[Remote legal representation](https://www.appropriateadult.org.uk/information/knowledgebase/ikaan/coronavirus-covid-19/remote-legal-representation)

[What is the Joint Interim Interview Protocol (JIIP)?](https://www.appropriateadult.org.uk/)

In response to the Covid-19 pandemic, the Crown Prosecution Service, National Police Chiefs Council, Law Society and other legal professional bodies have agreed a [Joint Interim Interview Protocol](https://www.cps.gov.uk/legal-guidance/coronavirus-interview-protocol-between-national-police-chiefs-council-crown) (JIIP).

It provides guidance to police on determining the best way to progress an investigation in different circumstances. This includes:

* determining whether an interview is necessary at the time
* conducting an interview where the police and/or legal representative use video or audio links (rather than physically attending)
* using written statements under caution to replace the interview.

The JIIP is a temporary framework that these organisations agree is reasonable during the pandemic.

It is subject to monthly review and possible change. The current version is version 3.

[What is the legal status of the Joint Interim Interview Protocol (JIIP)?](https://www.appropriateadult.org.uk/)

The [Joint Interim Interview Protocol](https://www.appropriateadult.org.uk/information/knowledgebase/ikaan/coronavirus-covid-19/remote-legal-representation/what-is-the-joint-interim-interview-protocol-jiip) (JIIP) paragraph 7 states:

*“The signatories to this Protocol accept that remote interviews by video and audio link are not within the current letter of the Code of Practice, but in the present circumstances of the Coronavirus pandemic they are within the spirit of recent amendments to criminal procedure, law and evidence in the Coronavirus Act 2020”.*

The JIIP has not changed the law. Yet, there have been no changes to the Police and Criminal Evidence Act 1984 or PACE Codes of Practice, in response to Covid-19. There are elements of the JIIP, such as remote legal representation, that are neither explicitly supported nor contradicted by PACE Code C.

Instead, the JIIP represents the way that the signatories expect police investigations to operate during the pandemic. Given who those co-signatories are, the JIIP has significant weight. If police operated outside of the JIIP in a way which was not supported by PACE, they would be taking additional risk.

The Home Office is developing proposed changes to the PACE Codes in line with the JIIP. Any changes will be subject to public consultation and Parliamentary approval before they are made.

[Does this mean legal representatives will not attend police custody?](https://www.appropriateadult.org.uk/)

The [JIIP](https://www.appropriateadult.org.uk/information/knowledgebase/ikaan/coronavirus-covid-19/remote-legal-representation/what-is-the-joint-interim-interview-protocol-jiip) does not prevent legal representatives from attending police custody (or a voluntary interview).

In fact, it does not *require* legal representatives to do anything. It is a framework for police to determine how they would like to proceed with their investigations.

However, in practice, it is reasonable to assume that the default position for legal representatives will be to not attend custody in most cases. Paragraph 10 of the JIIP states:

*“10. Legal advice for suspects should take place whenever possible over the telephone (for legal advice) and by video link for interviews with suspects”.*

The Legal Aid Agency, which funds police station legal advice, has been allowing legal firms extra flexibility during the coronavirus crisis. For the period of the pandemic, they have been [treating remote advice at interview as an “attendance”](https://www.gov.uk/guidance/coronavirus-covid-19-remote-working#claiming-police-station-attendance-fee). This allows legal representatives to still claim their fee without travelling to the police station.

It is up to individual legal companies and practitioners as to whether they attend. One may wish to do so routinely, while another prefers to do so rarely. Some will have a system of exceptions based on factors such as:

* company policy
* individual attitude
* steps taken by police to ensure health and safety
* the nature/seriousness of the allegation
* the needs of the suspect.

However, the key phrase in paragraph 10 of the JIIP is “whenever possible”.

Although the Legal Aid Agency (LAA) is not a signatory to it, it has publicly [confirmed that it supports the JIIP](https://www.gov.uk/guidance/coronavirus-covid-19-remote-working#claiming-police-station-attendance-fee). The LAA accepts remote legal advice as “attendance” only if all parties have agreed (i.e. consented) to it.  As per the JIPP, this includes the consent of AAs.

AAs have an important role in [deciding whether remote legal advice is appropriate](https://www.appropriateadult.org.uk/information/knowledgebase/ikaan/coronavirus-covid-19/remote-legal-representation/which-procedures-require-aa-consent) for the person they are supporting.

[Does the Joint Interim Interview Protocol (JIIP) change the role of appropriate adults?](https://www.appropriateadult.org.uk/)

AAs retain all their existing functions and powers under the PACE Act and Codes of Practice.

PACE Code C explicitly requires the physical presence of an AA for interviews of a child or vulnerable person. The only exception is an urgent interview as defined under Code C 11.18. These are very rare and require authorisation from a superintendent or higher rank.

