Codes.

Group 1

1. At what age is someone no longer a 'juvenile' under PACE?
2. How does the custody officer determine the age of a suspect?
3. If the suspect is under 18, who should be informed about their detention?

Group 2

4. What information should be given to the person informed about a suspect be they a juvenile or vulnerable person?
5. If the suspect is under 18, who should be called to the station?
6. Would it ever be preferable if the AA called for someone under 18 was not a relative?

Group 3

7. How does the custody officer determine if someone may be a vulnerable person?
8. Who must be informed about the detention of an adult who may be a vulnerable person?
9. Who must be called to the station for an adult who may be a vulnerable person?

1. At what age is someone no longer a 'juvenile' under PACE?

18 years old. Some parts of the PACE Act refer to 'juveniles' while others refer to people who have not attained the age of 18. This makes no difference in practice. Until 2013, 17 year olds were excluded whichever form of words was used. This was not consistent with the UN Convention of the Rights of the Child, to which the UK is a signatory. During the period 2013 to 2017 a number of changes were made to the PACE Codes and the PACE Act to remove this anomaly.

2. How does the custody officer determine the age of a suspect?

The custody officer determines their age by observation or information provided. If they have a reasonable suspicion or are told in good faith that the person detained is 17 years or younger, then an AA must be called.

3. If the suspect is under 18, who should be informed about their detention?

If the suspect is under 18, the custody officer must, if it is practicable (possible), ascertain the identity of a person responsible for their welfare. That person may be: -

- (a) the parent or guardian;
- (b) someone from the care organisation responsible for them if they are in care under the Children Act 1989;
- (c) any other person who has, for the time being, assumed responsibility for their welfare.

4. What information should be given to the person informed about a suspect?

That person must be informed *as soon as practicable* (possible) that the child or young person has been arrested and where they are detained. This right is in addition to the vulnerable suspect's right not to be held incommunicado.

5. If the suspect is under 18, who should be called to the station?

The AA should be called to the station. If the AA is not the person responsible for their care, that person still needs to be contacted and given the information above.

6. Would it ever be preferable if the AA called for someone under 18 was not a relative?

For a juvenile the AA should normally be the parent or guardian unless they are estranged and the young person objects. Sometimes parents may be unavailable or unsuitable because, for example, of involvement in the case in question.

7. How does the custody officer determine if someone may be 'vulnerable'?

Custody officers have limited training in this area and rely on the information to hand e.g. responses to risk assessment questions, conduct of the person, observations, and information provided in good faith. As of July 2018 they have been provided with a non-exhaustive list of sources of information to help inform them in determining whether an individual is 'vulnerable' – details are found below.

It is legally the custody officer's decision, so they cannot *defer* to anyone, including medical professionals. There is no need for a diagnosis. They can *refer* to others, and this will increasingly be the case across England as liaison and diversion schemes roll out. Technically speaking, if a suitably trained professional was able to categorically rule out mental vulnerability in a short space of time, and the officer therefore no longer suspected vulnerability, they would not need to call an AA.

However, it should be borne in mind that many medical professionals in police custody are not qualified to diagnose (or rule out) mental ill health or disability. In respecting a professional's medical qualifications, police officers may not always recognise this fact. The threshold is 'reason to suspect', not a diagnosis. If a custody officer is *suspects* enough to be asking a doctor, nurse or liaison and diversion professional, this probably meets the threshold for needing to call an AA.

- Code C 1.4 "If at any time an officer has any reason to suspect that a person of any age may be vulnerable (see paragraph 1.13(d)), in the absence of clear evidence to dispel that suspicion, that person shall be treated as such for the purposes of this Code..."
- Code C 1G "A person may be vulnerable as a result of a having a mental health condition or mental disorder. Similarly, simply because an individual does not have, or is not known to have, any such condition or disorder, does not mean that they are not vulnerable for the purposes of this Code. It is therefore important that the custody officer in the case of a detained person or the officer investigating the offence in the case of a person who has not been arrested or detained, as appropriate, considers on a case by case basis, whether any of the factors described in paragraph 1.13(d) might apply to the person in question. In doing so, the officer must take into account the particular circumstances of the individual and how the nature of the investigation might affect them..."

Custody officers must now make "reasonable enquiries...to ascertain what information is available....as indicating that the person may be vulnerable..." Code C provides a list of sources where information could be found to inform the decision to call for an AA. :

Code C 1GA – "...examples of relevant information that may be available include:

- the behaviour of the adult or juvenile;
- the mental health and capacity of the adult or juvenile;
- what the adult or juvenile says about themselves;
- information from relatives and friends of the adult or juvenile;
- information from police officers and staff and from police records;
- information from health and social care (including liaison and diversion services) and other professionals who know, or have had previous contact with, the individual and may be able to contribute to assessing their need for help and support from an appropriate adult. This includes contacts and assessments arranged by the police or at the request of the individual or (as applicable) their appropriate adult or solicitor."

8. Who must be informed about the detention of an adult who may be a vulnerable person?

An appropriate adult should be informed of their arrest and detention.

9. Who must be called to the station for an adult who may be a vulnerable person?

An appropriate adult should be called. There is no requirement to contact a partner, parent or other family member.

PACE Code C (1D) says, "In the case of someone who is vulnerable, it may be more satisfactory if the appropriate adult is someone experienced or trained in their care rather than a relative lacking such qualifications. But if the detainee prefers a relative to a better qualified stranger or objects to a particular person their wishes should, if practicable, be respected."

Activity 4: Who may act as an AA?

Information sheet (Handout 4)

For children and young people under 18

The Police and Criminal Evidence Act 1984 (PACE) sets out who may act for a person under 18: -

- the parent, guardian or, if the juvenile is in the care of a local authority or voluntary organisation, a person representing that authority or organisation;
- a social worker of a local authority;
- failing these some other responsible adult aged 18 or over (other than those prohibited)

The law prioritises parents but also recognises that this may not always be possible. The Crime and Disorder Act 1998 makes Youth Offending Teams legally responsible for ensuring the provision of appropriate adults for children and young people. This is the basis for organised schemes of AAs for children and young people.

For adults who may be vulnerable

The PACE Codes of Practice (not the Act) set out who may act for a vulnerable adult: -

- a relative, guardian or other person responsible for their care or custody;
- someone experienced in dealing with mentally disordered / mentally vulnerable people;
- failing these some other responsible adult aged 18 or over (other than those prohibited).

The Codes suggest that, it may be more satisfactory if the AA is experienced or trained in the care of vulnerable adults, rather than a relative lacking such qualifications. But if the vulnerable person prefers a relative to a better qualified stranger or objects to a particular person their wishes should, if practicable, be respected.

People who are not allowed to act as an AA

- A police officer or a person employed by police
- A person under the direction or control of the chief officer of a police force
- 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
- Solicitors and independent custody visitors at the police station in those capacities
- Suspects, victims, witnesses and anyone otherwise involved in the investigation (including parents)
- Anyone who has received admissions prior to acting as the AA (including parents)
- A person suspected of involvement in the offence or involvement in the commission, preparation or instigation of acts of terrorism (including parents)
- The principal of a child's educational establishment (unless waiting would cause unreasonable delay and the offence is not against the establishment)
- An estranged parent where the child expressly and specifically objects to their presence
- Acting as AA may affect eligibility for being a magistrate, particularly in the same area.

The police have the final say and can exclude a person they consider 'unfit' for any reason. They should, however, give the reason.

Activity 5: Roles at the police station

Question Sheet (Handout 5)

While at the police station, a vulnerable suspect may come into contact with a number of individuals other than the AA. Can you suggest what role they may play?

Solicitor/Legal Representative	
Forensic Physician /Healthcare Professional	
Approved Mental Health Professional (AMHP)	
Independent Custody Visitor (ICV)	
Liaison and diversion staff (L&D)	
Custody Officer / Sergeant	
Designated Detention officer (DDO)	
Duty Inspector	
Superintendent	
Arresting officer / Investigating officer / Officer in the case / Interviewing officer	

Answer Sheet (Handout 6)

Solicitor/Legal Representative

All suspects are entitled to consult with a solicitor/legal representative privately either in person, in writing or by telephone, at any time whilst in custody (PACE s58, Code C s6). There are a few exceptions to this (see Code C, Annex B). It is the solicitor/legal representative's job to represent their client's interests and to protect their basic and legal rights, ensuring that all the correct legal procedures are followed by the police involved in the case. The solicitor can be the person's own solicitor, if they have one and they can be contacted, or failing this, a Duty Solicitor Scheme operates at all police stations, providing a free service. A vulnerable suspect can choose to meet their solicitor/legal representative privately without an AA present. There are important complexities around AAs being present for legal consultations which are explored in [Module 5 Activity 7](#).

Forensic physician and healthcare professionals

Forensic physicians (doctors, often GPs) and healthcare professionals (a clinically qualified person, usually a nurse or paramedic) make clinical assessments and forensic examinations of people in police detention. They are employed directly by the police rather than by the NHS. PACE Code C s.9 states that the custody officer must immediately call the police healthcare professional if a person who has been detained: -

- appears to be suffering from physical illness or a mental disorder; or
- is injured; or
- does not show signs of sensibility or awareness; or
- fails to respond normally to questions or conversation (other than through drunkenness alone); or
- otherwise appears to need medical attention.

If an assessment under the Mental Health Act 1983 is to take place the police have discretion not to call the healthcare professional so long as the assessment can be undertaken without delay.

Approved Mental Health Professional (AMHP)

Under the Mental Health Act 2007, this role has replaced the approved social worker's role. It relates to health care professionals, including nurses, social workers and occupational therapists, who are experienced and have received extensive training in the application of the Mental Health Act 1983. They bring a broader social perspective to the process of 'sectioning' a person.

Independent Custody Visitor (ICV)

ICVs are volunteers from the local community. They are allowed unannounced access to police stations to check whether people are being treated properly and have access to their rights. They may ask to speak to a person who has been detained but it is not mandatory.

Liaison and diversion staff (L&D)

L&D services exist to identify people who have mental health, learning disability or substance misuse issues when they first come into contact with the criminal justice system. The service aims to screen, assess and refer people to other services. They may be supported through the criminal justice system or, if appropriate, diverted into treatment, social care or another intervention. The Government has committed to all-age L&D services existing in every police station and court in England by 2020.

Custody Officer/ Custody Sergeant

The custody officer must be the rank of Sergeant or above and is responsible for the welfare of those in custody. For example, they ensure there is decent ventilation and light, that the person gets properly fed and that nothing improper occurs (PACE s.39 and Code C s.8 cover this in detail). The custody officer is not involved in the investigation of the offence but can be called to court to give evidence about what happened in custody. They keep a full record of a person's time at the police station and decide what happens to them at the end of the investigation having spoken with the officer in the case. They will take into account representations from a legal representative and the AA. Some of the responsibilities of the role of the custody officer under PACE 1984 and the Codes of Practice include: -

1. To decide whether or not there are any grounds for detaining a person, record this in writing and inform the person of these grounds (PACE s37). Detention is usually authorised on the grounds that it is necessary to secure or preserve evidence or to obtain evidence by questioning.
2. To keep the custody record for each detainee (Code C 2.1, 2.3)
3. To ensure that the suspect is advised of rights (both verbally and in writing, and including notice of entitlements) (PACE s58, Code C3.1, 3.2 and s6)
4. To ensure that the forensic physician is contacted where necessary (Code C 9)
5. To ensure that an AA is contacted where necessary (Code C 3.15)
6. To decide whether a suspect is charged when presented with the evidence by the investigating officer (PACE s37(7), Code C 16.1)
7. To decide after charge whether to release suspect on bail (with or without conditions) or to detain (PACE s38).

Designated Detention Officer

Civilians employed by the police who work under the custody officer and carry out their instructions.

Duty & Review Inspector

These roles are often combined. This officer is responsible for the general management and running of police custody. They have many responsibilities in the Codes of Practice. These include: -

1. Regularly reviewing the grounds of a person's detention and authorising its continuation. As part of this process he/she will listen to and take into account any representations made by the person, their solicitor/legal representative and AA (if available at the time) about the necessity for on-going detention (Code C 15.1)
2. Authorising certain searches of people. (Code C, Annex A2)
3. Authorising the withholding of certain rights from a person, including the right to have someone informed of their arrest. (Code C, Annex B1)
4. Authorising the taking of certain samples and testing for Class A drugs in specific circumstances. (Code C 17.3)
5. Dealing with any formal complaints regarding the arrest and detention of a suspect. (Code C 9.2)
6. Authorising any interview where a vulnerable suspect says they no longer want legal advice, including enquiring about the reasons for their change of mind. (Code C 6.6d)

Superintendent

The Superintendent is usually responsible for authorising the detention of a person beyond 24 hours and up to a maximum of 36 hours, although some other ranks can undertake this function. When considering such an authorisation the Superintendent will listen to, and take into account, any representations made by the person, their solicitor/legal representative and the AA (if available at the time).

A Superintendent may only authorise extended detention in cases where: -

- the offence is an 'indictable' offence (a serious offence that has to be heard in the Crown Court rather than a Magistrate's Court),
- he/she is satisfied that the investigation is being conducted expeditiously and diligently and
- further detention is necessary.

Arresting Officer / Investigating Officer / Officer in the Case / Interviewing Officer

The Arresting Officer is the officer that carries out the initial arrest.

The Investigating Officer or Officer in the Case is responsible for investigating the alleged offence. They may or may not be the arresting officer. They collect evidence upon which a prosecution might proceed. They are not responsible for treatment or conditions in custody. If the suspect has to leave the custody centre as part of the investigation (e.g. a house search) they are temporarily under the supervision of the Investigating Officer (Code C 12.1).

While the Investigating Officer may conduct the interview, there may be a specialist interviewer. According to Codes of Practice, some of the roles of the investigating or interviewing officer during a PACE interview are to: -

1. Explain the recording process; give their name, rank and number and that of any other interviewer (Code C 12.7, Code E 4.4);
2. Ask the suspect, AA, solicitor and anyone else to introduce themselves (Code E 4.4)
3. Caution the suspect in the presence of the AA (Code C 10.1, 10.12, 11.4, 11.15)
4. Repeat the reason for arrest, purpose of interview and remind the suspect their right to free legal advice (Code C 11.1A, 11.2)
5. Inform the AA of their role during the interview (Code C 11.17)
6. At the conclusion of interview, offer the suspect an opportunity to clarify and/or add to anything that has been said (Code C 11.11)

Module 4: Effective communication

Overview

Module objective	To develop an understanding of how the appropriate adult can support effective communication in custody
Learning outcomes	By the end of this module, learners should be able to: - <ul style="list-style-type: none"> • Explain the importance of clear communication • Describe the different factors which may help or hinder communication • Describe some of the tools and strategies an appropriate adult can use to support effective communications
Suggested timing	2 hours
Method	<ul style="list-style-type: none"> • Activity 1 - Review of Module 3 and overview of Module 4 • Activity 2 - The communication process • Activity 3 - Factors affecting communication • Activity 4 - Non-verbal communication and building rapport • Activity 5 - Assertiveness, aggression and passivity • Activity 6 – Dealing with difficult behaviour
Resources	<ul style="list-style-type: none"> • Photocopied activity sheets and handouts • Flip chart and/or blank pieces of paper and pens
Facilitator's notes	<p>The module looks at both external factors (the environment) and internal factors (people's state of mind) that may have an impact on effective communication in police custody and voluntary interviews. The module is somewhat unusual in its focus on 'softer' skills rather than hard knowledge. However, ensuring effective communication is a fundamental aspect of the AA role. AAs must ensure that the vulnerable person understands the content of what is being asked of them and its <i>significance</i>. They must also ensure that the vulnerable person can make informed choices in any given situation.</p> <p>Therefore, this module is critically important and should be allotted sufficient time. Since communications is something that is important to all of us, and there are plenty of activities, it's also particularly engaging for learners.</p>

Activity Plan

Activity 1	Review of Module 3 and Overview of Module 4	Handout
Step 1	Facilitator reminds learners of what has been covered in previous module	
Activity 2	The communication process	
Step 1	Draw on the information contained in the handout to lead a discussion about how the communication process works and how it can be open to misinterpretation.	
Step 2	Share the handout (at the end of the discussion). Ask two learners to read out the statements by Jane and her Manager. Ask the group what message they think Jane might have wanted to convey and what message the Manager 'heard'.	1
Step 3	Share the handout.	2
Activity 3	Factors affecting communication	
Step 1	On a flipchart, write out the four factors which affect communication (Location; You; The other person(s); What you are communicating).	
Step 2	Ask the group how they think that each of these factors could affect communication, specifically in the AA role.	
Step 3	Ask the group to think of factors that might help or hinder communication.	
Step 4	Share the handout	3
Activity 4	Non-verbal communication and building rapport	
Step 1	Follow the facilitator's notes for Activity 4 (communicate this image)	4
Step 2	Use the information contained at the top of Activity 4 Handout 5 to discuss the importance of non-verbal communication and its impact.	
Step 3	Share the handout after the discussion	5
Step 4	Ask the group to identify some examples of non-verbal communication and how they can be interpreted, e.g. lack of eye contact or fidgeting by the listener can make a speaker feel that they are not being listened to.	
Step 5	Discuss how AAs might try to establish good rapport and communication.	
Activity 5	Assertiveness, aggression and passivity	
Step 1	Use the handout as a reference, introduce the idea of aggression and passivity. Ask what indicators there might be of aggressive or passive behaviour in terms of body language, looks, voice and language. Discuss how this might be relevant to how they communicate in their role as an AA. Either capture a whole group discussion on a flipchart or divide into groups based on the sections in the handout. Share the handout at the end.	6
Step 2	Introduce the idea of assertiveness, highlighting the importance of confidence. Share the handout and discuss.	7

Step 3	Share the question handout and ask learners to complete the activity.	8
Step 4	Share the answer handout	9
Step 5	Follow the facilitator's notes for 'How is the AA seen by others?'	
Activity 6	Dealing with Difficult Behaviour	
Step 1	Lead a group discussion based on the information in the handout	
Step 2	Share the handout for future reference	10

Activity 2: The communication process

Information sheet (Handout 1)

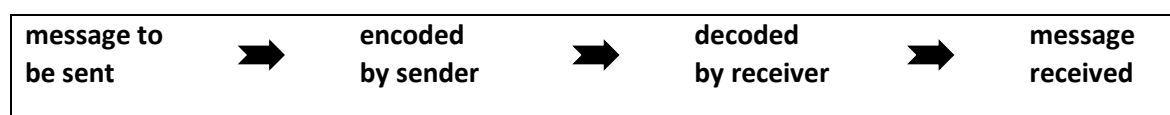
Introduction

People in organisations typically spend over 75% of their time in an interpersonal situation. Therefore, it is no surprise that poor communication is at the root of a large number of organisational problems. Effective communication is an essential component of organisational success whether it is at the interpersonal, intra-group, organisational or external levels.

The process

In some way, we have all been communicating with others since infancy. However, the process of transmitting information from an individual (or a group) to another is a very complex process, with many sources of potential error.

In any communication some of the 'meaning' is lost in the simple transmission of a message from the sender to the receiver. In many situations a large amount of the true message is lost and the message that is heard is often far different than the one originally intended. This is most obvious in cross-cultural situations where language and idioms (such as "it's raining cats and dogs") are an issue. However, it is also common among people of the same culture.



*Some error likely as the sender
'encodes' i.e. finds a way to turn their
meaning into words, images, gestures
etc.*

*More error likely as the receiver
'decodes' the message, turning the
words, images etc. back into a meaning*

A simple example

Jane: "I don't think I'll be able to cover my rota shift on Wednesday, I keep feeling nauseous and my doctor says I must not be stressed."

Manager: "Jane, this is the third time in a row this has happened – if you are unwell please let me know as we have to cover for you at short notice and this inconveniences everybody."

Answer sheet: a simple example (Handout 2)

Jane: *"I don't think I'll be able to cover my rota shift on Wednesday, I keep feeling nauseous and my doctor says I must not be stressed."*

Manager: *"Jane, this is the third time in a row this has happened – if you are unwell please let me know as we have to cover for you at short notice and this inconveniences everybody."*

Jane felt that she had a simple message to convey: she didn't feel very well and may not be able to fill a rota shift. She translates her thoughts into words and this is the first potential source of error. Was she trying to say she might be unavailable? Was she trying to convey anything else? In fact, she was trying to say more than that she might be unavailable. Jane perceived her Manager and colleagues were not as sympathetic to the situation as she felt they should be. She had made herself available for several shifts and Wednesday afternoons were becoming difficult to fit in.

The Manager would have preferred Jane to say what was really wrong; Jane didn't want to feel that she was letting the team down.

Thus, what appears to be a simple communication is, in reality, quite complex. Jane is communicating far more than that she would miss a shift, she is conveying a number of complex emotions, complicated by her complex feelings about not letting the team and others down, her personal situation and her reputation.

Jane sent a message – the message is more than words; it includes the tone, the timing of the call, and the way she expressed herself.

Similarly, the Manager goes through a complex communication process in 'hearing' the message. The message that Jane sent had to be decoded and given meaning. There are many ways to decode the simple message that Jane gave and the way the message is heard will influence the response to Jane.

In this instance the Manager 'heard' far more than a simple message that Jane wouldn't be able to cover her shift on Wednesday. The Manager heard hostility from Jane, indifference, lack of consideration, among other emotions. Jane may not have meant any of this, she may have felt embarrassed and awkward at cancelling a rota shift, but this is not what the Manager heard. The message the Manager heard will be influenced by the Manager's own feelings at the time; in this instance the Manager may already have been feeling stressed, tired, frustrated, etc.

Communication is so difficult, because at each step in the process there is a major potential for error. By the time a message gets from a sender to a receiver there are four basic places where transmission errors can take place and at each place, there is a multitude of potential sources of error. Therefore, it is no surprise that social psychologists estimate that there is usually 40-60% loss of meaning in the transmission of messages from sender to receiver.

In your role as an AA, it is critical to understand this process. The AA needs to understand and be aware of the potential sources of errors. They should constantly counteract these tendencies by making a conscientious effort to ensure minimal loss of meaning in your conversation with the vulnerable suspect and with others involved in the detention process.

Activity 3: Factors affecting communication

Information sheet (Handout 3)

The location

- The environment in which you are active will have an impact on your effectiveness.
- Noise, a variety of smells and the atmosphere can affect an individual and affect the success of the communication process.

You

- How *you* are feeling at that particular time can have a dramatic effect on any exchange of communication.
- Have you had difficulty making your way to the police station?
- Have you had problems waiting to be let into the custody centre, due to busy custody officers processing several people?
- Have you won the big prize on the lottery the night before and feel particularly happy to be in any place to share your good news? Remember, this may not be appropriate either.

The other person/people

- Who are you communicating with e.g. a vulnerable suspect (young? vulnerable adult?), custody staff, solicitor?
- How will you communicate effectively, depending upon the needs of the individual? Are they distressed? Do they understand why they are in a police cell, and even perhaps more importantly, do they know where they are?
- Is the staff in the custody centre overstretched and busy with numerous people all requesting information at the same time? Is your request imperative, or can it wait while another is given priority?
- Is the solicitor talking to the officer in the case? Is your question more important than the discussion they are having?

What YOU are communicating

- Your actions and feelings in the situations addressed above, will affect how you communicate and how you are perceived by others. Are your tone and manner appropriate?

What helps and hinders communication?

What helps	What hinders
<ul style="list-style-type: none"> • Eye contact • Genuine interest • Pleasant environment • Undivided attention • Being/feeling relaxed • Liking the person • Peace and quiet • Empathy • Privacy • Speaking the same language • No distractions • Good vibes • Time • Interesting content • Good memory 	<ul style="list-style-type: none"> • Inequality in seating • Desk • Interruptions • Noise • Feeling ill or tired • Hard of hearing • Boredom • Agitated state of mind • Irritating habits • Shortage of time • Anger • Too hot or cold • Gossiping • Rambling • Forgetting • Unpleasant smell

Active listening	When speaking
<ul style="list-style-type: none"> • Being aware of personal space • Giving your complete attention • Remaining neutral • Paraphrasing what you have heard • Clarifying when necessary • Asking questions if you do not understand 	<ul style="list-style-type: none"> • Speak for yourself • Be aware of your non-verbal language • Speak in a way that the listener will understand • Be clear, specific and precise • Be descriptive rather than judgemental • Check that the listener is hearing • Do not speak too quickly or too quietly

Activity 4: Non-verbal communication

Facilitator notes for 'Communicate this image'

The purpose of the activity is to demonstrate how much we rely on non-verbal communication (gestures, facial expressions, etc.) when communicating with each other. Allow 5 minutes per stage.

Stage 1

- 1) Place the learners into pairs and ask them to sit back-to-back.
- 2) One of the pair (person A) is given the diagram on the following page. They cannot show it to person B. (Remember that the image is the same for all pairs, so consider arranging learners in a line so that the Bs cannot see any of the As).
- 3) Person B is given a blank sheet of paper and a pen.
- 4) Person B is not allowed to speak throughout the activity.
- 5) Person A describes the shape to person B.
- 6) Person B attempts to draw the diagram purely from the verbal description given by person A.

Stage 2

- 7) Person B is then given a second piece of paper or turns over their sheet.
- 8) The pair then face each other – A still does not show the diagram to B.
- 9) The activity is repeated (the facilitator should see person A using non-verbal communication e.g. hand gestures, etc. to explain the diagram).
- 10) Let the pairs check the results. The second attempt should be closer to the original than the first. Even if both drawings are accurate, the second is likely to have been drawn quicker and with more confidence.

Stage 3 (optional)

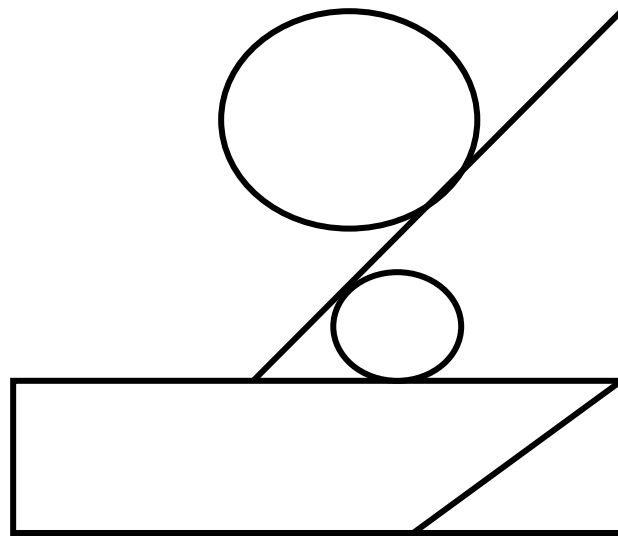
This stage could be used to take the activity further to show how all three parts of communication i.e. listening, non-verbal and speech (including one-to-one) are important to understanding.

- 11) As with Stage 2, but this time the pair can talk to each other.

Debrief

The debrief should address the feelings of the learners taking one stage at a time. Cover feelings of frustration (from both of the pair) and the moments of understanding (the penny drops, light bulb comes on, etc.). Link to the AA role by highlighting the particular relevance to the interview situation where the AA should be seated in a position where they can see the vulnerable suspect's face and posture.

Communicate this image (Handout 4)

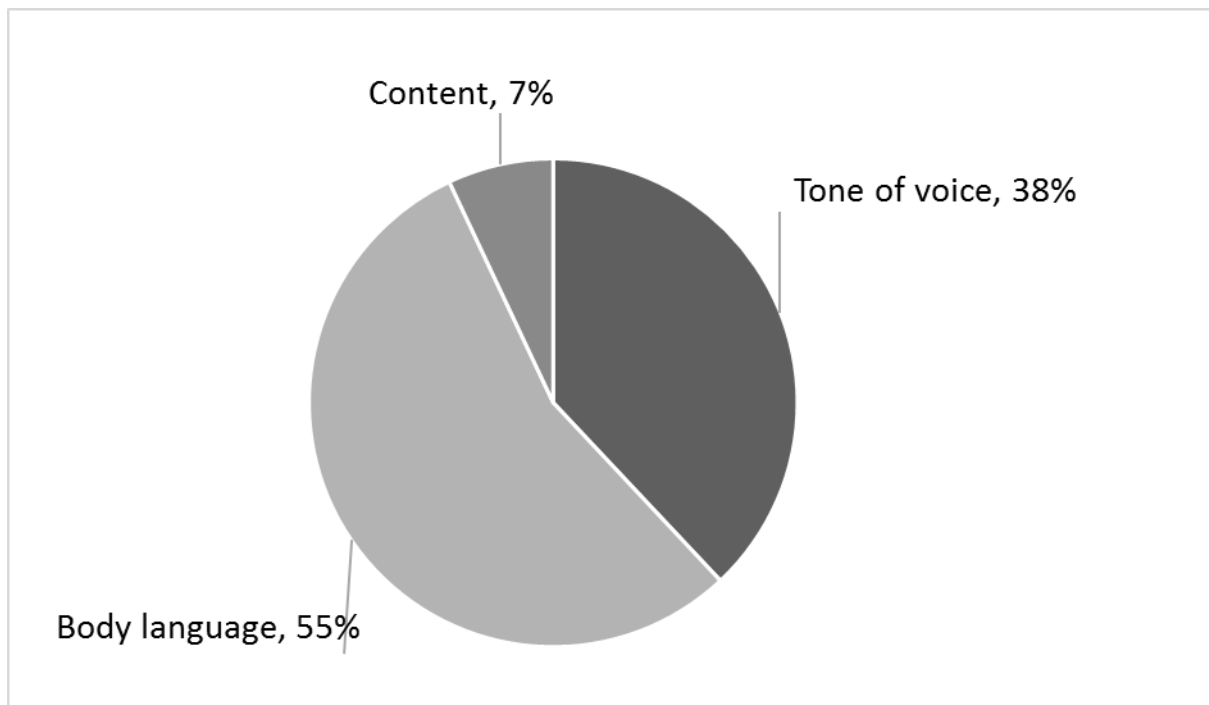


Non-verbal communication (Handout 5)

Consistency of communication

A major part of communication is non-verbal. This means that when we attribute meaning to what someone else is saying, the verbal part of the message actually means less than the non-verbal part. The non-verbal part includes such things as body language and tone.

“It’s not what you say but the way that you say it”



To have an effective communication process – all of the above must send the same message.

Building rapport and improving communication

The concept of rapport is based on the fact that, in general, people like people who are like themselves. Notice friends when they are together, they often look like one person, each matching and mirroring the other’s gestures, language and body language.

When seeking to build rapport an appropriate adult needs to use the right and actual words. However, they also need to consider: -

- Tone
- Tempo
- Movement
- Postures
- Gestures
- Eye contact

Activity 5: Assertiveness, Aggression and Passivity (Handout 6)

Aggressive behaviour	Indicators
<ul style="list-style-type: none"> • Putting forward your own needs, ideas and feelings • Ignoring or putting down the needs, ideas and feelings of other people • Blaming others for problems and mistakes • Using sarcasm • Adopting a patronising attitude • Being verbally hostile • Using racist or sexist remarks 	<p>Body language</p> <ul style="list-style-type: none"> • Alteration of facial expression • Shifting position, maybe to the edge of the chair or twisting the body away • Movement towards you that involves invading your personal space (if you move back the intimidation may be pressed further) • Threatening gestures, finger wagging, table thumping gestures <p>Looks</p> <ul style="list-style-type: none"> • Staring, glaring, grimacing, smiling inappropriately, jaw set firmly <p>Voice</p> <ul style="list-style-type: none"> • Alters in some way, shouts usually but may get quiet and more intense or is shaky, deeper, shrill, stiff-lipped • Rapid speech <p>Language</p> <ul style="list-style-type: none"> • Becomes aggressive, swearing, depersonalising by using sexist, racist demeaning tones or content, makes direct threats.
Passive behaviour	Indicators
<ul style="list-style-type: none"> • Ignoring or suppressing your own needs, ideas and feelings • Going along with other people's ideas even if they are not right for you • Blaming yourself for problems and mistakes • Using hints rather than saying what you really think, feel or want • Expecting other people to guess or to know what you want or what you feel • Sulking • Being martyred or making other people feel guilty • Being a 'doormat' 	<p>Body language</p> <ul style="list-style-type: none"> • Looking down, looking away, avoiding eye contact • Hiding – behind hair, cap, 'hoody' • Retreating – sitting back in chair, defeated posture • Fidgeting, nail biting, hair twiddling and other ways of managing feelings without expressing them openly • Tutting, sighing, sulking <p>Looks</p> <ul style="list-style-type: none"> • Blank, impassive, • Faking compliance or enjoyment <p>Voice</p> <ul style="list-style-type: none"> • Quiet, "yeah, whatever" – agreeing to things not putting own views forward • May not talk much at all <p>Language</p> <ul style="list-style-type: none"> • Putting self down • May huff and puff and sigh but will say nothing is wrong (when clearly it is!) • "It doesn't matter"; "It's not important"; "It's up to you"

The assertive option (Handout 7)

Assertive behaviour helps us to communicate clearly and confidently our needs, wants and feelings. It is an alternative to passive, aggressive and manipulative behaviour. A major part of being assertive is having confidence.

Be assertive	Be confident
Deciding what you want	Compromise - be realistic
Deciding if it is fair	Open - honest, sincere
Asking for it clearly	Negotiate - tact and forethought helps!
Not being afraid of taking risks	Fair - basic rights - yours and others
Being calm and relaxed	Innovate - initiate change when needed
Expressing feelings openly	Direct - say what you mean, clearly
Giving and taking compliments easily	Expressive - show appropriate emotions
Giving and taking fair criticism	Non-verbal - body language
	Chance - try something different
	Empower - yourself and others

Assertiveness is.....

Honesty	<i>rather than</i>	Deceit
Clarity	<i>rather than</i>	Vagueness
Acceptance	<i>rather than</i>	Denial
Compromise	<i>rather than</i>	Victory
sharing feelings	<i>rather than</i>	hiding feelings
setting limits	<i>rather than</i>	being imposed upon
taking responsibility	<i>rather than</i>	blaming self or others
taking the initiative	<i>rather than</i>	waiting to be rescued
believing in ourselves	<i>rather than</i>	depending on approval

Question sheet (Handout 8)

Identify each response as assertive, passive or aggressive. Where you think the statement is passive or aggressive, re-word it to make it an assertive statement.

	Situation	Response	Type of behaviour and rewording
1	You are called to attend the police station as an AA. It is nearly the end of your working day or rostered shift and you don't really want to go	In a sarcastic tone: "Just what I need; I've had nothing all day and now this, just as I should be finishing".	
2	When you arrive at the police station the custody officer gives you the wrong custody record	"What's this supposed to be? That's not who I'm here for – get your act together mate"	
3	The vulnerable suspect is obviously upset about something but says he doesn't want to discuss it	"Well something's wrong with you, sitting there scowling at me all evening"	
4	The vulnerable suspect says she does not want a solicitor	"Well I'm the AA and I can overrule you – so you're going to have one."	
5	The police tell you that there are no interview rooms free so you will have to see the vulnerable suspect in his cell	"Well, I'm not really meant to but I don't suppose it will really matter."	
6	In interview the police officer says to the young female vulnerable suspect: "No wonder they don't want you back in the children's home – look at the state of you – look at your hair."	The AA remains silent	
7	During interview the police officer says: "So, what else have you done?"	"Back off plod – that's out of order!"	
8	The solicitor has spoken to the vulnerable suspect in private and says they are ready for interview and that you don't need to speak to his client again	"Oh, OK, if you don't think I need to."	

Answer sheet (Handout 9)

	Type of behaviour	Examples of assertive statements
1	Passive The AA is hinting at his/her feelings and needs and expecting the other person to guess them. It is meant to invoke guilt in the other person	Either: “Unfortunately I have only 10 minutes of my work time left so I will be unable to take this piece of work on this time.” Or: “Yes, you have just caught me in time. I will be with you shortly.”
2	Aggressive The AA is abrupt, rude and unprofessional	“Excuse me Sgt, you seem to have given me someone else’s record. Do you have Joe Bloggs’ custody record there for me to see?” This is clear and polite. It acknowledges the error as a simple mistake.
3	Aggressive This is very ‘in your face’. It focuses more on the AA’s own feelings than the vulnerable suspect’s	“If you want to talk to me about it later I can be a good listener. Is there anything I can do now to help?” This response respects the vulnerable suspect’s rights while making sure they know that practical or emotional support is still available.
4	Aggressive This is rude and bullying – it is abusing the power the AA has and is likely to be met with a hostile or resentful response	First, try to find out the real reason the vulnerable suspect doesn’t want a solicitor and then address their particular concern. Persuade, negotiate, compromise “I really want to make sure you get all the advice you need so I am going to speak to a solicitor on the phone and see what they think, is that ok with you?”
5	Passive The AA has given a mixed message, saying on the one hand that they shouldn’t do it, but then doing it anyway.	“I can see the difficulty you have with lack of rooms but I really do need to speak to the vulnerable suspect in private and in a safe place. How quickly can a suitable room be made available?”
6	Passive By saying nothing the AA is giving a message to both the police and the vulnerable suspect that this behaviour / way of talking is OK	“I think it would be best if we stick to questions about the alleged offence. I don’t think XX’s appearance is really relevant.” This would be recorded and the vulnerable suspect would also feel supported. If this polite request does not work you may need to say “XX’s appearance is really not relevant to this interview so I must insist that personal remarks are left out.”

7	Aggressive This is rude and unprofessional.	“Excuse me, but please could we stick to the offence he/she has been arrested for?” (The solicitor should be encouraged to participate at this stage!)
8	Passive The AA has allowed him/herself to be intimidated by the solicitor	“Actually, I do need to speak to XX again briefly before the interview to check that he has understood the advice you have given and is happy to follow it.” Perhaps follow with: “You can stay too if you like.” This shows that you have nothing to hide and are not seeking to undermine the solicitor. You will also want to ask: “Are you able to give me some idea as to what to expect during the interview? Is XX planning to answer questions or go ‘no comment’?”

How is the AA seen by others? (Facilitator notes)

This activity is designed to help AAs voice some of their anxieties about performing the AA role and identify strategies to increase their confidence in performing the role and improve the way they are seen by others at the police station.

Ask the course learners to come up with a list of all the words or phrases which others might use to describe an AA – ask them to include both positive and negative ones. This might be done as a whole group or it could be done in small groups with the lists amalgamated at the end. Sort the words and phrases into 3 categories – aggressive, passive and assertive, using work done in the previous activity. The table below is an example.

Aggressive	Passive	Assertive
Bolshie	Useless	Helpful
Interfering	Waste of space	Supportive
Rude	Ineffective	Source of information
Annoying	Wet	Sensible
Difficult	Irrelevant	Gets things done
Stroppy	Woolly liberal do-gooder	Efficient
Nuisance		Calm
Bossy		In control
Nosey		Kind
		Interested

Which category would the AAs like to be in? How can they achieve that? Ask the learners to identify the types of behaviour, body language, and language used that would go with each category. They could come up with examples or sort some prepared examples into categories.

Aggressive	Passive	Assertive
Shouting	Being silent	Smiling (when appropriate)
Demanding	Standing back	Listening
Criticising	Not being seen or heard	"It might be helpful to....."
Interrupting	Being told what to do	"I'll find out shall I?"
Crossed arms	Being kept waiting	"What can I do to help?"
Hands on hips	Huffing, sighing, whingeing	"Can we look that up?"
		"Can you explain that to me?"

The more specific they can be about the actual things the AA would say or do in each category, the more likely they are to be aware of how they are behaving.

Activity 6: Dealing with Difficult Behaviour

Information Sheet (Handout 10)

Normally anyone acting in the role will find that a juvenile or vulnerable person does not respond negatively to the presence of the AA. You don't wear a uniform and you can explain that your role is to support and assist the process, to ensure the person has the rights to which they are entitled.

However, your personal safety is paramount and you should ensure that you have read and understood the health & safety policy and procedures given to you by your organisation.

Sometimes a suspect may express frustration or anger. This may be due to the length of time that they have been in custody or been waiting for an AA. Occasionally, you may not be welcomed by a vulnerable suspect. They may disagree with the police decision that they require an AA.

