

NAAN | PACE Consultation 2017

Consultation Response December 2017

Chris Bath

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About us

The National Appropriate Adult Network (NAAN) is a registered charity and membership organisation open to organisations and individuals. It acts as a national infrastructure body for appropriate adult provision. It has over 100 member organisations.

Our vision: Every child and vulnerable adult detained or interviewed by police has their rights and welfare safeguarded effectively by an appropriate adult.

Our mission: To gather, develop and share knowledge, skills and standards that inform, inspire and support effective appropriate adult policy and practice.

Our strategic objectives:

- More children and vulnerable adults are safeguarded by effective appropriate adults operating to national standards
- National and local policy development and implementation enable appropriate adults to be effective

Our activities:

- Raising awareness
- Setting national standards
- Developing guidance
- Supporting volunteering
- Informing parents and carers
- Providing training
- Conducting research
- Informing policy

About appropriate adults

Appropriate adults safeguard the interests of children and adults with additional needs when they are suspected of a criminal offence, ensuring that they are able to participate effectively and are treated in a fair and just manner with respect for their rights and welfare.

Appropriate adults:

- support, advise and assist when a person is asked to provide information or participates in a procedure;
- observe whether the police are acting properly to respect the person's rights, and inform an officer of the rank of inspector or above if they consider that they are not;
- assist with communication between the person and the police;
- help the person to understand their rights and ensure that those rights are protected.
- ensure issues which may disadvantage the person are recorded on the custody and/or interview record
- consult privately with the person at their request
- ensure they have legal advice where it is in their best interests

Summary of our response

We welcome

• The principle of moving to a functional test of need for an appropriate adult.	Proposals	Discussion
• Reinforcement of the need for the appropriate adult to be independent from the police.	Proposals	Discussion
• The introduction of a more detailed explanation of the appropriate adult role.	Proposals	Discussion
• Efforts to increase information provided to suspects, including around the decision that an appropriate adult is required.	Proposals	Discussion
• The positive and substantial response to our joint paper with ICVA on voluntary interviews	Proposals	Discussion

Our principle concerns are

• The raising of the decision-making threshold for police officers as to whether an appropriate adult is required, from ‘any suspicion’ to ‘reason to believe’.	Proposals	Discussion
• The practical implementation of a functional test, particularly given the proposed threshold and current tools available to police officers.	Proposals	Discussion
• The removal of ‘any age’ from the decision-making threshold.	Proposals	Discussion
• The label of ‘vulnerable adult’, which on reflection we feel is regressive, implies that the person is wholly responsible for the problem faced by the system, and may undermine accurate identification.	Proposals	Discussion
• The need to go further to ensure people make a fully informed decision to take on the role of appropriate adult and aware of their purpose, responsibilities and powers.	Proposals	Discussion
• A continued lack of clarity about what support should be provided to a person detained for assessment under the Mental Health Act 1983.	Proposals	Discussion
• Issues relating to voluntary interviews including: the lack of an easily accessible separate Annex; reliance on interviewers to apply safeguards; and lack of oversight	Proposals	Discussion
• The lack of influence which suspects, appropriate adults and solicitors have over the use of live link technology for various procedures, particularly interviews and reviews of detention.	Proposals	Discussion

Identification of mental vulnerability

Paragraphs: [Code C: 1.4, 1G \(proposed version\)](#)

Summary

1. The proposal would change the decision-making threshold for police officers when determining whether they must treat a person as mentally vulnerable for the purposes of detention and/or interview, and therefore contact an appropriate adult (AA).
2. Currently, a police officer is expected to act where they have '*any suspicion or are told in good faith that a person of any age may*' be vulnerable. Under the proposals, a police officer would have to have '*reason to believe that a person is*' vulnerable.
3. Overall, we believe the proposed change constitutes both a higher threshold and a more difficult test for police officers to apply, because it involves a complicated decision making process. For these reasons, we would expect it to have a detrimental effect on the already low rates of identification of need. Given the significant evidence that mental vulnerability is currently under-identified, the rationale for a raise in the threshold is therefore unclear. We have proposed an alternative wording. In the absence of this being accepted, we believe that there should be no change.