If the police conduct an interview without an AA being physically present this would be a very serious breach of PACE. The [JIIP (version 2)](https://www.appropriateadult.org.uk/information/knowledgebase/ikaan/coronavirus-covid-19/remote-legal-representation/what-is-the-joint-interim-interview-protocol-jiip) makes this PACE requirement, very clear, stating:

*“In the case of children and vulnerable adults, the physical presence of an appropriate adult is always required for interview, save for urgent interviews in accordance with Code C 11.18”*(JIIP para 6)

[The JIIP](https://www.appropriateadult.org.uk/information/knowledgebase/ikaan/coronavirus-covid-19/remote-legal-representation/what-is-the-joint-interim-interview-protocol-jiip) also creates additional responsibilities for AAs as a safeguard to ensure suspects’ rights and effective participation. This includes requirements for police to:

* always have an AA physically present for interviews under the JIIP\*
* secure the consent/agreement of AAs for various procedures under the JIIP

Version 1 of the JIIP did not provide much information about how children, vulnerable adults or appropriate adults fitted into the temporary framework. It is possible that AAs will encounter people who are not aware of the revised version. They should be alerted to the [latest version](https://www.cps.gov.uk/legal-guidance/coronavirus-interview-protocol-between-national-police-chiefs-council-crown) – dated 27th April 2020.

[Why doesn’t legal representative always have to be physically present for interviews like AAs? AAs are a procedural safeguard applied to the police when a person in custody or voluntary interview is a child…](https://www.appropriateadult.org.uk/)

[When can police conduct an interview with remote legal representation?](https://www.appropriateadult.org.uk/)

PACE Code C explicitly provides for the use of “live-link” for remote participation in interviews by *interviewers* and *interpreters* only. It does not currently include any provisions regarding remote participation by legal representatives. The [Joint Interim Interview Protocol (JIIP)](https://www.appropriateadult.org.uk/information/knowledgebase/ikaan/coronavirus-covid-19/remote-legal-representation/what-is-the-joint-interim-interview-protocol-jiip) paragraph 7 states:

*“The signatories to this Protocol accept that remote interviews by video and audio link are not within the current letter of the Code of Practice, but in the present circumstances of the Coronavirus pandemic they are within the spirit of recent amendments to criminal procedure, law and evidence in the Coronavirus Act 2020”.*

The JIIP sets out several conditions before remote legal representation in interview can be used:

* It provides secure and accurate communication
* Individual suspect’s communication will not be adversely affected
* Consent is secured from the suspect and their AA.

It provides secure and accurate communication

Under the JIIP, the custody officer (or interviewing officer for voluntary interviews) must first be satisfied that any medium used allows for secure and accurate communication. This is something that in reality is determined by the chief officer of the force.

The individual suspect’s communication will not be adversely affected

Police must carry out the same case-by-case assessments as when interviewers use “live link” under PACE Code C. Paragraph 8 of the JIIP states:

*“Special care should be taken in deciding whether, and how, an interview of a child or vulnerable adult should proceed. Where legal representation in interview is to be provided remotely the custody officer (or interviewing officer when the suspect is not in custody) should comply with the principles contained in PACE Code C 12.9A.This includes considering, on a case by case basis, whether a suspect’s ability to communicate confidently and effectively for the purpose of the interview is likely to be adversely affected, undermined or limited without the physical presence of a legal advisor. This assessment must be made in consultation with the legal advisor and appropriate adult (where one is required).”*

Code C 12.9A is a relatively new provision in so may be unfamiliar to some professionals. It requires that on each occasion, the custody officer’s decision must take account of:

* whether the suspect’s ability to communicate confidently and effectively is likely to be adversely affected, undermined or limited without the physical presence of the legal advisor
* that a suspect for whom an AA is required may be more likely to be adversely affected
* the age, gender and vulnerability of the suspect
* the nature and circumstances of the offence and the investigation
* the impact on the suspect of carrying out the interview by this means.

The JIIP requires that they must consult the AA and legal advisor as part of that assessment.

Consent is secured from suspect and AA

Finally, the police must secure the informed consent of the suspect and the AA to proceed with remote legal representation.

Code C 12.9A means that, if the custody officer is satisfied that remote legal representation presents no risks, they must do the following for the suspect, legal representative and AA:

* Inform them of their belief that it does not present a risk
* Explain and demonstrate the operation of the hardware/software to them
* Advise them of the chief officer’s obligations concerning the security of live-link communications
* Ask them if they wish to make representations that the hardware/software should not be used
* Ask them if they require more information about the operation of the arrangement
* Tell them that at any time that the hardware/software is in use, they may make representations to the custody officer or the interviewer that its operation should cease and that the physical presence of the legal advisor should be arranged.