Voice any concerns to the custody officer or other staff available and remove yourself from the situation. All custody centres have alarms, which are easily identified. If one of the alarms should activate whilst you are in the custody suite, stay well clear of the corridors. Otherwise, you will be in danger of getting in the way of a large number of people who will be rushing to a possible incident.

You may on occasion face aggression or other difficult behaviour from vulnerable suspects, police officers, legal representatives or health care professionals. The methods for dealing with this will be the same. Aggression can take many forms and may involve a surly attitude or sarcasm. If this happens, think, take your time and do not react in a negative way.

Do not	Do
Be confrontational	Stay calm
Take personal offence	Respect personal space, keep your distance, give the other person room
Raise your voice	Always stay nearest the door and keep the exit clear
Attempt to lead people away or initiate some other form of physical contact	Be aware of the panic alarm buttons
Hit back unless an attack is sustained - you could be accused of assault	Listen to the problem/complaint
Rapidly approach the other person or approach them from behind	Perceive the emotions behind the anger
Crowd the other person	Try to remove the trigger by talking through
Show fear, alarm or anxiety	Invite the other person to sit
Tell the other person to calm down	Do not stand immediately in front of the other person
	Be confident, you might say "stop that" in a firm tone
	Try the "let's sort this out together" approach
	Provide alternatives to the behaviour, "let's organise a cup of tea and talk this over."
	Reassure
	Validate the other person's feelings e.g. "you sound really upset. Let's take a moment."

After the event: record the incident and the action taken, talk through with your scheme manager, share your concerns, and take further action as appropriate and as agreed with them.

Module 5: Ensuring the juvenile or vulnerable person's rights (Part 1)

Overview

Module objective	To develop a detailed understanding of how the rights and entitlements of the AA can be used effectively to ensure to those of the vulnerable suspect.
Learning outcomes	<p>By the end of this module, learners should be able to: -</p> <ul style="list-style-type: none"> • Describe the procedures that should be carried out by both the custody sergeant and the appropriate adult before and during an interview • Describe the caution and the legal rights of a person who has been detained and the guidelines for detention under the Police and Criminal Evidence Act (PACE) 1984 • Explain how an AA can ensure that a person understands their rights, including those associated with the caution • Explain how an appropriate adult can act to ensure that the - person's rights are being respected, giving examples of appropriate actions (e.g. intervening in an interview) • Describe the responsibilities of an appropriate adult in relation to confidentiality
Suggested timing	3 hours
Method	<ul style="list-style-type: none"> • Activity 1 - Review of Module 4 and overview of Module 5 • Activity 2 – Preparation - referral, arrival & first meetings • Activity 3 – Rights and entitlements of a vulnerable suspect • Activity 4 – Rights and entitlements of the appropriate adult • Activity 5 – Pre-charge bail • Activity 6 – Dealing with concerns about legal advice • Activity 7 – Confidentiality • Activity 8 – Pre-interview procedure
Resources	<ul style="list-style-type: none"> • Photocopied activity sheets and handouts • Flip chart and pens • Latest version of rights and entitlements
Facilitator's notes	This session can seem daunting to a learner due to the technical nature of the content. It is likely that time will have to be given for reflection and questions after each activity. Activity 7 provides an opportunity to assess and reinforce understanding of the previous activities.

Activity Plan

Activity 1	Review of Module 4 and Overview of Module 5	Handout
Step 1	Reminds learners of what has been covered in previous module	
Activity 2	Preparation - referral, arrival & first meetings	
Step 1	Ask the group to consider: <ul style="list-style-type: none"> • What will you ask when you receive a referral? • How will you introduce yourself on arrival at the station? • What will you say when you meet the vulnerable suspect? 	
Step 2	Introduce the idea of the cue card and share the handout	1
Activity 3	Rights and entitlements of a vulnerable suspect	
Step 1	Split into small groups. Ask them to complete the handout questions. If you are short of time, assign different questions to each group.	2
Step 2	Ask the groups to feedback their answers. Lead a general discussion to provide extra information and clarification	
Step 3	Share the answer sheet handout (during the discussion if you prefer)	3
Activity 4	Rights and entitlements of the appropriate adult	
Step 1	Ask the whole group, "What rights does the AA have?" Record answers on a flip chart.	
Step 2	Share the handout. Go through the lists highlighting those that are not already on the flip chart.	4
Step 3	Ask for any questions, and provide clarification. Be aware of the activities still to come and 'park' those issues until later.	
Activity 5	Pre-charge bail	
Step 1	Split learners into groups of around four people	
Step 2	Share the two handouts and ask the groups to answer all questions.	5 & 6
Step 3	As a full group, ask for answers and lead a discussion before providing the answer handout	7
Activity 6	Dealing with concerns about legal advice	
Step 1	Follow the detailed facilitator's notes.	
Activity 7	Confidentiality	
Step 1	Share the handout and conduct a guided discussion	8
Variations	Share article "Legal Privilege and Appropriate Adults" at http://www.appropriateadult.org.uk/index.php/members/briefings	
Activity 8	Pre-interview procedure	
Step 1	Split the group into small groups and ask them to complete the questions in the handout.	9
Step 2	Ask the groups to feedback their answers. Guide the discussion and provide clarification where required, based on the information given in the answer sheet handout	
Step 3	Share the answer sheet handout	10

Activity 2: Preparation - referral, arrival & first meetings (Handout 1)

What will you ask when you receive a referral?

In order to be an effective AA it is best to go to the police station prepared with as much information as possible. When taking a referral, always make sure you speak to the custody sergeant, or if he/she is not available, the officer in the case (OIC) before you set off for the police station. It is useful to have a checklist to help you focus on the AA role and the information that is needed. This will help you to feel in control of the situation and demonstrate that you know what you are doing.

Additional information may be provided by Social Care Teams or the Emergency Duty Service, the Youth Offending Team, Probation and existing client records.

1	Name	
2	Age / date of birth	
3	Address	
4	Have parents or carer been notified?	
5	Are they known to adult/child social services, YOT or probation?	
6	Suspected offences	a) b) c)
7	Are there other suspects involved? How many and what ages? Will AA be required for any of the others? What is the planned interviewing order?	
8	What time was the suspect arrested?	
9	What time was the suspect detained?	
10	What particular vulnerabilities/needs have been identified?	
11	Which medical professionals have seen them? (doctor, nurse, liaison & diversion)	
12	Have they been assessed for fitness for interview?	
13	What time is the interview expected?	
14	Has a solicitor been requested yet?	
15	Is a solicitor in their best interests? (If yes, inform police now)	
16	When is the process expected to finish?	
17	Is there a risk that they may be refused bail / detained overnight?	

How will you introduce yourself when you arrive at the police station?

Depending on your local police station you may enter the police station via the front desk, or you may go direct to the custody suite. In either case you should have relevant work or AA scheme identification with you.

You should give your name and the name of the scheme or service you are working for.

Explain that you have come as an AA and the custody sergeant is expecting you. Be mindful of who else may be present and confidentiality issues if you are giving the name of the vulnerable suspect.

What will you say when you meet the vulnerable suspect?

When you meet the suspect you will need to introduce yourself, saying who you are and why you are there. You may meet them for the first time in front of the custody desk while the rights are given again in your presence. Tell the suspect that you will have a chance to speak with them in private once the rights have been issued. At this point it is best to keep introductions clear but brief. Wait until you see the suspect in private to give full introductions and explanations.

As soon as you have said who you are, it is very important to tell the suspect that they should not talk about whether they committed the offence or not. This should be backed up with body language that makes it clear the suspect should not make any admissions to you. You can then go on to explain the limits of your confidentiality but that the vulnerable suspect can speak freely about that, in full confidence, to a solicitor.

You will need to check the person's basic welfare and whether they understand what has happened to them so far. Explain the procedures that are likely to take place now that you are here.

Tell the suspect that they may speak to you in private at any time while they are at the police station.

Cue Cards

A cue card might be helpful for inexperienced AAs. It can be a guide, at least for the initial visits, and will remind you of your role and what you need to communicate to the vulnerable suspect. Points that need to be raised:

- The service that you are from and that you are independent of the police
- You do not want to know anything about their involvement in the matters that the police are investigating. Not speak to me about it as I do not want to have to give evidence against you (if the matter did come to trial).
- What has taken place since arrest
- How they have been treated by the police and how a complaint can be made (if necessary)
- If they have not asked for a solicitor, an exploration of why, the benefits of having one
- Explanation of the role of the AA (reinforcing that AAs are not solicitors)
- Have they eaten, had a drink and any medication that they require?
- Explanation of the data that they are collecting on any PACE recording form, the lawful basis for it and what it will be used for (in a way that is appropriate to the suspect)

Activity 3: Rights and entitlements of a person who has been detained
Question sheet (Handout 2)

1. What are the person's rights?
2. What are their additional entitlements?
3. How long can they be held at a police station?
4. Can the length of detention be extended? If so, who by and for how long?
5. Within a 24-hour period, what length of uninterrupted rest is are they entitled to?
6. What are the guidelines on refreshments?
7. How long can they be interviewed for without a break?
8. Who can they call and/or speak to?
9. What is the purpose of the custody record? Who writes this?
10. Who can view the custody record?

Rights

When a person is detained by the police, they have the right to: -

1. Consult privately with a free, independent legal advisor
2. Have someone told where they are (this is in addition to a child's parents being informed)
3. Read the Codes of Practice
4. Free medical help
5. Remain silent (the caution)
6. Be told what they are suspected of having done
7. See records about their arrest/detention and their time in custody
8. A free interpreter/ translation
9. Contact their government's embassy or consulate
10. Be told how long the police can detain them for
11. See the evidence against them before the court hearing.

These rights are guaranteed under the law in England and Wales. They are continuing rights that can be exercised at any stage during the person's period in custody. However, there are some special circumstance in which some or all of these rights may be delayed.

Entitlements

There are also a number of entitlements set out in PACE Code C: -

- Reasonable standards of physical comfort (clean warm, lit cell; clean bedding; clothes)
- One phone call (in addition to the solicitor and one person being informed), although this can be denied or delayed in certain circumstances
- Access to toilet and washing facilities, clothing, medical attention
- Access to exercise where practicable (allowed outside for fresh air)
- Access to a copy of the custody record when they have left, for a period of 12 months
- Support of an appropriate adult if under 18 or vulnerable
- Assistance with faith needs (e.g. religious books)
- When being questioned; not standing; breaks every 2 hours unless specific reason
- 8 hours of rest in any 24-hour detention period (usually at night)
- Adequate food and drink (3 meals per 24 hours with drinks; drinks between meals), at recognised meal times or taking account of when they last had a meal, taking account of dietary, cultural or religious requirements. Some police forces may allow food and drink to be brought in by friends and/or relatives at the custody officer's discretion.

This list is not set out explicitly in law like the rights. However, they are still important and a failure to comply with some of them could potentially constitute a breach of the law.

If a person requires an appropriate adult, the police can read them their rights and entitlements before the AA arrives. However, they must be repeated again with the AA present once they arrive.

The police must give a person who has been detained a written notice of these rights and entitlements. The Home Office publishes a notice in many languages and in 'Easy Read' format. It can be downloaded from www.gov.uk.

Limit of detention

The custody officer must ensure that police inquiries are conducted as quickly as possible and that people who are detained are released as soon as the need for detention has ceased to apply.

A person may be detained in police custody for up to 24 hours without charge. This is known as the 'limit of detention'. This period begins from the time that the person arrives at the custody centre. That includes time spent in the police vehicle in the car park before they are booked in.

The police may need the time to interview co-defendants or speak to store detectives or do a house search. They may keep the person detained in custody while they do this as long as it is within the 24-hours custody period.

Extended detention

The limit of detention can be extended beyond 24 hours, but only where the arrest was for an 'indictable' offence (ones that are triable in a Crown Court rather than a Magistrate's Court). If the police suggest that they wish to keep a person for longer than 24 hours, then the person should take additional legal advice.

In the most serious cases the time can be extended to 36 hours with the consent of a Superintendent. A Magistrates' Court may extend it further, initially for an additional 36 hours and subsequently by another 24 hours if necessary and justified. This means that the absolute maximum period of time a person may be detained at a police station after arrest is 96 hours.

Reviews of detention

A person's detention must be periodically reviewed by a police officer of Inspector rank (or above).

This occurs after the person has been in detention for: -

- no more than 6 hours
- 9 hours after the first review
- 9 hours after the second review

The second review may coincide with the 'limit of detention'. However, the 'review time' is taken from the time that detention is authorised by the custody sergeant. Therefore, it may vary from the 'limit of detention' which is taken from the time of arrival at custody.

Before re-authorising detention, the reviewing officer must check:

- That it remains *necessary* for the person to remain in custody
- That the investigation is being carried out *expeditiously*
- That the person is aware of their rights
- Whether the person wishes to exercise any of those rights (e.g. legal advice)
- Whether or not the person, their legal representative, or the AA (if present) wishes to make any representations

Communication

Whilst in detention a vulnerable suspect may speak to the following: -

- Solicitor or other legal representative
- Appropriate adult
- Interpreter
- One person of their choice (unless right withdrawn by police)
- Staff from their High Commission, Embassy or Consulate
- Medical professional (doctor, nurse, liaison and diversion team)
- Independent Custody Visitor

Custody record

The custody record is the place where all matters relevant to the person's detention are chronologically recorded. This applies to matters that relate to both the investigative process (i.e. interviewing, taking of samples, reviews of detention etc.) and to their welfare and treatment.

Authority to edit

The custody officer is responsible for the custody record's accuracy and completeness. Depending on local systems, others may be responsible for adding entries to the custody record, such as: -

- Designated Detention officer
- Investigating officer
- Interviewing officer
- Reviewing officer
- Officer authorising certain searches/taking of certain samples
- Officer authorising the extended detention of a person
- Doctor (Forensic Medical Examiner, Forensic Physician, Police Surgeon) or nurse

Authority to view

In addition to relevant police officers and staff, the following persons may view the custody record:

- An appropriate adult (as soon as possible after their arrival)
- A solicitor/legal representative
- An independent custody visitor (with the person's consent)

Arrangements for this access must be agreed with the custody officer and may not unreasonably interfere with their duties. The right to view the custody record lasts for 12 months for the solicitor and AA only

Medical records

Medical records do not form part of the custody record but can be viewed by the AA with the juvenile or vulnerable person's consent. The police may withhold sections of the Custody Record that contain medical information. Medical professionals operate under a strict code of confidentiality. This means that only information relevant to the case and the welfare of the vulnerable person (and therefore the AA) should be included on the custody record. Sensitive information, such as HIV status, should not appear. See the website of the [British Medical Association](#) for further information.

The Human Rights Act 1998 (HRA)

The specific rights and entitlements explained above are underpinned by fundamental human rights. The HRA 1998 incorporated the European Convention on Human Rights into UK law. It provides minimum rights for people of any age.

Appropriate adults don't have to be human rights law experts. However, a basic understanding can be helpful. The most relevant Articles to consider in relation to people detained by the state in police custody are explained briefly below.

Article	Description and relevance
2: right to life	The state must take appropriate steps to safeguard the lives of those within their jurisdiction. There must be an independent investigation of any death or serious injury at the hands of the state, such as a death in police custody.
3: prohibition of physical and mental torture and inhuman or degrading treatment or punishment	<p>Torture occurs when someone deliberately causes very serious and cruel suffering (physical or mental) to another person. This might be to punish someone, or to intimidate or obtain information from them.</p> <p>Inhuman treatment or punishment is treatment which causes intense physical or mental suffering. This includes psychological interrogation and cruel detention conditions.</p> <p>Degrading treatment means treatment that is extremely humiliating and undignified. Whether treatment reaches a level that can be defined as degrading depends on a number of factors. These include the duration of the treatment, its physical or mental effects and the sex, age, vulnerability and health of the person affected.</p> <p>Severe mistreatment in police custody could breach this article.</p>
5: right to liberty	<p>The state can detain you if there is reasonable suspicion that you have committed a crime, someone is trying to stop you committing a crime or they are trying to stop you running away from a crime. However, you have a right to: -</p> <ul style="list-style-type: none">• be told in a language you understand why you have been arrested and what charges you face• be taken to court promptly• bail (temporary release while the court process continues), subject to certain conditions• have a trial within a reasonable time• go to court to challenge your detention if you think it is unlawful, and compensation if you have been unlawfully detained.
6: the right to a fair hearing and the presumption of innocence	This right mostly focuses on courts rather than police stations. However, the courts have determined that this right stretches back and applies when a person is a suspect and is questioned in police custody. It requires special protections for children. Failure to ensure an appropriate adult was present for an interview could be a breach of this right because the interview would not be fair.
8: right to private and family life / privacy	This has been interpreted widely by the courts. In 2013 they ruled that PACE Code C breached it because 17 year olds were treated like adults. The judge said it was, 'difficult to imagine a more striking case' involving the rights of both child and parent under Article 8 than when a child was in custody on suspicion of committing a serious offence.

Activity 4: Rights and entitlements of the appropriate adult (Handout 4)

AAs can access information

To be told the reason for detention	Code C 3.13, 3.15 ; Code H 3.15, 3.17
To see a copy of the notice of rights and entitlements	Code C 3.17; Code H 3.18
To see a copy of the Codes of Practice setting out the powers, responsibilities and procedures of the police	Code C 1.2; Code H 1.8
To see the record made by the custody officer (for detainees) or investigating officer (for voluntary interviews) about what factors apply when they determined someone is/isn't vulnerable	Code C 1.4 (b), (c); Code H 1.10 (b), (c)
To inspect the whole of the detained person's custody record as soon as possible and at any time on request while in detention, and have a copy of it up to 12 months after release, including the circumstances and reasons for arrest and the grounds for each authorisation of detention.	Code C 2.4, 2.4A, 2.5; Code H 2.5, 2.6 and 2.7)
Allowed access to access to the content of any risk assessment if not to do so would put them at risk	Code C 3.8A; Code H 3.8A
Given a copy of the notice of particulars of charge at the point of charge or when they arrive and of any third party written statement or interview about the offence which is brought to the attention of the suspect after they have been charged or informed they will be prosecuted	Code C 16.3, 16.4, 16.4A (also applies to Code H)

AAs can listen, advise, intervene, check

A juvenile or vulnerable person is allowed to speak in private to the AA at any time.	Code C 3.18; Code H 3.19
AA is allowed to insist on a legal advisor attending for a juvenile or vulnerable suspect if they consider it in their best interest. This applies even when the person has waived their right to free legal advice. It remains the right of the person to decide whether they see the legal advisor and whether the AA is present in legal consultation. Legal aid solicitors will be paid even if not seen by the suspect. Anyone who has an AA has the right to face to face (not phone) advice even for minor matters.	Code C 3.19, 6.5, 6.5A, Annex E: 4 , Annex E: E1; Code H: 3.20, 6.6, 11.10
Allowed to: advise the person during interview (but NOT give legal advice); intervene if you feel it is necessary or in the person's interests to help them communicate effectively with the police or when the interview is not being conducted fairly and properly; ask for a break in an interview if the person needs a break, legal advice or you wish to speak to them, the police or the solicitor (particularly if the interview is a lengthy one or if the suspect is distressed or ill).	Home Office guidance
Allowed to read and sign the interview record or any written statement taken down during it.	Code C 11.12
The AA must be given an interpreter (appropriate assistance necessary to establish effective communication with that person) if they are a parent or guardian and have a hearing or speech impediment or do not speak or understand English (unless urgent & PACE Code C11.1, 11.18-11.20 apply).	Code C 13.2A, 13.6

AAs can make representations

Must be given reasonable opportunity to be available (physically or remotely) to make representations before a decision on continued detention .	Code C 15.3(c), 15CA, 1M(d)(i) Code H – not applicable
Before any decision to extend maximum detention from 24 to 36 hours, (a) the AA must be consulted and have their views considered on extended detention and (b) enabled to support the person to make their own representations if a solicitor is not making them. They do not have to be present.	Code C 15.2A(c), 1M(d)(i), PACE 1984 s.42(1) Code H – not applicable
Allowed to make representations that a translation should be provided of a document not listed in the table of essential documents .	Code C Annex M: 8
Consulted by the custody officer over the use of 'live link' for an interview under caution. If it authorised, the AA be told that they can make representations to either the custody or interviewing officer that it should cease and an interpreter come to the police station. If representations are made at any time (including when in use), and concerns cannot be met, the use of live-link must not proceed without the written authorisation of an inspector. The representations of the AA must be considered as part of this decision making process.	Code C 12.9A(c), 12ZB Code H – not applicable Code C 12.9A(d), (e) Code H – not applicable
Before the use of live-link interpretation, its use is explained and a demonstration given to the AA. They are allowed to make representations, either before or during its use, to the custody officer about the suitability of live-link interpretation, in that it would adversely affect or otherwise undermine or limit the suspect's ability to communicate confidently and effectively	Code C Annex N:4 Code H Annex L:4
Be involved in the decision making process , between a superintendent and custody officer, over whether live link should be used for an extension of detention	Code C 15H Code H – not comparable
Allowed to advise a juvenile or vulnerable person who refuses a particular eye witness identity procedure and make representations about why another procedure should be used	Code D 3.15
Allowed to make representations about the location of a group identification procedure	Code D Annex C: 3
Make representations about bail being refused and conditions not being applied for a juvenile who has been charged and remanded	Concordat on Children in Custody
Seek clarification that the decision not to transfer a child to local authority accommodation due to impracticability is in fact impracticable, and that retention in police custody is the best available option.	Concordat on Children in Custody
Make representations about the fact that a child who has been charged and remanded should be moved to non-secure accommodation if they believe the threshold for secure has not been met	Concordat on Children in Custody

AAs must be present for

If present at the time , the explanation of rights and entitlements , the grounds for detention and offering of legal advice. If not present, they must be repeated when they arrive.	Code C 3.17, 3.18, Annex E:3 Code H 3.18, 3.19, Annex E:3
The caution given by police to a person suspected of an offence before questions are put to them. Cautions may be given in the absence of an AA if they are not immediately available but must be repeated later in the presence of an AA. Special warnings under the Criminal Justice and Public Order Act 1994 sections 36-37.	Code C 10.11A, 10.12, Annex E:7. Code H 10.10A, 10.11, Annex E:6
Interviews or requests to provide or sign a written statement under caution or record of interview. Officers of superintendent rank or above can in exceptional cases, where it is necessary to avert an immediate risk of serious harm, exercise their discretion to commence an interview in an AA's absence.	Code C 11.15, 11.1, 11.18 Annex E: 8, E2, E3. Code H 11.2, 11.9
Seeking and giving of informed agreement for a voluntary interview	Code C 3.21B (d)(v)
Identification procedures requiring information to be given by or sought from the person, including consent, and also for the process itself (e.g. witness ID, samples fingerprints, footwear impressions, photos, evidential searches, and examinations).	Code D 2.3, 2.4, 2.14 and 2.15
Class A drugs testing (under 18) , including request/giving of consent, informing of authority and grounds, warnings and the taking of samples.	PACE s.63B(5B) Code C 17.7
Intimate searches for Class A drugs for supply or export under PACE 1984 s.55 including informing of authority and grounds and any required requests/giving of consent, unless a juvenile signifies in the AA's presence that they do not wish them there for the search and the AA agrees, a record is made and the AA signs the record. The AA must be of the same sex unless; the person requests someone who is readily available, or for juveniles they state in the presence of the AA that they do not want one.	PACE s.65 Code C 1M(d)(i), Annex A: 2A, 2B, 5, Annex E: 12 Code H 1P(d)(i), Annex A: 3, 6
Strip searches , unless an urgent case where there is risk of serious harm to the detainee or others, or a juvenile, signifies in the AA's presence that they do not wish them there for the search and the AA agrees, a record is made and the AA signs the record. The AA must be of the same sex as the person for a strip search unless they specifically request an AA of the opposite sex who is readily available	Code C Annex A: 5, 11(b), 11(c), Annex E: 12. Code H Annex A: 12(c), Annex E: 10
The seeking and giving of consent and informing of the authority/grounds for an x-ray or ultrasound (AA does not have to be present for the scan)	Code C Annex K: 2 and 3
When consent is sought and given to waive the right to written translations of essential documents.	Code C & H Annex M: 7(a),(b)
If present at the time , any action taken resulting from the custody officer's decision whether the person should be charged i.e. charging and related action .	Code C 16.1, 16.6 Annex E: 11. Code H Annex E: 9
The giving of a youth caution (under the Crime and Disorder Act (1998) or when consent is sought for, and explanation & warning given for, a youth conditional caution (under the Code of Practice for Youth Conditional Cautions)	CDA 1998 s.66ZA(2), s.66B(5) . CPYCC 4.1.4, 16.1, 16.3

Notes: (1) An AA should never sign to give consent unless they are the parent/guardian. (2) An AA can be present during a medical assessment if the person gives informed consent.

Activity 5: Pre-charge bail

Information sheet (Handout 5)

Introduction

The time juveniles and vulnerable persons spend in police custody should be minimised. Under UK law the detention of children must be a measure of last resort and for used the shortest appropriate period. However, the principle of minimising time in custody applies both to children and vulnerable adults right from the point of detention.

In many circumstances, detention will be legal. However, as people concerned with safeguarding rights and welfare, appropriate adults should be asking themselves (and custody officers) whether arrest and detention was necessary.

Pre-charge bail provides an opportunity to avoid unnecessary and inappropriate overnight stays in police custody – something that can have a disproportionate effect on juvenile and otherwise vulnerable suspects. It was developed in order to enhance liberty by enabling people to be free who would otherwise have been locked up. It is an alternative for those who would otherwise be detained, not a way of controlling people who would otherwise be released. This principle should be remembered at all times.

Released under investigation

From April 2017 there is a legal presumption that a suspect who is released in an ongoing investigation will be released without bail. If a person is 'released under investigation' (RUI) police enquiries will continue but they will not have to return to a police station or any other conditions. They will be given a notice indicating that they remain the subject of police enquiries and outlining the alleged offences that could lead to further police action. If the investigation closes with no further action, the person should be informed.

When pre-charge bail can be used

Within custody, the law allows police to use pre-charge bail in three scenarios:

1. When there are **no longer any grounds for detention** (unless they were at large at the point of arrest). The investigation into that person may continue. Examples include a person whose identity was uncertain at the point of arrest but has been confirmed or a person who the police no longer consider is a suspect. This is bail under PACE 1984 section 34.
2. When they consider whether there is enough evidence for a charge and believe there is **insufficient evidence for a charge** but detention is not justifiable. An example would be where after an interview forensic analysis is still required before a disposal can be applied (e.g. accessing information from a mobile phone). This is bail under PACE 1984 section 37.
3. When police consider there is **sufficient evidence for a charge**. This might be because the Crown Prosecution Service (CPS) will be making the charging decision so there will be a delay but the circumstances don't justify detention. Alternatively the police might have other reasons. An example would be a minor allegation (which doesn't require a CPS decision) but where time pressures mean they are not able to authorise the charge before the time limits on custody run out. This is also bail under PACE 1984 section 37.

Bail under PACE section 34 (limitations on detention).

If the grounds for detention no longer apply, a suspect must be released without bail unless the following are true:

- a) It appears to the custody officer that: -
 - there is a need for further investigation; or
 - proceedings may be taken against the suspect; or
 - the suspect may be given a youth caution
- b) The custody officer is satisfied that releasing the person on bail is:
 - necessary (in the light of all the facts known about the suspect and the offence under investigation); and
 - proportionate in all the circumstances (having regard, in particular, to any conditions of bail which would be imposed)
- c) An officer of the rank of Inspector or above authorises the release on bail (having considered any representations made by the person or the person's legal representative)

Bail under section 37 (duties of a custody officer before charge).

The custody officer is responsible for deciding whether there is enough evidence to charge. They can consider this question multiple times. If there is not enough evidence, the suspect must be released unless the custody officer has reasonable grounds for believing detention is necessary:

- to secure or preserve evidence; or
- to obtain such evidence by questioning the suspect.

As in section 34 bail, release must be without bail unless it is necessary and proportionate and it is authorised by an Inspector after considering representations.

In cases where offences are said to have occurred some time ago it may not be possible to justify detention on the grounds of preserving evidence. However, if there are outstanding suspects, the police may fear that co-accused may be tipped off. While in some serious cases release may not be a realistic option, in others the case will require more time than the 'PACE clock' allows in order to gain evidence after an initial arrest.

Conditions

If an individual is bailed from the police station (pre-charge) then they will be given a time and date when they are expected to return. This will normally be the same station.

Additional conditions can be attached to bail under PACE s.37. Legally no conditions can be attached to bail under PACE s.34. However this has little effect because police can switch to using section 37 simply by considering whether there is sufficient evidence to charge.

Breaches of bail conditions can have serious consequences including making it more difficult to secure bail in future. It is vital that AAs ensure that a juvenile or vulnerable person understands any conditions, what they mean in reality and what powers the police have if they suspect a breach.

Bail conditions are covered in detail, refer to Module 6 (Activity 7).

Time Limits

An officer of Inspector rank can authorise bail period of 28 days. This can be extended up to a total of three months by an officer of at least Superintendent rank (at the same time if they wish) who must apply a specific decision-making test.

In practice periods may be longer than this because the 'clock' pauses when police refer a case to the Crown Prosecution Service (CPS) for a charging decision. It restarts if the CPS decide that further evidence is required.

Beyond this police must apply to Magistrates Court to extend bail (although in very rare 'designated' cases very senior police can extend bail up to a total of 6 months).

Key considerations for AAs

1. Be aware of the powers that police have to use pre-charge bail
2. Remember pre-charge bail is an alternative for those who would otherwise be detained, rather than as an alternative for those who would otherwise be released
3. Consider what would be in the best interests of an individual vulnerable suspect, including avoiding unnecessary and inappropriate lengthy detentions, including overnight stays
4. Remain vigilant to the use of legal advice. The groups that AAs support have a right to face to face advice from a legal advisor in situ at the police station. Whilst this is the ideal they can also receive telephone advice at any time during the custody stay and have the right to speak privately with a legal advisor at any time. AAs have the right to overrule someone's decision not to seek legal advice and to ask for advice on behalf of a juvenile or vulnerable person. If you have thoughts that pre-charge bail could be used, or is being misused, then ask for a solicitor or speak to one that is already involved with the juvenile or vulnerable person
5. Understand when pre-charge bail might and might not be appropriate
6. Ask questions of the custody officer and make representations, particularly about the necessity and proportionality of bail and any conditions (taking notice of the specific vulnerabilities of the individual)
7. Ensure juveniles or otherwise vulnerable suspects understand bail time limits, conditions and breach implications and that the juvenile or vulnerable person has a copy of the bail notice setting them out
8. Ensure juvenile or otherwise vulnerable suspects understand what it means to be released under investigation and that they have been provided with any paperwork and understand its implications
9. Providing feedback to scheme co-ordinators about concerning actions and inactions by the police. Queries can be raised by the service provider in order to uphold best practice

More detailed information about pre-charge bail can be found in the NAAN briefing *Pre-charge bail (as amended by Policing and Crime Act 2017)* published in April 2017 Question sheet (Handout 6)

1. If a suspect is released before being charged and the police intend to continue investigating, what is the presumption?
2. What does 'released under investigation' mean?
3. If a detainee asked you what 'pre-charge bail' means, what are the key points that you think that they need to be aware of?
4. In the case study below, what options are open to the AA?

Case Study

Johnny is a fourteen year old who has been arrested for possession of cannabis.

Police were called to a street by a concerned resident as they believed that there was a gang of youths acting suspiciously. Upon attending they found Johnny and his friends loitering in the area and thought that they could smell cannabis. They searched the group and Johnny was found to have a number of small snap bags of what the police believe to be cannabis in his pocket and he was arrested. A couple of other members of the group were arrested for the same reason.

Johnny lives with his mother who is separated from his father but they both live locally. Upon being booked into custody the police tried to contact his mother but failed to get hold of her. Subsequently they tried a number of times but still could not make contact.

The AA scheme was called and an AA attended at around 10.30pm. Although Johnny waived his right to free legal advice, following their private consultation the AA requested it on his behalf and a call was put through to the duty scheme.

The custody officer explains to the AA that there is about to be a shift change and night duty CID will take over the case. There will have to be a handover, the case allocated to a new officer, the case papers re-read and then they will be ready. However there is only a skeleton staff on and three people have been arrested for a GBH which resulted in someone losing the sight in one eye. This matter will take priority and realistically Johnny will not be dealt with until the morning and the plan is to bed him down for the night for the 8 hour rest period described in the PACE Codes. The custody officer wanted to ensure that Johnny had his rights and entitlements at this stage.

1. That they will be released without bail, known as 'released under investigation.'
2. This means that police enquiries will continue but the juvenile or vulnerable person will no longer be required to return to a police station or be subject to any other rules or conditions such as would be applied if bail was used (with or without conditions).
3. That they will be released from the police station but that they must return to that station or another one that is stated on a particular time and date. If they fail to do so the police may circulate them as wanted and they could be arrested. If conditions are imposed it means that there are some restrictions, or obligations, that are placed on the person. They need to understand that they must adhere to them; what the individual conditions mean in reality to the juvenile or vulnerable person and the fact that a breach could mean that they are arrested, and will most certainly effect their chance of being granted bail in the future.
4. As Johnny is a child, the focus should be his best interests and minimising the period of detention. Since there are going to be delays, release to attend at a later date would be a positive outcome.

Despite the likely delay before interview, the AA should meet privately with Johnny and discuss what might be achieved through the use of pre-charge bail. This can be done before the legal representative arrives.

The AA should clarify whether Johnny has any other contact numbers for his mother or other people who the police could contact in order to get in touch with her. The AA should ensure similar questions are asked about Johnny's father.

If as a result a parent can be contacted by police, the AA should make representations to the custody officer that Johnny be released to attend the station at later date when the police are ready to interview.

Although the presumption is release without bail, the police may wish to add conditions such as not associating with the other members of the group that were arrested. The AA should advocate for conditions that are relevant, proportionate and achievable.

Securing legal representation is very important and AAs are not expected to act alone. If the police agree with an AA regarding release, a legal representative who has not yet attended the station should be informed of the decision and any future interview date as soon as possible. If the police have not agreed with the AA's representations, a legal representative can provide additional weight to the argument even before they arrive at the station. The custody officer is not obliged to consider any representations on bail conditions from an AA but must consider those from legal representatives.

Securing an agreement that Johnny will be interviewed at a later date may mean that his parents act as AA. The AA should signpost the parents (via Johnny if necessary) to guidance on the role, such as that on the NAAN website.

Activity 6: Dealing with concerns about legal advice (Facilitator notes)

Step 1 - Explain: Young and vulnerable people may decline legal advice for a range of reasons – some of which are not in their best interests. If the suspect declines legal advice, the AA require a solicitor attends the station if they consider it to be in the person's best interest. When the AA makes this request, the police must treat it as if it came from the suspect. The police are not allowed to say anything that might dissuade the person from having legal advice. The AA must not try to force a vulnerable to actually see the legal advisor. It is best practice to speak to the person and seek to understand, and deal with, their concerns. It is important for AAs to anticipate those concerns and be prepared to deal with them effectively.

Step 2 - Divide the learners into small groups of 3 – 6 people, each with paper and a pen.

Step 3 - Write the following on a flip chart or have it on a PowerPoint slide: *Imagine you are a suspect. You do not want a solicitor. In the exact words and phrases of the suspect, write a list of what might say to the AA i.e. "I don't want a solicitor because....."*

Step 4 - Each group passes their list on to another group. Write the following on a flip chart or have it on a PowerPoint slide: *Imagine you are the AA. Look at the list of statements that the suspect has said to you. In your group discuss the likely reasons/fears behind each statement. Write down the exact words and phrases that you would say to overcome the objections and ensure the person took legal advice.*

Explain to learners that, if the objection is, "I don't know what they do" they can't just write "I would explain their role". They need to write down exactly how they would explain the role.

Step 5 - Take feedback from each group or ask some learners to role play the objections and responses. Open up to whole group discussion and give additional examples and hints.

<i>Vulnerable person says</i>	<i>AA replies</i>
"I haven't done anything wrong"	"You are locked up because someone thinks you have done something wrong – a solicitor is the best person to try and sort this out."
"I just want to admit it and get out of here"	"That's great, but a solicitor can check you are admitting to the right thing and not something more serious"
"I can't afford it"	"You won't have to pay at all – it doesn't matter who you are or how much money you have – even* would still get free legal advice." * Add name of rich celebrity of your choice. "If this does go to court, the legal advice might not be free then so you'd best get some while you don't have to pay."
"The last one I had was rubbish"	"It probably won't be the same one, but anyway, I am here this time and I can make sure you are OK with the standard of service."
"I never have one – I don't need one"	"OK, but I want to make sure I do my job really well – shall we compromise? Will you agree to me calling one on the phone and see what they say?"

If the interview does go ahead without legal representation, against the AA's advice, the AA should state on the recording what they have done to persuade the vulnerable suspect to get legal representation and why they are going ahead without it.

Activity 7: Confidentiality (Handout 8)

Common Law Duty of Confidentiality

Everything said to a solicitor is confidential because they have 'legal privilege.' Medical professionals also operate under a code of confidentiality in relation to medical matters. How do issues of confidentiality affect AAs?

The police are entitled to question any one whom they think may be able to provide information about the offence, including the AA. However, citizens do not have a legal duty to assist the police. The AA is entitled not to answer the police questions and must comply with the 'common law duty of confidentiality'. This applies whether the AA is a volunteer or paid professional.

The duty exists because it is generally considered that maintaining confidentiality is in the public interest. This enables the public to feel safe when disclosing information to professionals and volunteers acting in a professional capacity. However, the law allows confidentiality to be breached if the public interest would be better served by doing so, for example in order to safeguard a child or save a life.

Children and young people

People aged under 18 are entitled to the same duty of confidence as adults provided that those under 16 have the ability to understand the choices and consequences. Confidentiality can be breached if it is necessary to safeguard the child from exploitation or abuse or if it is more in the public interest to do so. This should usually be done following discussion with the child.

Admissions of guilt

The PACE Codes of Practice say that anyone who has received an admission prior to arriving at the police station cannot act as the AA. Once at the station, the AA is allowed to continue with their role even if they do receive admissions but some additional complications can arise.

If the person makes an admission to the AA, and the police are aware they may have relevant information, the AA could be summonsed as a witness and could be required to pass on the information. In practice this is very rare. The likelihood of being called as a witness can be significantly reduced if the correct approach is taken.

The most likely time to receive an admission of an offence, or other information which may compromise their impartiality, is during the private discussion with the person prior to interview.

Where a person admits an offence or provides information to the AA and subsequently makes the same admission or provides the same information to the police, there is no problem. The AA does not need to breach the confidentiality of his/her discussions with the person.

However, where a person provides information about an offence or makes an admission to the AA but goes on to deny or withhold this information from the police the AA will need to consider the common law duty of confidentiality.

Breaching confidentiality

In deciding whether the information should be passed on the AA will need to consider the consequences of maintaining confidentiality as opposed to breaching it, and decide which is more in the public interest. The public interest test has a high threshold and the AA should always consult in private with their manager or scheme co-ordinator before deciding.

Information can also be passed over if the person consents; it is necessary to safeguard an individual or group; there is a legal duty to do as much.

As a general rule where the disclosure is relevant to an allegation that the suspect is under investigation over, or one that is not known to the police, unless the matter is 'life or death' then the AA does not need to speak immediately to the police. They can take guidance from their scheme manager/co-ordinator and work from there. 'Life and death' alludes to the fact that a person may die if the information that the AA is privy to is not released immediately to the police.

Human rights implications of breaching confidentiality

Article 8 of the European Convention on Human Rights states that:

- (1) Everyone has the right to respect for his private and family life, his home and his correspondence
- (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of
 - national security
 - public safety
 - economic well-being of the country
 - prevention of disorder or crime
 - protection of health or morals
 - protection of rights and freedoms of others

Disclosure of information without consent might give rise to an issue under Article 8. Disclosure of information to safeguard children will usually be for the protection of health or morals, for the protection of the rights and freedoms of others and for the prevention of disorder or crime. Disclosure should be appropriate for the purpose and only to the extent necessary to achieve that purpose.

