Provision of Appropriate Adults

This paper examines the provision of appropriate adults and the impact of current provision on policing to inform national debate and consultation.

The provision of appropriate adults has been discussed at the National Custody Forum for several years. This paper takes into account legislation, relevant research and recommendations to inform debate and consultation nationally, intended to improve provision.
1. Introduction

1.1 Appropriate adults provide an important safeguard in the custody process by supporting juveniles and mentally vulnerable detainees and ensuring that they understand what is happening to them and why. The provision of appropriate adults has been disjointed and unstructured since their introduction as a requirement in the Codes of Practice issued under the Police and Criminal Evidence Act 1984 (PACE). Whilst there have been discussions and attempts at improvement over the years, it is widely acknowledged that this area is still in need of improvement and that current provision is not sufficient, either to meet the needs of criminal justice or to protect vulnerable persons in custody. This leads to delays in investigations and vulnerable people spending unnecessary time in the often unsuitable environment of police custody.

1.2 Planned changes to the way in which the MPS provides custody as part of the Custody Improvement Project have highlighted the difficulties inherent in current appropriate adult provision; this situation is not unique to London. This paper sets out legislative requirements, research and action being considered nationally which aims to improve provision and the different departments which currently share responsibilities for aspects of the provision.

2. Legislation and Statutory Guidance

2.1 PACE Codes impose a requirement for appropriate adults to be arranged for juvenile detainees (under the age of 17 years). Special provision is also made in respect of mentally vulnerable people of any age, including arrangements for appropriate adults. The difference here is that it is recognised that someone who has experience or training in mental health may be more satisfactory than a relative lacking such qualifications. There is, however, a marked difference in the impact of other legislation between these two groups.

Children and young persons

2.2 There are two relevant Acts which impose duties on agencies to provide services in respect of children under the age of 18 years.

2.3 The Crime and Disorder Act 1998 (CDA) requires local authorities, in cooperation with the police, probation services and health authorities, to ensure that appropriate adult services for children are available in their area. Local authorities must also appoint Youth Offending Teams (YOTs) to provide youth justice services which include the provision of appropriate adults.

2.4 The CDA also places a duty on chief officers and police authorities to co-operate with local authorities in the discharge of their duty. In addition the Act permits chief officers to make payments towards expenditure incurred in the provision of youth justice services either directly or by contributing to a fund maintained by the local authority.

2.5 Section 11 of the Children Act 2004 sets out the police service’s responsibility in respect of arrangements to safeguard and promote children’s welfare. Statutory guidance recognises that whilst this Act does not change the functions placed on police by existing statutes, there is a duty to ensure that they are discharged with regards to this overarching principle. It also emphasises the fundamental importance of shared responsibility and effective inter-agency working.

Vulnerable adults

2.6 There is no similar legislation in respect of adults who are suspected of being mentally vulnerable. Whilst the Mental Health Act 1983 deals with the care and treatment of mentally disordered persons, it does not address the issue of who may represent their interests in respect of police detention other than those detained for mental health assessments. There is no statutory duty on any body to provide appropriate adult services in respect of this group, in stark contrast to the legislation relating to children and young persons.

3. National research and discussion

3.1 The joint Home Office/Cabinet Office PACE review in 2002 considered the provision of appropriate adults chaotic and unstructured and suggested that a possible cause was that there was no overall responsibility for appropriate adults. They recommended the establishment of a national policy and the development of national guidance.
3.2 In 2006 the Home Office commissioned research by the National Appropriate Adult Network (NAAN) which provided further evidence that gaps in provision remained. The key issues that came out of the subsequent report revolved around the need to place responsibility for providing services for mentally vulnerable adults on a statutory footing; the need for better out of hours services for juveniles; changing the PACE definition of juveniles to under 18; and the need for adequate funding and stakeholder engagement to enable effective services to be delivered. These common themes appear in subsequent reviews.

3.3 This work was carried forward and included in the government proposals for the PACE review in 2008. Key proposals included:

- Giving a statutory role to police authorities to ensure that effective schemes operate in their area.
- Limiting the role to those who have received adequate training.
- The attendance of parents and guardians would be in addition, rather than as an alternative, to trained appropriate adults.
- The development of a national support structure for appropriate adults and Independent Custody Visitors, enhancing their contribution to safer detention.
- The development of protocols with voluntary schemes and social services departments and SLAs with commercial companies and monitoring of response times.
- Extending access to appropriate adults to 17 year olds to end the anomaly where they are treated as adults for bail and remand purposes.

3.4 The Bradley Report, published in 2009, included two key deliverables that relate to appropriate adults: -

- To understand the training needs of appropriate adults and other third parties coming into custody by 2011; and
- To consider a review of appropriate adults in police stations by April 2010.