In detail

Suspicion vs Belief

1. The decision regarding whether a person is mentally vulnerable or not (and therefore whether they require an AA) remains the legal responsibility of the police officer. It is a trite point that police officers are not mental health, learning disability, neurodevelopmental or brain injury professionals. In fact, there are significant gaps even in the provision of basic awareness training to officers. This is perhaps even more the case in relation to the front-line response officers who are increasingly carrying out voluntary interviews (where no arrest, and therefore no custody sergeant, is involved). Some disabilities and conditions are more 'hidden' than others. Some individuals are understandably reticent to disclose very personal matters in the context of criminal justice. Police are often under significant resource and time pressures which restrict their ability to undertake detailed assessments. Access to validated tools to support decision-making about vulnerability is low.¹ In current practice, a police officer's judgements about mental vulnerability are typically a matter of subjective gut instinct, a hunch².
2. The current threshold is '*any suspicion*'. In *Hussein v. Chong Fook Kam* [1970] AC 942, Lord Devlin observed: "*Suspicion in its ordinary meaning is a state of conjecture or surmise where proof is lacking: 'I suspect but I cannot prove'. Suspicion arises at or near the starting-point of an investigation of which the obtaining of prima facie proof is the end*".

¹ Young, S., Goodwin, E. J., Sedwick, O., & Gudjonsson, G. H. (2013). The effectiveness of police custody assessments in identifying suspects with intellectual disabilities and attention deficit hyperactivity disorder. *BMC Medicine* 2013, 11:248, doi:10.1186/1741-7015-11-248.

² Dehaghani, R. (2016). He's Just Not That Vulnerable: Exploring the Implementation of the Appropriate Adult Safeguard in Police Custody, *The Howard Journal* Vol 55 No 4. December 2016

3. The proposals would replace this with 'reason to believe'. The exercise of almost all the police powers under PACE operate under either reasonable grounds to suspect or reasonable grounds to believe. Although these are not synonymous with 'reason to suspect' and 'reason to believe', their interpretation in law may be a useful guide to the meaning and implications of the proposed new terms.
4. The Police National Legal Database states: *"The different formulations seek to impose a higher threshold for powers requiring "reasonable grounds to believe" which involve the invasion of a person's privacy, continued detention etc. and decisions which require more mature reflection and consideration. In contrast, powers which are frequently exercised, for example stop and search and arrest powers are conditional upon the existence of "reasonable grounds to suspect". This is a much lower standard than "believe". In legal terms "reasonable grounds to believe" requires something closer to certainty...It is not necessary to have substantial proof before one can be said to "believe" but the existence of a belief implies that there is more information available...Simple test: If there are ten steps from mere suspicion to certainty, then reasonable suspicion may be as low as step two or three, whilst reasonable belief may be as high as step seven or eight. A police officer may receive information from various sources, some of it anonymous, stating that a person is responsible for an offence; he would have reasonable grounds to "suspect" but certainly not "believe".*"³
5. Therefore, while suspicion equates to recognition of a *possibility*, belief equates to a sense of relatively *high probability* and is therefore a higher threshold. This would have both philosophical and practical implications.
6. Firstly, it is not fair, reasonable or proportionate to apply the same high threshold that applies to the police's most invasive and coercive powers to the question of whether a person benefits from appropriate procedural safeguards.
7. Secondly, the practical implication is that no AA would be required even if an officer strongly suspected that person was mentally vulnerable but was unable to say that it was probable. As it would take a forensic psychologist a significant period of time to make such a judgement, it is unreasonable and unrealistic to ask it of police officers. It is difficult for an officer to judge the relevance or veracity of information provided to them about mental vulnerability, either by the suspect or those around them. Police officers cannot be expected to diagnose (i.e. identify the nature of an illness or condition by examination of the symptoms). They cannot be expected to make a judgement that a person probably is (or not) mental vulnerable. Therefore, a police officer's *belief* is clearly not the most appropriate test as it places an unrealistic expectation on the police officer.
8. Evidence suggests that the long-standing 'suspicion' threshold, has not resulted in over-identification. In fact, quite the opposite is true. Data from police forces suggests that only 3.1% of adult detentions are recorded as requiring an AA, significantly below the levels of mental vulnerability found in police custody by academic studies⁴ and has not improved since the early 1990s⁵.