Impact of data protection legislation on confidentiality

The General Data Protection Regulation contains 7 principles. Personal information must be: -

- lawfulness, fairness and transparency
- purpose limitation (collected for specified, explicit and legitimate purposes)
- data minimisation (adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed)
- accuracy (accurate and, where necessary, kept up to date)
- storage limitation (kept in a form which permits identification of data subjects for no longer than is necessary)
- integrity and confidentiality (processed in a manner that ensures appropriate security of the personal data)
- accountability (a Data Controller shall be responsible for, and be able to demonstrate compliance)

AAs and legal consultations

PACE Code C states that appropriate adults are not subject to legal privilege.

However, a ruling by the High Court (*A Local Authority v B* [2008] EWHC 1017 (Fam)) stated that the presence of an appropriate adult at a conversation between a suspect and their legal advisor (which would otherwise attract legal privilege) did not destroy that privilege. In other words, AAs don't have legal privilege but they don't destroy it where it exists. If they did, a vulnerable suspect would be further disadvantaged. However, this is only case law not legislation. A future case may or may not be decided in the same way.

There is confusion between solicitors and appropriate adults as to what should happen in practice. An AA is not required to attend legal consultations. PACE Code enables the suspect to choose whether they attend or not. This should be an informed choice. Legal advisors may resist attendance. They may request the AA sign a non-disclosure agreement before attending. This does not change the legal position but may increase their confidence.

Dealing with admissions of guilt

The following steps will be useful in avoiding difficulties with confidentiality:

- When meeting the person in private ensure that you give a very clear message, supported with obvious body language and gestures, that you do not need to know whether he/she committed the offence or not. Be direct in your approach and say specifically that you do not have full confidentiality and could be made to pass on information from your discussion.
- You do need to make sure the person understands the reasons for his/her arrest and need to ascertain whether legal advice should be taken. You should not ask "what have you done?", but can use the 'front sheet' of the custody record to ensure the suspect knows what the police are investigating, ensuring that they do not comment on the allegations.
- You can tell the person that they can talk in full confidence to the solicitor/legal advisor (who is covered by legal privilege) and reassure them that there is someone with whom they can discuss the details of the offence.

If the situation cannot be resolved you should speak in private to your manager or scheme co-ordinator for advice on whether to inform the police and if so, when and how this should be done.

Activity 8: Pre-interview procedure

Question sheet (Handout 9)

You have been called as an AA to a custody centre. The custody officer tells you that the vulnerable suspect is in a cell. They have been given their rights, but have declined free legal advice and the right to have someone informed of their arrest.

The custody officer has contacted the police doctor/healthcare professional*, who has examined the suspect, but has now left the station.

The officer in the case says he is ready and waiting to interview the suspect as soon as possible.

**Under Code C9.5, the custody officer must make sure a detained person receives appropriate clinical attention as soon as reasonably practicable if the person: (a) appears to be suffering from physical illness; or (b) is injured; or (c) appears to be suffering from a mental disorder; or (d) appears to need clinical attention.)*

1. **What would you do next?**
2. **How would you find out what the doctor/health care professional said when s/he examined the vulnerable suspect?**
3. **What would you say to the vulnerable suspect when you meet him/her?**
4. **What information could you clarify with regard to their mental health history, if this is relevant?**
5. **What procedures/information should you explain?**
6. **Should you discuss with them their choice not to have free legal advice and would it ever be right to overrule their decision?**

Following your private conversation with the suspect, you both return to the custody desk. The custody officer repeats the rights in your presence.

The vulnerable suspect decides they would like their next-door neighbour informed that they have been arrested.

7. **What action, if any, should you take?**
8. **Should you countersign any documentation at this stage?**
9. **Is there anyone else that you should contact at this point?**

1. What would you do next?

After receiving information from the Custody Officer the AA should ask to see the suspect.

2. How would you find out what the doctor/health care professional said when s/he examined the suspect?

You do not have the right to see the medical report, but can if the suspect gives his/her permission. You should ask the custody officer and check the custody record for any relevant medical information.

3. What would you say to the suspect when you meet him/her?

- Introduce yourself
- Explain what an appropriate adult is and the limit of the AA's confidentiality
- Explain why you are there
- Inform them of the lawful basis for collecting any data about them and the purpose that it will be used for

4. What information could you clarify with regard to their mental health history, if this is relevant?

- Medication
- Time spent in hospital
- Whether they are currently having any difficulties
- Whether they have any mental health diagnoses

5. What procedures/information should you explain?

- That fingerprints/photographs/DNA samples will be taken (DNA is only taken until it is confirmed on the system). What they can expect to happen once they go into the interview room e.g. the formal reading of information including the caution and the fact they will be asked whether or not they understand what it means to them
- That the interview will be recorded
- That once the interview has concluded the officer will need to consult with the custody officer and a decision will be made about how to proceed
- You should clarify whether they would like to have anyone informed of their arrest and whether they would like free legal advice
- The caution (only if you are absolutely clear that you know it and can break it down)

6. Should you discuss with them their choice not to have free legal advice and would it ever be right to overrule their decision?

Yes.

An AA may overrule a suspect's decision not to consult with a legal representative and request one. An AA cannot insist that they speak to one once they arrive.

You should make every effort to ensure the suspect receives legal advice.

If the interview is to go ahead without legal representation against your advice, state on the recording all you have done to try to persuade the detained to get legal advice and why you are going ahead without that advice.

If you or the suspect wants a legal representative to be called you should tell the custody officer at once.

Would you ever override their decision? – Yes. Whenever it was in their best interest.

7. The suspect has decided they would like their next-door neighbour informed that they have been arrested. What action, if any, should you take?

A person who is detained is entitled to have one person notified of their arrest. You should ensure that either the suspect, or the police on their behalf, contact the neighbour. You should not contact anyone on behalf of the suspect.

8. Should you countersign any documentation at this stage?

You will be required to countersign that the suspect has received their rights in your presence. Note that this may be before you have had the opportunity to have a meeting with the suspect in private. Whenever an AA signs it is to say they have witnessed a procedure or persons signature – not to give consent (unless they happen to be the parent/legal guardian of a juvenile).

9. Is there anyone else that you should contact at this point?

The PACE Codes do not require you to. However, your local scheme may have protocols in place concerning contacting other people or agencies, such as social services.

Module 6: Ensuring the juvenile or vulnerable person's rights (Part 2)

Overview

Module objective	To develop a detailed understanding of how the rights and entitlements of the AA can be used effectively to ensure to those of the vulnerable person.
Learning outcomes	<p>By the end of this module, learners should be able to: -</p> <ul style="list-style-type: none"> • Describe the procedures that should be carried out by both the custody sergeant and the appropriate adult before and during an interview • Describe the caution and the legal rights of a person who has been detained and the guidelines for detention under the Police and Criminal Evidence Act (PACE) 1984 • Explain how an AA can ensure that a person understands their rights, including those associated with the caution • Explain how an appropriate adult can act to ensure that the - person's rights are being respected, giving examples of appropriate actions (e.g. intervening in an interview) • Describe the different disposal options available
Suggested timing	2 hours
Method	<ul style="list-style-type: none"> • Activity 1 - Review of Module 5 and overview of Module 6 • Activity 2 – The caution • Activity 3 – The caution • Activity 4 – Interviews • Activity 5 – The charging decision • Activity 6 – Release or detention? • Activity 7 – Bail conditions
Resources	<ul style="list-style-type: none"> • Photocopied activity sheets and handouts • Flip chart and pens
Facilitator's notes	<p>This module looks more deeply into the custody process and procedures with a spotlight on those that are of most importance to the investigative process and the role. In essence this is a walkthrough for learners.</p> <p>For the answers to Activity 4, see the Activity Plan, Activity 4, Step 2.</p>

Activity Plan

Activity 2	Searches and samples	
Step 1	Split the group into pairs or small groups and share the handout. Ask them to place the correct letter in each of the twelve boxes.	1
Step 2	As a full group, discuss what an AA might do to have a positive impact	
Step 3	Share the answer handout	2
Activity 3	The caution	
Step 1	Ask the group: - <ul style="list-style-type: none"> What is the caution? When will the vulnerable suspect hear the caution?	
Step 2	For each of the three sections of the caution, ask the group: - <ul style="list-style-type: none"> What the vulnerable suspect needs to understand? How exactly might you explain it to them?	
Step 3	Ask the group: - <ul style="list-style-type: none"> How can the AA ensure the vulnerable suspect has understood what the caution means? 	
Step 4	Share the handout	3
Activity 4	Interviews	
Step 1	Split the group into three smaller groups and share both handouts.	4 & 5
Step 2	Assign each group one of the questions on handout 4	
Activity 5	The charging decision	
Step 1	Ask the group, "What options are available to a custody officer at the end of the detention process?" Record answers on the flipchart.	
Step 2	Share the handout. Ask the group to read through it and complete the task at the end, matching the names of disposals to their descriptions. <u>The correct answers are A2. B3. C7. D9. E6. F4. G5. H1. I8.</u>	6
Step 3	Share the handout. Ask learners to read it and then check their understanding by asking, "What does the AA need to consider in relation to out of court disposals?"	7
Activity 6	Release or detention?	
Step 1	Split learners into small groups. Share the handout and ask learners to read through it. Answer any questions arising.	8
Activity 7	Bail conditions	
Step 1	Ask learners to answer the questions on handout 7 <ul style="list-style-type: none"> What conditions might a custody officer attach to a person's bail? What might the ramifications be if a person fails to answer any form of bail or breaches a bail condition? Record the answers on a flipchart and discuss.	
Step 2	Share the handout.	9

Activity 2: Searches and samples

Question sheet (Handout 1)

Many detentions will not include the searches and samples below. However, where used, they can increase vulnerability, generating psychological risks which could unfairly impact a vulnerable suspect and the justice process. It is important that AAs are aware of the procedures and their role.

Name	Description	Rules

- A. Non-intimate sample
- B. AA of same sex must be present (with a small number of exceptions). Must only be undertaken to find items that a person could and might use to cause physical injury while at the station or Class A drugs intended for supply or export (consent is required for the latter). Must be carried out by a healthcare practitioner in most circumstances. Must be authorised by an Inspector.
- C. Non-pubic hair, nail or under it; saliva; skin impression; swab from body or mouth (no other orifices).
- D. A search that requires removal of more than outer clothing, including shoes and socks. Not uncommon.
- E. Intimate sample
- F. AA must be present. Consent is required. Inspector must have reasonable grounds to believe it will tend to confirm or disprove involvement in a recordable offence and authorise it. The only people of the opposite sex who may be present are healthcare professionals and an AA who was specifically requested by the suspect (e.g. a parent).
- G. A physical examination of a body orifice other than the mouth. Occurs rarely.
- H. Strip search
- I. AA of same sex must be present (with a small number of exceptions). May only take place if police reasonably consider that a detained person might have concealed something that they are not allowed to keep and which they consider necessary to remove. May not be carried out as a matter of routine. Consent is not required. Must be carried out by police officer of same sex out of view of others.
- J. A dental impression; blood, semen or any other tissue fluid, urine, or pubic hair; or swab taken from genitals or orifice other than mouth. Occurs rarely, usually in relation to contact sexual offences.
- K. Intimate search
- L. Consent not usually required and reasonable force can be used. AA must be present.

Answer sheet (Handout 2)

Name	Description	Rules
Strip search	A search that requires removal of more than outer clothing, including shoes and socks. Not uncommon.	AA of same sex must be present (with a small number of exceptions). May only take place if police reasonably consider that a detained person might have concealed something that they are not allowed to keep and which they consider necessary to remove. May not be carried out as a matter of routine. Consent is not required. Must be carried out by police officer of same sex out of view of others.
Intimate search	A physical examination of a body orifice other than the mouth. Occurs rarely.	AA of same sex must be present (with a small number of exceptions). Must only be undertaken to find items that a person could and might use to cause physical injury while at the station or Class A drugs intended for supply or export (consent is required for the latter). Must be carried out by a healthcare practitioner in most circumstances. Must be authorised by an Inspector.
Non-intimate sample	Non-pubic hair, nail or under it; saliva; skin impression; swab from body or mouth (no other orifices).	Consent not usually required and reasonable force can be used. AA must be present.
Intimate sample	A dental impression; blood, semen or any other tissue fluid, urine, or pubic hair; or swab taken from genitals or orifice other than mouth. Occurs rarely, usually in relation to contact sexual offences.	AA must be present. Consent is required. Inspector must have reasonable grounds to believe it will tend to confirm or disprove involvement in a recordable offence and authorise it. The only people of the opposite sex who may be present are healthcare professionals and an AA who was specifically requested by the suspect (e.g. a parent).

How can the AA make a positive difference?

- Question whether there are any alternative approaches which are less invasive
- Revisit the matter of legal advice if it has not yet been taken
- Explain to juvenile or vulnerable person the nature and purpose of the procedure and their options – ensure that consent (where required) is *informed* consent.
- If they are upset or anxious, try to calm them.
- Ensure that procedures are only carried out where permitted and that they are always carried out properly and with regard to the dignity and needs of the individual.
- You need to be present for the procedure to provide independent scrutiny but there is no requirement to watch. Talk to the person about what would make them feel supported.
- If you raise concerns with no positive response, escalate to the custody sergeant and/or your scheme co-ordinator and ensure your concerns are noted on the custody record.

Activity 3: The caution (Handout 3)

The caution

“You do not have to say anything, but it may harm your defence if you do not mention when questioned, something which you later rely on in court. Anything you do say may be given in evidence.”

When will the suspect hear the caution?

1. When arrested/reported for summons/street bailed
2. Prior to the interview taking place
3. Prior to charge or being informed that they may be prosecuted

What does the caution mean?

The caution is short and is often read out at high speed. It is actually both complicated and critically important in terms of a person's rights. AAs have to both understand it and be able to explain it.

“You do not have to say anything”.

We are all innocent until proven guilty. If you are a suspect, you do not have to prove you are innocent. This section of the caution allows the person to remain silent. They do not have to answer any questions at all and can give a “no comment” interview or remain in complete silence.

“But it may harm your defence if you do not mention when questioned something which you later rely on in court”

If a person does not answer some or all of the questions the police ask, or does not provide crucial information (such as an alibi) but does give the information later at court, the court may be less likely to believe it or give it less importance.

The thinking is that a reasonable, innocent person would be willing to give the police any information which may clear their name. Failure to give this information to the police may lead the court to draw an **“adverse inference”** from the silence.

The words should be read literally. If something *may* harm you, it may *not*. The caution does not say that not mentioning something will harm your defence, only that it might. If there is an explanation for not providing certain information to the police at interview, a court is unlikely to draw an adverse inference. The word “rely” means that it must also be information crucial to their defence, not some peripheral matter.

“Anything you do say will be recorded and may be given in evidence”

If the suspect does say anything, then it will be recorded and may form part of the prosecution, or defence, case and be given to the court.

How will the AA ensure that the suspect has understood what it means?

Vulnerability and the caution

If a young or otherwise vulnerable suspect does not understand the caution, there is a significant risk to the justice process.

The second section of the caution is designed to ensure that sophisticated adult criminals cannot give a “no comment” interview then spring an alibi defence on a court. It is not meant to trap or trick suspects who may not understand the significance of questions put to them or the significance of their replies.

Young and vulnerable persons who are easily stressed, confused, led or upset may not understand the significance of certain information. They may fear other trouble if they tell the police where they really were or what they were really doing. For example, they may have been engaged in a sexual relationship they think may be wrong or is just too private to tell anyone about. In fact, the more vulnerable a suspect is, the less likely a court will be to draw an adverse inference from their silence.

The third section of the caution is very significant for young and vulnerable suspects. Rudeness, boasting and flippant jokes are just some examples of things that could be a result of a person’s general vulnerability or specific condition. They may well be read out in court, possibly out of context.

You should try to provide the suspect with the opportunity to retract inappropriate comments or abusive language. You can explain to a suspect that if they plan to do anything other than tell the whole truth, they should discuss everything with a legal advisor first.

Checking understanding

If you ask, “Do you understand?” and a person says “Yes”, this does *not* mean that they understand. People are pre-disposed to answer “Yes” to that question, often due to avoiding embarrassment and/or wanting the process to be over as quickly as possible.

To check understanding, have them explain the meaning in their own words. Alternatively, you can ask these simple questions. A person’s responses will let you know whether they understand.

1. Do you have to answer the police questions?

No.

2. What might happen if you say something different in court from what you say now?

They might not believe me.

They’ll want to know why I didn’t say anything before.

3. How will the court know what has been said?

It is all recorded. The police will be able to show the recording to the court.

Activity 4: Interviews (Handout 4)

One of the main reasons for detaining a person at a police station is to ask them questions. If a suspect requires an AA, the police should only ask a questions in the presence of an AA (subject to a small number of exceptions).

The AA's role

The role of an AA is to: -

- **Support, advise and assist** the suspect, when they are given or asked to provide information or participate in a procedure (but not give legal advice).
- Observe whether the police are acting **properly, fairly and with respect for the rights** of the vulnerable suspect. And inform an officer of the rank of inspector or above if you consider that they are not.
- **Assist with communication** between the suspect and the police, whilst respecting their right to say nothing unless they want to as set out in the terms of the caution.
- Help them to **understand** their rights and ensure that those rights are **protected and respected**.

All these apply in the interview, and help to mitigate the risk of the interview producing unreliable evidence.

Facilitating effective communication includes ensuring that: -

- **The suspect understands the questions** being asked and that questions are not asked in a way which is confusing, overly repetitive or oppressive.
- **The police also understand** and do not misinterpret the suspect's answers.

The start of the interview

At the start of the interview, the suspect should:

- Be reminded of their right to free legal advice (and asked whether they have had enough time to consult if they have a legal advisor)
- Be made aware of the reasons for their arrest
- Be made aware of the purpose of the interview
- Have any recording equipment explained to them
- Hear the caution repeated and understand this
- Be made aware of the role and responsibilities of the appropriate adult
- Be cautioned

The caution

Before questioning begins, the suspect should be cautioned in the following terms:

"You do not have to say anything but it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence."

The AA should ensure the caution is read slowly and clearly to the suspect. It is the responsibility of the person giving it to explain it in their own words if the suspect does not appear to understand it. The AA should check that he or she understands it by asking them to explain it in their own words. The caution is complicated and further explanations from the police, solicitor or the AA will usually be necessary.

Recording

All interviews have to be recorded via some method. Almost all interviews are recorded on audio or video equipment. The AA may need to make relevant comments about what is happening because audio will not record gestures or other body language, and a video recording will not pick up on an atmosphere. The police will follow a set procedure for starting and stopping the recordings. The AA should introduce him or herself and is entitled to intervene during the interview whenever he or she thinks it is necessary to fulfil the AA role.

Breaks

The suspect has the right to ask for the interview to be stopped to ask for legal advice to be obtained or to speak to the AA in private at any point. The AA should ensure that the person understands this and is able to use this right when they wish. Equally if the AA believes that a break is necessary for any reason then they are expected to voice this. Examples might include where the suspect is no longer concentrating, too tired or requires legal advice.

Breaks from interviewing should be made at recognised meal times or at other times that take account of when an interviewee last had a meal. Short refreshment breaks shall be provided at approximately two hour intervals.

Interventions

Solicitors may intervene during an interview: -

- To seek clarification
- To challenge an improper question or the manner in which it is put to their client
- To advise their client not to reply to particular questions
- To give their client further legal advice

The AA should intervene if something causes them concern. For example, this may be: -

- Something has not been properly explained, such as the AA role
- Inappropriate familiarity by interviewing officer
- Interviewer repeatedly interrupting vulnerable suspect's answers
- Interviewer is confrontational, sarcastic, aggressive, insulting, demeaning, raising voice, shouting, using foul language other otherwise bullying
- Interviewer standing during interview
- Excessive repetitive questions; questions are being asked too fast
- Inappropriate questioning e.g. about matters unrelated to the reason for the arrest
- A change in the suspects answers – from 'no comment' or 'silence' to answering the questions
- Closed, leading or negative questions
- Suspect is unable to understand questions
- Suspect upset, confused or very agitated
- You want to talk to the police or suspect in private
- You or the suspect want to ask for legal advice

However, the police interviewer is not bound to accept the first, or any subsequent, answer given. They are entitled to say if they do not believe what they are being told. Questioning is not unfair merely because it is persistent. Even when the right to silence is exercised by a suspect the police still have the right to put questions. Persistence and robustness are acceptable. A bullying, repetitive pounding alleging the suspect's guilt is unfair and unacceptable.

If the issue cannot be resolved with the interviewing officer via an intervention, queries or complaints should be made to the custody officer in the first instance or, if necessary, to the duty inspector. The AA is also entitled to contact their AA scheme or manager for advice or information. An AA should not feel isolated from their scheme or workplace while at the police station.

Removal of an AA from an interview

The Codes make provision for the removal of an appropriate adult in extenuating circumstances. This provision is not targeted at appropriate adults who, having been trained using this pack, are effective, assertive and clear about their role and inherent responsibilities.

This only applies where “the appropriate adult’s approach or conduct prevents or unreasonably obstructs proper questions being put to the suspect or the suspect’s response being recorded”.¹

The accompanying guidance note clarifies that examples of “unacceptable conduct include answering questions on a suspect’s behalf or providing written replies for the suspect to quote”.²

In the event that the police believe that this is occurring, the interview must be stopped. An officer of superintendent rank must be consulted if one is readily available (if not, it must be an inspector unconnected to the investigation). That officer will then remind the appropriate adult of their role and allow them to respond. The officer will then make a decision about whether to decide whether the interview should continue with that appropriate adult. They may listen to the views of any legal advisor that is present. If the appropriate adult is excluded then a new appropriate adult must be called before the interview can commence, unless exceptions under C11.18 apply.

Practitioners should be aware of the possibility of misinterpretation by the police and be able to defend their position if need be. It is advisable for appropriate adults to be clear about their role as described by the police at the start of any interview (as set out in PACE Code C 11.17). If there is a need for them, interventions that fall within that framework must not be minimised for fear of being removed.

¹ PACE Code C 11.7A

² PACE Code C 11F

Significant statements

AAs need to understand, and be able to explain to a suspected person, that there are occasions when they may make significant statements, or maintain a silence, which could appear capable of being used in evidence against that person. These may include a:

- direct admission of guilt;
- failure or refusal to answer a question;
- failure to answer a question satisfactorily (*see PACE Code C 11.4A and 11E*).

Prior to the police station

Where a suspect makes a significant statement prior to arrival at the police station, it must be put to them immediately after the caution is given at the beginning of the interview. For example, they may have said at the time of arrest: “I only did it because he told me to”.

If recorded in the officer’s police notebook (PNB), then if the suspected person agrees to read that record and sign it as correct, he/she should endorse the PNB with the words: “I agree that this is a correct record of what has been said.”

Any disagreement should include written details, read and signed by the suspected person in the PNB. Refusal should be similarly recorded. This process should be referred to at the start of the interview.

No comment interviews

As the caution explains, the vulnerable suspect does not have to answer any questions at all. This is known as a “no comment” interview. There are times when this may be in the suspect’s best interests and this approach is very common. This can feel awkward for an AA. However, it is the role of a legal advisor, not the AA, to know when a “no comment” interview is appropriate and to advise the suspect not to answer some or all of the questions.

Potential negative consequences of silence

A suspect may not answer some or all of the questions the police ask, or not volunteer crucial information (such as an alibi). If they later give that information in court, the court may decide that the person has just made it up.

The thinking is that a reasonable, innocent person would be willing to give the police any information which may clear their name. Failure to give this information to the police may lead the court to draw an “adverse inference” from the vulnerable suspect’s silence.

Young and vulnerable people may not understand the significance of information and may fear other trouble if they tell the police where they really were or what they were really doing. In these cases, where an explanation can be found for not providing that information to the police at the time of interview, a court is unlikely to draw an adverse inference from his or her silence.

Potential negative consequences of things said

Young people, those who are vulnerable, easily stressed, confused, led or upset may say things in interview which they do not really mean. Whatever they say may be read out in court, possibly out of context. The AA should do what they can to offer the vulnerable suspect the opportunity to retract inappropriate comments or abusive language. They should try and make sure that the vulnerable suspect realises that whatever is said can be mentioned in court.

How might you describe to a vulnerable suspect....

Group 1: What information should a juvenile or vulnerable person be given at the start of the interview?

Group 2: What might cause an AA to intervene in an interview?

Group 3: The meaning and implications of the right to silence, significant statements and inferences?

Activity 5: The charging decision (Handout 6)

“When the officer in charge of the investigation reasonably believes there is sufficient evidence to provide a realistic prospect of the detainee’s conviction, they shall, without delay, inform the custody officer who will then be responsible for considering whether the detainee should be charged.” (Code C 16.1).

The decision on the outcome of the process of police investigation is often called the ‘disposal’.

Charge

Charging is the term used when a person is going to be prosecuted and will have to go to court. Before deciding on a charge, the police will often consult with the Crown Prosecution Service, which can take several hours. The police will say, “I am now charging you with the offence of...” The actual charge is not decided until after the interview and all the evidence is gathered.

No further action (NFA)

The police will take ‘no further action’ in the case if (a) there is no, or not sufficient, evidence to charge or (b) it is considered not in the public interest to charge. The person will be released and should be notified in writing of this decision. They should be advised to keep all documents and other evidence that supports their defence, as the investigation could be resumed. This may happen where, for example, fresh evidence comes to light or new or historic allegations are made which are relevant to the circumstances of the original investigation. This outcome would not be recorded on the police national computer but would be recorded locally. Technically it could still show on an Enhanced DBS check (criminal record check) but only if the police deemed it relevant and this is rare.

Out of court disposals

The charging decision is not simply a matter of whether to charge someone or not. The custody officer has a duty to consider whether there are any alternatives which would be more appropriate.

In some circumstances they will be required by law to take a certain course of action, while in others they will have more discretion. Decisions must be proportionate and mitigating factors may be taken into account. This includes the vulnerability and whether a prosecution would have a detrimental effect on their mental health.

It is important to understand what out of court disposals are. They are not criminal convictions but they do form part of a person’s criminal record. They are stored on the Police National Computer until a person’s 100th birthday and can have a significant effect on their life. For further information on the impact of criminal records see www.unlock.org.uk.

Place the number of each of these out of court disposals in the correct row in the table.

1. Conditional Caution
2. Community Resolution
3. Warning (cannabis, khat)
4. Simple Caution
5. Youth Conditional Caution
6. Youth Caution
7. Warning (harassment)
8. Foreign National Conditional Caution
9. Penalty Notice for Disorder

Out of court disposals

Outcomes (disposal)	When might it be used?	Consent / Admission	What does it mean for the vulnerable suspect?	Will it be disclosed on a (Basic, Standard or Enhanced) criminal record check?
A	Lower level crime or incident. Reasonable suspicion, may deal with non-criminal matters	Yes / Yes	Accept responsibility. Restorative justice can be used. Agree to make amends to the victim.	Recorded locally only. Disclosed very rarely, only on Enhanced DBS check and only if deemed relevant by police.
B	First offence of possession for personal use. Reasonable suspicion. 18+ only.	No / Yes	Must comply with procedure. Verbal warning. Future possession likely to result in a PND.	Recorded locally only. Disclosed very rarely, only on Enhanced DBS check and only if deemed relevant by police.
C	Single act of conduct that might amount to harassment if there were a second act.	No / No	Given a letter advising them that if they do the same thing again could be charged.	Recorded locally only. Disclosed very rarely, only on Enhanced DBS check and only if deemed relevant by police.
D	Limited to 29 penalty offences. Reasonable or at that time that the caution is given suspicion. 18+ only	No / No	Sign penalty notice. Pay £60 or £90 or request trial within 21 days.	Recorded locally only. Disclosed very rarely, only on Enhanced DBS check and only if deemed relevant by police.
E	Any offence type but limited on seriousness. Police must refer to 'gravity matrix'. Enough evidence to charge but not in public interest. Realistic prospect of conviction. 10-17 year olds.	Yes / Yes	Must sign to accept. The YOT will be informed if the offence was indictable only (more serious offences)	Recorded on PNC. Never disclosed on Basic. Disclosed on Standard/ Enhanced unless eligible for filtering.
F	Any offence type but limited on seriousness. Police must refer to 'gravity matrix'. Enough evidence to charge but not in public interest. Realistic prospect of conviction. 18+ only.	Yes / Yes	Must sign to accept.	Recorded on PNC. Never disclosed on Basic. Disclosed on Standard/ Enhanced unless eligible for filtering.
G	Any offence type but limited on seriousness. Police must refer to 'gravity matrix'. Enough evidence to charge but not in public interest. Realistic prospect of conviction. 10-17 year olds.	Yes / Yes	Non-compliance may result in prosecution for original offence. YOT will screen and advise on conditions. Restorative justice available.	Recorded on PNC. Disclosed on Basic for 3 months minimum.* Disclosed on Standard/Enhanced unless eligible for filtering.
H	Selected offences. CPS must agree. 18+ only	Yes / Yes	Must comply with conditions or be charged with original offence. Restorative justice available.	Recorded on PNC. Disclosed on Basic for 3 months minimum.* Disclosed on Standard/Enhanced unless eligible for filtering.
I	Available for summary (non-motoring) offences and either way offences with a penalty of up to two years' imprisonment. For indictable only offences in exceptional circumstances. 18+ only	Yes / Yes	Primary condition must be that they leave the UK for 5 years. Other conditions must be rehabilitative / reparative.	Recorded on PNC. Disclosed on Basic for 3 months minimum.* Disclosed on Standard/Enhanced unless eligible for filtering.

*May be longer if the person has other unspent convictions under the Rehabilitation of Offenders Act 1974

Criminal records

Cautions effectively give the police the power to give someone a criminal record without a case being considered by a court. They should not be given or accepted without consideration, and legal advice is strongly recommended for all suspects.

Admission of guilt

Cautions and community resolutions require an admission of guilt. This might be before the decision to give one has been made (simple caution) or at the point that it is given (conditional caution).

In practice this means that a 'no comment' interview will mean that a young person or vulnerable adult cannot get a caution or a community resolution.

If the AA has not been present in the legal consultation, it may be very difficult for them to judge whether the legal advice they have been given is sound, or whether they have understood it. Without knowing whether a person has admitted guilt to their solicitor, it is effectively impossible to judge whether a 'no comment' interview is good advice.

The AA should uphold the young person's right to remain silent or give a 'no comment' interview. However, before the interview, they should first ensure that vulnerable suspect fully understands the consequences of the 'no comment' approach.

They should understand that although a caution is not a conviction, it is both a criminal record and the admission of guilt may qualify a person for addition to a register (such as the sex offenders register) and impact on access to services such as insurance.

Children and young people

The options available to police for dealing with children and young people are: -

- No further action
- Triage (Informal action, sent to YOT for intervention, recorded on PNC as no further action)
- Community resolution
- Youth Caution
- Youth Conditional Caution
- Charge

Any of these can be given irrespective of what has been given before and restorative justice can be an element of any of them.

Presence of an AA for youth cautions and conditional cautions

One of the requirements for a conditional caution (adult or youth) is that the police must explain the conditional caution and warn the person that failure to comply with any of the conditions may result in prosecution for the original offence. For youth conditional cautions, an AA must be present when the above explanation and warning is given. An AA must also be present for a youth caution.

In both cases, the parent or guardian should be present. If they are not available, the child or young person should be bailed until the parent/guardian can attend. It is vital that these out of court disposals are given in a meaningful way with the appropriate consultations and assessments; they should not be a simply administrative process.

Activity 6: Release or detention? – (Handout 8)

Presumption of bail

It is important to note that the law presumes that a person who has been charged will be released (see PACE 1984 s.38(1) and Bail Act 1976 Sch. 1 Part 1 s.2)

However, a custody officer may refuse to release the person if they have reasonable grounds to believe detention is necessary: -

- Because the person's real **name or address** has not been ascertained
- Because the person will **fail to appear** at court if bailed
- To prevent them committing **further offences** if bailed (*imprisonable offences only*);
- To prevent them causing **physical injury** to another person or **loss/damage to property**
- To prevent the person from **interfering with the investigation** or with witnesses
- For the person's **own protection** (adults) or their **own interests** (child or young person).
- In order to get a sample to **test for Class A drugs** (must be 14 years old or above.)

In addition, the granting of bail would be exceptional where the person is charged with one of a list of **very serious violent/sexual offences** (i.e. murder, attempted murder, manslaughter, rape and other serious sexual offences involving children or mentally vulnerable persons) and they have a previous conviction for that offence). The list can be found in the [Criminal Justice and Public Order Act 1994 s.25\(2\)](#).

Unconditional bail

A person released on unconditional bail is given a court date. Until then, they don't have to do anything. If he/she does not attend court it will be a *breach of bail*, which is a separate offence. The police may add a 'wanted/missing' marker to the Police National Computer (PNC) system until the suspect is found and arrested. These are valid indefinitely and do not expire. The police are authorised to arrest the person when found. Alternatively, the police can apply to a court to get a 'failure to appear' warrant.

Detention after charge

If bail is refused, the person will be detained until the next available court. Adults will be detained at the police station. Children and young people must be transferred to local authority accommodation in almost all circumstances.

Appropriate adults

Under PACE Code C (16.1) charging and related actions (such as bail) shall be undertaken 'in the presence of the AA if they are present'. However, after charge bail cannot be refused, or release on bail delayed, solely to await the arrival of an AA unless their absence provides the custody officer with one of the necessary grounds above. It is possible to bail a person pending charge to allow an AA to be present.

In your group, discuss:

- What conditions might a custody officer attach to a person's bail?
- What might the ramifications be if a person fails to answer any form of bail or breaches a bail condition?

Activity 7: Bail conditions – (Handout 9)

When conditions can be applied

The custody officer has the power to place conditions on bail. Any conditions imposed must be *necessary* to ensure:

- The person surrenders to court;
- To prevent the person committing offences whilst on bail;
- The person does not interfere with witnesses or obstruct the course of justice;

What conditions can be applied?

The types of conditions are not explicitly specified or limited in law. However, human rights law applies. The conditions must not be a punishment in themselves. Conditions must address one or more of the risks listed above, be necessary, reasonable, proportionate and capable of being enforced. Any perceived risk should be real and the police must give their reasons.

Examples of conditions include requiring people: -

- to report to a police station on a given day or days at a given time
- to abide by a curfew between specified hours (corresponding with times of the alleged offences)
- to reside at a named address
- to present themselves to a police officer on request to check they are living at a named address
- not to go to a place where the alleged offence was committed or where witnesses reside/work
- not to contact, either directly or indirectly, a named person, such as an alleged victim
- not to drive

Exceptions can be applied to the conditions for practical reasons. For example, a person could be prevented from going to a specific town centre unless they are going to court, meeting with their solicitor or having supervised contact with their children at a specified time.

What representations can an AA make about conditions?

There is no specific legal provision for making representations about bail conditions, either by the suspect or their AA. Therefore, there is no legal obligation on police to take them into account. However, equally, there is nothing preventing an appropriate adult from making representations or stopping a custody officer for asking for and considering them. Legal advice can still be sought at this stage. If the AA believes that any condition is inappropriate, then a legal advisor should be contacted. A person can apply for a variation of bail conditions either at the same police station or at the magistrate's court. Check that accommodation and association conditions are workable. "Reside as directed by the local authority" is more appropriate than a specific named local authority accommodation. There is then scope to move the person if necessary. It is probably unenforceable to have a condition stating "do not associate with someone in the same class or residential unit".

Breaching bail conditions

The police have a power of arrest where an officer has reasonable grounds for believing that conditions imposed on bail have been breached. If the police are still not able to charge, and the person is bailed again, there is no power to vary the bail conditions. However, the breach of conditions may mean a charge is more likely (because the Crown Prosecution may apply the 'Threshold Test' where previously the grounds for applying this test hadn't been met). However this would depend on the nature of the breach and whether, or how, it related to the initial allegation.

Module 7: Mental health and vulnerability

Overview

Module objective	To develop an understanding of how appropriate adults can meet the needs of children and adults who have a mental illness and/or other mental vulnerability when they are detained or otherwise questioned
Learning outcomes	<p>By the end of this module, learners should be able to: -</p> <ul style="list-style-type: none"> • Define the term 'vulnerable adults' as used in a custodial context, giving examples of different groups of adults who may be described as 'vulnerable' • Give reasons why adults with learning difficulties or disabilities may need the support of an appropriate adult in a custodial setting • Describe how different learning difficulties or disabilities or behavioural issues may affect a young person in custody • Explain the importance of being able to communicate effectively with a person with a learning difficulty or disability in custody, giving examples of appropriate approaches for a given individual • Give reasons why an adult with mental health needs may require the support of an appropriate adult in a custodial setting • Explain the importance of being able to communicate effectively with a person with mental health needs in custody, giving examples of appropriate approaches for a given individual • Describe some of the key tools and strategies an appropriate adult can use to support adults with learning difficulties or disabilities in different custodial situations • Describe appropriate strategies an appropriate adult can use to support a young person with learning difficulties or disabilities or behavioural issues while they are in custody • Describe some of the key tools and strategies an appropriate adult can use to support an adult with mental health needs in different custodial situations
Suggested timing	3 hours
Method	<ul style="list-style-type: none"> • Activity 1 - Review of Module 6 and overview of Module 7 • Activity 2 – Different perspectives • Activity 3 – Mental vulnerability in the justice system • Activity 4 – Neurodevelopmental disorders & brain injury • Activity 5 – Mental health • Activity 6 – Facilitating communication • Activity 7 - Case studies

	<ul style="list-style-type: none"> • Activity 8 – Fitness • Activity 9 – False confessions • Activity 10 – Adult safeguarding • Activity 11 – Legal Framework
Resources	<ul style="list-style-type: none"> • Photocopied activity sheets and handouts • Flip chart, pens and sticky notes
Facilitator's notes	<p>This module should be completed by AAs supporting both children and/or adults.</p> <p>Depending on the specific group of learners, this is probably the most challenging module to deliver.</p> <p>While previous modules have largely focused on relatively clear issues such as processes and rights, this module deals with significantly more complexity and uncertainty.</p> <p>This module also introduces learners to relevant sections of legislation (Mental Health Act 1983 and the Mental Capacity Act 2005) and how these impact on the Criminal Justice System.</p> <p>Both the medical and legal information can be extremely daunting (both for the learner and the facilitator). However, dealing with vulnerability is at the heart of the appropriate adult role. Whether AAs will be working with vulnerable adults or solely with children, it is equally important that they have an awareness of mental vulnerability.</p> <p>The challenge for the facilitator is balance the depth of information with keeping learners engaged and motivated. This requires facilitators to understand and 'read' the learners as the module progresses. Involving other professionals and experienced AAs as speakers and visits to custody within the module are strongly recommended.</p>

Activity Plan

Activity 1	Review of Module 6 and Overview of Module 7	Handout
Step 1	Facilitator reminds learners of what has been covered in the previous module	
Activity 2	Different Perspectives	
Step 1	Divide the learners into two groups	
Step 2	Give one group Scenario 1 and the other half Scenario 2	1 & 2
Step 3	Ask the groups to discuss their scenario and answer the questions. Give a set time for this (e.g. 10 minutes).	
Step 4	When they have finished, tell the groups had the same situation and questions but from a different person's perspective. Half the groups were asked to consider the questions from the custody officer's perspective and half from the vulnerable suspect's.	
Step 4	Go through the questions one at a time. Compare the answers from the different groups as you go. Encourage discussion of the very similar feelings shared by the custody officer and the vulnerable suspect. Explain that the AA is the one person who can provide or facilitate solutions to most of the problems identified. The AA should feel empowered and more confident as a result.	3
Variations	<ul style="list-style-type: none"> • Make the scenarios specific to learning disability or mental health • Add more detailed or specific questions • Add a third scenario from the solicitor's perspective 	
Activity 3		
Step 1	Divide learners into small groups (e.g. max 4) people in each)	
Step 2	Share the handout and annex and ask all learners to read them and then discuss the questions in their small group.	4 & Annex E
Step 3	Once the discussion is complete, lead a discussion through each of the questions. As you proceed, ask each group to share their answers. Add any additional points from the answer handout and clarify any questions or misunderstandings about the information sheet.	
Step 4	Share the handout with learners for future reference	5
Variations	If you are short of time you can lead the whole group through handout 4 and 5.	