Under the JIIP, if either the suspect or AA do not consent, an interview with remote legal representation may not proceed.

Note:*In normal circumstances (i.e. under PACE), AAs have no role in giving consent for PACE procedures themselves, only in making sure that suspects are informed before they give consent. Police must secure consent from the suspect, a parent/guardian, or a combination of both (depending on the age of the suspect). The JIIP does not mention the involvement of parents/guardians in relation to consent. However, NAAN believes that the proposed revisions to PACE Code C (in response to the pandemic) may make this a requirement. Therefore, if the AA is not a parent/guardian, police might be well advised to seek the consent of parents for children, in addition to that of the child and the AA*

[Which procedures require AA consent?](https://www.appropriateadult.org.uk/)

In normal circumstances:

* The suspect’s consent is not required for interviews (and there would be no remote legal advice)
* Where consent is required under PACE, it must be provided either by the suspect, by a parent/guardian, or by a combination of both (depending on the age of the suspect).
* AAs must ensure police secure consent correctly, ensuring that suspects are fully informed before they give consent.
* The consent of an AA is not required for any PACE procedures

Under [the JIIP,](https://www.appropriateadult.org.uk/information/knowledgebase/ikaan/coronavirus-covid-19/remote-legal-representation/what-is-the-joint-interim-interview-protocol-jiip) for the following three procedures, the police must secure:

* the suspect’s *informed* consent (the AA must ensure the person is informed); and
* the AA’s consent (the AA must decide whether *they* wish to give or withhold consent).

Remote support by legal representatives

Where the suspect has legal advice, the JIIP advises police that they can conduct an interview with the legal representative providing remote support by video to the suspect. However, this cannot occur unless both the suspect and the AA have given their consent.

Use of audio link by legal representatives

Where it is not possible for a legal representative to provide support during an interview using a video link, the JIIP advises police that legal support can be provided via audio link only. However, this cannot occur unless both the suspect and the AA have given their consent. Consent must be endorsed on the custody record and the interview should be visually recorded.

Use of written statements under caution

Under the JIIP, in some circumstances, the interview may be replaced by enabling the suspect to provide a written statement under caution. However, this cannot occur without the agreement of both the legal representative and the AA. The JIIP does not mention the consent of the suspect, but in practice this is implied by the fact that they will need to provide it.

[How should AAs decide whether to consent to remote legal representation in interview?](https://www.appropriateadult.org.uk/)

Treat suspect consent and AA consent as separate matters

When the AA is asked to consent, it is likely that others (i.e. police, lawyers, suspects) will have already indicated they wish to proceed in this way. AAs may need to be assertive to avoid being ‘bounced’ into a decision.

The consent of the AA is an important safeguard. It is separate from checking whether the suspect has given informed consent. If a suspect does give informed consent, this does not mean that the AA must give their consent.

It is the responsibility of the AA to ensure that the person they are supporting could participate effectively in any interview with remote legal representation and is not disadvantaged as a result. This includes ensuring that there is effective two-way communication and that their right to say nothing is respected.

Because this is an emergency approach, there is no specific research in relation to the risks of remote legal representation in police interviews. There is some relevant evidence about the risks of remote interactions in virtual courts and this is summarised in the article [‘How might a suspect be disadvantaged by remote legal advice?](https://www.appropriateadult.org.uk/information/knowledgebase/ikaan/coronavirus-covid-19/remote-legal-representation/how-might-a-suspect-be-disadvantaged-by-remote-legal-advice)’. However, AAs are not expected to have clinical or specialist knowledge about the risks of remote legal advice for specific individuals or conditions.

AAs should focus on the outcome of safeguarding rights, entitlements, and welfare. An effective way to do this is to ensure that the requirements placed on police, and the rights provided, by [the JIIP](https://www.appropriateadult.org.uk/information/knowledgebase/ikaan/coronavirus-covid-19/remote-legal-representation/what-is-the-joint-interim-interview-protocol-jiip) and Code C are followed.

Hold a private consultation

A private consultation in person is critical to the effectiveness of the AA. Spending time with a person places the AA in a strong position to understand their needs and explain them to police and legal representatives.

In addition to using private consultations to ensure the person is fully informed when they decide to consent, they can also be used to inform the AA’s own decision.

It is an opportunity to spend time with the person, to ask about and assess (non-clinically) their needs. These will vary significantly. AAs should approach these conversations by exploring any issues that may arise due to the use of video conferencing software. Whilst most people will have an excellent insight into their needs, AAs may want to offer their own thoughts. Especially if the suspect is well known to them. For instance, they may not be fully aware of how their needs under normal circumstances might translate into the pressure of a police interview.

If the AA initially provided remote support with rights and entitlements at the point of booking in, this provides a point of comparison to judge how effectively they communicate remotely and in person.