³ http://foi.west-midlands.police.uk/wp-content/uploads/2016/09/6284_ATTACHMENT.doc

⁴ National Appropriate Adult Network (2015), There to Help

⁵ Young, S. Goodwin, E.J. Sedgwick, O. and Gudjonsson, G.H. (2013) The effectiveness of police custody assessments in identifying suspects with intellectual disabilities and attention deficit hyperactivity disorder. BMC Medicine.11:248

9. We have seen no evidence of false positive identification of the need for an appropriate adult (beyond the apocryphal). We accept the *possibility* of a number of false positive identifications of mental vulnerability. However, we believe it is highly unlikely that this represents a significant number. In any case, given the current low level of sophistication in the processes by which mental vulnerability is identified and the serious level of risk attached to failing to do so in this context, some level of initial false positives should be an acceptable price for addressing the poor rate of true positives.
10. Any concerns about spurious or incorrect information about vulnerability being provided by the suspect, or those who know them, are already dealt with under the wording '*in the absence of evidence to dispel that suspicion*' which appears in both the current and proposed provisions. This should mean that if a *properly qualified* professional determines that a person is not mentally vulnerable, the police do not have to treat them as such. In practice, it is not uncommon for police to consult custody healthcare professionals who, while experts in their field, often unqualified to conclude that a person is not at risk in the context of the Codes⁶. While it is not realistic to imagine wide access to forensic psychologists, the development of liaison and division services presents an opportunity.
11. Given these facts, the replacement of '*suspicion*' with '*believe*' would neither be in the interests of police or public.

Addition of 'reason to'

12. For the '*reason to believe*' threshold to be met, a police officer would have to be able to identify enough evidence (the reason) to justify a decision of relatively high probability (belief). For the reasons set out above, this may often not be possible.
13. It should be remembered that unlike other forms of support for vulnerable people, once the threshold (whatever it is to be) is met, a suspect cannot refuse the AA safeguard. The absence of an AA in such circumstances presents a significant risk that evidence will be ruled inadmissible in court. In addition to opening up a line of defence at court, the ability to waive the 'right' to an AA would risk the most vulnerable people declining support without a full understanding of the implications. However, it is not unknown for people to ask why they need to have an AA. If the threshold was '*reason to believe*' an officer would have to supply a reason – something they may not readily be able to do.
14. There is no guarantee for police that, where a suspicion of vulnerability is recorded, the absence of a specific reason will protect the evidence from inadmissibility. Courts are not bound by the PACE Codes. This may act to discourage police officers from recording concerns about mental vulnerability – elevating risks. Furthermore, the gap between the established threshold and the new one may necessitate more *voir dire* to establish the admissibility of evidence before the main trial begins. This runs counter to the Government's aims regarding the efficiency and cost of the court system.