Activity 4	Neurodevelopmental disorders & brain injury	
Step 1	<p>Divide learners into groups and assign each group one or more of the conditions listed on the handout.</p> <p>Depending on the nature of your learners, some of these conditions may be more familiar than others. Try not to leave a group with something they have never heard of as the discussions are likely to be counterproductive (increasing anxiety rather than confidence).</p>	6
Step 2	Give the group 5 – 10 minutes to discuss the question on the handout and note down the answers on the handout.	
Step 3	<p>Lead a guided discussion taking each condition in turn, using the information in the answer handout. Ensure learners are aware that they will not be expected to be experts on the details of each condition. Keep the focus on the potential impact on communication and how having an awareness of conditions might help them as an AA.</p> <p>Discuss the ‘real-life example’ drawing out how the young man’s vulnerabilities led to ‘offending’ and how the situation might have been better dealt with.</p>	
Step 4	Share the handout for future reference	7
Variations	<ul style="list-style-type: none"> • Provide the answer handout at the same time as the questions. Ask groups to find the information in the handout, then give a short presentation to the whole group on their area. • Set the task as ‘homework’ between sessions, asking learners to research one or more areas for the next session. 	
Activity 5	Mental health	
Step 1	<p>Ask the whole group: “Can anyone think of a mental health condition?”</p> <p>Record answers on the flipchart or whiteboard.</p>	
Step 2	<p>Once all the suggestions have been added, ask the group: “What type of symptoms might someone with poor mental health have?”</p> <p>Try to get learners to link symptoms back to specific conditions if possible, but be gentle as this can be an intimidating subject area.</p>	
Step 3	Share the handout and talk through it as necessary to fill in the gaps not covered by the previous steps	8
Variations	<ul style="list-style-type: none"> • Draw a 2 x 2 grid on a whiteboard or flipchart. Label each section with the four categories of mental disorder. Provide large sticky notes and ask learners to write down mental health conditions and stick them in the right box 	

Activity 6	Facilitating communication	
Step 1	Share the question handout. Ask each learner to write down their ideas. Keep this short – explain that you are looking for their ideas and immediate instincts. Generalisations are fine.	9
Step 2	<p>Lead a discussion based on the answer handout.</p> <p>Be aware of the risk of overloading learners. If people feel overwhelmed they will be demotivated and will be paralysed when they are in custody trying to remember everything.</p> <p>Emphasise the value of their natural instincts and simply treating people with humanity. Stress that they will develop their knowledge over time and with experience. They can always use the handout as a reference guide and include it in the information they take with them to the station.</p> <p>Emphasise that although there are many conditions, with many symptoms, there are core principles that will work in almost all cases.</p>	10
Step 3	Share the answer handout at the start or end of step 2	
Activity 7	Case studies	
Step 1	Divide learners into three groups, assign each group one of the three case studies in the handout, and ask them to discuss and answer the questions.	11-13
Step 2	Ask each group in turn to present its case study and their answers. Invite views from members of the other groups.	
Step 3	Fill in gaps, answer questions and add material based on the answer handout. Share the handout with learners for future reference.	14
Variations	<ul style="list-style-type: none"> If you have a large group you may wish to divide into six groups and give each case study to two groups 	
Activity 8	Fitness	
Step 1	Share the handout and, using it as a guide, explain fitness to detain and interview.	15
Step 2	Answer any questions and ensure that learners are clear that it is not a decision that they are responsible for making – they just need to be aware of it so they understand the process and can inform it.	
Variations	<ul style="list-style-type: none"> Ask a local Health Care Professional to talk to learners about their role and how they make ‘fitness’ decisions. Ask a local custody officer to talk to learners about risk assessments, how they interact with medical professionals and what AAs can do to keep custody safe by informing fitness decisions 	

Activity 9	False confessions	
Step 1	<p>Use the handout to introduce the ideas that: -</p> <ul style="list-style-type: none"> a) people make false confessions (particularly vulnerable children and adults) b) Confessions may be useless in court if they are not obtained fairly c) Avoiding false confessions is at the very heart of the appropriate adult role – it's the reason it was established. 	16
Step 2	<p>Ask the group:</p> <ul style="list-style-type: none"> • Why might a person make a false confession? • How many reasons can you think of? <p>Put the answers on a flip chart, white board or use sticky notes.</p>	
Step 3	Check their answers off against the answer handout.	
	Share the handout and lead a guided discussion on the four categories of false confession, organising their answers and filling in the blanks.	17
Activity 10	Adult safeguarding	
Step 1	Share the handout and ask learners to read through it section by section	18
Step 2	Taking each section in turn, check the understanding of learners and provide clarification	
Variations	<ul style="list-style-type: none"> • Replace this activity with your own organisation's training on safeguarding, or one provided by your commissioner • Invite the safeguarding lead for adult social care to deliver a presentation at your training. It is in their interest that referrals from AAs are appropriate • The Social Care Institute for Excellence provides free e-learning on adult safeguarding at www.scie.org.uk/publications/elearning/adultsafeguarding/index.asp 	
Activity 10	Legal framework	
Step 1	<p>Share the handout and talk the group through it.</p> <p>Emphasise that appropriate adults are not lawyers or mental health professionals. They will not be responsible for making any legal or medical decisions.</p> <p>Focus on the last section, covering what it means for the AA.</p>	19
Variations	<ul style="list-style-type: none"> • Ask a local Forensic Medical Examiner or Approved Mental Health Professional to talk about the Mental Health Act and how they use it in practice. 	

Activity 2: Different perspectives

Question sheet (Handout 1)

Scenario 1 – the custody officer

Imagine you are a custody officer. A person who is vulnerable has just been booked into the custody suite.

What are you thinking and how do you feel?

What worries or concerns you?

What do you want to happen?

Question sheet (Handout 2)

Scenario 2 – the vulnerable suspect

Imagine you are a vulnerable suspect. You have just been arrested and booked into the custody suite.

What are you thinking and how do you feel?

What worries or concerns you?

What do you want to happen?

What are you thinking and how do you feel?

	<i>Thoughts</i>	<i>Feelings</i>
<i>Custody officer</i>	<ul style="list-style-type: none"> • Oh no, this means trouble • This is all I need • What time will I get home tonight? • This could all go horribly wrong! 	<ul style="list-style-type: none"> • Fear, panic, out of control, out of depth • Alternatively: sympathetic, kind, caring.
<i>Vulnerable suspect</i>	<ul style="list-style-type: none"> • Oh no, this means trouble • This is all I need • When am I going to get out of here? • This could all go horribly wrong! 	<ul style="list-style-type: none"> • Fear, panic, out of control, out of depth • Alternatively: safe, secure, being attended to.

What worries or concerns you?

<i>Custody officer</i>	<ul style="list-style-type: none"> • Will he/she understand? • Will he/she kick off? • Am I at risk? • Are my staff at risk? • Will he/she self-harm? • Will I need to get a mental health assessment? • Will I get home in time for – work/children/pet/other responsibilities? • If this goes wrong it could be thrown out of court.
<i>Vulnerable suspect</i>	<ul style="list-style-type: none"> • Will they understand me? • Will they restrain me? • Will they hurt me? • Will I need/get a mental health assessment? • Will I get home in time for – work/children/pet/other responsibilities? • If this goes wrong I could get locked up.

What do you want to happen?

<i>Custody officer</i>	<ul style="list-style-type: none"> • Everything to be done by the book, everything to go smoothly • For this to be over quickly • Someone to help communicate • Someone to explain their illness/disability to me • Someone to keep an eye on the vulnerable suspect
<i>Vulnerable suspect</i>	<ul style="list-style-type: none"> • Everything to be done by the book, everything to go smoothly • For this to be over quickly • Someone to help communicate • Someone to explain what is going on • Someone to explain my illness/disability to the police. Someone to be with me

Activity 3: Mental vulnerability in the justice system

Information and question sheet (Handout 4)

What is vulnerability?

The word 'vulnerable' can have different meanings in different contexts. People often use it to mean different things. This is true within policing, within police custody and even between individual officers. However, when used in relation to suspects for whom an appropriate adult is required, it has a very specific meaning. This is defined in the PACE Codes (see NAAN training pack Annex E).

In this context 'vulnerable' applies to the risk of a person being put at a disadvantage in the justice system because of their mental vulnerability. People with mental ill health, learning disabilities and other mental vulnerabilities, face significant disadvantage in the criminal justice system. When asked about their experience of the CJS, they typically report they did not understand what was happening to them or why, that they felt alone, they did not know whom to turn to for support and that they were uncertain about what to say or do. In 2015/16, half of people who died in or following police custody were identified as having mental health concerns.

For example, a person who is mentally vulnerable may:

- have difficulty understanding or communicating effectively about the police's procedures or the exercise of their rights and entitlements.
- not understand the significance of what is said to them or what they say
- becoming confused and unclear about their position;
- unintentionally provide unreliable, misleading or incriminating information
- unconsciously accept or act on suggestions from others
- agree to suggestions or proposals without any protest or question.

Examples of conditions that might lead to a person being vulnerable include:

- Learning disabilities
- Brain injury / damage (that cause personality or behavioural changes)
- Autistic spectrum (including Asperger's syndrome)
- Affective disorders (e.g. depression and bipolar disorder)
- Psychotic disorders (schizophrenia and delusional disorders)
- Neurotic, stress-related and somatoform disorders (anxiety, phobias, obsessive compulsion, PTSD and hypochondria)
- Organic disorders (e.g. dementia and delirium)
- Personality disorders
- Mental and behavioural disorders caused by psychoactive substance use
- Eating disorders, non-organic sleep disorders and non-organic sexual disorders
- Behavioural and emotional disorders of children and young people

However, a person could still be vulnerable under PACE even if they don't have an underlying condition. For example, extreme stress (perhaps brought about by the incident in question, or being in custody) could render a person vulnerable to the above risks.

How common is vulnerability?

Under the PACE Codes a wide group of people may meet the definition of vulnerable. Examples include people with a mental illness, a learning disability, autistic spectrum conditions, Down's syndrome or those who have suffered a traumatic brain injury. It is difficult to know the exact prevalence of mental disorders and mental health problems due to the lack of routine screening and rigorous recording. However, there is strong evidence that it is significantly higher within the criminal justice system than within the general population.

In the general United Kingdom population: -

- 17% of adults are experiencing a diagnosable mental health problem at any one time.
- 2%-3% of people are estimated to have a learning disability
- 4% have severe dyslexia
- 2% of men (and 0.3% of women) have an autistic spectrum condition

In comparison, studies have found that in police custody: -

- 35% of people have problems which might interfere with their functioning or coping ability during police interviewing
- 38.7% have mental disorders including intellectual disability according to clinical interviews
- 23.5% have current symptoms of Attention Deficit Hyperactivity Disorder (ADHD)
- 7%-9% have intellectual disabilities (learning disabilities)³

In relation to children in the justice system: -

- 23 -32% have learning/intellectual disabilities (vs 2-4% in the general population)
- 43-57% have specific learning difficulties (vs 10%)
- 60-90% have communication (speech and language) disorders (vs 5-7%)
- 12% have attention-deficit/hyperactivity disorder (vs 1.7-9%)
- 15% have autistic spectrum disorders (vs 0.6-1.2%)⁴
- 1 in 3 children aged 5-16 who offend have a diagnosed mental disorder (vs 1 in 10)

High numbers of people coming into contact with police will have a combination of these vulnerabilities. Issues with drugs and alcohol are also common and can be both a contributing factor and a result of other vulnerabilities. The terms 'dual diagnosis' and 'co-morbidity' are sometimes used in relation to such combinations.

Questions

1. What disadvantages do people with mental vulnerabilities experience in the justice system?
2. What impact might these disadvantages have on the justice process?
3. Does everyone with a diagnosed mental health problem need an appropriate adult?
4. Is it necessary to have a diagnosed condition for an AA to be required?
5. It is the responsibility of a medical professional or the police to decide if an AA is required?
6. It is necessary for police to consider whether a person aged under 18 may be vulnerable?
7. Does it have to be a permanent condition to qualify as a person as vulnerable?
8. If someone is taking prescribed medication for a mental illness, do they need an AA?

³ Sources for the above statistics see [There to Help](#), published by NAAN (2015)

⁴ [Justice Matters for young people with neurodevelopmental impairment](#), University of Birmingham

Answer sheet (Handout 5)

Answers:

1. They are more at risk of providing information which is inaccurate, unreliable or misleading, or self-incriminating without knowing or wishing to do so. They may not appear to understand the significance of what they are told, of questions they are asked or of their replies. They may be prone to becoming confused and unclear about their position; accepting or acting on suggestions from others without consciously knowing or wishing to do so; readily agreeing to suggestions or proposals without any protest or question. They are also at increased risk of self-harm/suicide.
2. An unfair outcome at court, such as a miscarriage of justice or the case of a guilty person collapsing because the evidence was not considered reliable by the court.
3. Technically no. The definition of vulnerability is a functional one rather than linked to whether a person has a diagnosis. However, to avoid the need for an AA, the police would need to have evidence to dispel any reason to suspect that a person who had a mental disorder may be vulnerable.
4. No. No diagnosis is required.
5. It is the custody sergeant's sole responsibility if the person is detained at a police station and the investigating officer's responsibility for any voluntary interview, wherever it is planned to take place. In both cases if they have any reason to suspect that a person may be vulnerable they need to call an AA. In coming to their decision they are expected to make reasonable enquires about the suspect to see if they may be at risk. Sources of information and guidance include: the behaviour of the adult or juvenile; the mental health and capacity of the adult or juvenile; what the adult or juvenile says about themselves; information from relatives and friends of the adult or juvenile; information from police officers and staff and from police records; information from health and social care (including liaison and diversion services) and other professionals who know, or have had previous contact with, the individual. If these generates evidence to the contrary which removes their reason to suspect, an AA is no longer required.
6. Yes. Requirements for the treatment of vulnerable people apply to all ages. However, an AA will always be needed for a person aged under 18.
7. No – a vulnerable person is 'any detainee, who because of their mental state or capacity, may not understand the significance of what is said, or questions or of their replies.' It is important for AAs to be aware that a suspect could be temporarily vulnerable because of the circumstances surrounding their arrest, for example if someone had been injured in a car accident or they had been accused of a particularly distressing or serious crime.
8. This must be judged on a case-by-case basis. The question is whether there is a reason to suspect the person may be vulnerable. Some people with mental health problems will be taking prescribed medication and this may very well have side effects. Some of the most common are: sedation or drowsiness; movement disorders; heart problems; digestive problems and nausea; confusion and memory loss; fatigue. The stress of being arrested and detained in a police station may also make someone who is functioning well and taking their medication much more at risk.

Activity 4: Neurodevelopmental disorders & brain injury

Question sheet (Handout 6)

- 1. Learning/Intellectual Disability**
- 2. Specific Learning Difficulties**
- 3. Attention-Deficit Hyperactivity Disorder (ADHD)**
- 4. Autistic Spectrum Conditions**
- 5. Communication Disorders**
- 6. Foetal Alcohol Spectrum Disorder**
- 7. Traumatic brain injury**

What is it?

What are the symptoms that might affect communication?

Unlike an illness, neurodevelopmental disorders cannot be reversed or cured because it results from damage to or malformation of the brain or nervous system before, during or shortly after birth, although much can be achieved to improve learning ability and performance.

Learning / Intellectual Disability

Medical classification and diagnosis

Although the Mental Health Act 1983 includes learning disability within the definition of a mental disorder, a learning disability is not actually a mental illness. People with learning disabilities are no more likely to have a mental disorder than any other section of the population.

A learning disability (often referred to as an intellectual difficulty) is diagnosed when a person has a cognitive capacity (IQ) of less than 70, combined with significant difficulties with everyday tasks. Learning disabilities are generally recognised as lifelong conditions caused by incomplete development of, or damage to, the brain and nervous system, before, during or shortly after birth, resulting in learning and performance limitations and social disadvantage. For example, Down's syndrome is a genetic condition that, in addition to some characteristic physical features, typically causes some level of learning disability. While there can be physical differences (e.g. unusual head shape), learning disabilities are often not immediately apparent or are disguised by behaviour or substance misuse.

Prevalence and severity

Learning disabilities affect people from all social classes and all races. The estimate of 2% of the population – over 1 million people – is not based on any centralised data and the majority will be at the mild end of the scale. It is possible that less than half of these people will ever have been identified by educational or other authorities as suffering impaired intellectual ability. Some 10-15% of this total will have a severe disability. People with a severe learning disability who also exhibit challenging behaviour make up a small proportion of this second number.

However, research shows that there are a significant number of people with learning disabilities or difficulties in prison whose problems were not identified at any stage through the criminal justice process.

Learning disabilities (LD) are often referred to as:

- *Mild (IQ of 50-59):* Likely to have some learning difficulties in school. Many adults will be able to work and maintain good social relationships and contribute to society.
- *Moderate (IQ of 35-49):* Likely to result in marked development delays in childhood but most can learn to develop some degree of independence in self-care and acquire adequate communication and academic skills. Adults will need varying degrees of support to live in the community.
- *Severe (IQ of 20-34):* Likely to require continuous support
- *Profound (IQ of under 20):* Results in severe limitation in self-care, continence, communication and mobility. Appropriate adults are unlikely to come into contact with people with profound learning disabilities

Communication issues

People with learning disabilities may have a range of issues with communication. These may arise from the nature of the impairment, from the social stigma associated with labels about the learning disability or from previous social relationships.

- *Memory*: People with a learning disability may not have the cognitive powers of memory shared by others. Some may be reluctant to say they are unable to remember and may make up events.
- *Times and dates*: These are difficult concepts to manipulate and many experience problems with them even when they are able to tell the time.
- *Frequency*: This presents similar difficulties to that of time. Vague concepts relating to 'often', 'a lot' may be used but there may not be a shared meaning.
- *Immediacy*: People with learning disabilities may appear to want to do something suggested to them 'now'. This may be because they have been let down in the past or may be worried that they will forget if memory is a problem.
- *Giving the right answer*: People with learning disabilities may have been in situations where they have 'failed' repeatedly. Some may have become very socially skilled at 'passing' and will give an answer they perceive to be 'correct'.
- *Desire to please*: They may feel a strong desire to please the questioner by giving the answer they believe the questioner wants. They may provide inaccurate information, even to the extent that they provide a false confession.
- *Safe answers*: If people do not know the 'correct' answer they may give bland responses e.g. 'I don't mind, it's alright'.
- *Reluctance to offer criticism*: There is a particularly strong tendency to be reluctant to criticise any arena or setting in which the person is situated.
- *Tendency to acquiesce*: People are more likely to answer 'yes' to a question, where the answer is unknown, than 'no'.
- *Recency*: Given a choice of two options people will sometimes repeat the last choice offered if the question is not understood.
- *Concrete thinking*: Some people may be unable to deal with complex concepts and language and may take everything said literally, including axioms in common speech.
- *Level of language*: People may be unable to work with complex language construction as well as more advanced vocabulary.
- *Different frame of reference*: People with a learning disability may have experienced very different life events or have contended with different attitudes from the general public than professionals involved in any interview with them. This can make communication particularly challenging.

Specific Learning Difficulties

Despite the similar label, specific learning difficulties are distinct from learning disability and have no relationship to underlying intelligence. They are a range of difficulties relating specifically to reading, written expression or mathematics. The most common such difficulties are dyslexia, dyspraxia and dyscalculia respectively. People with specific learning difficulties may have: -

- a limited attention span
- difficulty processing information
- difficulty reading comprehension/writing
- impaired communication skills due to poor listening skills, a lack of precision with language
- poor organisation and planning abilities; self-reflection and self-monitoring; working memory; time-management and prioritising; and flexibility in choosing strategies
- difficulty shifting attention when required or following a change in the direction of discourse
- difficulty with navigation and orientation, making it hard to give a detailed account of their movements. 'Reading' maps, diagrams, charts and timetables is also problematic
- low self-esteem.

People with dyslexia may have had an early history of delayed language development. They may find it hard to learn the alphabet, learn letter-sound associations, to form letters properly when they start to write. Progress with reading and writing may be very slow. Some people with dyslexia may have more difficulty with numbers and may find it difficult to calculate time or money for example.

Attention-Deficit Hyperactivity Disorder (ADHD)

ADHD is a pattern of problems usually identified in childhood. There are two types – hyperactive and impulsiveness, and secondly, inattentiveness. For the hyperactive and impulsive people notice: -

- being unable to sit still, especially in quiet or calm surroundings
- constantly fidgeting
- low boredom threshold
- being unable to concentrate on tasks
- excessive talking
- being unable to wait their turn

The inattentive type may be present if behaviours include:-

- having a short attention span and being easily distracted
- making careless mistakes for instance in schoolwork
- appearing forgetful and losing things
- being unable to stick to tasks that are tedious and time consuming
- appearing to be unable to listen to or carry out instructions
- constantly changing activity or task
- having difficulty in organising tasks

In order to be diagnosed these problems must continue for an extended period of time and be severe enough to interfere with the person's education, work and social life. ADHD tends to get better with age but it can continue into adulthood. While over-activity usually gets less, impulsivity, poor concentration and risk-taking can worsen. Adults with ADHD are more likely to suffer with depression, anxiety feelings of low self-esteem and drug misuse.

Communication Disorders

Communication disorders encompass problems with speech, language or hearing that significantly impact upon an individual's academic achievement or day-to-day social interactions.

- Speech disorder: impairment of the articulation of speech sounds, fluency and/or voice.
- Language disorder: impaired comprehension and/or use of spoken or written language
- Hearing disorder: impaired sensitivity of the auditory system (deaf or hard of hearing). It may limit the development, comprehension, production, and/or maintenance of speech and/or language.

Autistic spectrum disorder

People with autistic spectrum disorders cover a wide spectrum, from those living an independent life to those needing a very high degree of support. It does not denote a learning difficulty or mental illness but can be combined with either or both.

People with autistic spectrum disorders sometimes behave in ways that other people find puzzling. They may have: -

- difficulty with communication and social relationships.
- problems coping with unplanned change, reliance on routines, inflexibility of imagination.
- high sensitivity to stimuli (strong light, or loud noise) and easily be overloaded with sensory information in busy places such as custody charge rooms or where there are lots of people.
- sensory overload may trigger people to; rock, tap objects, talk incessantly, pace, ask repetitive questions, whereas others might withdraw, placing their fingers in their ears etc.
- a very high pain threshold and may demonstrate an unusual response to pain, including laughter, humming, singing, removing clothing.
- high sensitivity to pain and any touching of the skin can prove extremely painful
- markedly restricted repetitive and stereotyped patterns of behaviour and interests

The diagnosis of Asperger's Syndrome no longer exists. It now sits within the diagnosis of autism spectrum disorder. Essentially it is at the 'upper end' of that diagnosis. It shares a number of the traits of classic autism such as difficulty in communication, difficulty with social relationships and inflexibility of imagination. However, normally individuals have unaffected intelligence and language development (although there may be specific learning difficulties present).

Foetal Alcohol Spectrum Disorder

Foetal Alcohol Spectrum Disorder (FASD) is the umbrella term used to describe the spectrum of abnormalities that can result from a foetus being exposed to alcohol. These can include: -

- characteristic facial features, below average height and weight, poor coordination
- learning difficulties, problems with language, problem solving and planning and short term memory, hyperactivity, inability to grasp instructions
- poor social skills, Lack of appropriate boundaries (such as over friendliness with strangers)
- egocentricity and emotional dysregulation
- mixing reality and fiction
- failure to learn from the consequences of their actions

Traumatic brain injury

What is it?

An acquired brain injury (ABI) is an injury to the brain that has occurred since birth. Although it is an *acquired* disorder, many of the symptoms are the same as found in neurodevelopmental disorders. Causes include tumour, stroke, brain haemorrhage, encephalitis, and traumatic brain injury (TBI). The causes of TBI include road traffic accidents, assaults, falls and accidents at home or work.

How common is it?

An estimated 500,000 people are living with the long term effects of TBI in the UK. In the general population, between 24% and 42% of children are estimated to have had some kind of head injury, while only 5% have had a head injury resulting in loss of consciousness for 20 minutes or more. Amongst children in custody, research has shown rates of up to 72% and 18% respectively. Studies indicate that brain injury is prevalent in adult offender populations in the UK and across the world. UK studies reveal that this prevalence is as high as 60%.

What are the effects?

No two brain injuries are the same and the effects can be wide ranging, and depend on a number of factors such as the type, location and severity of injury. They can be physical, cognitive, emotional and behavioural

The **cognitive effects** can include: -

- Reduced concentration span, speed of information processing, problem-solving ability
- Memory problems
- Problems with motivation
- Repeating the same action or conversation topic, appear unable to 'break the cycle'
- Impaired reasoning may affect a person's ability to think logically, to understand rules, or follow discussions. May easily become argumentative due to lack of understanding
- Difficulties in perceiving and interpreting behaviour and feelings
- Lack of insight. The person may have an unrealistic view of themselves and others, and may not appreciate that they have certain problems
- Difficulty making sense of what is said or read or finding the right words to say or write
- Difficulty making sense out of ordinary pictures and shapes, finding the way around a building, or drawing or constructing objects
- The **emotional and behavioural effects** can be wide ranging. They commonly include: loss of confidence; depression and sense of loss; anxiety; frustration and anger; spontaneous and uncontrollable abusive or obscene language; mood swings; laughing or crying very easily; moving from one emotion to another suddenly; disinhibition (e.g. make sexual advances with the wrong people at the wrong time; inappropriate and offensive outbursts); impulsiveness; obsessive behaviour.
- **Physical effects** can include: fatigue; sensory impairment; difficulties with speech and uncontrolled movements (e.g. shaky or clumsy hands making handwriting difficult).
- Brain injury can also leave people with a reduced tolerance of alcohol, so if alcohol has been consumed, its effect may be magnified.



the brain injury association

Metro – 6th May 2014

Police detain teen with Down's syndrome for nine hours after he tries to go to school on day off

A 19-year-old with Down's syndrome was detained by police for nine hours after trying to get into his school when it was closed.

Abdul Al-Faisal was arrested on suspicion of burglary after going to retrieve his favourite hat from Haringey Sixth Form Centre in Tottenham. Police were alerted to an intruder at 10am on bank holiday Monday after an alarm went off. They detained the teenager when they arrived.

His parents Muhammad and Roshina Al-Faisal, who had reported him missing, were furious when they found out he was at the police station being questioned. 'Anyone can see my

son has Down's syndrome. He has the mental capacity of a ten to 12-year-old,' Mrs Al-Faisal told the Evening Standard.

'Because of his condition he has a strong attachment to things and that's why he went to school because he just wanted his Chicago Bulls hat. That's his favourite basketball team. 'I'm extremely disappointed with the way police handled him.'

Mrs Al-Faisal said she would make a formal complaint despite being told by police Abdul's disability was taken into consideration during the whole process.

Abdul was cautioned for burglary.

Daily Mail – 20th November 2014

Teenager with Down's syndrome who broke into his school to retrieve his favourite hat has police record wiped after 120,000 people sign petition

Police have wiped the record of a teenager with Down's Syndrome who visited his school on a bank holiday to find his favourite hat after 120,000 people signed an online petition.

Abdul Al-Faisal, 19, set off an alarm in May by climbing through a window at Haringey Sixth Form Centre in Tottenham, north London, where he had left his basketball cap in a classroom.

His panicked mother Roshina, who reported him missing, then discovered to her horror that he had been arrested and was in a cell 'confused and in tears... without shoes'. She said he remained at Wood Green police station for nine hours before signing a formal caution for burglary. This was an admission of guilt which remained on the record of the teenager, who his mother said has a mental age of between 10 and 12.

Ms Al-Faisal promptly complained to the Metropolitan Police, the Independent Police Complaints Commission (IPCC) and her local MP David Lammy.

But it was an online petition which drew headlines as 120,000 people expressed their outrage over how Abdul was treated. The petition, started by the teenager's mother, said: 'He left the house without us realising, and he walked to his school. We called police to report him missing after searching streets near our home for two hours, and we were horrified to learn he had been arrested'.

'I went to the police station and found my son confused and in tears in a cell without his shoes or coat. His fingerprints had been taken, he had been swabbed for DNA and his details had been put on record'.

Activity 5: Mental health

Information sheet (Handout 8)

Mental illness is a social and intellectual construction of perceived suffering. It is known in different forms throughout the world. There are enormous differences in the way mental illnesses are observed, socially accepted and treated.

In the western world the dominant model of mental disorder is the psychiatric or biomedical model. Within this framework 'illness' can be seen as a state which is outside the statistical norm, in which people feel, behave or experience things differently. However, practitioners may have markedly different views about what constitutes a diagnosis.

Under this model, mental illness is far more common than many people may assume with about one in four of the population experiencing a mental health problem in their lifetime. These states encompass a broad range of experience from mild feelings of unease to florid psychotic states where the sufferer has lost touch with an objective reality. It is worth remembering that only about 20% of those who experience mental illness suffer from acute or severe forms.

These men, women and children can be amongst the most marginalized, misunderstood and discriminated-against members of society. People with mental illness are often seen as odd, dangerous, 'polluted' or wrong. Implicit in the term is the sense of difference. In contrast to physical illness, individuals are often defined by others as their diagnosis. For example, people may say that 'he is a schizophrenic', when they would not say 'he is a cancer'.

The causes of mental illness are often complex and misunderstood. They can include biological factors (genetic and substance misuse), responses by the individual to social, environmental or familial stressors and trauma to the brain following an injury.

Mental health problems can cause significant difficulties both in custody and interview settings.

Traditionally, in psychiatric definitions, the diagnoses are broken into groups.

Psychotic Disorders

These are categorised by a loss of contact with an objective reality, personality change and impaired social functioning. They can prove the most disabling to effective communication.

A person with a psychotic disorder might experience:

- Hallucinations (auditory 'hearing voices' or visual).
- Feelings of paranoia, persecution and thought disorder.
- Delusional belief systems (these can take many forms but common examples include thought insertion and withdrawal, often focusing on electrical equipment, and belief that the media are talking about them).
- Social withdrawal, passivity and poverty of speech and mood.

Whilst at times it may be obvious when someone is floridly unwell that is not always the case. Long pauses before responding to a question, inappropriate answers, laughing out of turn are often indicators that the individual is responding to some other stimuli than an objective reality.

Diagnoses include; schizophrenia, schizo-affective disorder and delusional disorder.

Neurotic Disorders

In this type of disorder reality testing is intact (unlike in the psychotic states described above).

There are two types of neurotic disorder; anxiety and mood.

Anxiety

Anxiety is a natural response to a stressful or dangerous situation. The body reacts with increased heart rate, sweating and shortness of breath. A person with an anxiety disorder has much more extreme and long lasting reactions, creating difficulty with relationships, school and work performance, social activities and recreation. Diagnoses and symptoms can include: -

<i>Diagnosis</i>	<i>Symptoms</i>
Generalised Anxiety Disorder	Excessive, uncontrollable anxiety about events or activities. Experienced most days for six months plus. Physical symptoms include irritability and sleep disturbance.
Panic Disorders	Individuals have repeated panic attacks (with physical symptoms such as palpitations, sweating and trembling) along with avoidance of places and situations that caused the anxiety.
Phobic Disorders	Individuals may experience only a specific phobia, such as a fear of flying, a fear of spiders, a fear of escalators, and so on, without the anxiety translating into other facets of their lives.
Obsessive Compulsive Disorder (OCD)	Obsessions are uninvited, intrusive thoughts, such as concerns or doubting, that are time-consuming and cause distress. Compulsions are behaviours or rituals that are followed to try to reduce obsessive thoughts, e.g. handwashing or checking
Post-Traumatic Stress Disorder (PTSD)	This is characterized by flashbacks, re-experiencing, persistent avoidance of people and places that remind one of the event, and increased arousal, such as difficulty concentrating, anger and jumpiness in response to the terrifying experience in which physical harm occurred or was threatened in.

Mood

Mood disorders concern the individual's emotional state. This ranges from an all-pervading sense of hopelessness in depression, to mania at the other end of the emotional spectrum when an individual experiences an abnormally elevated mood.

<i>Diagnosis</i>	<i>Symptoms</i>
Bi-polar affective disorder (previously manic depression)	Involves swings of mood from depression to mania and back. A major mental illness which may be very disabling. Often includes a psychotic episode. May come across as verbose and provide a wealth of information that is not necessarily relevant. As such there could be an increased risk of self-incrimination. Many people can manage this illness by the use of the drug Lithium, by managing stress and recognising early symptoms.
Depression (reactive/clinical)	Someone with a depressive illness may be unable to provide anything other than cursory answers or having difficulty concentrating.

Organic Disorders

These have an underlying medical reason or a demonstrable pathology of the brain.

There are two classifications of organic disorder: chronic (a long-developing syndrome) and acute (severe and sudden in onset).

A person with either classification of organic disorder might experience:

- Confusion and disorientation (e.g. about what day it is or where they are)
- Memory and communication problems (e.g. struggling to find the right word)
- Mood changes

<i>Diagnosis</i>	<i>Description</i>
Dementia	An umbrella term describing a chronic set of symptoms as above. It is caused by damage to the brain caused by diseases such as Alzheimer's, Creutzfeldt-Jakob disease (CJD) or a series of strokes.
Alzheimer's	A chronic condition affecting 850,000 in the UK, predicted to rise to over 2 million by 2051. During the course of the disease, the chemistry and structure of the brain changes, leading to the death of brain cells.
Vascular dementia	If the oxygen supply to the brain fails, brain cells may die. The symptoms of vascular dementia can occur either suddenly, following a stroke, or over time, through a series of small strokes.
Delirium (acute generalised impairment)	Delirium is a 'syndrome' (set of symptoms) rather than a disease. It can be caused by an underlying disease, drugs used to treat a disease, drug withdrawal or a combination of factors. As distinct from dementia it develops acutely and tend to fluctuate. In addition to the symptoms above it can include; thought disorder, delusions, hallucinations, sleep disturbance, and changes in rate of physical activity/movement)

Personality disorders

These historically contentious and difficult to define aspects of mental disorder are medically described as 'deeply ingrained mal-adaptive patterns of behaviour that are formed in childhood or adolescence.' These rigid ways of thinking, feeling and relating cause significant difficulties in that person's life and unless successfully treated remain throughout adult life.

Whilst there are a number of recognised personality disorders, the likelihood is that for AAs the two most commonly found are likely to be:

<i>Diagnosis</i>	<i>Description</i>
Anti-Social	Characterised by behaviour that is disruptive and harmful to others, traits include recklessness about the safety of the individual or others, a lack of remorse, impulsivity, irritability and aggressiveness.
Borderline	The term 'borderline' is somewhat misleading. Originally the condition was described as such because it was thought to be on the cusp of neurosis and psychosis. This disorder usually involves very unstable personal relationships, poor self-image, polarised thinking, mood swings and a disturbed sense of self.

Activity 6: Facilitating communication

Question sheet (Handout 9)

How might you support effective communication for a person with a vulnerable person?

Answer sheet (Handout 10)

You are not expected to diagnose conditions

The extremely wide range of mental illnesses and other mental vulnerabilities can be intimidating for new appropriate adults, especially those who do not have a background in health and social care.

It's important to remember that appropriate adults are not expected to be psychiatrists. It is not part of the appropriate adult role to diagnose conditions and you will not be required or expected to. There are health professionals in police custody such as doctors and nurses and as already mentioned the Liaison and Diversion programme will embed another tier of expertise into custody suites in England who will screen, assess and refer people who are mentally vulnerable.

You are not expected to operate beyond your knowledge and skills

If an appropriate adult is particularly concerned about a vulnerable suspect's mental state, they should make the custody officer aware of this concern. It may be appropriate to suggest a further assessment.

If an appropriate adult feels the situation requires a level of knowledge or experience that is beyond them, they should not hesitate to seek guidance from their manager/scheme co-ordinator. At all times, the priority must be the best interests of the vulnerable person and the fairness of the justice process.

Effective practice – all conditions

Your role is to support and facilitate communication in order to ensure effective participation. Although the list of possible conditions is long, many of the potential disadvantages, and the methods for mitigating them, are similar. Any diagnosis may well be unknown to the appropriate adult. If in doubt, remember to: -

- **Ask what helps** (people are all different and are not defined by their condition)
- **Respond sensitively** and appropriately to observed behaviour
- Use direct and **simple language**
- Regularly **check the person understands** what is going on
- Offer **rest breaks** in interviews as required to restore concentration

Effective practice - approaches to different conditions

Improving your knowledge of mental vulnerability will help you develop the effectiveness of your practice. It will also increase your confidence when dealing with other professionals, such as doctors and nurses. Despite their many years of medical training, many are not specialists in mental health and learning difficulties. The police will often defer to medical professionals but appropriate adults who demonstrate knowledge and experience increase their ability to influence decisions.

Learning Disabilities

- The Mental Capacity Act 2005 states that a person lacks capacity if they are unable to make a specific decision, at a specific time, because of an impairment of, or disturbance, in the functioning of mind or brain. If they don't appear to be able to retain information long enough to make informed decisions, a Mental Capacity Act assessment may be appropriate.

Specific Learning Disabilities

- Deal with issues in chronological order and insert pauses after each section
- Keep distractions to a minimum
- Visual thinkers might draw diagram to explain movement
- Provide reading material printed on coloured paper and in clear 'sans serif' fonts
- Text aligned to the left (ragged right edge) helps them follow the direction of the text and reduces the effect of the gaps between the words appearing as white rivers in the text

ADHD

- Ensure access to medication. Inform the police (never supply or administer yourself)
- Be aware of limited attention span, particularly when supporting children or young people
- Stimulant medication (e.g. Ritalin) has been shown to be very effective in treating the behavioural symptoms of ADHD such as restlessness, distractibility, and impulsiveness,
- Be aware that cannabis or alcohol suppress the part of the brain which is already under-active in ADHD, exacerbating symptoms of hyperactivity and impulsiveness
- Seek medical advice/information

Autistic Spectrum Disorder

- People may react to sensory overload with unusual behaviours (see above). These behaviours help calm the individual, or allow them to maximise the use of one of the senses, so do not stop them unless necessary, as this may lead to more challenging behaviour.
- Provide extra time to allow people to process and respond to questions.
- Don't expect them to understand body language, gestures, tone of voice or facial expression.
- Don't take lack of eye contact as a sign of rudeness and be aware of the importance of personal space.
- Be concrete in what you say. Don't use abstract ideas and phrases due to literal interpretation e.g. saying "jump in the cell for a while" may lead to the vulnerable suspect physically jumping around in the cell.

Communication Disorders

- If a person has communication needs beyond your skill set, raise this with the custody officer and explore the possibility of the police securing an 'Intermediary' who is a trained speech and language therapist. See www.communicourt.co.uk and www.triangle.org.uk.

Mental health

- Ensure access to medication. Inform the police (never supply or administer yourself)
- Aside from the mental health problem itself, some medications can cause drowsiness or problems with concentration. Often this will mean that questions need to be repeated or clarified. More breaks during the interview may also be necessary.
- If they don't appear to be grounded in reality (psychosis), then suggest a referral to Liaison and Diversion (in England) or a Mental Health Act assessment (via the custody officer).

Activity 7: Case studies

Case study 1 question sheet (Handout 11)

Kevin is in his early 60s and you have been called in to the custody suite to act as his appropriate adult.

The custody officer tells you that he has seen Kevin before and that his records show that he has spent many years in a hospital, before being discharged to live in a residential home run by a local voluntary organisation. He attends a local authority day service during the day. However, no one from the local authority or the voluntary organisation was available to act as his AA.

He has been brought in for questioning by the police following a fight at a local bus stop. Apparently some local youths complained that he was exposing himself to women, a fight developed and the police were called.

When you meet Kevin, he appears rather confused, and keeps asking why he can't go back to the day centre.

What might lead you to think that Kevin has a learning disability?

How might that affect your communication with him?

How might you persuade Kevin that he should have a solicitor?

Case study 2 question sheet (Handout 12)

Linda is 20 years old and has been arrested for shoplifting. You have been called in to the custody suite to act as her appropriate adult.

You have been called in because she told the custody officer that she lives in a house which she shares with five other people, and gets help from her 'key worker'. She also told him that she used to have difficulties at school. She appears to have no contact with her family, and got agitated when the custody officer suggested calling her mother.