The private consultation is also an opportunity to discuss how the person would like to be supported by the AA during the interview. This would include discussing how the person will communicate issues they may have and what they should expect to see the AA do in different circumstances.

A private consultation is not a ‘one shot deal’. Suspects have a right to consult privately with their AA at any time (PACE Code C 3.15, 3.21B). If an AA decides not to consent to remote legal representation, a private consultation can be used to sensitively explain that decision – especially where the person has provided their own consent.

Have an early discussion with the legal representative

Ultimately, the requirement for consent provides AAs with a veto on remote legal representation – one which technically requires no justification. This has the potential to create tension, even conflict, between AAs and legal representatives.

The working relationship between the AA and legal representative is an important factor in effectively safeguarding the interests of child or vulnerable adult. It is therefore strongly recommended that AAs make every effort to engage constructively with legal representatives at the earliest possible time. The ideal outcome is a well-informed consensus that acts in the interest of the child or vulnerable adult.

The physical presence of the AA will put them in a strong position to identify a person’s needs. If the AA has concerns, it is best to raise these with the legal representative before the police formally seek consent. AAs can ask to speak with the legal advisor assigned to the case. Their details will be held as part of the custody record (if the suspect is under arrest). For voluntary interviews, the interviewing officer should have them.

It may be helpful if AAs prepare what they are going to say beforehand, setting out the points they wish to raise.

When speaking with the legal representative, the AA should explain that they understand that they will not be physically attending. The legal representative will have reasons why they have come to this decision. For example, they may have a long history of supporting a person as an ‘own client’ and consequently have significant insight into the person’s needs. The AA should listen to any reasons and be prepared to respond to them.

AAs should explain any concerns they have about remote representation, focusing on the impact on the risks in interview. It may be helpful to consider the risks set out in Code C 1.13(d). This can be supported by information gathered from:

* private consultations between the person and their AA
* the custody record
* L&D (England) or CJLD (Wales) assessments.

The legal representative may not have been previously informed of the AAs concerns and additional information. Sharing this early may quickly lead to the legal representative agreeing to attend physically.

If the legal representative does not believe that their physical attendance is necessary, the AA should factor this into their wider considerations. The weight given to this few will depend on the reasons given, the circumstances and needs of the person.

AAs are advised to thank legal representative for taking the time to speak with them, but not feel pressured into deciding on the call. Similarly, they should not feel pressured by the police into a deciding the moment they are off the phone.

Ensure robust case by case assessment

The quality of the case by case consideration is very important. Paragraph 8 of [the JIIP](https://www.appropriateadult.org.uk/information/knowledgebase/ikaan/coronavirus-covid-19/remote-legal-representation/what-is-the-joint-interim-interview-protocol-jiip) states:

*“Special care should be taken in deciding whether, and how, an interview of a child or vulnerable adult should proceed. Where legal representation in interview is to be provided remotely the custody officer (or interviewing officer when the suspect is not in custody) should comply with the principles contained in PACE Code C 12.9A.This includes considering, on a case by case basis, whether a suspect’s ability to communicate confidently and effectively for the purpose of the interview is likely to be adversely affected, undermined or limited without the physical presence of a legal advisor. This assessment must be made in consultation with the legal advisor and appropriate adult (where one is required).”*

Police are not clinicians and they are very unlikely to have been provided with relevant training to make these considerations. However, they likely have access to services with relevant expertise in mental vulnerability and communication:

* England: Liaison and Diversion (L&D)
* Wales: Criminal justice liaison and diversion (CJLD)

These services are designed to provide assessments of vulnerability and provide justice decision makers (custody officers in this case) with information to make better decisions.

These services are usually based in police custody. However, during the pandemic they are likely to be provided remotely. As a result, it may be that police are not aware that they are available. They are unlikely to operate 24/7 so AAs should find out the operational hours of their local service.

When deciding whether to give consent, an AA should consider the following questions:

* Have the police complied with paragraph 8 of the JIIP and carried out a full assessment as described in PACE Code C 12.9A?
* If within operational hours, have the police asked Liaison and Diversion to assess the person’s vulnerability and needs?
* Have Liaison and Diversion been asked to specifically consider how the person might cope with remote legal representation?
* Have Liaison and Diversion indicated that a remote interview may present risks to the person?
* Have all considerations/assessments taken account of whether the legal representative will be on video link or audio link only?
* Will the police share both their conclusions and the evidence behind them?

If the police do not take ‘special care’ in considering the individual person in the context of the specific circumstances, following the requirements of JIIP paragraph 8 and Code C 12.9A, then the AA has clear grounds to withhold their consent.

Request a demonstration

When determining whether to consent, AAs will need to understand:

* How robust is the technology?
* Is the software stable?
* Can the legal representative clearly hear and see what is being said in the room?
* Are the AA and the suspect able to clearly hear and see the legal representative?