⁶ Young, S., Goodwin, E.J., Sedgwick, O. and Gudjonsson, G.H. (2013) The effectiveness of police custody assessments in identifying suspects with intellectual disabilities and attention deficit hyperactivity disorder. BMC Medicine.11:248

15. However, adding '*reason to*' could have benefits if combined with the current '*suspicion*' wording. Currently, an officer breaches the Code if they have '*any suspicion*' of vulnerability but do not act accordingly. The test is therefore what was subjectively in their mind, not what objectively ought to have been. Thus, if they did not suspect mental vulnerability when they reasonably ought to have done so, they do not breach the Code (unless they were '*told in good faith*'). If there were an alleged breach of PACE, a test of whether there was a '*reason*' to suspect vulnerability would be more objective and realistic for a court or professional standards body to consider. An officer acting in bad faith could not simply argue that they did not have any suspicion. Rather, the information available to the officer would be considered.
16. There is a risk that the construction '*reason to suspect*' could still be interpreted as an increased threshold, since suspicion would now have to be justified (albeit to a significantly lower standard than necessary to justify a belief). It would certainly appear to require more than a mere suspicion. It seems likely that police officers will always have a reason behind their suspicion, though they may not easily be able to identify or explain it.
17. For these reasons, we would accept the inclusion of '*any reason to suspect*' but not '*reason to believe*'.

Removal of 'told in good faith'

18. We have established above that it is not uncommon for there to be absence of naturally arising suspicion where vulnerability does in fact exist. In such circumstances, the value of information provided by a suspect, or person who knows them, is particularly important.
19. Under the current provision, police officers who are '*told in good faith*' about a vulnerability are expected to act on that information unless there is evidence to the contrary. This explicit statement creates an unambiguous expectation that information provided by suspects, and those close to them, will be taken seriously.
20. It has been argued that being '*told in good faith*' about a mental vulnerability would give a police officer a "*reason to believe*". If this were true it would make the former phrase superfluous and justify its removal. However, these sources of information are not universally accepted, or indeed respected. The provision of information does not automatically equate to a police officer forming a belief that a vulnerability is present.
21. We do accept that '*reason to believe*' does not technically require the police officer to form a belief (as would the similar phrase '*reasonable belief*') but rather to recognise that a reason to do so exists. However, in practice, the distinction is unclear. If a police officer perceives information as a reason to believe, they are likely to form a belief. Equally, if they do not believe a person is vulnerable, then it seems likely that they have concluded that any information received does not amount to a reason to believe. Therefore, we do not believe that the distinction will be applied in practice.
22. Similarly, it could be argued that '*told in good faith*' might be superfluous with the introduction of "*any reason to suspect*". Given the lower threshold, we are more receptive to this argument. If an officer was given information (for example) by a parent about a suspect's vulnerabilities, they could not reasonably argue that they had no reason to suspect mental vulnerability – even if they did not form a belief.

23. However, we believe that it is right that it remains clear that information provided by suspects, and those who know them, is treated seriously. If the threshold were to change to '*reason to believe*', it should not be removed.
24. However, if the threshold were set at '*reason to suspect*' as we have suggested, it would be reasonable to move reference to '*told in good faith*' to the notes for guidance. As now, an officer would not be bound to act on any and all information from these sources (which may on occasion be unreliable) due to the clause regarding '*evidence to dispel that suspicion*'. Such evidence would need to be compelling enough to outweigh the information provided to the extent that it removed any suspicion.

Removal of 'any age'

25. The removal of the reference to a person '*of any age*' does not affect the appropriate adult safeguard, which is mandatory for all persons under 18. However, the current wording does provide an explicit overarching rule that a child who is mentally vulnerable must be treated as such in all matters defined in the Codes. As a result, Code C Annex E (Summary of provisions relating to mentally disordered and otherwise mentally vulnerable people) applies to children currently. This is intended to simply be a summary of provisions elsewhere in the Code rather than additional rules. However, it is important that in removing the reference to '*any age*', the changes do not inadvertently remove protections for children who are mentally vulnerable, or discourage police from reading relevant parts of the Code. For example, Annex E Note for Guidance E2 provides helpful guidance for police when interviewing a child that has additional needs.
26. Our proposed version of paragraph 1.4 retains the reference to '*person*' in order to retain recognition that many (probably most) children interviewed as suspects are mentally vulnerable in this context and therefore have additional needs.