When you meet Linda, she appears rather distracted, and is very tearful.

What might lead you to think that Linda has a learning disability?

Do you think she might have any other problems?

How might these factors affect your communication with her?

Case study 3 question sheet (Handout 13)

Asif is a 50-year-old man and you have been called in to the custody suite to act as his appropriate adult, as the custody officer is concerned about his mental health. Asif has told him that he takes regular medication and sometimes goes to hospital 'for a rest'.

He has a history of complaining about noise from his neighbours and the police have been involved at times in these incidents. He has been moved several times.

On this occasion he phoned the fire brigade, having allegedly poured oil and rubbish over his own kitchen floor and set light to it. Police attended with the fire brigade and Asif was arrested.

When you meet him, he tells you that he is fed up with living on his own in a flat in a large block. He thinks his neighbours are hostile to him, and feels no one is interested in his complaints that he is again being disturbed by noise.

Do you agree with the custody officer that Asif should have an AA?

If so why, and what issues would you as his AA need to be aware of?

Are there any other professionals who might be involved at this point?

Case studies answer sheet (Handout 14)

Case study 1	
What might lead you to think that Kevin has a learning disability?	<ul style="list-style-type: none"> • Living in a residential home at age of 60 and attending a day service. • Appears confused and to have limited understanding of the situation
How might that affect your communication with him?	<p>There may be a need to:</p> <ul style="list-style-type: none"> • Check out his reading ability. • Use plain English when speaking to him. • Ask Kevin to explain the situation in his own words to check his level of understanding. • Have an agreement before going into interview that he will indicate to you if he does not understand what is being asked of him.
How might you persuade Kevin that he should have a solicitor?	<ul style="list-style-type: none"> • Explain that it is a serious allegation. • Explain that if you were in his situation you would not go into interview without a solicitor. • Explain that you are there to act in his best interests and would strongly recommend that he has one. • Tell him that it won't cost anything and that anything he says to a solicitor is private.
Case study 2	
What might lead you to think that Linda has a learning disability?	<p>She has a Key Worker. She had difficulties at school.</p>
Do you think she might have any other problems?	<ul style="list-style-type: none"> • She appears to be isolated from her family. • She possibly has a difficult relationship with family members. • She lives in shared accommodation; this might indicate that she is not able to live independently.
How might these factors affect your communication with her?	<p>This could have an effect on her reading and writing skills.</p> <ul style="list-style-type: none"> • Spend some time with her to find out why she is so tearful. • Check out her level of understanding and concentration as she appears distracted. Is this because there is another underlying issue?
Case study 3	
Do you agree with the custody officer that Asif should have an AA?	<ul style="list-style-type: none"> • Yes. History of mental health problems and hospital admissions. • Also, given the nature of the alleged offence, he is likely to be traumatised or in shock, and therefore, may be temporarily vulnerable, whatever his underlying mental state might be.
If so why, and what issues would you as his AA need to be aware of?	<ul style="list-style-type: none"> • This would depend on what his mental health problems and symptoms are. For example, if he appears pre-occupied, you may need to keep him focussed on his situation. • Check his understanding of the situation. • Relevant to check if any of his complaints against the neighbours are to do with his own experience of discrimination, whether based on race or his mental health problems. Asif may need assistance to make a complaint to the police or other authority about this. • Accommodation may be an issue
Are there any other professionals who might be involved at this point?	<ul style="list-style-type: none"> • Forensic Medical Examiner (FME)/Health Care Professional (HCP) • Liaison and diversion worker • Approved Mental Health Practitioner (AMHP) • Solicitor • Interpreter if required

Activity 8: Fitness

Fitness to detain (Handout 15)

A critical question for custody officers is whether a vulnerable suspect can physically and mentally withstand the process of being detained. Will the reality of being locked up cause some sort of physical or mental deterioration or breakdown?

PACE Code C 9.5 states that “the custody officer must make sure a detainee receives appropriate clinical attention as soon as reasonably practicable if the person: appears to be suffering from physical illness; is injured; appears to be suffering from a mental disorder; or appears to need clinical attention. This applies even if detainee makes if detainee makes no request for clinical attention or if they have received it elsewhere”.

Healthcare professionals and custody officers will normally work together to develop a plan of care in police custody. On rare occasions, the risk is too high and cannot be managed in custody. The person is declared not fit to detain and the investigation does not continue at that time.

Fitness to interview

Custody officers and healthcare professionals also have to consider whether a vulnerable suspect can physically and mentally withstand the process of being interviewed. Will the reality of the interview itself cause some sort of physical or mental deterioration or break down?

The PACE Codes of Practice (Annex G) explain that someone may be at risk if it is considered that:

- (a) conducting the interview could significantly harm the detainee’s physical or mental state;
- (b) anything the detainee says in the interview about their involvement or suspected involvement in the offence about which they are being interviewed might be considered unreliable in subsequent court proceedings because of their physical or mental state.

In assessing whether the detainee should be interviewed, the following factors must be considered:

- (a) how the detainee’s physical or mental state might affect their ability to understand the nature and purpose of the interview, to comprehend what is being asked and to appreciate the significance of any answers given and make rational decisions about whether they want to say anything;
- (b) the extent to which the detainee’s replies may be affected by their physical or mental condition rather than representing a rational and accurate explanation of their involvement in the offence;
- (c) how the nature of the interview, which could include particularly probing questions, might affect the detainee.

Forensic physicians often assess these factors using the PHIT scheme:

- **Personality:** How suggestible, compliant and/or acquiescent are they?
- **Health:** What relevant physical and mental conditions are they currently experiencing?
- **Interview:** How will it be conducted? Police more likely to be coercive for serious offence.
- **Totality of circumstances:** Have they had legal advice? Have they been given and do they understand their rights? Have they had an adequate rest period? Are there significant social distractions? Have they previously been detained and how did they cope?

In practice, normally only the acutely unwell (usually psychotic) are considered not fit for interview. For most people, they will instead propose safeguards, including an appropriate adult.

Role of the AA in fitness to interview

It is not the role of the AA to make a final decision about whether a person is fit for interview.

However, the admissibility of evidence gathered from vulnerable people is of central concern to the AA role. If an AA, as a lay person, has concerns that person may not be fit for interview, they have a responsibility to raise those concerns. PACE Code C Annex G (above) provides the framework for AAs to raise concerns with the custody officer or interviewing officers.

Where police decide to proceed with an interview, the AA should record their concerns on the interview recording. Where a vulnerable person is in detention, AA should ensure that their concerns are noted on the custody record. In recording their concerns in either way, the AA can be clear that they are not making a professional judgement.

If legal advice has not already been taken, the AA should exercise their right to ensure a legal advisor attends the police station.

Activity 9: False confessions

Information and question sheet (Handout 16)

When a forensic physician is considering fitness for interview, they should be thinking about the risk of false confessions. A false confession creates a major risk of a miscarriage of justice. A miscarriage of justice means an innocent person is punished, a guilty person escapes justice, the victim is not served and, if it is discovered, the tax payer has an enormous bill to pay.

A confession will be ruled 'inadmissible' if it was gained in a way which might make it unreliable, including by oppression. A court also has the power to exclude confession evidence if it believes that it would make the proceedings unfair (see PACE 1984 below).

It is also possible that a guilty person's confession could be inadmissible if proper procedures are not followed. This is one of the reasons why appropriate adults are so important to police officers.

Police and Criminal Evidence Act 1984 (PACE)

SECTION	
76(2)	The Court shall not allow a confession to be admitted if it was or may have been obtained: a) By oppression b) In consequence of anything said or done which was likely.....to render unreliable any confession which might be made by him in consequence thereof
78(1)	The Court may refuse to allow confession evidence if it appears that 'having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the Court ought not to admit it'

Examples of false confessions

Colin Lattimore (18), **Ronnie Leighton** (15), and **Ahmet Salih** (14) were convicted in 1972 in relation to the killing of Maxwell Confait (see Annex F). All gave confessions after having been questioned by police for long periods of time, and without any other adult being present. Colin Latimore was considered to 'have the mental age of an 8 year old'. In 1975, the Court of Appeal found all three not guilty of all charges as a result of new forensic evidence and they were freed. This case ultimately led to the creation of the Police and Criminal Evidence Act and the role of the appropriate adult.

Anthony Everett confessed to 391 burglaries and thefts during interrogation by Essex police. He was charged and went to prison. Sometime later, after treatment for his mental health problem, he realised that he could not have been guilty of many of the offences as he had actually been in prison when most of them had been committed.

Stefan Kiszko, a tax clerk from Rochdale was convicted of the murder of schoolgirl Lesley Molseed in 1975. Kiszko confessed to the crime after three days of intensive questioning. He believed that by doing so he would be allowed to go home, and that the ensuing investigations would prove him innocent and his confession false. He served 16 years before being cleared on appeal in 1992 after it was discovered that medical evidence, which had been withheld from his defence team, proved him incapable of being the killer. Sadly, Kiszko died a year after being released, with his mother, who had campaigned tirelessly for his release dying six months after that.

Why might a person make a false confession? How many reasons can you think of?

Category	Description	Possible reasons
Voluntary	When a person falsely confesses for personal reasons without being pressured to do so	<ul style="list-style-type: none"> To relieve feelings of guilt about real or imagined things they have done wrong in the past (most likely with depression) In order to protect other people who are important to them (e.g. friends, partners, family) To pre-empt investigation of a more serious crime To hide non-criminal matters (such as an affair) Desire for notoriety (some mental conditions include a pathological/morbid need to become infamous to increase their self-esteem) Unable to distinguish between fact and fiction (for example people with schizophrenia) To achieve a perceived gain (such as when someone sees no way to prove their innocence and wants to at least get a reduced sentence)
Accommodating Compliant	When a person confesses in order to please but without coercion	<ul style="list-style-type: none"> Strong need for approval and to be liked Police questions are 'leading' so person knows what the police want to hear People of all intellectual levels are at risk of this, with people who are excessively compliant at higher risk
Coerced Compliant	When a person falsely confesses due to coercion but holds an internal belief that they are innocent.	<ul style="list-style-type: none"> Social influence (police coercion) Want an end to the questioning and to be allowed to go home, please the interviewers, and/or to avoid being locked up in a police cell Some believe that their false confession will be found out later on in the criminal justice process and that they will not be wrongfully punished. Individuals who are particularly susceptible to compliance (e.g. learning disability) may be especially vulnerable to this
Coerced Internalised	When a person falsely confesses due to coercion and believes that they have committed the offence	<ul style="list-style-type: none"> Social influence (police coercion) Interviewee who is anxious, tired, confused and subjected to highly suggestive methods of interrogation comes to believe that they have committed the crime. Memory distrust syndrome (due to a lack of memory of the time in question or suggestions made by police) Personality traits (high level of trust in authority, low self-confidence, high suggestibility)

Activity 10: Safeguarding (adults)

Information sheet (Handout 18)

What is it?

The Care Act 2014 brought together various strands of law to make a single piece of legislation for safeguarding adults from abuse or neglect.

Safeguarding adults is about protecting those at risk of harm (vulnerable adults) from suffering abuse or neglect. It includes: -

- Protecting their rights to live in safety, free from abuse and neglect
- People and organisations working together to prevent the risk of abuse or neglect, and to stop them from happening
- Making sure people's wellbeing is promoted, taking their views, wishes, feelings and beliefs into account

The Care Act does not apply to anyone under the age of 18 years.

Who is responsible?

Safeguarding is an important responsibility for everyone who works with adults who may be at risk. However, certain bodies have specific responsibilities in law: -

- Local authorities have overarching responsibility for safeguarding under the Care Act with specific duties towards *any* adult who:
 - has care and support needs AND
 - is experiencing, or is at risk of, abuse or neglect AND
 - is unable to protect themselves because of their care and support needs.
- For example, this may include a person with a learning difficulty or someone with mental health needs such as dementia or a personality disorder or a victim of modern slavery.
- Local authorities have to look at safeguarding concerns raised with them about any adult who has care and support needs and decide whether it is necessary to carry out an enquiry.
- Every area must have a Safeguarding Adults Board (SAB) aiming to help and protect the above adults in its area. SABs co-ordinate and ensure the effectiveness of what each of its members does. Local authorities, health authorities and police forces must all be members

Appropriate adults are an important way in which local statutory partners meet their safeguarding responsibilities. They should to fulfil their role in a manner consistent with these duties.

What should an appropriate adult do?

The following information provides a brief overview of standard procedures. Exact processes will differ across areas. Your scheme co-ordinator will provide you with local policy, procedures, roles and responsibilities on child protection and inter-agency information sharing. You should follow local protocols.

Be aware of the typical forms of maltreatment, abuse and neglect

The following categories outline some potential types of adult safeguarding need. It is important to remember that an individual adult's safeguarding needs may be complicated and overlapping.

Type	Description and examples	Example indicators
<i>Physical</i>	Physical abuse can be any action or inaction which results in physical harm. Examples include hitting, smacking, punching, slapping, kicking, pinching, burning and beating; whether with an implement/weapon or not, forcible feeding or withholding food, and unauthorised restraint. It may be caused by the inappropriate administration of drugs or alcohol and the inappropriate administration or withholding of medicines or other medical treatment.	<ul style="list-style-type: none">• No explanation for injuries or inconsistency with the account of what happened• Injuries are inconsistent with the person's lifestyle• Bruising, cuts, welts, burns and/or marks on the body or loss of hair in clumps• Unexplained falls• Subdued or changed behaviour in the presence of a particular person• Signs of malnutrition• Failure to seek medical treatment
<i>Emotional, Psychological, Mental</i>	Broadly this is making a person feel bad about themselves through persistent emotional ill treatment. Examples include enforced social isolation; removing mobility or communication aids; intentionally leaving someone unattended when they need assistance, preventing the expression of choice and opinion; failure to respect privacy; intimidation, coercion, harassment, use of threats, humiliation, bullying, swearing or verbal abuse; addressing a person in a patronising or infantilising way; threats of harm or abandonment; cyber bullying	<ul style="list-style-type: none">• An air of silence when a particular person is present• Withdrawal or change in the psychological state of the person• Insomnia• Low self-esteem• Uncooperative and aggressive behaviour• Change of appetite, weight loss/gain• Signs of distress: tearfulness, anger
<i>Sexual</i>	This involves a person being forced, coerced, groomed or tricked into sexual activity by an adult or another child. Examples include: rape, attempted rape or sexual assault; inappropriate touch anywhere; non-consensual masturbation, penetration or attempted penetration of the	<ul style="list-style-type: none">• Bruising; unusual difficulty in walking or sitting• Torn, stained or bloody underwear• Genital bleeding, pain or itching• The uncharacteristic use of explicit sexual language or significant changes in sexual behaviour• Self-harming

	vagina, anus or mouth; any sexual activity that the person lacks the capacity to consent to; inappropriate looking, sexual teasing or innuendo or sexual harassment; sexual photography or forced use of pornography or witnessing of sexual acts; sending explicit images; indecent exposure	<ul style="list-style-type: none"> • Poor concentration, withdrawal, sleep disturbance • Excessive fear/apprehension of, or withdrawal from, relationships • Fear of receiving help with personal care
<i>Financial or Material</i>	Having money or other property stolen; being defrauded; being put under pressure in relation to money or other property; having money or other property misused.	<ul style="list-style-type: none"> • Missing personal possessions • Unexplained lack of money or inability to maintain lifestyle • The family or others show unusual interest in the assets of the person • Rent arrears and eviction notices • Disparity between the person's living conditions and their financial resources, e.g. insufficient food in the house
<i>Neglect</i>	Examples include: failure to provide or allow access to food, shelter, clothing, heating, stimulation and activity, personal or medical care; providing care in a way that the person dislikes; failure to administer medication as prescribed; ignoring or isolating the person; preventing the person from making their own decisions; preventing access to glasses, hearing aids, dentures; failure to ensure privacy and dignity This includes self-neglect	<ul style="list-style-type: none"> • Poor physical condition and/or personal hygiene; pressure sores • Inappropriate or inadequate clothing • Malnutrition • Untreated injuries and medical problems • Inconsistent or reluctant contact with medical and social care organisations • Accumulation of untaken medication • Uncharacteristic failure to engage in social interaction
<i>Institutional</i>	Organisational or institutional abuse is the mistreatment of people brought about by poor or inadequate care or support, or systematic poor practice that affects the whole care setting. Examples include: abusive and disrespectful attitudes towards people using the service; inappropriate use of restraints; lack of respect for dignity and privacy	<ul style="list-style-type: none"> • Lack of flexibility and choice for people using the service • People being hungry or dehydrated • Poor standards of care • Absence of visitors • Unnecessary exposure during bathing or using the toilet
<i>Discriminatory</i>	Discriminatory abuse is when someone picks on you or treats you unfairly because something about you is different. This can include unfair or less favourable treatment due to a person's race, gender, age, disability, religion, sexuality, appearance or cultural background.	<ul style="list-style-type: none"> • The person appears withdrawn and isolated • Expressions of anger, frustration, fear or anxiety • The support on offer does not take account of the person's individual needs in terms of a protected characteristic

Within and across these categories, people may experience very specific forms of abuse such as: -

- Domestic abuse involving coercive, controlling behaviour between current or past intimate partners or family members
- Abuse linked to faith or belief: radicalisation; forced marriage; female genital mutilation
- Human trafficking/modern slavery: forced labour; debt bondage (forced to work to pay off debts that realistically they never will be able to); sexual slavery; commercial sexual exploitation; escort work, prostitution and pornography
- Abuse by professionals, e.g. medical / dental professionals and institutions

Be aware of the risk factors

Engaging in anti-social or criminal behaviour is itself a *potential* indicator of a safeguarding intervention. People with care and support needs may come to be at risk of abuse or neglect at any point due to:

- physical or mental ill-health
- becoming disabled
- getting older
- not having support networks
- inappropriate accommodation
- financial circumstances or
- being socially isolated.

Understand your responsibility to act

The police will conduct risk assessments during a vulnerable adult's time in custody. They must share any concerns with appropriate agencies when the person is to be released if there is a risk of significant harm.

However, this does not mean appropriate adults can leave safeguarding to the police alone. Appropriate adults spend significantly longer periods of time with vulnerable adults and develop a position of trust. Whoever commissions or provides the service, appropriate adults fulfil a role which is independent from the police.

Where an adult discloses abuse to the appropriate adult

AAs need to follow their scheme's safeguarding policy. However, in general: -

It is not the role of the AA to conduct an assessment of a person's safeguarding needs. However, if an adult discloses abuse to an appropriate adult, they should not prevent the disclosure. Listen carefully and allow the individual to say all they want. The AA should not probe for further information, ask too many or questions or ask any leading questions.

Disclosures may be shocking – don't make assumptions or be judgemental.

AA scheme policies will usually require AAs to share safeguarding concerns with their scheme coordinator or safeguarding lead in the first instance.

Consent must be obtained from the individual concerned before a referral is made to adult social care or the police.

Some people may be unwilling to consent. This may be because they are frightened (of reprisals or damaging their relationship with the person abusing them), the fear losing control or they don't

trust care services. Building up trust and using gentle reassurance may help the person to review whether it is in their best interests to consent to the information being shared.

If consent is not given there are some circumstances in which information can still be shared. AAs will already have explained that they owe the person a duty of confidentiality but that this can be broken in certain circumstances. The AA should not promise complete confidentiality in this circumstance either.

The decision to share information must be a proportional one, made on a case by case basis. Local policies will provide guidance on whether, how and with whom the person's information should be shared. Examples will include: -

- Where the person does not have mental capacity as defined in the Mental Capacity Act
- Where a serious crime has been committed or could be prevented
- Where other people, such as children, are at risk.

Where there is no explicit disclosure

It may be difficult to confidently identify abuse except by clear disclosure. AAs should follow your local scheme's protocols. AA scheme policies will usually require AAs to share safeguarding concerns with their scheme coordinator or safeguarding lead in the first instance.

Activity 11: Legal framework

Information sheet (Handout 19)

Mental Health Act 1983 (As amended by the Mental Health Act 2007)

Appropriate adults are not solicitors or mental health professionals and there is no mandatory requirement to have a detailed knowledge of mental health law.

However, given the prevalence of mental vulnerability amongst both adult and child suspects, a basic working knowledge will help you in developing effective practice.

The Mental Health Act 1983 is the legislation that describes the formal assessment, detention, care and rights of people believed to be mentally disordered. It is divided into ten parts with each being split into numbered paragraphs or groups of paragraphs. These are known as 'sections'.

The term 'being sectioned' just means using a 'section' or paragraph from the Mental Health Act as the authority for detention. A better word is 'detained' under the Mental Health Act. The paragraph or 'section' number is often used so a patient may be told they are on a section 2 or section 3.

SECTION	
2	Admission for Assessment The individual suffers from mental disorder and this is of a nature that merits such an admission (up to 28 days, non-renewable) and they have to be detained for their own health, or safety or the protection of others. Normally the AMHP (see Module 3 Activity 5) makes the application and two medical recommendations are required. One must be from a practitioner approved under section 12 of the Act.
3	Admission for Treatment Lasts up to 6 months and can be renewed for a further 6 months. As with section 2, two medical recommendations are required with an AMHP application.
12	Clinicians approved to recommend compulsory admission to hospital Medical practitioners / clinicians who are "Section 12 approved" have "special experience in the diagnosis or treatment of mental disorder". The Secretary of State for Health is legally responsible for the approvals but this is exercised by local health authorities, which have 'approval panels'. They are usually psychiatrists or other doctors. Forensic physicians (FMEs) can be but do not have to be Section 12 doctors. They complete a detailed assessment of a person's mental state and make recommendations as to whether that person should be detained in hospital. If any of the professionals feels that there is not enough evidence to detain someone then they cannot be admitted to a hospital. All assessments need to be completed by two medical professionals and an AMHP.

136	<p>Mentally disordered persons found in public places</p> <p>A police officer who finds someone who appears to be suffering from a mental disorder in a public place, or where the public have access, can remove them to a place of safety if that person: -</p> <ul style="list-style-type: none"> • appears to be in need of care and control AND • they think that it is necessary to do so in the person's; interest or for the protection of others <p>A police station is a legally recognised place of safety where they can be held for an assessment for up to 72 hours. However, the Government has indicated that police cells should never be used as a 'place of safety' for children experiencing a mental health crisis (as opposed to those suspected of an offence), and only used for adults in exceptional circumstances.</p> <p>Despite this, on occasion police cells are still used when a person is 'removed to a place of safety' under the Mental Health Act for an assessment.</p>
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What does this mean for the appropriate adult?

- If someone is being assessed under the Mental Health Act this does not affect any aspect of the role of the AA as laid out in the PACE Codes.
- The investigative process could be delayed if an assessment under the Act is required.
- Under these circumstances the normal rules relating to the 'PACE clock' continue.
- If it is decided to 'section' the person, the investigation will not take place at that time.
- PACE Code C E4 states that there is no requirement for an appropriate adult to be present if a person is detained under section 136 of the Mental Health Act 1983 for assessment.
- The Mental Health Act Manual suggests precluding a professional who was assessing someone under the Act from being that persons AA if the criminal investigation moves forward.

Mental Capacity Act 2005

The Mental Capacity Act (MCA) provides protection and empowerment for anyone aged 16 or over who may lack capacity to make decisions for themselves. It also provides safeguards for people who look after or care for (whether in a professional capacity or more generally) a person who lacks capacity. The legislation provides a framework for professionals and others who have to make decisions that will affect the care of that person. It consolidates the common law position; it focuses minds; it provides a statutory process for reviewing capacity and acting in someone's best interests.

SECTION	
1	The five underlying principles <ol style="list-style-type: none">1. Assume that a person has capacity to make decisions, unless there is evidence otherwise.2. Do all you can to maximise a person's capacity.3. Unwise or eccentric decisions do not in themselves prove lack of capacity.4. If you are making a decision for or about a person who lacks capacity, act in their best interests.5. Look for the least restrictive option that will meet the need
2	How is capacity defined? <p>"For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain."</p> <p>"It does not matter whether the impairment or disturbance is permanent or temporary."</p> <p>A person is unable to make a decision for her/himself if s/he is unable:</p> <ul style="list-style-type: none">• To understand the information relevant to the decision• To retain that information• To use or weigh that information as part of the process of making the decision, or• To communicate his/her decision. <p>('Information' includes information about the reasonably foreseeable consequences of either deciding one way or the other, or of failing to make the decision.)</p>

The Act applies to everyone who looks after, or cares for, someone who lacks capacity to make particular decisions for themselves; including family or other carers. There is a Mental Capacity Act Code of Practice which applies to anyone acting in a professional capacity for, or in relation to, a person who lacks capacity or being paid for acts for or in relation to a person who lacks capacity.

What does this mean for the appropriate adult?

- Most suspects who are 'vulnerable' under PACE will not lack capacity as defined by the Act. This does not mean that they do not need an AA.
- The principles of the Act, that a professional or carer should always act in the 'best interests' of the person lacking capacity are very similar to the principles underlying the AA role.
- The appropriate adult should help a vulnerable suspect, as far as possible, to make informed decisions for themselves. They should always facilitate communication and seek to ensure that a vulnerable suspect understands the process and procedures in the police station and is aware of the importance of getting legal advice.
- An appropriate adult can still require a solicitor to be called to the station even if the vulnerable suspect has waived their right to legal advice. However, nobody can force them to take legal advice.
- A vulnerable suspect does not have the right to refuse to have an appropriate adult present when they are being detained and interviewed by the police, irrespective of whether they have capacity.
- If the appropriate adult has doubts about the suspect's capacity to make decisions and give consent to procedures, they should make the custody officer aware of this and request further professional assessment.
- At the interview stage, the appropriate adult should keep under consideration the suspect's capacity to;
 - understand the nature and purpose of the interview,
 - comprehend what is being asked,
 - appreciate the significance of their answers,
 - make a rational decision about whether they want to answer the questions.

If the appropriate adult is concerned, then they should:

- put their concerns to the custody officer and note them on the custody record and/or interview record
- ask for an appropriate healthcare professional to be called
- request legal advice is sought if a solicitor is not already present.

If an interview does take place in spite of the appropriate adult's concerns, then they should put their concerns on record at the start of the interview. This can then be taken into account at court. Remember that as a last resort the appropriate adult can decide not to continue and the interview cannot proceed without their presence. However, the police may be able to find another person to act as an appropriate adult who may be more compliant. The decision to withdraw is a serious one and the manager/scheme co-ordinator should be consulted before such a decision is made.

Module 8: Children and young people

Overview

Module objective	To develop an understanding of the role of the appropriate adult within the youth justice system and how it can meet the needs of children and young people detained or questioned by police
Learning outcomes	<ul style="list-style-type: none"> • Describe the role of the appropriate adult within the youth justice system • Describe the different social, educational and environmental problems which may affect a young person in custody • Explain how an appropriate adult can identify and work to resolve problems affecting a young person in custody
Suggested timing	3.5 hours
Method	<ul style="list-style-type: none"> • Activity 1 - Review of Module 7 and overview of Module 8 • Activity 2 – Children’s rights in the justice system • Activity 3 – The role of the AA in youth justice • Activity 4– The role of AAs in a Youth Offending Team • Activity 5 – How children and young people can be disadvantaged • Activity 6 – Supporting children and young people • Activity 7 – Local authority accommodation transfers • Activity 8 – Safeguarding (children) • Activity 9 – My experience of police stations
Resources	<ul style="list-style-type: none"> • Photocopied activity sheets and handouts • Flip chart and pens
Facilitator’s notes –	<p>Young people are potentially the most disadvantaged of the all the groups that an AA may work with and a very broad view of stressors in all forms, and appropriate remedies, is very helpful as the young person may not be able to articulate their needs.</p> <p>Depending on the skill set and knowledge base of the trainer, thought should be given to using, or adding, a member of staff from the local Youth Offending Team.</p> <p>As mentioned in the previous module, trainers should be explicit that whilst the PACE Codes define young people as vulnerable solely by age, the reality is that mental vulnerabilities mentioned in the previous session may well be present and need considering by the AA. Use of the materials in Module 7 will be necessary if not already undertaken.</p>

Activity Plan

Activity 1	Review of Module 7 and Overview of Module 8	Handout
Step 1	Facilitator reminds learners of what has been covered in previous module	
Activity 2	Children's rights in the justice system	
Step 1	Share the handout and ask all learners to read it.	1
Step 2	Lead a discussion adding any additional points and clarifying any questions or misunderstandings. Focus on relating each element back to their practice as an AA. Assure learners that they are not expected to memorise individual points of law. However, it is important that they understand the legal framework of children's rights and that police and others must adhere to them.	
Activity 3	The role of the AA in youth justice	
Step 1	Divide learners into small group (e.g. 4 people)	
Step 2	Share the handout (both pages)	2
Step 3	Ask each group to enter the number of the relevant stage (from page 2) into each box (on page 1).	
Step 4	Provide support as appropriate to the group	
Step 5	Ask each group to share its answers. Discuss. Provide correct answers and share the handout for reference	3
Variations	<ul style="list-style-type: none"> Display handout 2 in a large format (e.g. on screen) and ask the group to shout out the answers 	
Activity 4	The role of AAs in a Youth Offending Team	
Step 1	Share the handout and ask learners to read it	4
Step 2	Lead a discussion adding any additional points and clarifying any questions or misunderstandings. Reviewing the Youth Justice Board (YJB) documents linked to in the document will enable you to be better prepared to answer more detailed questions	
Variations	<ul style="list-style-type: none"> Ask a YOT manager or other representative to give a short presentation on the value of the AA role to the YOT. Make sure whoever delivers this is clear on the YJB guidance. 	

Activity 5	How children and young people can be disadvantaged	
Step 1	Ask learners: “For what reasons might an individual child be disadvantaged in the criminal justice system”	
Step 2	Record their answers on a flip chart If basic answers are given (e.g. ‘Age’) ask, “How might that disadvantage a child?”	
Step 3	Lead a discussion based on the information in the handout, suggesting additional reasons where they have not been raised by learners	
Step 4	Share the handout for future reference	5
Variations	<ul style="list-style-type: none"> • Split learners into small groups and ask them to come up with reasons • Split learners into small groups, giving each a different reason heading (from the handout) and ask them to discuss how that element might create disadvantage • Consider adding any locally available resources on discrimination 	
Activity 6	Supporting children and young people	
Step 1	Read out the quote from the joint inspectorate report at the top of the handout.	
Step 2	Based on page 1 of the handout, ask learners: “What is unique about the AA role in relation to children?” Discuss and correct responses, recording them on a flipchart	
Step 3	Based on page 2 of the handout, ask learners: “What can we do to ensure that we are not just another part of the custody process?” Discuss responses, recording them on a flipchart	
Step 3	Share the handout for future reference	6
Variations	<ul style="list-style-type: none"> • Provide a copy of (or web link to) the ‘Who’s looking out for the children’ report to all learners and ask them to come back with questions (either before or after this session). 	

Activity 7	Local authority accommodation transfers	
Step 1	Provide learners with information about accommodation transfers such as the Home Office Concordat on Children in Custody , NAAN guidance flow chart and the relevant iKAAN topic	
Step 2	Divide learners into pairs or small groups, providing each with Scenario 1 or Scenario 2 (or both) from the handout.	7
Step 3	Ask pairs/groups to research the questions on the handout using the guidance you have provided before moving to a whole-group discussion. Use the answer sheets to help you to guide the discussion.	
Step 4	Share the answer sheets with learners.	8
Variation	Depending on the group of learners and the time available, you may prefer to consolidate the guidance into a short presentation delivered before you split learners into groups.	
Activity 8	Safeguarding (children)	
Step 1	Briefly explain what safeguarding is and who is responsible, based on the information on page 1 of the handout	
Step 2	Divide learners into four groups, giving each a different category title of maltreatment (physical, emotional, sexual, neglect)	
Step 3	Ask each group to think of think of examples of actions that would be included in their category and what they might look for as an AA (indicators)	
Step 4	Ask each group to report back and lead a discussion, highlighting the likelihood of overlapping forms of abuse; the potential for specific forms; and the children who are most at risk (as detailed in the handout)	
Step 5	Explain the parameters of AAs responsibilities (versus police or children's social services) and ensure learners understand local policies and procedures	
Step 6	Share the handout and any local documentation on safeguarding	9
Variations	<ul style="list-style-type: none"> • If you are short of time, ask learners to read the handout first, then answer any questions, ensuring that their understanding is checked • Replace this activity with your own organisations training resources on safeguarding (ensuring that AAs are clear on their specific responsibilities) • Invite the safeguarding lead from your organisation, your commissioning organisation, Young Offenders Service or local children's social services team to speak to your AAs 	

Activity 9	My experience of police stations	
Step 1	Share the handout and ask all learners to read it	10
Step 2	Lead a group discussion based on the questions in the handout	
Step 3	Share the answer handout	11
Variations	<ul style="list-style-type: none"> • Split learners into groups and assign questions to each group • This is an excellent point at which to invite a former service user to talk about their experience of police custody and what they valued/disliked about having an AA. If you cannot source someone directly, the local YOT may have some form of service user council. If done correctly, this is likely to be the most impactful part of the training for new appropriate adults. 	

Activity 2: Children's rights in the justice system

Information sheet (Handout 1)

In addition to all human rights applying to children, they have specific additional rights laid down in international convention, domestic law and codes of practice.

United Nations Convention on the Rights of the Child (UNCRC)

The UK is a signatory to the UNCRC which it ratified in 1991. It says that all children and young people under the age of 18 have certain rights. It has never been directly incorporated into UK law but it does strongly influence the way the human rights are interpreted in UK courts, particularly in relation to Article 8. Many of the [UNCRC Articles](#) can be applied to children who are detained in police custody and reflects the work of AAs. For example: -

- A child is a person aged under 18 unless adulthood is legally set lower (Article 1)
- The best interests of children must be the primary concern in making decisions that may affect them (Article 3)
- Governments have a responsibility to take all available measures to make sure children's rights are respected, protected and fulfilled (Article 4)
- Children should be detained only as a measure of last resort, for the shortest appropriate period of time; treated with humanity, respect dignity and taking into account age-related needs; and given prompt access to legal and other appropriate assistance. (Article 37)
- Children who are accused of breaking the law must be treated in a manner consistent with the promotion of their sense of dignity and worth and takes into account their age and the desirability of promoting their child's reintegration; and have the right to legal help and fair treatment in a justice system that respects their rights (Article 40)

Legislation in England & Wales

The **Equality Act 2010** prohibits discrimination on the grounds of age ([s.5](#))

The **Children and Young Persons Act 1933** requires that:

- The age of criminal responsibility is 10 years old, one of the lowest in the world ([s.50](#))
- A 'child' is under 14 and a 'young person' is between 14 and 17 ([s.107\(1\)](#))
- Children and young people must be kept separate from adults from when they are in the police station through to court
- Girls must be under the care of a female member of police staff (not the AA) ([s.31](#)).
- When a child or young person is in police detention, all possible steps must be taken to identify their parent, guardian, local authority (if in care) or other person who has for the time being assumed responsibility for their welfare. That person must be informed as soon as possible of the arrest, the reasons why and where they being detained ([s.34](#)).
- Courts must have regard to the welfare of all children and young people ([s.44](#)).
- Children under 16 must attend court with a parent or guardian ([s. 34A](#)).
- The Act provides for anonymity, particularly in cases heard in a youth court ([s.39](#), [s.49](#)).

The **Children Act 1989** requires that:

- Local authorities must safeguard and promote the welfare of those in need and consider their feelings and wishes in relation to services ([s.17](#))
- Local authorities provide accommodation when requested by police ([21\(2\)\(b\)](#)) (see PACE 1984 s.38(6) below)

The **Children Act 2004** requires that:

- Local authorities cooperate with police to improve their wellbeing and protect them from harm ([s.10](#)).
- Public bodies (e.g. YOTs, police) ensure their functions and contracted services have regard to the need to *safeguard* and *promote the welfare* of children and young people ([s.11](#))
- Local authorities take reasonable steps to reduce the need for criminal proceedings against children, encourage them not to commit offences and avoid the need for secure accommodation ([Sch. 2 s.7](#))
- Secure accommodation for children is prohibited except for specific circumstances ([s.25](#))

The **Crime and Disorder Act 1998** requires that:

- Local authorities, via Youth Offending Teams (YOTs) ensure the provision of appropriate adults to safeguard the interests of children and young persons detained or questioned by police officers, for all those in the authority's area who need them (s.38, s.39)
- Youth cautions and conditional cautions take place in the presence of an AA (s.66ZA, s.66B)

The **Police and Criminal Evidence Act 1984 (PACE)**, unlike most legislation in England and Wales, does not use the terms 'child' or 'young person'. Instead it uses the terms 'juvenile'. The path to correcting this anomaly has been long and complex but the terms 'children and young people' and 'juvenile' are now, in effect, interchangeable

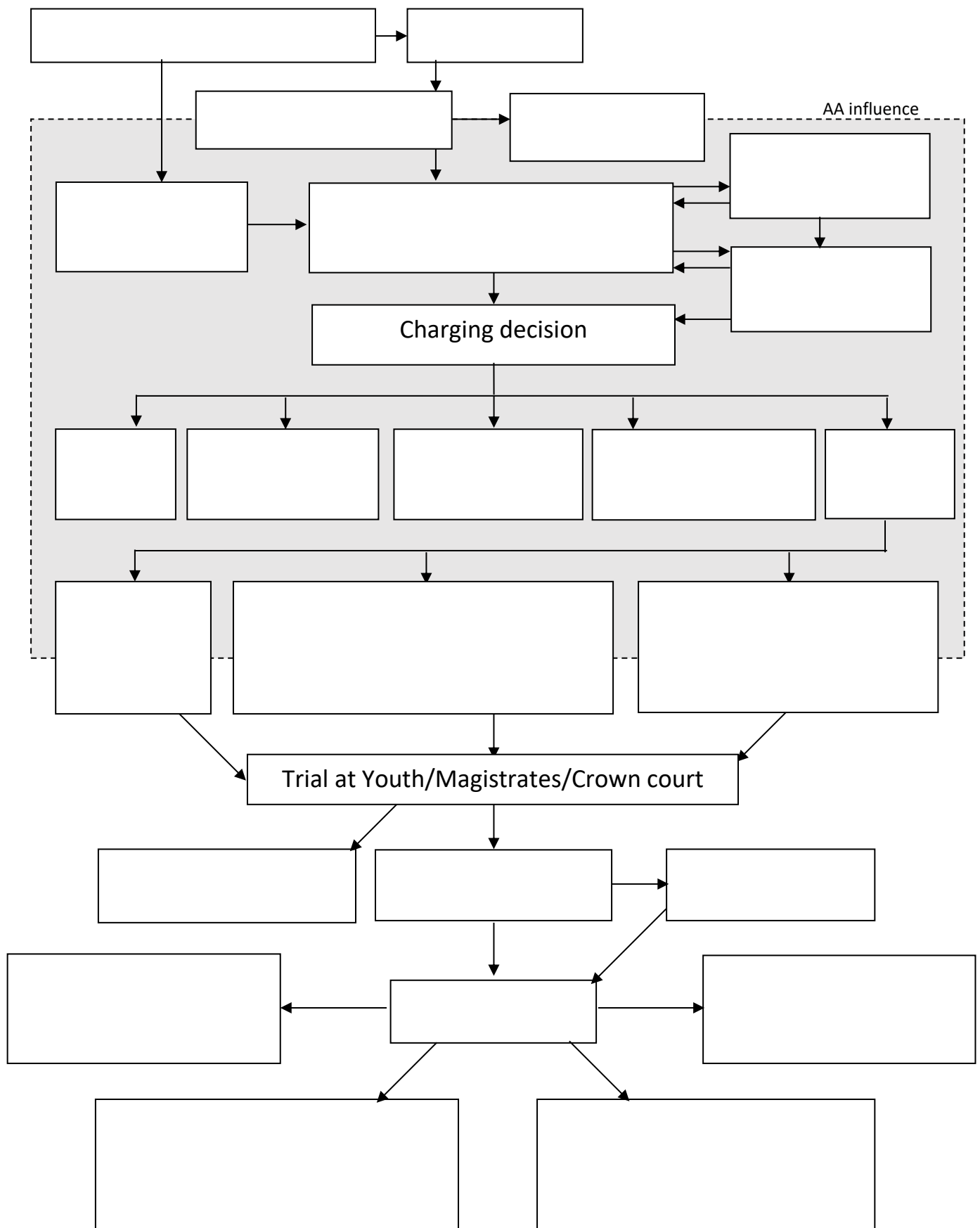
The Act does not provide a great deal in the way of protection for children. It merely requires that:

- An appropriate adult is present for testing for class A drugs, who should be a parent or guardian, a social worker or 'failing those' any responsible adult. ([s.63B](#))
- Where consent is required (such as for intimate searches for drug offences), parental consent is required ([s.65](#))
- Unlike adults, a juvenile can be refused bail if the custody officer has reasonable grounds for believing it is in their own interests ([s.38\(1\)\(b\)\(i\)](#))
- Any detained juvenile who is charged and refused bail must be moved to local authority accommodation, except for in very specific circumstances ([s.38\(6\)](#)) - [See NAAN guidance](#)

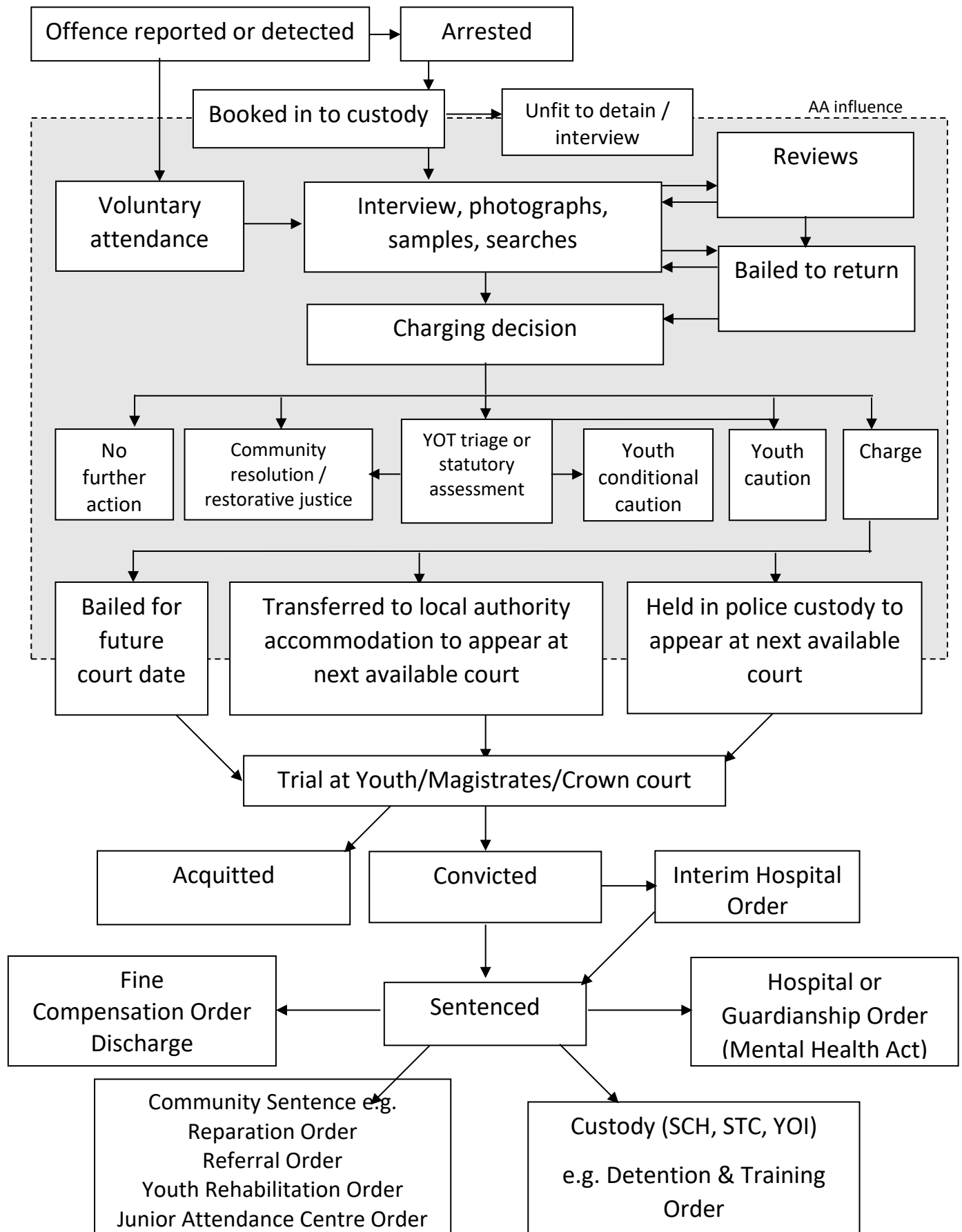
The PACE Codes of Practice contain more detail about the treatment of children.

