

29 May 2020

By email: louise.falshaw@hmiprobation.gov.uk

Re: HM Inspectorate of Probation: Consultation on our inspection framework and programmes 2020-2021 and 2021-2022

I write in response to HMI Probation's consultation on its inspection framework, specifically in relation to the inspection of Youth Offending Teams.

The National Appropriate Adult Network (NAAN) proposes the inclusion of appropriate adult provision for children, which is a statutory duty, in the YOT inspection framework.

Appropriate adults

The role of the appropriate adult (AA) is to safeguard the interests, rights, entitlements and welfare of children or vulnerable adults who are suspected of a criminal offence, by ensuring that they are treated in a fair and just manner and are able to participate effectively. Where the suspect is a child or vulnerable adult the Police and Criminal Evidence Act 1984 and its Codes of Practice (laid by statutory instrument) require the presence of an AA for many procedures.

Responsibilities of Youth Offending Teams

[Section 38\(4\)\(a\) of the Crime and Disorder Act 1998](#) places an explicit statutory duty on local authorities to ensure the provision of persons "to act as appropriate adults to safeguard the interests of children and young persons detained or questioned by police officers". As one of the 'youth justice services' mandated by the Act, responsibility for delivery sits with YOTs.

The legal duty fills a gap which arises when parents/guardians are unable to act as a child's AA. This can occur because the parent/guardian is connected to the investigation in some way (e.g. they are a witness), for logistical reasons, or simply because they choose not to support their child.

Historically, the role of the AA in such circumstances was taken on by social workers, then YOT workers and often local volunteers recruited, trained and managed by YOT staff. The AA role is recognised in policy as integral to the work of YOTs, as reflected in current Youth Justice Board guidance on [how to manage bail and remands](#), which states, "*Effective local appropriate adult arrangements are an important part of an effective bail and remand strategy in relation to children in police custody*".

The challenge

The joint inspectorate thematic ["Who's looking out for the children?"](#) (CJI and IYO 2011) delivered some highly critical findings in relation to appropriate adults stating, "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".

Several areas of concern highlighted in the report relate to police forces and officers. Where investigations take place in custody, these are within the mandate of joint police custody inspections. The relevant inspectorates have consistently developed their interest in the treatment of children (and other vulnerable suspects).

However, several important issues related directly to AA provision, namely:

- *Policies, procedures, and call out arrangements did not properly consider the needs of the child or young person. This resulted in children and young people being detained in police cells for longer than necessary*
- *Information flow between YOTs and Appropriate Adults was found to be ineffective. Appropriate Adults often knew little about the child or young person they were sent to support, and the feedback Appropriate Adults provided to Youth Offending Teams focussed on process and not the best interests of the child or young person. As a result, Appropriate Adults were often ill prepared and did not take a proactive role in promoting the needs of children and young people*
- *There was a lack of any credible assessment of the quality of service provided by Appropriate Adults, who were found to be passive in interviews and unlikely to challenge the police. While there are forums at both local and national level to monitor Appropriate Adult provision, the quality of the service given was rarely raised, and the providers generally assessed this based on a lack of complaint from the police...there was little effort made to obtain feedback from children and young people who had used the Appropriate Adult service*

These are not police responsibilities; they are YOT responsibilities. By extension they are explicitly outside of the remit of joint police custody inspections. While such inspectorate reports have continued to highlight any general issues with AA provision, this is necessarily very limited and, to an extent, from the perspective of police. Hence, they typically focus on the simple presence or absence of a scheme that responds quickly to police requests. They are not in a position to engage with AA providers or judge the quality of the services.

As per the last bullet point above, this means that there is a paucity of accountability in relation to appropriate adults. Redressing this lacuna has become increasingly urgent as the provision of AA services has become increasingly market-based, with YOTs often contracting out delivery of their legal duty to external providers in the charitable and private sectors. Reporting and governance is typically restricted to remote contract management by commissioners. This tends to focus on activity and output measures (such as the number of call outs and response times). There is insufficient consideration of outcomes for children or their views on the quality of provision.

Our member AA scheme coordinators have, in the past, prepared evidence to present to inspectors during YOT inspections. They have been disappointed to find that their support for children in the police station (and voluntary interviews) is not within scope. YOT managers that NAAN have spoken to have been honest in saying that, as result, they do not consider AA services when thinking about inspections of their work.