Reasonable steps

27. Code C paragraph 3.5 requires that, "The custody officer or other custody staff as directed by the custody officer shall determine whether the detainee requires an appropriate adult". It then simply points to paragraph 1.4, indicating that this is determined by whether or not there is '*any suspicion*' (current version) or '*reason to believe*' (proposed version).
28. In addition, under Code C paragraph 3.6 there is a requirement to conduct an "*assessment to consider whether the detainee is likely to present specific risks to custody staff, any individual who may have contact with detainee (e.g. legal advisers, medical staff) or themselves. This risk assessment must include the taking of reasonable steps to establish the detainee's identity and to obtain information about the detainee that is relevant to their safe custody, security and welfare and risks to others*". However, this is clearly a physical safety risk assessment and does not mention the assessment of need in relation to procedural safeguards or reasonable adjustments to secure effective participation in procedures including interviews.
29. Code C paragraph 1.0 states that, '*Under the Equality Act 2010, section 149 (Public sector Equality Duty), police forces must, in carrying out their functions, have due regard to the need to eliminate unlawful discrimination...[and]...to advance equality of opportunity between people who share a relevant protected characteristic*'. This is a proactive duty and we argue that it requires police to take reasonable steps to ascertain whether a person requires reasonable adjustments for a disability under the Act. The AA is required under a separate and distinct legal provision, it could reasonably be said to contribute to this duty.

30. Therefore, we propose that note for guidance 1G includes an explicit expectation on police to take ‘reasonable steps’ to determine vulnerability as defined by the Code. This is not an additional requirement on police but rather a reflection of their existing legal responsibilities. This applies irrespective of other changes but is even more critical if the significantly higher ‘reason to believe’ threshold were to be adopted. This would simply mean that an officer who did not contact an AA would need to demonstrate that they had taken reasonable steps to ascertain whether or not a person was mentally vulnerable before determining that they did not need an AA. In practice, this would likely be evidenced by appropriate questions included during a risk assessment and/or interaction with liaison and diversion staff.

Clarification of different tests

31. Some of the proposed changes to note for guidance 1G are clearly beneficial. It seeks to tackle the issue whereby police identify vulnerability but determine not to apply the AA safeguard⁷ by reinforcing the fact that whenever a person is identified as vulnerable an AA must be called. It also makes clear the need for a custody officer to consider each case individually, on each separate occasion, rather than relying on historical data.
32. However, 1G also presents some issues. As a note for guidance it is intended to provide clarification about the threshold test in paragraph 1.4. However, it currently risks creating the confusion of alternative threshold tests. It states, “The custody officer must consider whether a person is vulnerable...” and that, “An appropriate adult will be needed...if...the custody officer is satisfied that paragraph 1.13(d) applies” (our underline for emphasis). We interpret ‘satisfied’ as a much higher threshold than even ‘reason to believe’ which itself is too high. Our proposed amendments to 1G seeks to remedy this.
33. We are concerned that the wording at the start of 1G will undermine the functional test and act to confirm unfortunate biases in the system against certain conditions. These include conditions that evidence indicates are often considered as not relevant (e.g. depression) or even non-existent (e.g. ADHD) but in fact may present a significant risk to the reliability, and therefore admissibility, of evidence. Our amended version of 1G seeks to remedy this.
34. Both academic evidence and our own experience suggests that, in practice, the threshold for vulnerability (and therefore the requirement for an AA) is confused with other tests, specifically those for fitness (to detain or to interview) and capacity (under the Mental Capacity Act 2005). Though these test are related, they do not equate to each other. We believe it would be beneficial for the notes for guidance to make this clear.