3.5 The Home Office and Department for Health commissioned NAAN to conduct a further review and their report was published in November 2010. NAAN conducted another survey across England & Wales as part of this review. Their conclusions were that: -

- There were significantly less requests in relation to vulnerable adults. Where professional services were provided, the majority had been subcontracted to third party or private sector organisations.
- Police services expressed frustration with out of hours services provided to juveniles and inconsistency in service delivery for vulnerable adults, partly due to a lack of out of hours services.
- The majority of police services and police authorities do not contribute to funding appropriate adult schemes.

3.6 Their recommendations include:

- Statutory responsibility for appropriate adult services for vulnerable adults is given to local authorities or considered as part of the transfer of healthcare provision from police authorities to the National Health Service. In either case, adequate funding must be provided. Police forces and/or police authorities should contribute to this funding rather than directly funding or running appropriate adult services themselves.
- The Ministry of Justice considers ways of ensuring that YOTs deliver an effective appropriate adult service, including where other organisations do this on their behalf.
- Local authorities consider developing a combined service where there is no service for vulnerable adults.
- Legislation is introduced to treat 17 years olds as juveniles in PACE.

3.7 In November 2010 HMIC published a report examining the effectiveness of the criminal justice system. This report echoed the delays experienced as a result of ineffective appropriate adult services. It recognised that, as there is no single agency or person in charge of the criminal justice system, there was no ‘silver bullet’ which would deal with identified problems overnight.

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1 Appropriate Adult Provision in England & Wales NAAN, February 2006
2 PACE Review - Government proposals in response to the review of PACE Home Office PPPU, August 2008
3 Lord Bradley’s review of people with mental health problems or learning disabilities in the criminal justice system, 2009
4 Appropriate Adult Provision in England & Wales NAAN, November 2010
5 Stop the Drift - A focus on 21st century justice, HMIC, November 2010
It also recommends a process driven approach with collective leadership, simplicity and fairness at its core.

3.8 Most recently, in December 2011, HMIC and others published a report on a thematic inspection of the welfare of children and young people in police custody including the provision of appropriate adults. Again, it was recognised that this work requires an effective partnership between agencies to operate effectively. They found the role of appropriate adults lacked clarity and had become increasingly focused on process rather than safeguarding the interest of children and promoting their welfare. They concluded that there needed to be greater strategic leadership, direction and supervision but saw little evidence of the Local Safeguarding Children Board overseeing this area of work.

3.9 HMIC/P have also focussed on the provision of appropriate adults in their thematic inspection of custody in England and Wales. Inspection reports comment on local arrangements and their recommendations invariably include 17 years in police custody being treated as adults to bring it in line with other legislation relating to children.


Children and young persons

4.1 Youth Offending Teams are required to have in place appropriate adult schemes. In common with other custody services, the provision of appropriate adults in London is locally delivered with no organisation having overall responsibility. This leads to a mixture of services, some provided by volunteers and third sector companies. The level of service provided is also variable with some scheme providing 24/7 cover whilst other boroughs rely on social workers undertaking this role alongside other pressing demands. This poses particular problems outside office hours when there may be a single social worker on a borough. This mixture of services is reflected throughout England and Wales.

Vulnerable adults

4.2 The MPS negotiated Service Level Agreements with the NHS several years ago but these relate to persons detained for assessment under the Mental Health Act, not for the provision of appropriate adults. Whilst there is no recent research, it is known that few schemes within London, or indeed nationally, deal with vulnerable adults.

5. National structure

5.1 The research and recommendations made over the last ten years provide ample evidence for the need for a statutory based structure for delivering appropriate adult services for children and vulnerable persons.

5.2 In the absence of any body having statutory responsibility for the delivery of appropriate adult services, several government departments appear to control aspects of the service:

- The Home Office Police Powers Team in respect of PACE and the Codes of Practice.
- The Ministry of Justice in respect of Youth Justice Boards and safeguarding.
- The Department of Health in respect of mental health in respect of adults and children.
- The Department of Education in respect of safeguarding.
- The Department of Communities and Local Government in respect of councils and social services.

6. Summary

6.1 Current arrangements for the provision of appropriate adults can only be described as generally unsatisfactory, reflecting the findings of research over the last 10 years and the picture across England and Wales. Driving forward changes to this provision will be difficult, given the independent nature (from police) of the arrangements, the lack of national or regional structure, gaps in legislation and the current economic climate. As this affects all police services, a national response is required to highlight the difficulties still being experienced.

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6 Who’s looking out for the children? Inspection of Youth Offending/CJ Joint Inspection, December 2011