Before consent is sought, ask whether the arrangement can be demonstrated to you and the suspect. The requirement in the JIIP for police to follow Code C 12.9A means that, if the custody officer is satisfied that remote legal representation presents no risks, they are expected to:

* explain and demonstrate the operation of the live link to them
* advise them of the chief officer’s obligations concerning the security of live-link communications
* ask them if they require more information about the operation of the arrangements

This will clearly not be necessary for every case an AA undertakes as they will become familiar with the system. However, the AA should ensure that they use this provision to ensure they have a full understanding of what the arrangements would entail.

If an interpreter, including someone who uses sign language, is in use then they should be included in any demonstration.

Consider provisional consent

There may be situations in which the AA is content to give consent but remains concerned that risks may only become apparent once the interview begins.

The JIIP does not explicitly cover a situation in which either the suspect or AA give consent but later wish to withdraw it. This might occur if, during an interview, it becomes apparent that a suspect is not able to participate effectively or is otherwise at risk. However, it does reference PACE Code C 12.9A which includes the following provisions:

(c) the custody officer must tell the suspect, AA and solicitor that *“at any time live link is in use, they may make representations to the custody officer or the interviewer that its operation should cease and that physical presence should be arranged”.*

(d)(i) states that, *“If representations are made that a live-link should not be used to carry out the interview, or that at any time it is in use, its operation should cease and the physical presence of the interviewer arranged.”*

Under 12.9A, in the case of an interview where only the interviewers are remote, the interview could continue with authorisation from a senior officer. However, this does not currently apply to remote legal representation.

AAs should discuss this with the custody officer and interviewing officers in advance of the interview. AAs should consider recording verbally the basis of their consent at the start of the interview recording. This will ensure that everyone (including a future court) is aware.

For example, they may say, “I have consented to [suspect’s name] being represented remotely by his legal advisor on the basis that officers have agreed that this can be withdrawn at any time if I have concerns during the interview”.

[What is informed consent?](https://www.appropriateadult.org.uk/)

[The JIIP](https://www.appropriateadult.org.uk/information/knowledgebase/ikaan/coronavirus-covid-19/remote-legal-representation/what-is-the-joint-interim-interview-protocol-jiip) requires that suspects must have been “fully informed and advised” before they are asked to consent to remote legal advice. This means that they should have been informed of:

* what it involves
* any risks that it may present to them
* the alternatives that exist (e.g. physical attendance)
* their rights to influence which approach is taken.

*AAs may not provide a suspect with legal advice. However, AAs may provide advice about the impact of remote legal representation.  Their role (as defined by PACE Code C 1.7A) explicitly includes to:*

* *advise suspects when they are given or asked to provide information or participate in any procedure*
* *help them to understand their rights*
* *ensure that their rights are protected and respected and inform an inspector (or higher) if they are not.*

*AAs should ensure that the suspect is fully informed. This can be achieved by the police or legal representative or by the AA themselves.*

*It is likely that the person will have already had a consultation with their legal representative, during which the process will have been explained. In any case, the AA should ensure that the person understands the information they have been provided with. Just as with the caution before interview, this will require the asking of questions. For example, the suspect could be asked:*

* *Where would your lawyer be during the interview?*
* *Would you be able to see/hear your lawyer during the interview?*
* *How would you tell your lawyer how you are feeling?*
* *What would you do if you needed to speak to your lawyer privately?*
* *Can you have a lawyer here with you if you prefer?*

*If the suspect can answer relevant questions, then the AA can be confident that any consent is informed. If a suspect does give informed consent, this does not mean that the AA must give their consent. If a suspect does not give consent and wishes to have their legal representative present, the AA should always support this.*

*The AA should seek a private consultation with the suspect before the suspect’s consent is sought. This can be used to:*

* *Explain the AAs role*
* *Explain processes, alternatives, and rights*
* *Check understanding*

*Check that a person genuinely wishes to consent.*

[*What happens if the AA or the suspect refuse consent for remote legal representation?*](https://www.appropriateadult.org.uk/)

The options

If either the AA or the suspect do not consent to a remote interview there are a limited number of valid options:

* Legal representative physically attends the interview (as per [JIIP](https://www.appropriateadult.org.uk/information/knowledgebase/ikaan/coronavirus-covid-19/remote-legal-representation/what-is-the-joint-interim-interview-protocol-jiip) para 16)
* Legal representative hands back the case to the Duty Solicitor Call Centre (DSCC), which appoints an alternative legal representative that is willing to attend the interview physically
* Interview is delayed, with the person being released under investigation (RUI) or placed on pre-charge bail to return for interview
* The person works with their legal representative to provide a written statement under caution as per the JIIP Annex B (requires the agreement of the legal representative and AA)
* Police decide to take no further action
* Police proceed to charge without an interview.