⁷ Dehaghani, R. (2016). He’s Just Not That Vulnerable: Exploring the Implementation of the Appropriate Adult Safeguard in Police Custody, The Howard Journal Vol 55 No 4. December 2016

Definition of persons for whom an AA is required

Paragraphs: [Code C: 1.4, 1.13 \(a new paragraph\), 1G \(current version\)](#)

Summary

35. The proposal introduces a new definition of people for whom an AA is required and creates and assigns a new title to them.
36. Currently, an AA is required where there is any suspicion that a person may have '*any mental disorder*' (defined by the Mental Health Act 1983) or is '*otherwise mentally vulnerable*' (defined in terms of functional ability). Under the proposals, the requirement to contact an AA for a person with any mental disorder is removed. In addition, '*otherwise mentally vulnerable*' is replaced by the term '*vulnerable adult*' which is then specified in a separate provision.
37. In principle, we support a functional test. However, we are concerned about how deliverable it would be, particularly if combined with a move from suspicion to belief. We are also concerned that the creation of the label '*vulnerable adult*' is regressive and must be avoided.

In detail

The challenge

38. The combination of situational factors (e.g. involvement in a traumatic event, being a police suspect, extreme stress, being arrested and detained) and personal characteristics or conditions (e.g. intellectual disability, mental health issues, suggestibility, compliance, problems coping) has the potential to generate significant risks to the justice process. In short, this includes the risk that guilty people may not be held to account due to inadmissibility of evidence and the risk that evidence obtained unfairly may result in innocent people being subjected to a miscarriage of justice.
39. The function of an AA is to act as a procedural safeguard and reasonable adjustment in order to mitigate these risks. The definition of the individuals to which the AA safeguard must be applied must include all people who are at risk. At the same time, given that the AA safeguard is not (and cannot be) optional for the suspect, the definition should exclude those for whom it is not required. The definition should not insult or degrade the people who it includes, nor discourage engagement with the resulting safeguards/adjustments.
40. The definition and required action need to be clear, unambiguous and applicable in practice. This is perhaps the greatest challenge. Certain mental disorders, such as depression or ADHD, appear not to be considered valid by some officers, with the legal requirement for an AA not being engaged⁸. Interpretation of '*otherwise mentally vulnerable*' is similarly very personal. In fact, academic evidence suggests that the PACE Code provisions often do not form part of an officer's vulnerability decision-making process at all⁹. Police officers have expressed to us that this is due to: a lack of training on mental vulnerability; lack of time to become familiar with the PACE Codes; and a feeling that the system would be unworkable if the law was complied with in all cases (given the gaps in AA provision for adults)¹⁰.

⁸ Dehaghani R (forthcoming), Vulnerability in Police Custody: police decision-making and the appropriate adult safeguard. Abingdon: Routledge.

⁹ Dehaghani (2016), Custody Officers, Code C and Constructing Vulnerability: Implications for Policy and Practice, *Policing: A Journal of Policy and Practice*, Volume 11, Issue 1, 1 March 2017, Oxford University Press

¹⁰ Palmer, C. and Hart, M. (1996). A PACE in the Right Direction?. The Effectiveness of Safeguards in the Police and Criminal Evidence Act 1984 for Mentally Disordered and Mentally Handicapped Suspects – A South Yorkshire Study. Sheffield: University of Sheffield.