Activity 3: The role of the AA in youth justice

Question sheet (Handout 2)



1 Reviews	2 Acquitted	3 Interview, photographs, samples, searches	4 Held in police custody to appear at next available court
5 Bailed for future court date	6 No further action	7 Interim Hospital Order	8 Youth caution & conditional caution
9 Community Sentence e.g. Reparation, Referral, or Youth Rehabilitation Order	10 Offence reported or detected	11 Transferred to local authority accommodation to appear at next available court	12 Hospital or Guardianship Order (Mental Health Act)
13 Arrested	14 Custody (SCH, STC, YOI) e.g. Detention & Training Order	15 Community resolution / restorative justice	16 Fine Compensation Order Discharge
17 Booked in to custody	18 Youth Offending Team Triage	19 Sentenced	20 Unfit to detain / interview
21 Charge	22 Bailed to return	23 Voluntary attendance	24 Convicted



Activity 4: The role of AAs in a Youth Offending Team

Information sheet (Handout 4)

What is a YOT?

Youth Offending Teams (YOTs) were established by the Crime and Disorder Act 1998 (CDA). In some areas they are now known as the Youth Offending Service (YOS). Some have been integrated into a wider Youth Service, that does not deal only with justice, but they still have the same legal duties.

YOTs are multi-agency teams which bring together the main agencies in the youth justice system under one roof. As a legal minimum, this must include representatives of police, children's social services, probation, health and education.

What do they do?

The overall purpose of a YOT is to prevent offending and further offending by children and young people aged 10 to 17 years.

YOTs are involved in a wide range of activities both in response to offending and in preventing it. Members of the team will have a wide range of expertise including mental and physical health care, youth and community workers, substance misuse, court support, anti-social behaviour, family intervention, restorative justice, integrated resettlement support, and supporting victims. Schemes and services vary from area to area and from child to child.

YOT officers manage a caseload and undertake direct work with children, young people and their parents and carers. They use a range of tools which allow the officer to build a picture of both a child's risk factors and positive factors. As part of their duties YOTs also deal with: -

- Bail support and recommendations
- Youth cautions and conditional cautions
- Pre-sentence reports
- Court orders
- Custodial sentences

Where do AAs fit in?

Appropriate adults were created by PACE, and so existed before YOTs. However, when YOTs were created, they were given the legal responsibility to ensure provision of AAs for children. This means that if a parent, guardian, care home representative or social worker is not available, suitable or willing to act as AA, the YOT must provide one. This is the legal basis for children's AA schemes as they exist today – either delivered or commissioned by YOTs locally.

The Youth Justice Board (YJB) sets [National Standards for Youth Justice](#) for YOTs – this includes provision of AAs both within and outside office hours, to NAAN's National Standards.

YJB guidance makes clear that AAs are a critical part of a YOT's [bail and remand strategy](#). This is how a YOT will minimise the use of custody, ensure that children attend court and reduces the likelihood of offending on bail. AAs should be aware of local specialist provision linked with custody such as: liaison and diversion schemes, bail support schemes and the [out-of-court disposal](#) process.

YOTs can legally share information with partner agencies such as AA schemes (and vice versa) in relation to safeguarding and to prevent offending (Crime and Disorder Act 1998 [s.115](#)). Effective information sharing between YOTs and AA schemes helps AAs know more about the people they are supporting and enables YOTs to inform any continuing work with the child.

Activity 5: How children and young people can be disadvantaged

Information sheet (Handout 5)

Age

For many people, simply being a youth is synonymous with being an offender. Consider the fear or dislike of youth culture and fashion – the banning of ‘hoodies’ from shopping centres and the installation of ‘mosquito’ devices to keep young people away from certain areas. A ‘mosquito’ is a device that issues an intensely irritating, unpleasant, sound which is pitched at a frequency only young people can hear. They are often installed outside buildings etc. where young people may otherwise congregate. Imagine the outrage if a similar device was proposed which only black people, or gay people or old people could hear – and yet the mosquito affects all young people regardless of their actual behaviour. The real reason many young people often congregate around shopping precincts etc. is because they feel less afraid in public places.

Young people are caught between the protection and security of childhood and the freedoms and responsibility of adulthood. Many young people and their families find this transition difficult, which leads to many of the problems in families, schools and communities – this is completely normal. There is a danger in pathologising young people – suggesting that there is something ‘wrong’ with them when, in fact, they are just growing up.

The overwhelming majority of young people will grow out of criminal and anti-social behaviour as they reach their late teens/early twenties. Some interventions can speed up this process, but others can hinder and delay it.

The following notes on adolescence are adapted from David Kolko’s book: *A Handbook on Firesetting in Children and Youth* (2002):

Aside from the obvious physical changes that take place during adolescence, intellectually there is a huge shift from concrete thinking – facts, measurements, physical objects, functions etc. – to abstract thinking – at school they will learn algebra and philosophy. This is the time when adolescents begin to question everything from rules at home or school, global issues, the environment, and themselves; the self-consciousness which results can be almost crippling for many young people whose self-esteem plummets as their acne flourishes and school work demands increase.

At this time the peer group becomes increasingly important and behaviour which brings status and admiration from peers will be engaged in with little regard to risks or consequences from other authority figures. Caught between the ignorance of childhood and the awareness of adults, although adolescents can think of consequences, they often don’t want to accept this level of responsibility. Adolescents may be drawn to anti-social behaviour or offending precisely because – depending on the activity - it may be dangerous (need for risk taking and impressing peers), it may be illegal (testing boundaries), it may be relatively easy to rationalise as victimless (satisfies moral justification – ‘at least I’m not mugging old ladies’).

Mental health and mental vulnerability

Module 7 considered in depth the disadvantage created for people of all ages by mental illness and other mental vulnerabilities. In relation to children in the justice system it noted that: -

- 23 -32% have learning/intellectual disabilities (vs 2-4% in the general population)
- 43-57% have specific learning difficulties (vs 10%)
- 60-90% have communication (speech and language) disorders (vs 5-7%)
- 12% have attention-deficit/hyperactivity disorder (vs 1.7-9%)
- 15% have autistic spectrum disorders (vs 0.6-1.2%)
- 1 in 3 children aged 5-16 who offend have a diagnosed mental disorder (vs 1 in 10)

The most common disorders are anxiety and depression – both can have a significant negative effect in police custody and interviews. Only a fraction of those suffering with depression are detected and treated. If they are on medication they may be suffering from side effects or withdrawal. Depression is associated with suicide - the 3rd leading cause of death for 15-24 year olds and the 6th for 5-14 year olds. Children in police custody may have self-harmed or attempted suicide before.

Childhood is a period of great change both physically and mentally. All children must be treated as individuals and there can be large differences in development of children of similar ages. Some conditions have their onset in early childhood. For example, the symptoms of ADHD have their onset before age 7. For older children, the transition from adolescence to adult coincides with onset of several severe mental illnesses (including psychoses – i.e. delusions and hallucinations)

Children who have learning disabilities may use language or dress like a younger child. They may struggle to read and write and be involved in a crime in a way that suggests lack of understanding. In fact, many children in justice system will have reading comprehension below the age of 10.

A child in custody may have suffered emotional/physical/sexual abuse, neglect or other trauma.

Language and emotional intelligence

Young people often struggle to express themselves. They may find it very difficult to manage their own intense emotions. Some do not have the vocabulary or verbal skills to explain things. This can lead to frustration, swearing or aggressive behaviour, or to withdrawal and non-cooperation. Some young people withdraw in an attempt block out what is happening and make everything go away. Children who are being bullied may present as the perpetrator of harm against other people.

Social Skills

It is entirely normal for teenagers to be highly self-conscious, easily embarrassed and socially awkward. They develop physically, emotionally, intellectually and socially at different rates which only intensifies the problems. Many teenagers find it incredibly difficult to know how to act – many have lacked appropriate role models or have not been exposed to formal social situations. The young person who won't make eye contact, who hides under a cap or hoody, who continually plays with their mobile phone, may not actually be disrespectful; they may be feeling acutely uncomfortable. Young people often seem inarticulate or express themselves by swearing. Some will smirk or adopt a 'couldn't care less' attitude. All of this is usually bravado and a strategy for self-protection. However, this sort of behaviour makes it likely the young person will be perceived badly by other, less sympathetic people.

Family

Factors such as class, address, family connections, friendship groups, being from a traveller community, being an unaccompanied asylum seeker or otherwise being in care, can all lead to disadvantage and differential treatment. It may be as simple as the assumptions being made about the young person. Looked after young people start at a much greater risk of involvement in offending than do other young people even before they enter care, because of common risk factors. While becoming looked after is unlikely to increase the rate of offending by young people, it can make it more likely that relatively minor challenging behaviour is sometimes dealt with through inappropriate use of the criminal justice system, rather than in a family home.

Physical appearance

Young people may be judged by their clothing or physical appearance. Youth fashions (e.g. piercings, tattoos, baseball caps, hoodies) can have a negative image. Young people grow at different rates. Some young people look older than they really are and adults can forget that they are still children. Other youths may look like children but be nearing 18 and want to be treated more like adults. This does not mean their rights are different but will require professionals to adjust their approach.

Knowledge and understanding

Young people may not understand the significance of what is happening or being asked of them at the police station and may therefore make poor decisions. For example, only 45% of children take up their right to free legal advice in the police station. The least likely group of people to receive legal advice are the youngest, 10 to 13-year-old children, at only 39%. Young people often adopt an attitude of bravado or nonchalance to cover up their nervousness. Many young people will boast or pretend to know more about offending or the Criminal Justice System, including police powers and processes, than they really do. The resulting attitudes and behaviour can lead to irritation or confrontation with those with whom they come into contact.

Ethnicity

Black people and those from minority ethnic groups (BAME) are massively over-represented in the criminal justice system. Black people are now seven times more likely to be stopped and searched than white people. Black and minority ethnic groups account for approximately 25% of the prison population while these groups only comprise about 10% of the general population. It is clear that discrimination takes place at all stages of the criminal justice system. There remain significant tensions between police and some BAME communities.

Gender

While women and girls only commit between 20 and 30% of all crime, they are frequently treated more harshly by the courts than boys and men (for equivalent offences). Women and girls are more likely to get custodial sentences for violent crime than boys or men are and they are also more likely to be sent to custody for relatively minor offences. Women and girls are often given disproportionately long community orders for 'welfare' reasons – and while the youth court must take account of the welfare of the young person, this should not be the primary sentencing consideration.

Sexuality

One of the functions of adolescence is to seek independence from the family/parents. With this comes a search for identity – 'Who am I?' 'Why am I here?' – it is natural, therefore, for teenagers to have quite fragile self-esteem as they cast around for role models. In such a developmental context as this, it is not surprising that issues of sexuality may be experienced more acutely.

Activity 6: Supporting children and young people

Information sheet (Handout 6)

PACE includes additional requirements on police related to the treatment of children.

On arrival

- If practicable (possible), then at the earliest opportunity and without delay, identify & inform a parent, guardian, carer or person who has for the time being assumed responsibility for their welfare (this person may or may not also be the AA): that the child or young person has been arrested; why he/she has been arrested; and where he/she is being detained.
- Take reasonable steps to notify anyone with statutory responsibility under a court order to supervise/monitor them.

Accommodation at the station

- Not place them in a cell unless it is impossible to supervise them elsewhere or a cell provides the most comfortable secure accommodation (custody management plans should clearly identify the rooms to be used for children and young people).
- Prevent them from association with adults and never place them in a cell with an adult.
- Place girls under the care of a female police officer or member of staff.

Searches

- Strip searches only take place without an AA present where there is urgent risk of serious harm or a child (under 18) signifies it is their wish in the presence of an AA, the AA agrees and a signed record is made. The AA must be the same gender as the young person unless they have specifically requested someone of the opposite sex.

Intimate searches, for Class A drugs for supply or export may, only take place without an AA present if a child signifies it is their wish in the presence of an AA, the AA agrees and a signed record is made.

During interviews

- Treated as always being at some risk of significant harm to their physical or mental state.

Identity procedures

- AAs must be present when any identity procedure (e.g. video ID and intimate samples) takes place and when any information is given to or consent is sought from a child. Usually consent is not necessary for fingerprints and non-intimate samples (e.g. nail clippings, hair, skin).

Consent

- Appropriate consent for procedures is sought and received when required under PACE.
 - Under 14: parental consent only required
 - 14-17: parental consent and the consent of the child required

Agreement (Voluntary interviews only)

- Informed agreement is required from the child before any voluntary interview takes place
- Agreement from the parent/guardian is also required

Charge, bail and disposal

- Bail is refused on the basis that they ought to be 'detained in their own interests' only where there are reasonable grounds.
- If bail is refused, transfer to local authority accommodation as soon as possible after charge (see the Home Office Concordat on Children in custody and NAAN's guidance flowchart).

“We found that Appropriate Adult provision has evolved into being another part of the custody process, with a focus on complying with PACE 1984 rather than safeguarding and promoting the welfare of children and young people”

- Quote from [Who’s looking out for the children \(2011\)](#) A joint inspection of Appropriate Adult provision and children in detention after charge by HMI Constabulary, HMI Prisons, HMI Probation, CQC, Healthcare Inspectorate Wales and the Care and Social Services Inspectorate Wales.

No matter how many times a person does it, being the appropriate adult for a child is an enormous responsibility that can have a life-long impact on the life of that child.

The appropriate adult is *not* just another part of the custody process. The work of an AA for a child is underpinned by the legal requirement in the Crime and Disorder Act 1998 to “*safeguard the interests of children and young persons detained or questioned by police officers*”. This is a broader remit than expressed explicitly in PACE. It reminds the AA to focus on the *outcomes* of effective participation and fair justice, not just facilitating the process of police investigations and detention.

The role of the AA touches on a number of other statutory duties described in the various pieces of children’s and human rights legislation in England and Wales, as well as the state’s duties under the UN Convention on the Rights of the Child.

The Police and Criminal Evidence Act 1984 (PACE) and related Codes of Practice provide the ‘rule book’ for *police*. They provide helpful information on the appropriate adult role and provide the basis for some specific powers. They are not the sole and exclusive basis for the role of the appropriate adult.

However, PACE brings together many of the various legal duties applying to children and applies them to those who are suspects in a criminal investigation. In order to be effective, appropriate adults need to be aware of how PACE requires police to treat children.

You should seek to ensure compliance with both the ‘letter’ and the ‘spirit’ of PACE by:

- Being there (both physically and mentally) for as much of the process as possible
- Proactively influencing what is happening to achieve the best outcomes (don’t passively observe, “nothing went wrong” is not the measure of success)
- Being aware of the potential for discrimination, especially against those from minority groups. If you think it has led to unfair treatment, raise it with police and your scheme
- Building a rapport and try to develop into a relationship of trust
- Putting yourself in the shoes of a child, with language and social skills that are not fully developed. Help them to stay calm and fully appreciate that flippant comments ‘may be given in evidence’ as per the caution.
- Not making any assumptions about their understanding of guilt and innocence. Just because they say “I did it” does not mean they are guilty of the offence
- Ensuring a legal advisor whenever you believe it is in their best interests
- Ensuring understanding of procedures, enabling participation and informed decision-making

Activity 7: Local authority accommodation transfers

Question sheet (Handout 7)

Scenario 1

Sam is 12 years old and lives at home with her parents. Late one Saturday night, she is arrested under s.12 of the Theft Act 1968 (taking a vehicle without consent) while sitting at the wheel of a stationary vehicle which has been reported stolen. She has been arrested twice before, both for theft. On one occasion the police took no further action. However, the last time she was arrested she was charged and given bail but did not turn up for her court date. On this latest occasion, Sam arrives in custody at 2 a.m. on Sunday morning. On authorising his detention, a custody officer attempts to call Sam's parents but is unable to reach them. Sam declines legal advice and is placed in a cell. At 8 a.m. a custody officer calls Sam's parents again. Due to other commitments neither of them can get to the station until 2pm. Sam's mother expresses a strong desire to act as the AA and the police decide to wait. However, at 2.15pm Sam's mother calls to say that she will not be able to make it to the station due to a change of circumstances. An AA is then requested from the local scheme.

You arrive at 4pm. Shortly afterwards you have a private consultation with Sam during which she agrees to have a solicitor. The police undertake a number of processes including a DNA swab and ID procedures. The solicitor arrives at 6.30pm and holds her own consultation with Sam. At 7.45pm, following a custody shift change, Sam, you and the solicitor go into an interview that concludes at 8pm. The case is passed to the Crown Prosecution Service for a charging decision and the solicitor is called away on other business.

At 10pm Sam's mother arrives unexpectedly at the station, just as Sam is being charged and asks if she can take her home. The custody sergeant refuses bail and says that, because it is so late and there is no local secure accommodation for children, Sam will be looked after at the police station until being transported to Court on Monday morning. Sam's mum turns to you and asks, "Can they do that?"

Discussion questions

- What is in Sam's best interests?
- Were the police right to refuse post-charge bail?
- Did Sam need to be held in secure accommodation?
- Were the police's justifications for holding Sam in a cell overnight valid?
- Is there any way Sam could have gone home once she'd been refused bail?
- Could anything have been done earlier?
- How should you respond now?

Scenario 2

Marc is arrested for the attempted murder of a member of staff at the care home where he lives. His detention is authorised at 8am on a Tuesday morning. While the alleged victim lives within the police force area, and this is where offences are suspected of taking place, Marc's care home is just across the force and local council border. Marc is known to his local Youth Offending Team. Aged 17, has been arrested three times before. His first offence was a shoplifting matter where the file was marked no further action. But in the last three months he has been arrested once for theft and, on another occasion, under Section 5 of the Public Order Act 1986 (causing harassment, alarm or distress) - both against the same young person. On both occasions he was given non-custodial sentences.

Nobody from the care home is able to act as Marc's appropriate adult due to their potential role as witnesses in the case. As requested by the police, you arrive from the AA scheme at 9am and meet with Marc privately before identification procedures are completed. Marc has indicated he wants legal advice and the solicitor arrives at 11am. After your consultation an interview takes place. In interview Marc admits to having a knife and to saying that he was going to kill the member of staff but that he did not actually mean it. He says the staff member was, "Coming to get me and I had to defend myself. I don't regret it. I'd do it again if he came near me".

At 3pm Marc is charged with assault causing grievous bodily harm (GBH), possession of an offensive weapon (a knife) and making threats to kill to a member of staff. They refuse bail, recording the grounds as preventing offending and preventing injury. The custody officer believes that secure accommodation is required to protect the public from serious harm and this is cleared by the duty inspector.

The custody officer calls the Youth Offending Team in the area in which the police station is located to inform them of the need for secure accommodation. The YOT advises that PACE transfers are not their responsibility and the police will have to speak to children's social services. On contacting social services, the custody officer is informed that the local authority has no secure accommodation provision for these purposes.

At 4pm, the custody officer advises you that Marc will now be detained in police custody until tomorrow morning, when he will be taken to the Magistrates Court (which is within the same building).

Discussion questions

- What is in Marc's best interests?
- Were the police right to refuse post-charge bail?
- Were the police right to require *secure* accommodation?
- Was the local YOT right to say that it is not their responsibility?
- Should Marc be held in police custody overnight?
- How should the AA respond at this point?

Scenario 1

What is in Sam's best interests?

In dealing with the police, solicitor and parent, it is easy to forget that it is the child at the centre. Sam has already spent a night (and a day) in a police cell. She's now been in custody for 20 hours. There was a 17 hour delay between her detention being authorised and her 15 minute interview concluding. As a result she is likely to be unhappy with the police and potentially her mother and you as the AA. She may therefore not be acting in a way which encourages the police to let her go.

However, research has shown that *adults* find detention intolerable, distressing, boring, scary, unpleasant, uncertain, isolating, disorienting and humiliating, stressful, depressing, and isolating. For children detained overnight it is likely the feelings are amplified.

Under the UN Convention on the right so the child, detention must be a measure of last resort and used for the shortest appropriate period of time.

Were the police right to refuse post-charge bail?

This is not a simple question. Legally speaking, there is a presumption that people will be given bail. If Sam got bail, even with conditions attached, the issue of local authority accommodation transfers would not arise. However, her past breach of bail may have led police to believe that she won't answer bail. Alternatively, the police may believe Sam might commit an offence while on bail (this argument only applies to imprisonable offences so an AA may have to ask if it applies). However, it is possible that her mother could provide assurances that will meet the police's concerns about bail.

Did Sam need to be held in *secure* accommodation?

Police can only require a child's accommodation to be secure (i.e. for the child to be locked in) in certain circumstances. The child must be aged 12 or above and secure has to be the *only* accommodation adequate to protect the public from 'serious harm'. Although the police has some discretion in interpreting that test, serious harm is defined in legislation as 'death or serious personal injury'. Custody officers are not always aware that the legal test has such a high bar.

It could reasonably be argued that Sam did not meet this threshold, especially in the short time before her morning court appearance and with someone keeping an eye on her. It is worth noting that most cases of 'taking without consent' will result in a non-custodial sentence.

Were the police's justifications for holding Sam in a cell overnight valid?

Once Sam was refused bail, the police were under a legal duty to transfer her into the care of the local authority. This duty applies at all times of night (or day), so they cannot use the time of day as a reason not to seek a transfer.

Assuming the threshold of secure accommodation was not met (legal advice should be sought) and transfer was physically possible, it is not legal to keep Sam in police custody.

Is there any way Sam could have gone home once she'd been refused bail?

Yes, it may have been possible. If the police accepted that Sam did not require secure accommodation, the local authority would have full discretion in how it met its absolute duty to provide her with accommodation. This includes sending her home if they thought it was appropriate.

The local authority may have been content for Sam to go home, even if the police were not. However, they may choose to listen to the police's concerns before making a decision. Unlike the police, if the local authority thought Sam was likely to abscond then they could have sent her to secure accommodation irrespective of whether she was a risk to the public.

Could anything have been done earlier?

In theory, police could have contacted the local authority emergency duty team (EDT) at 2am and asked them to provide emergency accommodation for Sam, enabling them to give her pre-charge bail pending investigation. However, in the circumstances it is unlikely that the police would have been willing to grant pre-charge bail at the point. In practice, the EDT may not have had the resources to arrange accommodation and may have perceived Sam not to be at risk because she was in police custody.

At 8am the police could have discussed with Sam's mother the effect of a long wait on Sam. Use of an AA from the scheme could have been combined with an agreement to keep Sam's mother informed of developments. The AA scheme could then have alerted the local authority (via the Youth Offending Team) that there was a child in custody who was risk of a refusal of bail and may require bail support or accommodation.

In this scenario there might have been a solicitor involved by 10am, able to make effective representations about pre-charge bail if a significant investigation was required. Alternatively, Sam could have been interviewed without delay and been charged by midday. This would have provided greater opportunity to organise either bail support to enable Sam to go home or local authority accommodation.

How should the AA respond at this point?

Appropriate adults can take a range of actions including: -

- ensuring that all parties (police, solicitor, parent, child) are aware of the child's rights by highlighting the relevant legislation
- speaking to Sam, privately if necessary, and ensuring that she understands what is going on and discussing what you are trying to achieve for her
- asking a solicitor to consider the situation and making appropriate legal representations
- discussing the reasons for refusal of bail with the police and asking whether these could be mitigated by bail conditions
- discussing with the police their view that secure accommodation is required and making representations that the threshold for secure is not met
- escalating the issue to a scheme manager and ensuring the Youth Offending Team is engaged (they have a specific bail support function)

Scenario 2

What is in Marc's best interests?

Marc's best interests are served by reducing the time he spends in a police cell to the minimum necessary and making sure he is well prepared for court. Even a relatively short period in cell can be psychologically damaging for a child and being brought up from the cells may send a negative message to the court. It's important that he is as fresh and well rested for his court appearance as possible. So it is in his best interests to be transferred to local authority accommodation that is within a reasonable travelling distance.

Were the police right to refuse post-charge bail?

The police were acting within their powers to refuse post-charge bail.

Were the police right to require secure accommodation?

Depending on the circumstances, it might be possible to argue that while Marc clearly presents a risk of serious harm when in the presence of the member of care home staff, he does not present a wider threat. However, it is unlikely that a court would criticise police for requiring secure accommodation in cases of serious offences against a person. Legal advice should always be sought.

Was the local YOT right to say that it is not their responsibility?

The responsibility lies with the local authority (of which the YOT is only a part). There may be local protocols that specify a point of initial contact for police, for example Children's Services. However, the Youth Justice Board expects YOTs to "assist with the process of identifying a placement and contribute information on risk and vulnerability".

Should Marc be held in police custody overnight?

The local authority has said they have no secure accommodation. While local authorities have a legal duty to provide accommodation for PACE transfers, the courts have ruled that it is not *absolute* in relation to *secure* accommodation. However, they still need to have a 'reasonable system', so simply not having any provision may be unlawful.

It is up to the police to decide which local authority (or authorities) to make their request to and that they can 'ask around' before making a formal request. In this situation, the police should enquire with Marc's home local authority and any others within a reasonable distance. Any local authority contacted is able to check available beds nationally via the YJB National Bed Bank.

Assuming the threshold for secure is met, it is legal for Marc to be held in a cell overnight only if no secure local authority accommodation can be found within a reasonable travelling distance. Marc will need a sensible amount of sleep before his court appearance. While detaining children overnight in cells is extremely poor practice and not desirable at all, it may be preferable to travelling hundreds of miles.

How should the AA respond at this point?

Appropriate adults can take a range of actions including: -

- ensuring that all parties (police, solicitor, parent, child) are aware of the child's rights by highlighting the relevant legislation
- speaking to Marc, privately if necessary, and ensuring that he understands what is going on and discussing what you are trying to achieve for him
- asking a solicitor to consider the situation and making appropriate legal representations
- discussing the reasons for refusal of bail with the police and asking whether these could be mitigated by bail conditions
- discussing with the police their view that secure accommodation is required and making representations that the threshold for secure is not met if appropriate
- escalating the issue to a scheme manager and ensuring the Youth Offending Team is engaged (they have a specific bail support function)
- advising the police to contact alternative local authorities

Activity 8: Safeguarding (children)

Information sheet (Handout 9)

What is it?

The Government has brought together all the legislation and statutory guidance on safeguarding children in one document, [Working together to safeguard children](#) (2015).

Safeguarding children means more than just child protection. It is defined as: -

- protecting children from maltreatment;
- preventing impairment of children's health or development;
- ensuring that children grow up in circumstances consistent with the provision of safe and effective care; and
- taking action to enable all children to have the best outcomes.

All people under the age of 18 are included in the term 'children', including those who live independently, are in the armed forces or are in police custody. Nobody aged 18 or over is included, including those with learning disabilities.

Who is responsible?

Safeguarding is an important responsibility for everyone who works with children. However, certain bodies have specific responsibilities in law (see Children Act 1989;2004 in Module 8 Handout 1): -

- Local authorities have overarching responsibility for safeguarding
- Local authorities, health authorities, YOTs and police forces all have to co-operate to safeguard and promote the welfare of children when carrying out their functions
- Every area must have a Local Safeguarding Children's Board (LSCB) which co-ordinates and scrutinises the efforts of all the local partners. They also provide links to information and training.
- Local authorities have to provide services to 'children in need' to safeguard and promote their welfare. A child is 'in need' if they are disabled or if, without services, they are unlikely to achieve or maintain a reasonable level of health/development; or their health/development will be significantly impaired without provision of services
- If a local authority has reasonable cause to suspect that a child is suffering, or likely to suffer, significant harm, it has a duty to investigate to see if safeguarding actions are required

Appropriate adults are a function of the YOT and need to fulfil their role in a manner consistent with the statutory duty of the YOT.

What should an appropriate adult do?

The following information provides a brief overview of standard procedures. Exact processes will differ across areas. Your scheme co-ordinator will provide you with local policy, procedures, roles and responsibilities on child protection and inter-agency information sharing.

Be aware of the typical forms of maltreatment, abuse and neglect

The following categories outline some potential types of safeguarding need. It is important to remember that an individual child's safeguarding needs may be complicated and overlapping.

Type	Description and examples	Example indicators
<i>Physical</i>	Physical abuse can be any action or inaction which results in physical harm. Examples include hitting, smacking, punching, slapping, kicking, pinching, burning and beating; whether with an implement/weapon or not, forcible feeding or withholding food, and unauthorised restraint. It may be caused by the inappropriate administration of drugs or alcohol and the inappropriate administration or withholding of medicines or other medical treatment.	<ul style="list-style-type: none">• No explanation for injuries or inconsistency with the account of what happened• Injuries are inconsistent with the person's lifestyle• Bruising, cuts, welts, burns and/or marks on the body or loss of hair in clumps• Unexplained falls• Subdued or changed behaviour in the presence of a particular person• Signs of malnutrition• Failure to seek medical treatment
<i>Emotional, Psychological, Mental</i>	Broadly this is making a child feel bad about themselves through persistent emotional ill treatment. Examples include name calling, taunting, shouting and humiliating or belittling the child. Emotional abuse may also occur through withholding physical affection or offering only conditional love/affection. Inconsistent parenting can lead to emotional abuse as can problems in the relationship between parents, such as a child witnessing domestic abuse.	<ul style="list-style-type: none">• An air of silence when a particular person is present• Withdrawal or change in the psychological state of the person• Insomnia• Low self-esteem• Uncooperative and aggressive behaviour• Change of appetite, weight loss/gain• Signs of distress: tearfulness, anger
<i>Sexual</i>	This involves a person being forced, coerced, groomed or tricked into sexual activity by an adult or another child. Examples include: rape, attempted rape or sexual assault; inappropriate touch anywhere; non-consensual masturbation, penetration or attempted penetration of the vagina, anus or mouth; any sexual activity that the person lacks the capacity to consent to; inappropriate looking, sexual teasing or innuendo or sexual harassment; sexual photography or forced use of pornography or	<ul style="list-style-type: none">• Bruising; unusual difficulty in walking or sitting• Torn, stained or bloody underwear• Genital bleeding, pain or itching• The uncharacteristic use of explicit sexual language or significant changes in sexual behaviour• Self-harming• Poor concentration, withdrawal, sleep disturbance• Excessive fear/apprehension of, or withdrawal from, relationships

	witnessing of sexual acts; sending explicit images; indecent exposure	<ul style="list-style-type: none"> • Fear of receiving help with personal care
<i>Neglect</i>	This means a persistent failure to meet the ongoing developmental needs of a child, for example lack of food, warmth, play, love, shelter, clothing, education or medical attention	<ul style="list-style-type: none"> • Poor physical condition and/or personal hygiene; pressure sores • Inappropriate or inadequate clothing • Malnutrition • Untreated injuries and medical problems • Inconsistent contact with medical and social care organisations • Accumulation of untaken medication • Uncharacteristic failure to engage in social interaction

Within and across these categories, children may experience very specific forms of abuse such as: -

- abuse linked to faith or belief: radicalisation; forced marriage; female genital mutilation
- modern slavery: human trafficking, forced labour; sexual slavery; commercial sexual exploitation
- teenage relationship abuse: rape, physical, emotional/psychological abuse
- home / school: domestic violence, bullying, missing from home
- affected by gang activity
- abuse by professionals, e.g. medical / dental professionals and institutions

Be aware of the risk factors

Engaging in anti-social or criminal behaviour is itself a *potential* indicator of an early safeguarding intervention being required. Other risk factors include if a child or young person: -

- is disabled and has specific additional needs or has special educational needs;
- is a young carer;
- is in a family circumstance presenting challenges for the child, such as substance abuse, adult mental health problems and domestic violence;
- violent peer group
- has returned home to their family from care; and/or
- is showing early signs of abuse and/or neglect.

Understand your responsibility to act

The police will conduct risk assessments during a child's time in custody. They must share any concerns with appropriate agencies when a child is to be released if there is a risk of significant harm. This information allows agencies to protect the child's welfare.

However, this does not mean appropriate adults can leave safeguarding to the police alone. Appropriate adults spend significantly longer periods of time with children and develop a position of trust. In an inquiry into the death of a child following police custody in 2015, it was noted that appropriate adults were leaving police custody officers to fax their recorded notes to social services. The Coroner stated that this was as unacceptable, noting the importance of independence of appropriate adult schemes from police forces.

Where a child discloses abuse to the appropriate adult

If a child discloses abuse to an AA, they should not prevent the disclosure and simply listen and allow the child to say all they want. The AA should not probe for further information, ask leading questions, make any assumptions or promise confidentiality. It is not the role of the AA to conduct an assessment a child's safeguarding needs.

Where there is no explicit disclosure

It may be very difficult to confidently identify abuse except by a straight admission. However, if you have any concerns about a child's welfare you should pass them on *immediately* to the custody sergeant *and* your scheme co-ordinator.

The AA scheme should ensure the YOT is notified. Although the police have a legal duty, the YOT should also make a referral to local authority children's social care (or the Emergency Duty Team if out of hours). They should follow up their concerns if they are not satisfied with the local authority children's social care response.

Where a child is likely to suffer significant harm or is 'in need'

If at any time it is considered that the child may be a child in need as defined in the Children Act 1989, or that the child has suffered significant harm or is likely to do so, a referral should be made immediately to local authority children's social care. This referral can be made by any professional.

Consent

You do not need consent from the child or parent/guardian although it is good practice to inform them of any decision to refer on unless this would put the child at greater risk of harm.

Activity 9: My experience of police stations

Question sheet (Handout 10)

The following is a genuine account given by a young person who had been in police custody.

I have just been arrested for shoplifting. I live in a children's home and am one of nine other children. I am constantly bullied both at home and at school because I speak well and because my clothes are shabby. I have no kind of family or role model, so the care system became my role model. I never have any money and my clothes are ill fitting, so I become desperate to have a little something. I shoplift clothes and food because I have no other way of acquiring them.... anyway, I've just been arrested and I'm feeling quite rebellious because I'm thinking my life can't get much worse. As a result of my rebellious nature my handcuffs are fastened too tight, my wrists feel sore and I can feel the cold metal biting into my wrists. I request for them to be loosened and in return get a refusal and a snidey remark. I point out the fact that I am merely a 15-year-old girl of slight build who poses no threat to two competent police officers. I get no response. My belongings are removed, including my footwear, and I get put in a cell, with the door banged behind me. It is freezing in the cell with just a mat as a bed on the bench, a toilet and a camera.

I sit there for what feels like days, crying, having bursts of anger and then crying again. I feel isolated and lonely. I have needed the toilet for hours but don't want to go because of the camera.

I sit there feeling lonely and thinking for hours until I feel I'm going mad. I phone the buzzer and ask how much longer it will be before they question me (interview me). I'm told that no-one from the children's home can come out to be an appropriate adult, then they close the door again. It's dinner time and my dinner does not consist of enough to feed a baby. I cry again and ask for my solicitor, they say they will phone him and again the door is slammed shut. I hear nothing for hours.

After what feels like days they finally interview me. My appropriate adult has arrived and to my amazement and disgust, it is a complete stranger, a relief worker from the children's home who is not fully qualified and doesn't know anything about me. During the interview the police are cold, patronising and condescending towards me, as if I were a naïve child of limited intelligence.

I admit everything they've accused me of straightaway, all the time in my head I'm feeling hopeless and alone, thinking that no-one understands me, or how hard it is for me to get things right when I have no real guidance and support.

The interview is over, my fingerprints are taken and I am formally charged. They release me on conditional bail with a court date and then it's all over for me.... but not for the countless others in the same position as myself."