How an option will be selected

The CPS and police have a framework for deciding whether interviews are the most appropriate option in the context of the coronavirus pandemic. This is set out in:

* [the JIIP](https://www.appropriateadult.org.uk/information/knowledgebase/ikaan/coronavirus-covid-19/remote-legal-representation/what-is-the-joint-interim-interview-protocol-jiip) (paragraphs 14, 15, 16 and Annex A); and
* [Interim CPS Charging Protocol – Covid-19 crisis response](https://www.cps.gov.uk/sites/default/files/documents/legal_guidance/Interim-CPS-Charging-Protocol-Covid-19-crisis-response.pdf)

In most cases, it is expected that police and legal representatives will be able to agree on an option.

However, there may be cases where they do not. There may be debate over the meaning of JIIP paragraph 16 “All parties physically required… because the suspect and appropriate adult do not consent”. Police may interpret this as meaning that legal representative are ‘required’ to attend; and if they do not, they must be replaced in order to enable the interview. In contrast, legal representatives may interpret this a meaning that since the police do not have one of the ‘required’ elements for interview, they will have to select an alternative.

When the police and legal representatives do not agree

In this circumstance, AAs may come under pressure to agree with one side or the other. However, in practice it is likely to come down to how the DSCC respond to a request to provide a different legal representative.

The AA should remain focused on ensuring that any option safeguards the best interest of the person they are supporting. This means it must:

* Respect the rights of the person under PACE
* Ensure effective participation by the person
* Minimise the risks set out in PACE Code C 1.13(d)
* Take account of the wishes of the person, but without compromising the above.

It may be helpful for the AA to be aware of the framework set out in the joint interview and interim charging protocols. Briefly, these describe three levels of cases:

* A: Immediate (police seeking remand or Covid-19 related case)
* B: High priority (police seeking bail with conditions)
* C: Other cases (will be released under investigation or no arrest was required)

If it is a Level C case (e.g. common assault (not domestic abuse), low value criminal damage, lower level public order offences, low value dishonesty offences) it is likely that an interview is not necessary now.

In Level A and B cases, the framework is set out in Annex A of the JIIP. This states that interviews will not be required if the person’s identity is known, there is already enough evidence; and one of the following applies:

* it is a summary only offence
* A simple offence against the state (possessing weapons/drugs, public order)
* Drink or drug driving
* Shoplifting (regardless of value)
* Criminal damage under £5000.

Otherwise, police are expected to proceed with an interview.

[What should an AA do in an interview with remote legal representation?](https://www.appropriateadult.org.uk/)

At the start of the recording, the AA may wish to describe the basis of their consent. For example:

* “[Suspect’s name], has [condition] which I do not currently believe will present a risk in light of remote legal representation. However, this has not been tested in the context of a police interview. Therefore, I have consented to [suspect’s name] being represented remotely by his legal advisor on the basis that this can be withdrawn at any time if I have concerns during the interview”. (I believe officers are now reading some text to cover this prior to interview starting Jan 2021)

As in interviews where the legal representative attends the police station, the AA should:

* Ensure that the person understands that the interview can be stopped at any time for them to consult privately with their solicitor.
* Ensure that they can see the person’s face and body, remaining alert to non-verbal communication (e.g. they are very stressed, they want to speak with their legal advisor, they do not understand a question)

If the remote advice is being delivered by audio link only:

* If necessary, remind police that the interview should be video recorded. This is to ensure that legal representatives / courts can see what was happening in the interview room.
* Ensure that regular checks are made on the quality of the link (e.g. by asking the lawyer if they can still hear)
* Be mindful that as the legal advisor cannot observe what is taking place in the interview, so any concerns will need to be voiced by the AA
* Be especially alert to non-verbal communication

[What is a written statement under caution?](https://www.appropriateadult.org.uk/)

A written statement under caution is an alternative to an interview. It is described in the JIIP (Annex B) and PACE Code C (Annex D).

Purpose

It may be used to obtain access to:

* out of court disposals for which acceptance of guilt is required
* aid the ability to draw adverse inferences in court (if a person fails to say something they later rely on for their defence at trial).

Circumstances of use

Situations in which the police may choose to use this method are when:

* the offence is not complex, and no visual evidence needs putting to the suspect; and
* there are limited questions to put to the suspect; or
* the police are seeking a first account prior to Bail or RUI; or
* an interview has already occurred, and some simple points need clarifying
* an out of court disposal is appropriate.

Process

The process is that:

* The legal representative and AA are asked to provide consent for the process
* The police provide the questions they would like answered to the legal representative
* If the client wishes they can provide a written statement in response (or remain silent)
* The legal representative will help them produce this and send it to the police by email
* The statement must include: “I make this statement of my own free will. I understand that I do not have to say anything but that it may harm my defence if I do not mention when questioned something which I later rely on in court. This statement may be given in evidence.”