Moving to a purely functional definition

41. An AA is currently required for all mental disorders, defined in the Mental Health Act 1983 as ‘any disorder or disability of mind’. It includes learning disability but only if associated with abnormally aggressive or seriously irresponsible conduct. It excludes dependency on alcohol or drugs. This is a simple and relatively easily understood definition, assuming access to information about what is currently defined as a mental disorder. However, it assumes an inability to function and participate effectively where this may not always be the case. In this way, there is a risk that some people are required to have an AA who do not require one. In addition to the issue of inefficiency, some people find this insulting and even discriminatory.
42. There are situations where a person has a *history* of mental disorder but a person is not currently experiencing one or where a current disorder is controlled by medication. Police officers currently have a variety of reactions to these situations, not all of which are compliant with PACE¹¹. They may judge that a well-medicated person does not need an AA¹². They may take a ‘belts and braces’ approach based on medical history. They may go with whatever custody records show happened if there was a previous arrest. They may ask a custody nurse’s opinion or even find out whether the suspect wants an AA¹³.
43. However, the Codes as currently formulated allow an effective and proportionate response to these situations. It is possible to recover from some mental disorders, just as they can recover from physical disorders. If a person experienced clinical depression 30 years ago, it does not mean that they need an AA today. It seems reasonable that an officer should have suspicion as a result of an apparent history. While this would trigger the AA safeguard, they could be stood-down if there is evidence to dispel that suspicion (such as information from a *suitably qualified* professional). What is required is training and guidance for police officers.
44. A person with a well-controlled mental disorder may also be able to participate effectively. However, like physical ill health or injury, a person’s history may indicate an increased risk of a vulnerability. A well-controlled disorder may worsen as a result of stress or delays in accessing medication. Again, we suggest that a current mental disorder, however well-controlled should trigger the suspicion of a police officer. It is unreasonable to ask police to judge a person’s functional ability and the current effect of a condition or medication. However, an AA can be stood-down if there is evidence to dispel that suspicion (such as information from a *suitably qualified* professional).
45. An AA is also required for a person who may be ‘*mentally vulnerable*’, defined as someone who ‘*because of their mental state or capacity, may not understand the significance of what is said, of questions or of their replies*’. The benefit of this provision is that it focuses AA provision on need rather than a diagnosis. However, it does not include all relevant risks to justice.

¹¹ Dehaghani R (forthcoming), *Vulnerability in Police Custody: police decision-making and the appropriate adult safeguard*. Abingdon: Routledge.

¹² Dehaghani (2016), *Custody Officers, Code C and Constructing Vulnerability: Implications for Policy and Practice*, *Policing: A Journal of Policy and Practice*, Volume 11, Issue 1, 1 March 2017, Oxford University Press

¹³ Dehaghani R (forthcoming), *Vulnerability in Police Custody: police decision-making and the appropriate adult safeguard*. Abingdon: Routledge.

46. As essentially a more comprehensive definition of ‘otherwise mentally vulnerable’, the definition (as opposed to the label) proposed in paragraph 1.13 is welcomed. It is common to hear police focus on whether or not a suspect understands what is being said to them¹⁴. In addition to not understanding significance and implications, the new provision includes the risks of unreliable evidence, suggestibility and compliance, confusion and lack of clarity.
47. It is notable that, under the Equality Act 2010, the protected characteristic of disability is defined as ‘*a physical or mental impairment*’ which ‘*has a substantial, adverse, and long term effect on [a person’s] ability to carry out normal day-to-day activities*’. The focus is on the effects of a condition (which may well be a mental ill health) rather than a diagnosis. In order to be defined as a disability, a condition must have more than a small effect, must make things more difficult for the person, and must have lasted for an extended period. With the exception of the last clause, it is a functional test.
48. However, in the context of the PACE Codes, it is critical to recognise that while an internal vulnerability may be important, the situational vulnerability may well be the most pertinent factor. It is perfectly possible that while a person may not be particularly vulnerable in normal circumstances, the circumstances of police custody or a voluntary interview may render them so¹⁵.
49. Gudjonsson (2006) identified four types of vulnerability relevant to detainees or suspects¹⁶. The first is *mental disorder* (including mental illness, learning disability, and personality disorder). The second category encompasses *abnormal mental states* (e.g. anxiety, phobias, bereavement, intoxication, withdrawal and mood disturbance). The third category is *intellectual functioning*. The fourth is *personality*, whereby a person’s inherent natural traits (such as suggestibility, compliance and acquiescence) are such that they present a risk to evidence. The implication is not that any person with any presentation of any of these categories is vulnerable. The functional approach remains applicable. Rather, people who are vulnerable to the relevant risks will fit into one or more of these categories.
50. Our proposed amendments to 1.13 sets out some additional risks. We suggest: inclusion of all four of the risk groups identified by Gudjonsson¹⁷; disambiguation of the separate risks of suggestibility, compliance and acquiescence; and the additional risk of a lack of consequential thinking. With a view to ensuring the AA safeguard is targeted correctly, subject to including all four risk groups, it may be appropriate to remove the ‘*any other reason*’ category in order to avoid confusion (for example in relation to people who require interpretation). We suggest slight restructuring which avoids the implication that all other risks are subordinate to ‘*difficulty understanding the implications of processes*’.