- **How long did the actual police interview take?**
- **How important is the interview itself in comparison to the rest of the time in police custody: (a) from the young person's point of view and (b) from your point of view?**
- **You may be meeting many detained people as a stranger. What can you do to overcome their "amazement and disgust"?**
- **What little things could you do that would make a big difference to how a vulnerable person feels?**
- **What things did this young person find upsetting or irritating about the way the police treated her? What can you do to make sure you don't come across in the same way?**

How long did the actual police interview take?

The interview itself probably only took a few minutes.

How important is the interview itself in comparison to the rest of the time in police custody: a) from the young person's point of view? b) from your point of view?

The interview is probably the most important part of the whole process as this is the child's chance to explain what happened, to offer any defence or get credit for early admissions. What is said in interview will be admissible in court. It is clear here that the girl is not concentrating during the interview. She seems to just want it over with and does not realise its importance. She is feeling hungry and cold and she needs the toilet. She is feeling full of self-pity and not able to consider the implications or seriousness of the offences she has committed. There may be issues about the reliability of her admission in such circumstances. Separately, it raises questions about her effective participation in the process: her understanding, sense of responsibility, and her pathway to living a better life.

You may be meeting many detained people as a stranger. What can you do to overcome their 'amazement and disgust'?

Her 'amazement and disgust' is directed at the 'system' and perhaps also at her own family and circumstances of being in care. It is not really at the AA but the AA is the only one there, so naturally has to bear the brunt of her anger and frustration. If the AA takes the comments personally or gets angry or defensive ('there's no need to talk to me like that – it's not my fault – I don't have to come here you know'), the situation will get worse. The best course of action would be to simply acknowledge and validate her feelings – 'you sound really fed up' - and then move things on – 'what can I do to get things sorted out?'

What little things could you do that would make a big difference to how a vulnerable person feels?

The things that would make the most difference would be a kind word, someone to listen and not judge. Check if she has had a chance to go to the toilet since she arrived. Explain that the toilet area is pixelated out on the camera screens, so there is some privacy. Make sure she has been offered adequate food and a drink. Try to get her some warmer clothing or a blanket. Find out what is happening with the solicitor. These simple common sense actions will make her feel valued and respected. These actions will free her mind to focus on the interview itself.

What things did this young person find upsetting or irritating about the way the police treated her? What can you do to make sure you don't come across in the same way?

The girl felt she was ignored and belittled by the police. Make sure you are always polite and respectful. Include her in the discussions and decision making – keep her informed about the progress of her case. The girl's account given here is clearly her own perception of the time in custody. The officer in the case would probably have given a very different version of events. This does not matter – you are dealing with her perception and need to acknowledge that this is how she feels. Only once she feels valued and listened to, is she likely to become more cooperative and willing to take on board another person's perspective.

Module 9: Terrorism

Overview

Module objective	To develop an understanding of how appropriate adults can meet the needs of children and adults who are suspected of terrorism-related offences.
Learning outcomes	<p>This module aims to allay anxieties and to reinforce knowledge about the AA role. On completion, learners will be able to: -</p> <ul style="list-style-type: none"> • Describe the differences in people and procedures under TACT 2000 versus PACE 1984 • Give examples of how detention under TACT may impact on a person's vulnerability. • Explain how the rights and welfare of a vulnerable person detained in a TACT suite can be ensured
Suggested timing	3 hours
Method	<ul style="list-style-type: none"> • Activity 1 - Anxieties about acting as an AA in a terrorism case • Activity 2 - What makes terrorism-related cases different? • Activity 3 – Legislation • Activity 4 - Differences for suspects and AAs under TACT 2000 • Activity 5 - How TACT impacts on suspect vulnerability • Activity 6 – Taking action • Activity 7 – Case study
Resources	<ul style="list-style-type: none"> • Photocopied activity sheets and handouts • Flip chart and pens • Scissors
Facilitator's notes	<p>This module is not mandatory for learners who will not be acting as AA in terrorism cases.</p> <p>The module assumes that learners will have undertaken and understood all other modules prior to beginning this module.</p> <p>Even for an AA who is trained and experienced in relation to detention and questioning under PACE Code C, being asked to act in a terrorism case</p>

	<p>can be daunting for a number of reasons. While the nature of the offence may be a factor in this, the key reasons are likely to be: -</p> <ul style="list-style-type: none"> • Lack of knowledge of the rules relating to terrorism • Lack of experience and familiarity with the TACT environment • The length of detention and involvement <p>Use the first two activities to establish what learners are particularly concerned about and their current level of knowledge. The focus of the module is helping learners feel confident about applying all their existing knowledge.</p> <p>This module does not cover the role of the 'responsible adult' under TACT 2000 Schedule 7 (Port and border controls) which provides powers to stop, search and hold passengers at certain points of exit/entry to the country or to undertake such examinations in a TACT suite. However, AAs should be aware that it is possible for a person stopped under Schedule 7 to then be arrested and taken a TACT suite for interview.</p>
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Activity Plan

Activity 1	Anxieties about acting as an AA in a terrorism case	Handout
Step 1	Working in small groups, ask learners to discuss their key anxieties about being an AA in a terrorism case. What would they like answered by the end of the training?	
Step 2	As a whole group, record answers on a flipchart. As you progress through the module, ask the learners whether they are happy for you to 'tick off' issues that have been covered.	
Activity 2	What makes terrorism-related cases different?	
Step 1	Working in small groups, ask learners to create lists of (a) things they think might be different compared to a purely criminal/PACE matter and (b) things that would remain the same.	
Step 2	Ask each group to feedback their thoughts to the whole group. It may be helpful to record the answers on a flipchart as they are discussed.	
Step 3	Present the information in the handout and provide it to the learners	1
Variation	If you have more time for step 3, split learners into groups and ask them to use the handout to develop a short presentation back to the group (rather than presenting the material yourself as a lecture).	
Activity 3	Legislation	
Step 1	Present the information in the information sheet handout.	2
Step 2	Share the question sheet handout and ask learners, individually or in pairs, to answer the questions.	3
Step 3	Check answers against the following and discuss: 1: Police and Criminal Evidence Act 1984 ; Terrorism Act 2000 2: PACE is used more often. 3: In all examples, the damage must be <u>serious</u> and aimed <u>to influence a government or intimidate the public to advance a political, religious, racial or ideological cause</u> 4: Both. Terrorism-related cases can switch between PACE (Code C) and TACT (Code H). Some parts of Code H simply point to Code C.	
Step 4	Share the information sheet handout.	2

Activity 4	Differences for suspects and AAs under TACT 2000	
Step 1	Before the session, print out and cut up the handout into each numbered section (i.e. have one piece of paper for 1. Appropriate adults, another for 2. Custody record, and so on).	4
Step 2	Present the summary bullet points in the information handout to the whole group.	4
Step 3	Place the pieces of paper from Step 1 around the training room and divide the group into pairs (or individuals if a small group)	
Step 4	Provide each pair/individual with a question sheet. Ask them to answer the questions, moving around the room to find the information that they need. To avoid queues, remind them that they do not need to do them in numerical order.	5
Step 5	As a whole group, go through the question sheet asking learners to provide their answers verbally. Once completed, share the answer sheet handout.	6
Activity 5	How TACT impacts on suspect vulnerability	
Step 1	Share the handout and ask learner to read through it individually.	7
Step 2	Lead a group discussion on why TACT detentions increase the risk to a suspect's rights, welfare and effective participation?	
Step 3	As a group, write up the list of risks and issues that a suspect may face and that AA may have to respond to.	
Activity 6	Taking action	
Step 1	Split the learners into pairs or small groups and share the handout.	8
Step 2	Ask each pair or small group to use the handout to develop responses to the risks and issues developed in the last activity. Ask them to write their responses down.	
Step 3	Ask each group to feed back their responses to the group. Make sure to explore and discuss any differences of opinion or methodology.	
Activity 7	Case Study	
	Split learners into pairs or small groups. Share the information sheet handout and ask them to complete the questions.	9
	Ask each group to feedback its answers and facilitate discussion.	
	Share the answer sheet handout	10

Activity 2: What makes terror-related cases different?

Information sheet (Handout 1)

TACT Suites

Locations

Across England and Wales there are a small number of dedicated detention centres reserved for people suspected of terrorism-related offences. They are known as 'TACT suites' in reference to the Terrorism Act (2000 & 2006). They are separate and distinct from the normal custody suites used for other criminal matters. Not all areas will have a TACT suite. The precise locations are not in the public domain. In addition to the dedicated regional TACT suites there are also some local TACT facilities. These are standard police custody suites but which have clear protocols for TACT detainees. They do not have the same enhanced facilities that would be found in a TACT suite and are only a 'holding' option. After a maximum of 48 hours (i.e. after a warrant of further detention) a suspect must be transferred to a TACT suite.

Design

While TACT suites will have a range of designs and layouts, they will tend to differ from mainstream custody facilities in several ways.

- They do not tend to be as noisy or busy as a mainstream facility
- They usually hold small numbers of suspects managed by a high number of custody staff
- Movement of all non-police personnel is likely to be highly controlled and with an officer
- There may not be a traditional charge desk or booking-in area
- Suspects are generally booked into custody by a sergeant inside a designated cell upon arrival.

Due to the prolonged periods of detention often experienced by TACT detainees, cells will usually: -

- be larger than a normal custody cell, and will generally have fixed storage;
- have some form of entertainment, usually a TV screen playing documentaries or films.

Security

Security is also higher at a TACT suite.

Access to the facility is limited to only those officers, staff and visitors with an operational requirement to be present.

Staff in a TACT suites will not wear identifying name badges or shoulder numbers. They will not use their personal names when being asked to identify themselves. Instead they will provide a warrant number or PIN code to identify themselves to visitors and for record keeping purposes (Code H2.8). The only police identifier for uniformed staff will be the officer's rank displayed on their epaulettes. When answering incoming phone calls staff will not identify their location or give their name.

Electronic devices are not allowed in the facilities for security reasons and so AAs need to ensure any items they need for notes/record taking etc. are in paper format.

There is likely to be a rigorously enforced search protocol for visitors to the facility, including AAs, with strict limits on what can be physically taken into the facility. However, AAs should ask for anything that they require to effectively undertake their role (i.e. Codes of Practice, ID badge).

Volume

In the year ending March 2017, arrests for terrorism-related offences in Great Britain rose 18%. The total of 304 arrests was more than in any year since data collection began in September 2001. In the year to March 2017, 60 people were detained under TACT 2000. This represents a tiny fraction of police arrests but due to their nature terrorism cases take up a disproportionate amount of police resources. Whilst referrals to organised AA schemes have historically been low, recent increases in investigations seems likely to increase requests in areas where TACT suites are situated.

Media profile

Not all terrorism-related cases will be considered 'serious' or have a high media profile. However a minority are the subject of significant public debate and strong public reaction – often including debate about mental illness. High profile terrorism cases in recent years include:

Pavlo Lapshyn (2013). A Ukrainian student and right-wing extremist stabbed Mohammed Saleem, a Birmingham resident to death and detonated home-made explosives outside mosques.

Michael Adebolajo and Michael Adebawale (2013). British soldier, Lee Rigby, was murdered and decapitated in an attack in Woolwich, by Islamist extremists. Adebawale was reported to have a history of serious mental illness.

Muhaydin Mire (2015). A 29 year old man with a knife attacked three people at Leytonstone Tube Station in East London. He shouted, "This is for Syria". Mire was reported to have been engaged with community mental health services and was sectioned under the Mental Health Act after the attack.

Thomas Mair (2016). A 52-year-old white nationalist, shot and stabbed the MP Jo Cox outside a surgery in West Yorkshire and severely wounded a passerby. He shouted "This is for Britain", "keep Britain independent", and "Put Britain first". Mair had reportedly sought help for depression.

Khalid Masood (2017). A 52-year-old British man, born in Kent as Adrian Elms, drove a car into pedestrians on Westminster Bridge and fatally wounded a police officer. The attack was treated as an act of terrorism motivated by Islamic extremism.

Salmen Abedi (2017) a British suicide attacker of Libyan descent bombed Manchester Arena, killing 22 and injuring 250 children and adults.

Khuram Shazad Butt, Rachid Redouane, Youssef Zagbba (2017). Eight people were killed and at least 48 injured when a van drove across London Bridge. The occupants stabbed people in Borough Market. All three were shot dead by police. An ISIS news agency claimed they were ISIS fighters.

Darren Osborne (2017). A 47 year old British man drove a vehicle into Muslim worshippers close to a mosque in Finsbury Park, London. He was charged with terrorism-related murder. Concerns about his mental health were reported.

Ahmed Hassan (2017). An 18 year old Iraqi national was charged with placing a botched crude 'bucket bomb' on a Tube train causing 30 people to be injured. Of seven initially arrested, six were released without charge. The attack was claimed by ISIS but authorities said there was no evidence for this. An immigration officer reportedly said Hassan suffered from PTSD following torture in Iraq.

Ciaran Maxwell (2017). A Royal Marine, Ciaran Maxwell pled guilty to terrorism offences and was sentenced to 18 years. He used 43 locations to hide weapons, stolen ammunition, bomb-making equipment and information on potential targets. It is thought that these items were to be used by dissident Irish Republican groups. He claimed to suffer from PTSD.

Demographics

Ethnicity

The majority of people arrested under TACT 2000 are White (30%) or Asian (40%). The percentage of people observed as being of each ethnicity who are arrested under TACT 2000 has changed in each year between 2001/2 and 2016/17.

TERRORISM RELATED ARRESTS: ETHNIC APPEARANCE



Source: *Terrorism in Great Britain: the statistics (2017)*, House of Commons Library

Nationality

Of people arrested under TACT 2000 since the US terror attack of September 11th 2001:

- Most people arrested were British (55%), a trend increasing to 75% by 2015/16
- The 5 top non-British nationalities were Algerian, Pakistani, Iraqi, Afghan and Iraqi.

Religion

Statistics about religion are patchy because there is no requirement to capture this data. Of people arrested for terrorism related offences from 1 September 2001 to 31 August 2012:

- 47% did not declare whether or not they had a religion
- 46% declared that they were Muslim
- 6% declared they were of another religion or no religion.

Legislation

The principal legislation governing suspects rights under criminal law is the Police and Criminal Evidence Act 1984 and subsidiary Codes of Practice, commonly referred to as **PACE & the Codes**. In Terrorism legislation, the principal legislation such as the Terrorism Act 2000 & Terrorism Act 2006 are collectively referred to as **TACT**.

Activity 3: Legislation

Information sheet (Handout 2)

Terrorism Act 2000

There are now a number of pieces of counter-terrorism legislation in the UK, including: -

- Anti-terrorism, Crime and Security Act 2001
- Terrorism Act 2006
- Counter-Terrorism Act 2008
- Terrorism Prevention and Investigation Measures Act 2011
- Counter-Terrorism and Security Act 2015

AAs do not need to understand all this legislation. However, it is important to understand that the Terrorism Act 2000 (commonly known as TACT 2000) provides a more restrictive detention and questioning framework for suspects.

While the nature of terrorism may seem self-evident, there is no internationally agreed definition. TACT 2000 sets out the strict legal definition governing whether an action can be dealt with under terrorism legislation in the UK. Broadly, an action must involve serious harm that aims to influence a government or intimidate the public, with the aim of advancing a political, religious, racial or ideological cause. This includes actions involving violence, property damage, risks to public health and safety and interference with electronic systems – any of which must be of a *serious* nature (see Annex G).

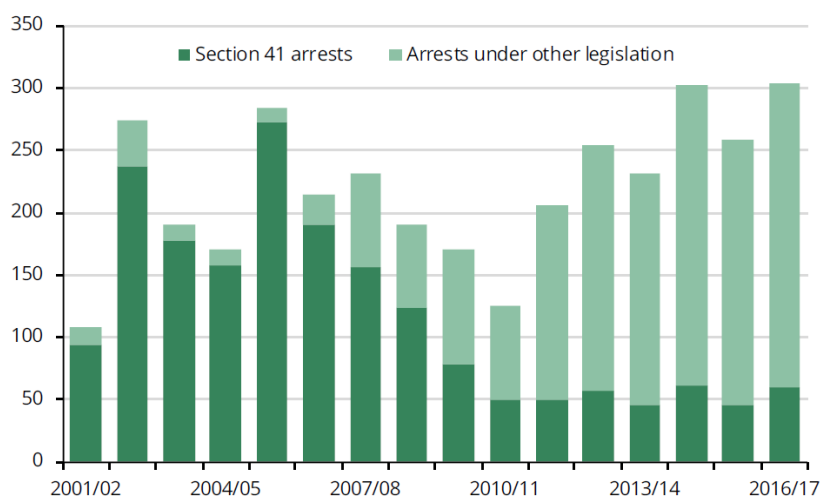
Counter-Terrorism Act 2008 (CTA 2008)

The CTA 2008 sought to give police and the Crown Prosecution Service confidence that they did not have to wait until the end of the detention time limits in order to charge a suspect. It did this by removing the long-standing prohibition on post-charge questioning.

Police and Criminal Evidence Act 1984

People who are held in TACT suites are not necessarily detained under counter-terrorism legislation. In fact, in recent years the majority of arrests which take place during terrorism-related investigations are made under PACE 1984 (Code C). In the year to March 2017, only 20% of arrests for terrorism-related offences were dealt with under terrorism legislation.

TERRORISM RELATED ARRESTS



Source: *Terrorism in Great Britain: the statistics (2017)*, House of Commons Library

This includes some cases which are referred to as terrorist acts by the media and general public. For example, the murders of Lee Rigby and Jo Cox were in fact murder investigations (although in court the perpetrators were all sentenced as terrorists).

PACE investigations that are suspected to be linked to alleged terrorist activity (e.g. murder, fraud and money laundering offences) will be conducted from a TACT suite.

PACE Code H

PACE Code H only covers the detention, treatment and questioning of suspects who are:

- arrested under the Terrorism Act 2000 section 41 (Arrest without warrant); or
- detained under the Terrorism Act 2000 schedule 8 (Detention); or
- questioned after charge with authorisation under Counter-Terrorism Act 2008 section 22 (Post-charge questioning: England and Wales)

If none of these apply to a suspect, then PACE Code C will continue to apply, even if the matter is related to terrorism and a TACT suite is being used⁵. PACE Code C also still applies whenever a person is charged, even if it is for a terrorism-related offence as Code H points refers back to Code C in this regard

Code H largely mirrors PACE Code C. In some areas it simply points back to Code C. However, the differences make a very significant difference to the rights of suspects.

It is possible for an arrest to switch between one Act and the other as the investigation develops. Most commonly this will be from TACT 2000 to PACE 1984.

For example, if the grounds for detention under TACT 2000 cease, the police may be able to arrest the person under PACE. If they do, the detention and bail provisions of PACE will apply and must be considered from the time of that arrest.

A person cannot be held under both pieces of legislation at the same time. Therefore, AAs need to constantly be aware of which Act a person is being held under as this directly effects aspects of their detention. It should not be assumed that police will proactively provide this information when a change occurs.

⁵ An exception to this is examinations made as part of port and border controls which may occur in a TACT suite but are not covered in this module.

Question sheet (Handout 3)

1. In a terrorism-related case, what are the names of the two Acts of Parliament that a person could be detained under?
2. Which Act is more likely to be used?
3. A person has damaged another person's property. What factors might lead this to being dealt with under terrorism legislation? Can you give an example?
4. In a terrorism-related case, would an AA have to aware of the provisions of PACE Code C or PACE Code H? Why?

Activity 4: Differences for suspects and AAs under TACT 2000

Information sheet (Handout 4)

The following information applies to detentions under TACT 2000:

- A lower arrest threshold
- No requirement to specify offence under investigation before a person is charged
- Suspects can be held for much longer periods (making handovers between AAs more likely)
- Larger gaps between reviews of detention
- Multiple interviews and more intensive ID procedures (magnifying vulnerabilities)
- A different detention review regime with longer gaps (and no formal role for AAs in reviews)
- Information may be more difficult for AAs to access
- Possibility of surveillance during private consultations between AAs and suspects
- More attention paid to healthcare, food, exercise and visits
- No pre-charge bail

Where a person is detained and questioned within a TACT suite but under PACE 1984, the rules set out in PACE Code C apply without change.

1. *Appropriate adults*

There is no difference in the threshold or definition governing which suspects require an AA. With one exception, the AA role and rights remain the same for detention and questioning under TACT 2000. Most of the Code H provisions are either identical or equivalent to those of Code C (see Annex B). The one exception is that Code H does not describe a role for the AA in reviews of detention (Code H section 14 and TACT 2000 Schedule 8 section 26).

2. *Custody record*

Within a TACT suite, the custody record may be very different than found elsewhere. It is likely to be a written document (or at least part handwritten) and held in a binder. It may be a more comprehensive document than those found in a traditional custody suite

AAs have the same right of access to the custody record as they would have under PACE (H2.5, 2.6 & 2.7). However they should be aware of the following:

- It may not (in whole or in part) be available for inspection on request if it is in use elsewhere
- The risk assessment and any analysis of the level of risk in relation to their detention is not required to be shown to the detainee or anyone acting on their behalf (H3.8).
- Parts may be removed for updating while the AA is reading it.
- Police officers are under no obligation of the Codes to have their identities noted on the record (H 2.8) as this is viewed as a potential security breach. Entries will not be signed by police officers/personnel who will instead use their warrant number or pin to identify themselves as the author of an entry.

AAs should ensure that they have access to all documents that they are entitled to. As they may visit the suite several times during one extended detention period, the whole record should be checked on each return, noting any entries made since the last visit. As under PACE, the custody record must contain all health information necessary for the custody staff (and only this health information).

3. Arrest

Section 41 of TACT 2000 provides a specific power of arrest, with a lower threshold. Unlike under PACE 1984, the arresting officer does not have to have a specific offence in mind. There simply needs to be reasonable suspicion that a person is or has been involved in terrorism.

4. Private consultations

The detainee has the same right to a private consultation with an AA at any time (H3.19).

However AAs should be aware of the Judgement from the European Court of Human Rights from *R.E. vs The United Kingdom* (Application no. 62498/11)⁶. Whilst this case emanated from Northern Ireland, it can be cited in English and Welsh Courts. The Court considered whether the Police Service of Northern Ireland could covertly monitor the private consultations between a vulnerable person accused of terrorist matters and their appropriate adult. The Court found that they could. It is unknown whether this direct surveillance is being used in England and Wales, but AAs should be mindful of its existence as reinforcement of best practice explored earlier in this pack. Legal privilege due to a solicitor's presence is no safeguard in this situation.

5. Interviews

The role of the AA remains the same as under Code C. AAs should be reminded of their role and the accompanying expectations at the commencement of the interview (Code H 11.10).

AAs should be prepared for a number of interviews over a period of days. Evidence gathering is typically more complex and investigations longer. AAs should not assume that prolonged detention means one interview per day. A day may involve a number of interviews or a pause before resumption the day after. Each situation is unique. However, the principle of all investigations being carried out diligently and expeditiously applies to both PACE and TACT detentions.

All interviews will be both audio and visually recorded and are likely to be remotely monitored as well. This means that one or more officers, other professionals or interested parties will be viewing and listening to interviews under caution as they take place.

Under TACT it is more likely that AAs will encounter post-charge interviews.

Code H 11.10A details the circumstances under which an AA may be removed from an interview. Until 2017 this was unique to Code H, however the same provisions are now in Code C. An AA may not prevent or unreasonably obstruct proper questions being put or the responses recorded. They must not answer on a suspect's behalf or provide written replies for them to quote. This provision should not affect trained AAs who should continue to intervene robustly wherever it is appropriate as per the needs of the suspect (see Module 6 Activity 3).

⁶ <http://www.statewatch.org/news/2015/oct/ecxhr-judgment-full-text-R-E--v-UK-covert-surveillance-of-detainees%27-consultations.pdf>

6. Fingerprints, photographs and DNA

The procedure for fingerprints and photographs is markedly different than under PACE Code C.

Fingerprints, palm prints etc. are taken using ink and are often minutely scrutinised whilst the process is being undertaken. Many more areas of the hands, fingers and palms will be taken and it is not unusual for the process to last about one hour or longer. The presence of an AA is required for this process.

Likewise many more photographs of a suspect (other than the front, left and right sides of the face) will be taken. In essence they provide a panoramic 360 degree portrait. Again this part of the process will be markedly longer than in non-TACT investigations.

The DNA (mouth swab) process is the same as in non-TACT suites.

7. Healthcare

According to the College of Police Approved Professional Practice, a forensic physician or an appropriately trained healthcare professional should examine TACT detainees:

- on arrival at the station (initial screening)
- each morning
- prior to interview
- prior to release (release of the detainee cannot be delayed for this examination to take place).

As a minimum, PACE Code H requires that suspects held for more than 96 hours will be seen by a relevant healthcare professional every day, irrespective of whether they have any medical ailments. This is a legal requirement and is to ensure a high level of welfare is maintained throughout periods of extended detention.

8. Food, exercise and visits

When a person is in prolonged detention, the microwave meals used in regular custody facilities are not suitable. After the first period of detention (24 or 48hrs depending on local policies) police staff will (at public expense and within reason) purchase fresh food to suit their individual dietary requirements.

Exercise and fresh air is offered daily to people detained under TACT 2000 and suitably secure exercise yards are in place at all TACT suites. The police should encourage people to make use of these facilities.

Visits can be accommodated to people in TACT detention but it is not a right. Decisions are made by police on a case by case basis. Facilities to enable secure visits can be found in all TACT suites.

9. Bail

If a person is arrested under TACT, the police have no power to grant pre-charge bail.

If they are subsequently charged with an offence then a post-charge bail review will be undertaken by the custody officer as with a normal PACE arrest.

If the grounds for detention under TACT cease, and the police then arrest the person under PACE for a specific offence, pre-charge bail is available to consider.

10. Pre-charge detention limits

The maximum period of pre-charge detention allowed under PACE is 96 hours. In contrast, the maximum period under TACT is 14 days.

Initially, the police may hold a person for up to 48 hours pre-charge. However, this can be extended by a District Judge up to a total of 14 days (see warrants of further detention).

This limit is an area of significant controversy and Parliament has fluctuated between a limit of 7 days and 28 days, and there have been attempts to introduce 42 days and 90 days. The current limit of 14 days has been in place since January 2011, although in a very narrow set of extenuating circumstances it is possible for the Home Secretary to grant a temporary extension to 28 days. However, in June 2017 Ministers were reportedly considering proposals to return to 28 days. This is a fast changing area of law and AAs should ensure they are always clear of the legislation that is in force at any time.

It is best practice to provide a single AA practitioner for the duration of the detention. However, this may be difficult in long cases but the principal of minimising the number of AAs is important. Therefore one or more handovers may be necessary. If that is the case then the vulnerable person, their legal advisor(s) and the police should be told as soon as possible and an agreeable time for a handover negotiated. Adequate time should be allowed for the handover between the incoming and outgoing AA in order that all matters are communicated. Given the concerns about potential monitoring, it may be desirable to conduct this in a private setting outside of police premises.

11. Reviews of detention

Detainees held under TACT are subject to a different review regime.

Unlike Code C, Code H makes no provision for the involvement of an AA in any review of detention. This does not mean they cannot seek to contribute to reviews. However, police are under no obligation to consider any representations.

The relevant time for the detention 'clock' begins:

- immediately upon arrest; or
- at the time the person was first detained (if they are arrested after being detained and examined at a port under Schedule 7 TACT 2000)

Custody sergeants do not authorise TACT detentions. Instead, detention must be authorised by an officer of Inspector rank or higher who is not connected with the investigation as soon as is practicable.

Reviews take place every 12 hours and the lowest rank they can be conducted by is:

- Inspectors in the first 24 hour period
- Superintendents in the 24 to 48 hours period

12. Warrants of further detention

Within the first 48 hours police can apply to a magistrate's court for a warrant of further detention up to 7 days total (TACT 2000 sch. 8 s.29). Police can subsequently apply for additional warrants up to a maximum of 14 days TACT 2000 sch. 8 s.36(3).

If a person is arrested under PACE 1984, normally they must be taken before the relevant court in person when police are applying for a warrant of further detention. However there are some extenuating (PACE 45 (ZB)) circumstances when a live link can be used instead. Under TACT 2000 the police will use a secure video link to enable a virtual court hearing within the TACT suite. The hearing will be facilitated by a specially trained judge sitting at a designated magistrate's court.

In deciding whether to extend the period of pre-charge detention, the court may consider evidence that has not been disclosed to the suspect. Therefore the decisions of the court may be more difficult for a suspect to understand.

13. Charging

In terrorism cases, the charging process and related matters are subject to PACE Code C section 16 and are covered by guidance issued by the Director of Public Prosecutions (see Code H 15)

This includes the legal responsibilities of the police and local authority to transfer and accommodate children who are remanded after charge in TACT investigations.

As with PACE, arrests under TACT do not always result in charge. Of the 12 arrests made in connection with the attack on Westminster Bridge and Westminster Palace on 22 March 2017, all were released without charge.

The Code for Crown Prosecutors states that where a suspect is under the age of 18: "the best interests and welfare of the child must be considered, including whether a prosecution is likely to have an adverse impact on his or her future prospects that is disproportionate to the seriousness of the offending".

14. Post-charge questioning

Post charge questioning may be used by police to strengthen a case in two ways: -

- Gaining additional responses from the suspect from further lengthy questioning
- Seeking to draw adverse inferences from a suspect's silence.

Under Code C 16.5, interviews after charge is prohibited unless it is necessary:-

- to prevent or minimise harm or loss
- to clear up an ambiguity in a previous answer or statement
- in the interests of justice for the detainee to have put to them, and have an opportunity to comment on, information concerning the offence which has come to light since they were charged

Since 2012, post-charge questioning has been allowed in terrorism-related cases. This is reflected in Code H 15.2 but applies whether a person is being dealt with under TACT 2000 or PACE 1984.

However, the permission of a Crown Court judge is required and they have to be convinced that the investigation is being conducted diligently and expeditiously. Permission is given for up to 48 hours at a time.

Question sheet (Handout 5)

1. What is the one power or responsibility that an AA has under PACE that they do not have under TACT?
2. How might a police officer sign an entry in the custody record in a TACT suite?
3. What does a police officer need in order to justify an arrest in relation to terrorism?
4. In an TACT case, does a person have the right to a private consultation with their AA at any time?
5. How might an interview under TACT be different to one under PACE?
6. How might ID procedures be the same, and different, under TACT?
7. How often will a person detained under TACT be seen by a healthcare professional?
8. Can a person receive personal visits while detained under TACT?
9. Can person detained under TACT be bailed before they are charged?
10. How much longer can a person be detained under TACT compared to PACE?
11. Under TACT, what is the minimum rank of a police officer carrying out a review after the first 24 hours
12. In a TACT case, what is the time limit for police seeking their first warrant of further detention?
13. What is the difference between charging under PACE and charging under TACT?
14. What do police have to do before questioning a person after they have been charged?

- 1. What is the one power or responsibility that an AA has under PACE that they do not have under TACT?**

Formal involvement in reviews of detention

- 2. How might a police officer sign an entry in the custody record in a TACT suite?**

Using their warrant number

- 3. What does a police officer need in order to justify an arrest in relation to terrorism?**

Reasonable suspicion of involvement in terrorism (no specific offence)

- 4. Under TACT, does a person have a right to a private consultation with the AA at any time?**

Yes

- 5. How might an interview under TACT be different to one under PACE?**

Longer. More complex. Remote monitoring. May happen post charge.

- 6. How might ID procedures be the same, and different, under TACT?**

DNA mouth swab is the same. Other procedures may be more thorough and so longer.

- 7. Will a person detained under TACT be seen by a healthcare professional every day?**

Legal minimum is daily after 96 hours but professional practice is every day.

- 8. Can a person receive personal visits while detained under TACT?**

Yes, but it is not a right.

- 9. Can person detained under TACT be bailed before they are charged?**

There is no pre-charge bail under TACT. Police may be able to switch to PACE first.

- 10. How much longer can a person be detained under TACT compared to PACE?**

10 days (96 hours or 4 days max. under PACE; 14 days max under TACT).

- 11. Under TACT, what rank of a police officer must carry out a review after the first 24 hours**

Superintendent or higher.

- 12. In a TACT case, what is the time limit for police seeking their first warrant of further detention?**

They can seek a warrant of up to 7 days any time within the first 48 hours.

- 13. What is the difference between charging under PACE and charging under TACT?**

Essentially none. Code H refers back to Code C.

- 14. What do police have to do before questioning a person after they have been charged?**

Get permission from a Crown Court judge.

Activity 5: How TACT impacts on suspect vulnerability

Information sheet (Handout 7)

Extended detention times

The extended detention times, isolation and lengthy interviews make for an environment where vulnerabilities (whether related to age or mental vulnerability) may become more pronounced, more visible, and impact negatively on the wellbeing of the person.

Even where an appropriate healthcare professional attends every morning, the risks to a person's mental and emotional health and psychological vulnerabilities increase the longer the detention continues.

Whilst there is no known research looking at the impact of longer detention periods in a TACT suite, Professor Gisli Gudjonsson CBE (an internationally renowned forensic psychologist) says,

“Custodial confinement is associated with social isolation, reduced environmental stimulation and loss of control over most aspects of daily living, often causing distress. The distress typically increases over time. Uncertainty over the length of detention is particularly distressing. Symptoms may include irritability, anger, mood swings, impaired concentration, poor sleep, and confusion”.

Ultimately these effects could impact on whether that individual is fit to be interviewed and/or the admissibility of any evidence. This is acknowledged in Code H:

Consideration should be given to the effect of extended detention on a detainee and any subsequent information they provide, especially if it relates to information on matters that they have failed to provide previously in response to similar questioning see Annex G. (Notes for Guidance H11D)

The minimum age of criminal responsibility (10 years old) applies to TACT cases as for non-terrorism cases. Children, particularly those in the lower end of the age range, will have a limited ability to cope with extended detention.

AAs should be mindful of the potential for deterioration in the mental, emotional or psychological health and wellbeing of a child or vulnerable adult. They must be prepared to have the custody record endorsed with their concerns if necessary.

Article 40(2)(b)(iii) of the UN Convention on the Rights of the Child provides that:

“a child should not be compelled to give testimony or to confess or acknowledge guilt”.

““Compelled” should be interpreted in a broad manner and should not be limited to physical force or other clear violations of human rights. The age of the child, the child's development, the length of the interrogation, the child's lack of understanding, the fear of unknown consequences or of a suggested possibility of imprisonment, may lead him/her to a confession that is not true.”

Post-charge questioning

Historically, post-charge questioning was prohibited to force the police to charge only where there was sufficient evidence. Under TACT there is a risk of dilution of a suspect's rights – including the right not to self-incriminate.

Being detained and questioned for a second period of up to 48 hours may lead a child or vulnerable adult to make unreliable and damaging admissions which can have a negative impact on the preparation of their defence.

Bail

Under the UN Convention on the Rights of the Child, the best interests of a child must be a primary consideration and the detention of a child must be for the shortest appropriate period of time. This right is arguably more difficult to meet given the lack of pre-charge bail under TACT 2000.

Activity 6: Taking action

Information sheet (Handout 8)

Using the Codes

AA's should think broadly about the needs of a juvenile or vulnerable person detained in this environment particularly if longer detention periods are in use. The key difference with PACE matters is the greater isolation experienced in TACT 2000 detention.

Any action considered or taken by an AA acting in role should be grounded in the PACE Codes and capable of justification by reference to them. It is good practice to make clear contemporaneous notes, particularly covering concerns, any interventions, timelines and any entries made to the custody record at the AAs request, and to review them while events are still fresh. This may prove to be very useful if any evidence gathered in custody is contested in Court and the AA is asked to give evidence. If doing so you should remain cognisant that these are a potential legal document.

Code H outlines how some of the detrimental effects on a detainee can be minimised. As in Code C, Annex E of Code H summarises the provisions relating to vulnerable adults.

Visits

Code H states: -

- *If the detainee agrees, they may at the custody officer's discretion, receive visits from friends, family or others likely to take an interest in their welfare, or in whose welfare the detainee has an interest. (H5.4).*
- *At the custody officer's discretion and subject to the detainee's consent, visits should be allowed when possible, subject to sufficient personnel being available to supervise a visit and any possible hindrance to the investigation. (Notes for guidance H5B).*
- *Custody Officers should bear in mind the exceptional nature of prolonged TACT detention and consider the potential benefits that visits may bring to the health and welfare of detainees who are held for extended periods. (Notes for guidance H5B)*
- *Official visitors may include: an accredited faith representative; Members of either House of Parliament; Consular officials... (H 5C).*
- *If the detainee does not know anyone to contact for advice or support or cannot contact a friend or relative, the custody officer should bear in mind any local voluntary bodies or other organisations that might be able to help (H 5D).*
- *In circumstances where the nature of the investigation means that such requests cannot be met, consideration should be given, in conjunction with a representative of the relevant scheme, to increasing the frequency of visits from independent visitor schemes (H 5.4).*

Contact with family and friends, or an accredited faith representative can be vital to maintaining wellbeing in the TACT environment. However, the suspect should speak with their legal advisor before any contact is made. This ensures that they are aware of the boundaries of any conversation that they may have.

The AA should have a daily 'check in' with the juvenile or vulnerable person and legal advisor. This can be used as time to gauge how well the person is coping with ongoing detention. It also provides a space for discussion around the person's needs and the status of any previous requests to the

custody officer by the AA and legal advisor. In addition, engaging in general conversation (i.e. not related to the investigation) will help to mitigate the effects of the isolation brought about by the TACT environment.

Other forms of communication

Code H states: -

- *The detainee shall be given writing materials, on request, and allowed to telephone one person for a reasonable time (H 5.6 - However bear in mind the police may seize anything written by the detainee as potential evidence or as a handwriting sample).*

Reading

Code H states: -

- *Police stations should keep a reasonable supply of reading material available for detainees, including but not limited to, the main religious texts.*

AAs can ask for appropriate books, or magazines to be brought in.

Exercise

Code H states: -

- *Brief outdoor exercise shall be offered daily if practicable....See note 8C (H8.7)*
- *In light of the potential for detaining individuals for extended periods of time, the overriding principle should be to accommodate a period exercise, except where to do so would hinder the investigation, delay the detainee's release or charge, or it is directed by the detainee. (Notes for guidance H 8C).*

Despite, and perhaps because of, the negative impact of being locked in cell, it may be that the AA has to encourage the suspect to take exercise.

Meals

Code H states:

- *As far as practicable, meals provided shall offer a varied diet and meet any specific dietary needs or religious beliefs the detainee may have. Detainees should also be made aware that the meals offered meet such needs. (H 8.6).*
- *The detainee may, at the custody officer's discretion, have meals supplied by their family or friends at their expense. (H 8.6).*

AAs should ensure that meals are sufficiently varied, fresh and in line with the person's dietary requirements. It is usual for police to get meals from outside the TACT suite during longer detentions. Suspects may be concerned that the police will tamper with their food. Where a person was refusing to eat as a result, an AA might offer to go with police to collect food to ensure that this did not happen.

Interpreters

Code H states:

- *If representations are made by the solicitor or AA that [remote interpretation via live-link] should not be used, it must stop and a physical interpreter arranges unless authorised in writing by an officer of Inspector rank or above (H Annex L 5).*

AAs have powers to make representations regarding the need for an interpreter to be physically present, rather than via video link. Terrorism matters are serious, it reduces isolation and enables more flexible consultation between legal representative/AA and the suspect.

Religious observance

Code H states:

- *Where practicable, provision should be made for detainees to practice religious observance. Consideration should be given to providing a separate room which can be used as a prayer room. The supply of appropriate food and clothing, and suitable provision for prayer facilities, such as uncontaminated copies of religious books, should also be considered. See Note 8D (H 8.8).*
- *Police forces should consult with representatives of the main religious communities to ensure the provision for religious observance is adequate, and to seek advice on the appropriate storage and handling of religious texts or other religious item (Note for guidance 8D).*

Conditions of detention may interfere with religious observance in several ways:

- Lack of religious accoutrements such as prayer mats, copies of Holy books.
- Lack of a suitable place to store these, or a place to pray. [It may be thought that Holy books should not be kept in a cell where there is a toilet].
- Lack of information about prayer times [which may vary according to sunrise/sunset] or direction to face in or notifying when the prayer time is due.
- Fasting &/or additional prayers at religious occasions.