AA role

The AA’s role is:

* To ensure the suspect understand the process
* To decide whether to consent to the use of a written statement
* To ensure that that the suspect understand the caution.

The use of a written statement process significantly reduces the risks which AAs are safeguarding against. For example, there is no risk of a vulnerable person unintentionally incriminating themselves under pressure of police questioning.

A child or vulnerable person still needs to be clear about their rights, what is being asked of them, and the significance of their replies. However, in most cases the legal representative will be able to achieve understanding.

The key element is that the AA checks that the person understands the [police caution](https://www.appropriateadult.org.uk/information/knowledgebase/ikaan/pace-procedures/caution-special-warnings/caution) before any written statement is developed. If the suspect is unable to understand the police caution, then a written statement under caution should not be used. This mirrors best practice around interviews under caution.

[How might a suspect be disadvantaged by remote legal advice?](https://www.appropriateadult.org.uk/)

The use of remote legal advice in police interviews has come about as a short-term emergency response to unprecedented circumstances. As such, NAAN has not identified any research into the impact it might have on children and vulnerable suspects. As and when any becomes available we will update this guidance accordingly.

There is some evidence on the impact of defendants appearing in courts via live link. However, it is also limited. There has been very limited assessment of the potential impact of using video hearings in cases with disabled defendants.

The main reports are:

* [Inclusive justice: a system designed for all, Interim evidence report, Video hearings and their impact on effective participation](https://www.equalityhumanrights.com/sites/default/files/inclusive_justice_a_system_designed_for_all_interim_report_0.pdf) (Equality and Human Rights Commission)
* [Defendants on video – conveyor belt justice or a revolution in access?](http://www.transformjustice.org.uk/wp-content/uploads/2017/10/Disconnected-Thumbnail-2.pdf) (Transform Justice)
* [Video Enabled Justice Evaluation](http://spccweb.thco.co.uk/media/4807/university-of-surrey-video-enabled-justice-final-report-ver-11.pdf) (University of Surrey)
* [“They just don’t understand what’s happened or why”](http://scyj.org.uk/wp-content/uploads/2018/04/SCYJ-FINAL.pdf): A report on child defendants and video links (Standing Committee for Youth Justice)

It is likely that AAs will experience the argument that remote legal advice will be in the best interest of the child or vulnerable person. Arguments might include:

* It will be faster so they will spend less time in custody and be less stressed
* Young people are used to using video apps like WhatsApp, Zoom or Skype
* They have given their consent so you would be going against their wishes

However, the evidence that is available has largely identified potential negative impacts. The EHRC concluded:

*“Most of our evidence focused on the barriers that video hearings can present to defendants with a cognitive impairment, mental health condition and/or neurodiverse condition. We found that for many people with these impairments, a video hearing would not be suitable.”*

The key issues are that:

* Poorer relationship between the person and their legal representative
* Legal representative is unable to read the person’s body language
* Suspects are less likely to communicate their issues and needs
* Effects for people with specific conditions

Anxiety and stress

For example, the EHRC found that even where remote attendance might help a vulnerable defendant, they would still need someone physically with them:

*“…those who experience high levels of stress or anxiety when attending court hearings in person might find a video hearing to be a helpful adjustment but would need support in the room where they are”.*

For some suspects, the AA’s presence may be enough to allow them to participate effectively. However, the AA cannot give legal advice, so they cannot necessarily compensate for the lack of a legal representative being present.

Young people are used to video links

Professor Richard Susskind *(*IT adviser to the Lord Chief Justice*),* giving evidence on the Prisons and Courts Bill 28 March 2017, argues that we should not assume people are less comfortable with remote communication:

“*We are now entering an era of telepresence— I joke not…Relationships are established through FaceTime and other similar types of video linking. The assumptions we make as "grown-ups"—as one might say—about how we establish trust and communicate comfortably with others cannot necessarily be carried forward to people who have grown up in the internet era, for whom the conduct of a meeting and interaction via video may be more comfortable and comforting and give rise to a greater experience of trust than it would for our generation”.*

However, in Transform Justices report, [Defendants on video – conveyor belt justice or a revolution in access?](http://www.transformjustice.org.uk/wp-content/uploads/2017/10/Disconnected-Thumbnail-2.pdf), a YOT Officer observed that, *“Children do not appreciate they are in a court not on a computer game”.*

Poorer relationship between the person and their legal representative

Studies have indicated that lawyers believe video hearings can negatively affect their relationship with the person they are representing. In the EHRC report, legal professionals were quoted as saying:

*“In my view, anybody who’s got language issues, mental health problems, or autism, ADHD, or any other learning-based difficulty, they shouldn’t be appearing by video link. It’s difficult enough working with somebody who has those problems to make sure that you’re doing your job properly and making reasonable adjustments to do it in person, so it should be avoided at all costs, other than for the most simple things”.*

The University of Surrey’s, Video Enabled Justice Evaluation report found that:

*“As indicated earlier in relation to the communication between defendants and their advocates, courtroom participants also recognised that defendants who appear via video may also feel uncomfortable or unable to bring a matter to the court’s attention during a hearing: ‘“They could feel, although they’re not able to verbalise it, they could feel that they’re not able to speak freely, they may not be encouraged to do that in the same way as they would if they were in a court room with us and we could pick up on how they were feeling and empathise more with them. I think there’s inevitably always going to be a distancing’”.*

“*Issues with the quality of the audio-visual and framing could exacerbate the problems associated with distancing, whilst concerns were also raised about the efficacy of defence advocates when appearing from the remote location*”.

“*Requests made by defence advocates to speak to clients during hearings were less common in video court”*

“…*it’s the disconnect between me and the client in the video link hearing or if you choose to do it at the police station, it’s the disconnect between you and the prosecutor as a Defence Lawyer as opposed to when the person is produced in court, you have that face to face contact*.”

The Standing Committee for Youth Justice’s report, “They just don’t understand what’s happened or why”, raised concerns from two lawyers:

*“For young clients it is impossible to build a rapport with them. Also, everything takes longer to explain as you have to modify your language to ensure they understand.”*

*“I think with the youths you need that personal contact with them because otherwise you’re just some old guy on a screen. You know, even if you’re only like 25, you’re still old to a youth, like, you’re an adult, why should I trust you?”*

Suspects are less likely to communicate their issues and needs

*However, there was also evidence to suggest that defendants may less willing to raise any issues with communication during video court hearings, owing to a perception that they would not be able to request a traditional in person hearing, “…it’s not going to change nothing, it is?... They’re not going to say, “Just a minute we’ll get a van there for you and bring you to court for what should be your… human rights.”” (007\_DEF)*

Legal representative is unable to read the person’s body language

Human communication is a combination of:

* verbal (the words we use)
* vocal (our tone and inflections)
* visual (our ‘body language’)

Academic studies suggest that the words we use may make up less than 10% of our communication. Much of our communication is actually visual.

Video links may make it more difficult for lawyers and suspects to use visual communication. Audio only links would make it impossible.

A lawyer participant in the University of Surrey’s, Video Enabled Justice Evaluation report said that,*“…we could miss their body language”.*

The research noted, “*The loss of non-verbal communication in the video court may inhibit the ability of defence advocates to identify when defendants may wish to speak with them, with some commenting that video court felt more detached and impersonal “…if it’s on a video link, it’s not that social, it’s become very sanitised…”. Communication issues were relayed by former defendants, who recognised the gravity of the situation they found themselves in, “Difficult, difficult looking at my solicitor, because unless you’re… it’s a very personal thing….*”

“*Nevertheless, for magistrates and legal advisors, video court reduced the level of non-verbal communication (e.g. eye contact) with those appearing over the link. This made it more difficult to assess body language and inhibited the ability of participants to pick up on any issues the defendant might be experiencing.”*

*“You can only see their face and there is little interaction. In my experience unless you have time with the young person to prepare, it is very hard to tell the difference between surly teenage behaviour, a total lack of confidence and/or significant learning difficulties and a lack of understanding*” (YOT officer)

Particular effects for people with specific conditions

*Autism*

Transform Justice’s report, Defendants on video – conveyor belt justice or a revolution in access, identifies specific concerns around the participation of autistic individuals:

“*Dr Marie Tidball has done in-depth research into defendants with autism and their experience of the criminal justice process. She has concerns about the suitability of video hearings based on her observations of a remand hearing and a case management hearing since “the process had the effect of atrophying their ability to participate”. “People on the autism spectrum often… can’t take one set of experiences and transfer the learning from that experience to another scenario. So, when doing a video link, giving evidence via a video link, or having part of the court procedure via video link, it was clear that they didn’t associate that as being part of their case. They weren’t in that space of the courtroom, so they didn’t have the communicative aspect of that space to understand the significance of what was happening and what was being said to them*.”

*ADHD*

Dr Samantha Fairclough: *“Vulnerable defendants could, for example, be suffering from attention deficit hyperactivity disorder (ADHD) and thus be easily distracted by the multiple stimuli within a crowded court.*(Transform Justice report).

*Anxiety*

Dr Samantha Fairclough: *“Alternatively, they might have an anxiety disorder which is intensified by the requirement to give evidence in a courtroom filled largely with strangers.”*(Transform Justice report).