NAAN believes that the current lack of a system of independent scrutiny presents significant barrier to improvement in commissioning and service delivery.

It enhances several interrelated risks to children at the gateway to the criminal justice system:

- poor quality and/or unsustainable AA provision
- failure to extend AA provision to voluntary interviews
- low rate of uptake of legal advice due to misunderstanding/mistrust
- lack of effective participation due to communication needs not being met
- miscarriages of justice at court
- inappropriate use of out of court disposals

Robust inspection would help to ensure that AA provision is not separated in policy and practice from the wider work of YOTs. This is a separate matter from YOTs decisions about whether to deliver directly or via commissioned services. However, it would help to prevent a situation in which some YOTs “commission and forget” and effectively de-prioritise support for children in police custody. It would help to avoid failure to drive improvements in key policy areas such as:

- minimising the use of detention (under the UNCRC)
- avoiding overnight stays in police cells
- transfers to local authority accommodation
- bail support
- black and minority ethnic disproportionality in the justice system (as per Lammy review)

NAAN's response to the challenge

NAAN is committed to developing standards and improving practice. Our work includes developing national standards, training resources, qualifications, professional development events and knowledgebases for the sector.

NAAN's evidence-based [national standards](#) for AA provision have been approved by the Youth Justice Board. The Ministry of Justice and YJB [Standards for children in the youth justice system 2019](#) state that, “Management boards should implement clear youth justice specific local policies and protocols covering: provision of persons to act as appropriate adults to safeguard the interests of children detained or questioned by police officers in line with the National Appropriate Adult Network's National Standards”.

These standards were designed with the potential for future inspection in mind. The various sections encompass commissioning, management, coordination, and practice. Each standard is supported by a range of indicators, intended to be of practical use both to those delivering services and inspectors.

Furthermore, we have developed a National Standards Self-Assessment Tool. As per the name, this allows AA schemes to self-assess against the standards. However, this clearly does not replace external inspection. There is no requirement to share the results of the analysis and, in a partly market-based sector, we believe this would be of limited value.

Given the gap in formal inspection, stakeholders often look to NAAN (as a standards body) to invigilate, intervene or simply comment with regards to the standard of specific AA services. However, NAAN's structure, resourcing and objectives render it inappropriate as an inspector.

About NAAN

NAAN was established in 1995 by frontline practitioners, Mind, Mencap and the Revolving Doors Agency, to develop and share best practice in the role of the appropriate adult (AA). It became a registered charity in 2004. NAAN now includes around 95 member organisations.

NAAN has a small budget raised via a Home Office grant, membership fees and earned income. It has two full time members of staff. Its board is part-elected by its full members (organisations that provide AA services).

We believe that every child and vulnerable adult detained or interviewed as a suspect should be treated fairly with respect for their physical and mental welfare; can exercise their rights and entitlements; and can participate effectively. We seek to ensure that children and vulnerable adults are supported by effective appropriate adults. We do this by: strengthening local provision; informing the public; and contributing to a fairer system.

NAAN supports effective appropriate adult policy, commissioning, provision and accountability. Working with its member organisations, it provides an independent national centre of specialist expertise and innovation, committed to improving the effectiveness of AA provision for vulnerable adults and children.

Next steps

I would like to be clear that we *believe* that the quality of AA provision has improved significantly. We know that many local leaders, commissioners, coordinators and practitioners have worked incredibly hard to develop effective and sustainable AA services for children. We know that there is great practice out there. And of course we are always grateful to hear that our work, at the centre of the sector, has provided supported those efforts.

However, we believe that inspection is necessary to ensure that all children benefit from those improvements and to move from *belief* in the general quality of services to *knowledge* about the quality of specific services. We believe this would be in the clear interests of children, would improve public confidence in the system, and ensure that public funds are used effectively.

We appreciate that this short submission does not provide full and compelling evidence. We recognise that the fact that AA provision is a statutory duty of YOTs does not automatically lead to inclusion in the inspection framework. And of course, there would practical obstacles to such a proposal.

However, we have previously discussed the potential for inspection with the former Chair of the YJB, the Home Office, and the Ministry of Justice youth justice policy team, and received a positive response. Should this proposal be of interest, we would be glad to discuss it further with HMI Probation and other relevant stakeholders.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Chris Bath', with a stylized, cursive script.

Chris Bath | Chief Executive