TACT Custody officers should be able to assist with the first three of the above. It is sensible to ask the detainee which prayers must be made at a fixed time, and which are more flexible, and to have these recorded so as to ensure custody and investigative procedures work around these. At religious festivals, strict adherence to religious observance [fasting, prayers] can be very tiring. Some faiths permit strict observance to be relaxed e.g. by the old or infirm, so a visit by an accredited faith representative [H 5C] may assist.

Activity 7: Case study

Information sheet (Handout 9)

You are called to a TACT suite to act for a young adult who has been arrested under the Terrorism Act 2000. He suffers from mental health problems and has seen the forensic physician (FME) before you arrive. Whilst the police will not discuss the nature of the allegation with you, they do make you aware that this is highly likely to be a lengthy investigation where Warrants of Further Detention will be sought. You are free to act in the role for up to five days of investigation but if there is a need for an AA beyond that then one of your colleagues will be required.

You ask to view the whole of the custody record which alerts you to the fact that the person identifies as a Muslim. It is the month of Ramadan. A criminal defence lawyer has been appointed.

Questions

1. As an AA what would you want to be aware of with regard to his needs considering the likely length of detention?
2. When you return on the second day and following any lengthy breaks from the suite, what would be your priorities?
3. Assuming that a second AA is required, what should the handover process include?

Answer sheet (Handout 10)

Question 1

Prayer

Knowing that religious observance will be important to the person and his wellbeing it would be helpful to know when he *has* to pray and which times are flexible. The AA should remain focused on the needs of the person.

Whilst the police should have details of prayer times, the times the person adheres to are the most important to the AA. These may be different from the information held by the police.

For the benefit of all involved, the AA should ensure that the custody officer and interviewing officers are pre-warned of the times of prayer that the detainee will use. This will assist them in ensuring that any investigative or custody procedures do not take place at these times. If there is a prayer time that may impinge on the interview length wanted by the police, the AA should mention it at the start of the interview, and may need to remind them again during an interview.

Cleanliness

Washing, clean clothes, toiletries (including alcohol free deodorant) are important. The AA will want to check with the person when he needs to wash and when the associated items will be required. The custody officer will also need to be made aware.

Food

The Holy month of Ramadan is time of fasting during daylight hours. It is common to have one meal (known as the suhoor), just before sunrise and another (known as the iftar), directly after sunset. AAs should be mindful of the possible effects of the fast on the person given the likely length of interviews and the fact that there is likely to be more than one interview per day. AAs must remain vigilant about how the person is coping with the questioning and that they are able to concentrate and participate fully at all times. For example low blood sugar can cause confusion and low mood which will undermine the ability of the detainee to engage appropriately in interview. If there are any doubts, these should be raised. Longer detentions are associated with more serious allegations and the intensity of the interviews is likely to increase as the detention lengthens.

If the person is happy, the AA should ensure that the evening meals are varied and are not simply the most convenient option for the police.

Physical and mental stimulation

The AA should be mindful of the need for physical exercise, as well as avenues for mental stimulation or relaxation when there is a pause in the investigation (reading materials, films from the monitor in the cell etc.), contact with family. This does not have to be face to face but can be via telephone. Visitors can be accepted and these can be from people outside of any relatives, accredited faith representatives for instance. However the AA must ensure that the person speaks to their legal advisor before any contact is attempted and that they are aware that phone calls most certainly will be monitored and recorded and visits highly likely to be.

For a lengthy detention, you need to be aware of the DP's mental and physical health issues, and any care/medication needs associated with them. While you may not be able to access the medical report, the custody record should carry any information necessary to make sure custody staff care correctly for the DP. If possible, speak directly with the FME.

Question 2

Check the custody record

Firstly, check the custody record to see what has taken place during the time that the AA was outside of the TACT suite. Any matters of concern should be raised with the solicitor initially and the custody officer afterwards. Scrutiny of the custody record also allows checks to be made around the progress of any requests made by the AA prior to that point.

Consultation

If the time spent outside of the suite is substantial then it is recommended that a short 'check in' private consultation is held with the person. This time can be used to find out about the needs of the suspect at that point, their treatment since you last saw them including the status of any previous requests made to the police. Finally, if the person has been dormant for an extended period (i.e. the investigation has not engaged with them directly), this time may assist them to prepare for another round of interviews.

Question 3

It is essential that the handover takes place somewhere that is private and consists of a full account of what has taken place up to that point. This should include all procedures that the detainee has been subject to:

- actions or inactions made by the outgoing AA since they have acted;
- matters raised with the custody staff/investigating officers and their current status (completed, on-going, not progressed etc.);
- an appraisal of the vulnerabilities of the detainee and any impact on the investigative procedures undertaken up to that point;
- matters of concern relating to any aspect of the detention; contact details for the police.

Annex A: Local policies and procedures

Disseminate and familiarise learners with any local policies, procedures and documents relevant to undertaking the role.

Examples may include:

- Processes related to rota management
- Forms completed whilst undertaking the role and methods for returning them
- Processes for accessing information regarding a vulnerable person prior to acting as their AA and for sharing information afterwards
- Confidentiality policies
- Health and safety guidance (see also Annex B)
- Safeguarding policies
- Support systems and how to access them
- Grievance and complaints procedures
- Ongoing supervision and professional development
- Data protection rules and obligations

Annex B: Health and Safety

Activity: Health and Safety Questionnaire

Question sheet

- 1. Where can you look for an outline of your role, which will clearly define what is expected of you?**
- 2. What steps can you take to ensure that your role as an AA is manageable, in terms of time and energy commitment?**
- 3. What should not be discussed with the juvenile or vulnerable person? What are the reasons for this?**
- 4. If you identify that a juvenile or vulnerable person requires on-going care and support, what is your responsibility in taking this forward?**
- 5. If you have a complaint about a juvenile or vulnerable person's detention, who should you take this up with? If you are unable to do this, or are not satisfied with the outcome, who should you contact?**
- 6. Should you have any physical contact with a juvenile or vulnerable person?**
- 7. Should you give any items to a juvenile or vulnerable person (e.g. money, pens)? What is the reason for your answer?**
- 8. When with a juvenile or vulnerable person in private, what considerations should be taken into account in terms of where you are seated, proximity to exits, etc.?**
- 9. Are there any circumstances when you should give your address or telephone number to a juvenile or vulnerable person?**
- 10. Should you ever offer transport to a juvenile or vulnerable person?**

- 1. Where can you look for an outline of your role, which will clearly define what is expected of you?**

PACE Codes Code C 1.7A, although the whole of Code C is important for the role.

- 2. What steps can you take to ensure that your role as an AA is manageable, in terms of time and energy commitment?**

Not taking on too many referrals at once and/or staying too long at a police station especially if you are fatigued. Call the back-up for support or the co-ordinator to be relieved.

- 3. What should not be discussed with the juvenile or vulnerable person? What are the reasons for this?**

Details of the case or their involvement or otherwise. This is because the AA is not covered by legal privilege.

- 4. If you identify that a juvenile or vulnerable person requires on-going care and support, what is your responsibility in taking this forward?**

On-going care and support of a vulnerable person, beyond their detention, is not part of the AA role. However safeguarding concerns for juveniles and vulnerable persons must always be passed over via the pathway identified by the service. If you identify that a vulnerable person requires support, discuss it with the scheme manager. If the vulnerable person consents in writing you can later request that the scheme co-ordinator makes a referral to the appropriate agency. Don't do this yourself unless authorised to do so by your scheme.

- 5. If you have a complaint about a juvenile or vulnerable person's detention, who should you take this up with? If you are unable to do this, or are not satisfied with the outcome, who should you contact?**

If you have a complaint about a vulnerable person's detention this should be made to the custody officer (or if necessary, the duty inspector) at the time. However, if you are unable to do this, or you are not satisfied with the outcome at that time, you should contact your scheme manager/coordinator who can take the matter up or make a formal complaint according to the standard complaints procedure.

- 6. Should you have any physical contact with a juvenile or vulnerable person?**

Consider carefully how your actions might be perceived by young and vulnerable people. Your scheme or service will have a policy on this issue.

- 7. Should you give any items to a juvenile or vulnerable person (e.g. money, pens)? What is the reason for your answer?**

Do not give money, pens or any other items to a vulnerable person. When taken into custody the property of detained people is locked away to avoid harm to them and others. If you did want to pass an item to a suspect i.e. a newspaper to read for the time that they are in their cell, then check and clear it with a custody officer first.

8. When with a juvenile or vulnerable person in private, what considerations should be taken into account in terms of where you are seated, proximity to exits, etc.?

You may be speaking to a vulnerable person in private in a cell or an interview room. Cells are not appropriate places to conduct private consultations. A consultation room or interview room are suitable. In either ensure that you are seated closest to the exit. Find out in advance where the panic button is. Do not hesitate to use this, and/or to exit immediately if you feel threatened in any way. .

9. Are there any circumstances when you should give your address or telephone number to a vulnerable person?

No. Never give your address or telephone number to a vulnerable person. If the vulnerable person is released, it may be appropriate to allow a short space of time to elapse before leaving the police station. This should ensure you do not receive requests from detained people for transport.

10. Should you ever offer transport to a vulnerable person?

As an AA do not transport a vulnerable person anywhere. In some circumstances, a social worker or YOT worker may have a responsibility but this is not in their role as an AA.

Annex C: Training Videos

NAAN members have access to four videos relating to initial training.

Video 1 (The AA role)

The first video provides an overview of the AA role. You may wish to use this video at the start of your training as an introductory overview.

Inevitably, as time goes on practices change and best practice develops. When showing this video to learners, trainers should be aware of the following points: -

- *1 min 10 secs:* Asking to see a copy of the custody record on arrival is good practice but you can do so at any time when you are at the police station (or for up to one year after the juvenile or vulnerable suspect leaves or is charged with an offence).
- *2 mins 20 secs:* The AA role is also to ensure that the juvenile or vulnerable suspect's rights are being upheld and they are being treated properly and fairly and to tell the police if you that is not the case.
- *2 mins 47 secs:* Again the role is more than facilitating communication. See above.
- *3 mins 30 secs:* DNA is only taken until it is confirmed as being held on the police database. Fingerprints and photographs will be taken every time that someone is arrested for a recordable offence. The AA has to be present when information about police powers and the procedure in this area is being given to the juvenile or vulnerable suspect and for the procedure itself. They should not have been taken before the arrival of the AA and if information about the power and process has been communicated then this should be repeated again.
- *6 mins 31 secs:* An AA is always necessary if the case disposal method is a youth caution caution or youth conditional caution.

Videos 2 (Meeting the client), 3 (Interviews) and 4. (Charge & bail)

The following three videos were designed to demonstrate *both good and practice* and are intended as a prompt for discussions during your training. Ask learners to watch the video and note down things that impress them or that they think should have been done better. The questions on the next page provide some examples of the kind of question you may wish to ask. You may wish to use these videos at the end of your training, at the end of a relevant module, or alongside specific activities.

Activity: The good, the bad and the AA

Video 2: Meeting the Client

1. Should the AA shake the person's hand? (link to health and safety and local scheme policies)
2. Should the AA stop the person giving offence details? (link to legal privilege)
3. Should the AA predict the case outcome? (link to the AA role)

Video 3: Interviews

4. Where should the AA sit? (Link to communication)
5. Should the AA have intervened in the questioning? Where and when? (link to interventions)
6. Should AA have advised the person to answer? (link to legal advice)
7. Was the AA correct to ask for break? Why? (link to interventions)

Video 3: Charge & bail

8. Should the AA wait for the Crown Prosecution Advice? (link to AA role and local scheme policies)
9. Should the AA take the vulnerable person home? If not, why not? (link to health and safety, AA role and local scheme policies)
10. Should the AA return to the police station for the charge? (link to AA role and local scheme policies)

Annex D: Aide Memoire

This is a generic sample aide memoire for appropriate adults. It should not be used as a comprehensive checklist.

Before leaving for the call out

1. Check that you have:
 - (a) Any paperwork that you must complete when at the police station
 - (b) Your ID badge
 - (c) The name of person and the nature of their vulnerability
 - (d) Details of the OIC (Officer in the Case) including a contact number for them
 - (e) The nature of the allegation.
2. Call the police:
 - (a) To check that you have the correct details
 - (b) To check whether the person has asked for a solicitor

Upon arrival at the call out

1. Introduce yourself to Custody Officer (CO) and the Officer in the Case (OIC). Find out the circumstances of the arrest from the OIC. This is for your information only, as you should not discuss the allegation in any detail with the vulnerable person.
2. Ask the CO if you can see the full custody record immediately and ensure that you see this document before you meet the juvenile or vulnerable person. As well as detailing what has happened to them since they have been at the police station, it will also contain a basic risk assessment. Whilst you do not have an automatic right to see the contents of the risk assessment, the police must not withhold information from you if it would put you at risk (Code C 3.8A). Ensure that you go through all documents that you have access to. You do not have access to any document marked 'For Police Eyes Only.' You also do not have general access to any report made by the Health Care Professional (HCP) about any consultation with they have had with the juvenile or vulnerable person – see point 5. If you or the CO have any concerns, then follow the CO's guidance. Do not put yourself at unnecessary risk.
3. When going through the custody record be aware of anything that has happened that concerns you. What processes have taken place before you arrived? What are the police saying about the demeanour and behaviour of the juvenile or vulnerable person since arrival at the station? Has a legal advisor been called? Is there an opportunity for pre-charge bail?
4. If you have any concerns or need clarification about anything that you have read in the custody record, speak to the CO. If they are serious concerns, then you should ensure that your comments are noted by the CO and on the custody record.
5. You do not have any general access to the report made by the healthcare professional (HCP) if they have met with the juvenile or otherwise vulnerable person. However, with consent from the juvenile or vulnerable person you can see its contents (Code C Notes for Guidance C 9E). As such, you should always try to go through this document if you can. Check what the HCP thinks about the mental/physical state of the person. Have they either prescribed then any medication or advised the CO that they can take any meds that the person brought with them to the police station? Were they deemed unfit for interview and put into a rest period? Has that period passed? If you do not have permission to see the HCP report, then the CO should advise you of any risks to you.

6. You must be present when the juvenile or vulnerable person is reminded of the ongoing rights by the CO. Do they understand them? Have they been given both verbally and in writing? Has a notice of entitlements been given in writing? Does the juvenile or vulnerable person want to exercise any of their rights?
7. The CO should also explain your role as AA to the vulnerable person and the fact that they can consult privately with you at any time they wish. (C3.18).
8. The need for continuing detention has to be periodically reviewed by a senior officer (not later than after six hours, and then again no later than nine hours after). Your views should be sought if 'available at the time' (Code C 15.3). This does not just mean that you need to be present at the police station. It 'includes being contactable in time to enable them to make representations remotely by telephone or other electronic means or in person by attending the station. Reasonable efforts should be made to give you and the solicitor sufficient notice (Code C 15CA). If you have concerns, such as continued detention being unhelpful or unnecessary, then say so (C15.2A & C15.3). Ensure that the custody record is endorsed with your comments.
9. If police seek to extend detention beyond 24 hours before charge, authority has to be sought from a Superintendent. This can be for up to another twelve hours. Your views, about the need for and suitability of an extension must be sought if 'available at the time'. The police must make reasonable efforts to notify you of the time the decision will be made. You do not need to be present to participate. If you have any comments or concerns, raise them with the Superintendent and ensure they are noted on the custody record.

Meeting the vulnerable person

1. Try to see the person on their own. However, see the guidance above concerning risk assessments and be aware of any local practice in this area. The person may consult privately with you at any time. (C 3.18). In any case you should meet with the juvenile or vulnerable person and their legal advisor before any interview takes place.
2. Ask CO whether you can meet privately with the juvenile or vulnerable person – this should take place in a consultation or interview room and not in a cell/detention room. If you ask the OIC they should check with the CO first.
3. Introduce yourself. Explain that you are not a police officer, employee of the police or affiliated to them. If you are a volunteer it may be helpful to explain that. Describe your role to the person and explain to them that it is not in their interest to talk in any detail to you about the allegation as potentially you could be called to court, if the matter progresses that far, to act as a witness. This is a matter for their legal advisor if they have one. Remember your role must not include giving legal advice and any conversation with the vulnerable person is not subject to legal privilege.
4. If you have to complete a PACE recording form or similar then you must explain the legal basis that allows you to collect their data and the purpose that it will be used for. This should be undertaken a way that the suspect understands.
5. If they have not asked for a legal advisor, then you need to talk to them about the benefits of this. Does the juvenile or vulnerable person understand their right to free legal advice? (C 6.1 - 6.8). If they want a solicitor, then speak to the CO and ask for one to be arranged. If the person knows of a practice that provides legal advice on criminal matters, then that company can be called. A solicitor understands criminal law and the rules of evidence and can advise the client in these areas.

6. Try to help them to understand why it might be in their interest. Do they know: -
 - (a) What questions the police can ask in an interview?
 - (b) When the police can refuse bail? (the legal advisor can speak up for them if this becomes an issue following the interview)
 - (c) What processes the police follow?
 - (d) That if the matter goes to court it is almost always better to have legal advice in the police station?
 - (e) That they do not have to know a criminal law solicitor as the duty system provides independent criminal law practitioners and that these are not 'police solicitors'?
 - (f) That they can speak to a solicitor on the phone initially if they wish?
 - (g) That having a solicitor changes the power dynamic between them and the police?
7. Check how are they feeling. Are they hungry? Are they tired? Have they had any medication that they might need? Do they understand why they have been arrested? (Remember to stop them from talking about the allegation. Using the 'front sheet' of the custody record can be helpful to inform the suspect of what they have been arrested for and what the police are investigating. But tell them not to comment about it to you).
8. Check on reading and writing (as sensitively as possible). Explain you are trying to look after their interests by ensuring that they do not sign something that they do not understand.
9. How have the police treated them since arrest? Do they have complaints? Advise how to make a complaint (in custody, at the front desk of any police station in the force area for up to 12 months after they have left the police station, via the Independent Office for Police Conduct). If appropriate, act on any complaint (C9.2, C12.9) by speaking to the CO.
10. Are they happy for you to act in the role? If not, and for vulnerable persons only, is there a relative/ friend who is readily available, who could be called? (Notes for guidance Code C 1D).
11. As well as using this time to orient the juvenile or vulnerable person and to explain your role and the need for legal advice you should also be making an informal assessment of whether you think that the person is likely to be 'at risk' in an interview. In making this assessment use the time that you have spent with the juvenile or vulnerable person. Are they making sense to you? Are they rational and responsive? Code C Annex G provides guidance about when someone might be at risk in an interview and assessing whether they should be interviewed:
 - (a) how the detainee's physical or mental state might affect their ability to understand the nature and purpose of the interview, to comprehend what is being asked and to appreciate the significance of any answers given and make rational decisions about whether they want to say anything;
 - (b) the extent to which the detainee's replies may be affected by their physical or mental condition rather than representing a rational and accurate explanation of their involvement in the offence;
 - (c) how the nature of the interview, which could include particularly probing questions, might affect the detainee.
12. If you have concerns, get them raised with the CO and added to the custody record. If the matter is unresolved mention your concerns on record in interview.
13. If you believe that there may be some complications in the interview due to the needs of the juvenile or vulnerable person i.e. complex words not being understood, concentration levels deteriorating after a time, then raise and explore these and any potential remedies with the interviewing officers, ideally before the interview itself.

In Interview

1. Be aware of seating positions. Never sit behind the person or set back from the interview. Allow the legal advisor to sit next to the vulnerable person if they wish. Make sure that you can see the vulnerable person at all times and are close enough to offer support if needed. Try not to sit too close to the side of room where the police officers sit.
2. After the recording machines are switched on, everyone in the room has to introduce themselves. Give your name and your role (e.g. "Francis Smith, appropriate adult".)
3. You should be told by the police that your role is, "Not simply to act as an observer and the purpose of your presence is to advise the person being questioned, observe whether the interview is being conducted properly and fairly and to facilitate communication with the person being interviewed" (C11.17). Ensure that this is complied with.
4. At the start of the interview proper the person is cautioned. Do they seem to understand the caution? If not, then the police should ask the vulnerable person to recount it in their own words. Do not involve yourself in explaining the caution to the vulnerable person (C 10.4, C10.5, C10.6, C10.7, C10.8, C10.9), unless you are absolutely certain that you understand it and can explain it simply. Remember that an incomplete explanation could lead to very real problems for the vulnerable person and for potentially for yourself.
5. Police should not attempt to obtain answers or elicit a statement by the use of oppression (C11.5)
6. Generally, the police should not indicate whether a certain course of action would follow if a person answers or refuses to answer a question. However, there are exceptions. (C11.5, C10.9)

Your role is not necessarily a passive one. You might need to intervene if:

- a. You do not think that the vulnerable person understands the question
 - b. The police misunderstand the reply
 - c. Multiple questions are asked in one
 - d. A change from silence/no comment to answering the questions
 - e. The manner of questioning is threatening, discriminatory, leading or seems to have no relation to the allegation under investigation
 - f. If the same question keeps being asked and the person is giving the same answer
 - g. If the person is very emotional, tired or cannot continue the interview for some reason.
7. Never be frightened to ask for, or insist on, a break if the juvenile, vulnerable person or you need it. Only in very rare circumstances can the interview proceed without an appropriate adult.
 8. Insist on appropriate breaks, at least every 120 minutes. More frequently if you feel the person's mental, emotional or physical state warrants it.
 9. The person may be asked to sign any significant statement or silence that they made prior to being interviewed. They may also be asked to sign a copy of the notes of arrest made by the arresting officer. They are under no obligation to sign anything at the police station and they should only sign if the statement is a complete and accurate account.
 10. Questioning should cease when the officers believe that they have enough evidence for successful prosecution, all the questions have been put to the person and they are asked whether there is anything that they would like to clarify or add (C11.6).

Post Interview

1. Does the person need anything whilst they wait for an outcome?
2. Depending on the outcome you may need to countersign a bail sheet, charge sheet or a caution.
3. You will also need to be present if the person is drug tested for certain Class A drugs. Not only to provide support and to check for fairness but also to ensure that questioning does not take place.
4. If the juvenile or vulnerable person is staying at the police station pending court, check: -
 - a. Do they need anything (e.g. clothes, medication, washing materials) that can be brought to the police station by family or the police?
 - b. Do they have the contact number of the solicitors that have represented them at the police station?
 - c. Will they be represented at court?
 - d. Would they like to speak to a family member?
 - e. Are there blankets in the cell?
 - f. Do they know they can have a wash/shower before court and the police have washing materials?
5. If they are leaving, check: -
 - a. Do they have all their property?
 - b. Do they have the contact number of the solicitor's company if needed?
 - c. Do they have the contact number for the OIC (if bailed pending further enquiry)?
 - d. Do they know when their bail date is and where to attend? Make sure that they understand that they must turn up and if there are any conditions what they are and what could happen if they are breached.

Annex E: Vulnerability under PACE

How is vulnerability defined in PACE?

Until July 2018, a person was vulnerable if at any time an officer had any suspicion, or was told in good faith, that a person of any age:

- may have any disorder or disability of mind; or
- because of their mental state or capacity, they may not understand the significance of what is said, of questions or of their replies.

In July 2018, a new definition was introduced. Under Code C 1.13d, a person of any age is 'vulnerable' if, at any time, an officer has reason to suspect that, because of a mental health condition or mental disorder, they:

- may have difficulty understanding or communicating effectively about the full implications for them of any procedures and processes connected with:
 - their arrest and detention
 - their voluntary attendance at a police station or elsewhere for the purpose of a voluntary interview
 - the exercise of their rights and entitlements.
- does not appear to understand the significance of what they are told, of questions they are asked or of their replies:
- appears to be particularly prone to:
 - becoming confused and unclear about their position;
 - providing unreliable, misleading or incriminating information without knowing or wishing to do so;
 - accepting or acting on suggestions from others without consciously knowing or wishing to do so; or
 - readily agreeing to suggestions or proposals without any protest or question.

Code C 1G further explains that, "A person may be vulnerable as a result of having a mental health condition or mental disorder. Because an individual does not have, or is not known to have, any such condition or disorder, does not mean that they are not vulnerable for the purposes of this Code."

The Mental Health Act 1983 section 1 states that: -

- **Mental disorder** means any **disorder** or **disability** of the mind (including learning disability).
- Learning disability means "a state of arrested or incomplete development of the mind which includes significant impairment of intelligence and social functioning."
- For someone with learning disability to be admitted to hospital (under section 3 of the Act) against their will, their disability must be "associated with abnormally aggressive or seriously irresponsible conduct".

How do police officer's decide who is vulnerable as defined by PACE?

PACE Code C (1.4) states that if at any time an officer **has any reason to suspect** that a person **of any age may be vulnerable**, in the absence of clear evidence to dispel that suspicion, that person shall be treated as such for the purposes of the Code. It goes on to say that:

- In trying to determine whether someone is 'vulnerable' the custody officer (for someone held in detention) or the investigating officer (for a voluntary interview), are responsible for: making reasonable enquiries to ascertain what information is available that is relevant to any of the factors.....as indicating that the person may be vulnerable might apply
- a record shall be made describing whether any of those factors appear to apply and provide any reason to suspect that the person may be vulnerable or (as the case may be) may not be vulnerable; and
- the record mentioned.....shall be made available to be taken into account by police officers, police staff and any others who, in accordance with the provisions of this or any other Code, are required or entitled to communicate with the person in question. This would include any solicitor, appropriate adult...

Code G 1G states that, "It is therefore important that the custody officer in the case of a detained person or the officer investigating the offence in the case of a person who has not been arrested or detained, as appropriate, consideration should be on a case by case basis, whether any of the factors described in paragraph 1.13(d) might apply to the person in question. In doing so, the officer must take into account the particular circumstances of the individual and how the nature of the investigation might affect them."

What information might be available to a police officer?

Code C 1GA gives examples of relevant information that may be available including:

- the behaviour of the adult or juvenile;
- the mental health and capacity of the adult or juvenile;
- what the adult or juvenile says about themselves;
- information from relatives and friends of the adult or juvenile;
- information from police officers and staff and from police records;
- information from health and social care (including liaison and diversion services) and other professionals who know, or have had previous contact with, the individual and may be able to contribute to assessing their need for help and support from an appropriate adult. This includes contacts and assessments arranged by the police or at the request of the individual or (as applicable) their appropriate adult or solicitor.

Further information on the changes to the PACE Codes in relation to vulnerability is provided in the NAAN PACE Update July 2018. This is available from the NAAN website.

Annex F: The Maxwell Confait Case

The catalyst for the AA role

In 1972 in Catford, South East London, Maxwell Confait was found murdered in his flat following an arson. This case was one of the drivers behind Lord Scarman's report following the 1980s Brixton riots. This is generally accepted as the catalyst for the creation of the Police and Criminal Evidence Act 1984 (PACE) and the role of the appropriate adult.

It is not necessary for anyone acting in the role to have intimate knowledge of the investigation and ultimately what went wrong. However, some basic details should provide an indication of why the role was born, and hence some of what the appropriate adult is there to protect against.

The case

About one week after the arson and the death of Maxwell Confait, three young men; Colin Lattimore, Ronnie Leighton and Ahmet Salih, were arrested, interviewed and ultimately charged with both the murder and the associated arson.

During time spent at the police station, Lattimore had apparently provided the police with intimate descriptions about how the fire was started, details of who killed Maxwell Confait and what had taken place afterwards. This implicated all three. This was all done in the presence of a police officer who took notes. No other person was present at that time although his parents and Ronnie Leightons' mother did later attend the station. The parents were told that they could enter the interview room but could not speak or interrupt the proceedings in any way. They were in time to hear their sons recite their confessions and see them sign their statements. The parents were then asked to sign to the effect that they were happy in which the way the statements had been taken. They did even though they had not witnessed anything that had previously happened.

Mrs Leighton later explained – "I can't really explain it; they just say 'sign'. I mean when you've got a room full of detectives and you know they look at you and they say 'sign', you naturally sign. I mean I was just as scared as Ronnie was."

However, difficulties arose. Colin Lattimore who had provided what appeared to be a compelling account of the events of the night in question would today be described as having a severe learning disability. He was highly suggestible and compliant. Ronnie Leighton would be described as having a borderline learning disability. Ahmet Salih had difficulty in understanding English.

All three alleged intimidation by the police. This took the form of being interviewed at extreme length and being told that they could not leave the police station until they signed the 'confessions'. One alleged that the police had assaulted him. None were told that they could take legal advice and consequently they had no legal protection during their stay at the station.

For completion, the cases against the three came to court. Central to the prosecution case was the time of the death which, allied to the confessions, would have put all three at the scene. Aside from the uncertainties about the reliability of the confessions, ascertaining the time of death caused problems as it became clear that correct procedures had not been followed by the police surgeon who attended the crime scene. This led to prosecution experts being unable to agree as to what the correct time of death was and the very unusual scene of the prosecution trying to discredit its own evidence. As a result, the only evidence that they could 'rely' on were the police station confessions.

Indeed, much later in the appeal, the uncertainties around the time of death became critical in the successful acquittal of the three. When the time was eventually deduced one of the accused had a rock solid alibi as to where he was and therefore by association all three had. However, before that, all were convicted and served time in prisons/borstals.

Sometime later, following public outcry against the convictions, a campaign was mounted to have the cases re-examined. Eventually this proved successful in getting new evidence to be placed before the Home Secretary. Eventually the convictions were quashed in the Court of Appeal.

An enquiry was set up to look into the circumstances around the investigation of the crime. This was chaired by a Lord Fisher. In brief his findings were:

- (a) No reliable transcripts of interviews (no one was sure what had been said and by whom)
- (b) Ignorance around, and breaches of, the Judges' Rules by police officers (these rules were the forerunner to the Police and Criminal Evidence Act 1984)
- (c) No legal protection offered to the young men nor received by them
- (d) Over reliance on unsupported confessions.

This ultimately led to the development of the Police and Criminal Evidence Act 1984. A landmark piece of legislation, PACE provided a framework for the police in investigating crime and laid out the rights of the public, vulnerable or otherwise, if they were suspected of involvement of an offence. The term 'appropriate adult' was first coined and the role described in the PACE Codes of Practice.

Annex G: Legislative definition of terrorism

The Terrorism Act 2000 defines terrorism as:

(1) In this Act “terrorism” means the use or threat of action where—

- (a) the action falls within subsection (2),
- (b) the use or threat is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public, and
- (c) the use or threat is made for the purpose of advancing a political, religious, racial or ideological cause.

(2) Action falls within this subsection if it —

- (a) involves serious violence against a person,
- (b) involves serious damage to property,
- (c) endangers a person’s life, other than that of the person committing the action,
- (d) creates a serious risk to the health or safety of the public or a section of the public, or
- (e) is designed seriously to interfere with or seriously to disrupt an electronic system.

(3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied.

(4) In this section —

- (a) “action” includes action outside the United Kingdom,
- (b) a reference to any person or to property is a reference to any person, or to property, wherever situated,
- (c) a reference to the public includes a reference to the public of a country other than the United Kingdom, and
- (d) “the government” means the government of the United Kingdom, of a Part of the United Kingdom or of a country other than the United Kingdom.

(5) In this Act a reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a proscribed organisation.

Annex H: Legal status of PACE and the Codes of Practice

The following information was provided by the Home Office on 7th February 2018

The statutory provisions of the Police and Criminal Evidence Act 1984 (PACE) (which being an Act of Parliament is primary legislation) require the Home Secretary to issue and to revise the Codes of Practice. Most revisions require a prior statutory consultation with specified stakeholder groups and for the consultation, full drafts of the proposed revisions to any one or more of the Codes must be prepared and circulated. The groups consulted include representatives from the police, the legal profession and police and crime commissioners. The consultation period may vary but usually lasts at least six weeks. When the responses have been analysed, further changes to the drafts will be made if necessary and appropriate to produce a final revised version of the Code(s) in question.

A revised Code comes into effect only after it has been laid before Parliament and an Order to bring it into force is made. The Order is normally made in Committee under the affirmative procedure. This requires a debate in, and approval by, both houses of Parliament. This Order is a Statutory Instrument (SI). It is not an Act of Parliament but is secondary legislation. It simply states the date when the revised Code as laid before Parliament comes into effect and the revised Code itself is not part of the SI.

The statutory provisions of PACE set out the range of core powers, procedures and requirements which enable the police to prevent, detect and investigate crime. These do not create any offences. Statutory provisions in PACE provide that a breach of any provisions of a Code does not give rise to any criminal or civil proceedings but the provisions of the Codes are admissible in evidence in criminal and civil proceedings if they are relevant any question arising in those proceedings, for example, to determine whether a detainee's claim for compensation from the police for their treatment should be allowed or whether evidence obtained by questioning should be excluded.

Each Code, apart from Codes B and F, includes one or more Annexes and the provisions of the Codes include the Annexes for example, in Code C, Annex E comprises a summary of provisions relating to people who are mentally vulnerable. The Notes for Guidance are not provisions of the Codes but provide guidance about the application of the provisions rather than rules. However, they are still important and courts may refer to them when deciding whether there has been a breach of the Codes.

For detainees, overall statutory responsibility for ensuring compliance with the Codes is assigned to the custody officer. This responsibility is only transferred when, for example, a detainee is handed into the custody of an officer investigating the offence for the purpose of an interview. In these cases, the officer to whom the detainee is transferred must, on returning the detainee, report to the custody officer how they complied with the Codes.

The following article was published by the journal Criminal Law and Justice on 30th November 2012. It is available on line at <https://www.criminallawandjustice.co.uk/features/If-PACE-Codes-Are-Not-Law-Why-Do-They-Have-Be-Followed>

If the PACE Codes Are Not Law, Why Do They Have to Be Followed?

Police cannot ignore the PACE Codes, writes Michael Zander QC (Emeritus Professor of Law, LSE)

I am told that there is a police force that takes the view that recent changes to the PACE Codes not to its liking can be ignored because the Codes are not “law”. It is correct that the Codes are not law. It is not correct that the changes can be ignored.

The PACE system draws a distinction between the Act which is law, the Codes of Practice which are not law and the Notes for Guidance which technically are not even part of the Codes. There is therefore a hierarchy in the jurisprudential status of the three kinds of text.

That provisions in the Act itself are law and therefore have to be followed is obvious. But, if one looks for the consequence of being in breach of the Act, one sees first that it is not a criminal offence. Equally, so far as I know, there has never been a case in which damages have been awarded against the police in a civil case for a breach of PACE. The only possible formal sanction against the police for a breach of the Act is disciplinary action against the officer responsible and such proceedings are as rare as hen’s teeth. So, whilst everyone will agree that the Act is law and must be followed, there is little in the way of obvious sanctions.

What Then of the Codes of Practice?

The Philips Royal Commission on Criminal Procedure, which launched what became the PACE project, recommended that the rules supplementary to the new proposed legislation – to regulate the facilities to be provided for, and treatment to be accorded to suspects and the rules governing the conduct of interviews – should be cast in the form of a statutory instrument. “This should be made by the Home Secretary with consultation as appropriate, and subject to the approval of Parliament by affirmative resolution” (Philips Report, para.4.116).

Affirmative resolution means that there has to be actual approval in both Houses of Parliament. It cannot go through without a debate, as happens with most statutory instruments under what is known as the negative resolution procedure.

Statutory instruments are higher in the hierarchy of norms than Codes of Practice. The Home Office chose, however, to proceed instead with Codes of Practice. They would be issued by the Home Office after consultation and would have to be affirmatively approved by both Houses of Parliament, like important statutory instruments.

The reason given by the Home Office at the time for preferring the Code of Practice format was that the objective was to have a comprehensive guide for police officers and that one couldn’t have a statutory instrument that repeated parts of the primary legislation in different language. Also a Code of Practice could be couched in less formal language than a statutory instrument.

Section 67 of the Act deals with the question of the effect of a breach of the Codes. Subs.(10) states that a breach by a police officer cannot give rise to any criminal or civil proceedings. When the Act was first passed, subs.(8) provided that any breach of a Code made the officer liable to disciplinary proceedings. The police were extremely apprehensive about this provision but, when a few years later the Runciman Royal Commission on Criminal Justice undertook research to find out how often

such proceedings had been brought, it turned out that they were extremely rare – in light of which, shortly thereafter, subs.(8) was repealed.

So for breaches of the Codes, just as for breaches of the Act, there is no threat of either criminal or civil proceedings and disciplinary proceedings are very rare.

The only visible sanction provided in the Act is in s.67(11), which states that the Codes are admissible in evidence and that “if any provision of such a Code appears to the court or tribunal conducting the proceedings to be relevant to any question arising in the proceedings, it shall be taken into account in determining that question”.

At the time it didn’t seem that that would be much of a sanction. The Judges had shown themselves to be woefully lax in giving meaningful effect to the Judges’ Rules. The experts, including the present writer, predicted that they would probably be equally supine in response to the new Codes of Practice.

But the experts were wrong. Whilst the Judges have frequently admitted evidence obtained in breach of the Codes or upheld convictions based on such evidence, they have frequently refused to admit the evidence or have quashed convictions in such cases. A classic case was *Canale* [1990] 2 All ER 187. *Canale* had been sentenced to six years’ imprisonment for conspiracy to rob. The conviction was quashed by the Court of Appeal on the ground that there had been “a flagrant, deliberate and cynical” breach by experienced police officers of the Code rules regarding contemporaneous recording of interviews.

Convictions have been quashed where the defendant was not told required information, where he was not given access to a solicitor, where he wasn’t cautioned or wasn’t provided with an appropriate adult and where interview formalities or identification procedures were not complied with. Whether the court will condone a breach of the Codes or penalize it by excluding evidence or quashing the conviction is generally unpredictable. But there can be no doubt that s.67(11) is a real sanction with real effects in actual cases.

In the more than 25 years since PACE came into effect there have been literally hundreds of cases in which the PACE Codes have been considered by the courts. A Judge would be exceedingly surprised to hear it suggested that they should not be considered “because they are not law”. I doubt whether the point has ever been taken. In light of s.67(11) it is obviously untenable. True, the Codes are not law but they are rules that need to be followed and, if they are not followed, consequences may follow in the case before the court.

The impact and status of the Codes however are based not only, and I would say not even primarily, on s.67(11). They are based even more on the acceptance by the police right from the start that the Codes represent not “best practice” – meaning rules that should be followed by other people – but the ordinary, routine way of doing business. I was involved in some of the training of police forces in the lead up to the introduction of PACE in 1985. I was struck at the time by the difference in attitude, especially by the crucial middle management ranks – superintendents and inspectors – to the then impending new regime, as compared with their attitude under the old regime to the Judges’ Rules.

It was accepted by everyone from the outset that the PACE Codes introduced a wholly new approach. These rules were not optional.

The Notes for Guidance are not mentioned in the Act. The first version of Code C had this statement: “The Notes for Guidance included in this and the other Codes are not provisions of this Code, but are guidance to police officers and others about its application and interpretation” (para.1.3). For some

reason, that helpful statement no longer appears in Code C. It was dropped in the 2003 revision and replaced by the less helpful statement: "The provisions of this Code ... do not include the Notes for Guidance."

Does that mean that the Notes for Guidance can be ignored? Absolutely not. The Notes for Guidance, like the Codes, have frequently been referred to by the courts when considering whether there has been a breach of the Code. They are for the guidance of police officers "and others", which means above all the Judges.

In other words, the Notes for Guidance might as well be said to be included in the Codes because in practice they are so regarded and so treated. To say that they are not included in the Codes is misleading.

Are the recent changes to Code C and Code G therefore law? The answer to this question is not fundamentally different from the question whether a recent decision of the courts is law. A decision of a court on a point of law is binding on the parties but it only represents the law if it would be followed in subsequent cases. Sometimes a court gives a decision which lawyers say is "wrong". What they mean is that they believe that it won't be followed in later cases. The proof of the pudding lies in the eating. Exactly the same is the case with the Codes.

The recent changes to Code C and Code G represent what is now officially considered to be the right approach to the topics concerned. The changes have been subject to elaborate consultation. They have been approved by both Houses of Parliament. A police force that believes any of the new rules to be misconceived is entitled to say so. It is not entitled to say that it will ignore the rules. Until changed they are the rules.