¹⁴ IPCC (2017) [Learning the Lessons: Case 7 | Bulletin 29](#) – Custody 30th March 2017

¹⁵ See Dehaghani R (forthcoming), *Vulnerability in Police Custody: police decision-making and the appropriate adult safeguard*. Abingdon: Routledge.

¹⁶ Gudjonsson, G. H. (2006). The psychological vulnerabilities of witnesses and the risk of false accusations and false confessions. In A., Heaton-Armstrong, E., Shepherd, G., Gudjonsson, G., and D. Wolchover (Eds.), *Witness Testimony. Psychological, Investigative and Evidential Perspectives*. Oxford. Oxford University press, 61-75.

¹⁷ In our proposed version of 1G we have added an explicit exception that where a person is intoxicated but would otherwise not meet the criteria in paragraph 1.13 an AA would not be required.

51. Overall we support the principle of moving to a functional definition. However, it requires more interpretation than '*any mental disorder*' and this brings risk because it is contingent on things like knowledge and culture. At one end of the scale there is a danger that vulnerability is interpreted so broadly that focus is lost on the people who are most at risk (arguably every suspect is vulnerable by virtue of their circumstance). At the other, misconceptions about certain disorders such as depression and ADHD are commonplace and there is a risk that the change will be perceived as a vindication of those erroneous beliefs. We have suggested a re-ordering of the proposed note for guidance 1G, to help mitigate this risk.
52. The move to a purely functional definition does make it all the more important to maintain the threshold as '*any suspicion*' rather than '*reason to believe*'. The combination of '*reason to believe*' with a functional definition comes very close to requiring police to conduct a functional assessment – a burden that cannot be placed upon them.
53. However, even at the level of suspicion, decisions will be informed by knowledge and culture¹⁸. This will inform what conditions trigger suspicion in an individual officer, whether it be all brain injuries; autism spectrum conditions (including where there is no intellectual disability); ADHD; Tourette's syndrome; cases of extreme stress brought on by involvement in a traumatic event or by being accused?
54. In order for this to be properly implemented, police forces will need to invest in supporting their officers. This may be through training, guidance and/or through the adoption of validated tools. Given the evidence that, in determining whether to apply the AA safeguard, police officers do not apply the tests currently set out in the PACE Codes, it will be this investment that makes the real difference.
55. It should be noted that both the current and proposed provisions apply a medical, rather than social, model. They define the issue as being the limitation or dysfunction of the individual. Application of a social model would recognise that it is the system, and its failure to adapt to individuals, that renders some individuals vulnerable, rather than simply their personal characteristics. The Equality Act 2010 recognises the social model of disability by placing a duty on employers and service providers to make '*reasonable adjustments*' but still applies the medical model to the definition of disability.

The term 'vulnerable adult'

56. We are concerned about the term '*vulnerable adult*' for two main reasons. One is the risks posed by existing usage of the language and the other is the potential impact on, and acceptability to, the individuals concerned. We are guilty of using the term ourselves and the following rationale applies to our own organisation as much as to the Codes.
57. AA provision remains a significant issue and there is no statutory duty on any authority to ensure it. It has been argued that the adoption of this term will be beneficial in developing engagement and partnerships between police, health and social care. The rationale is that the term '*vulnerable adult*' is widely used and understood not only in policing but also in those fields, and that this will encourage all parties to recognise their role in ensuring provision.
58. However, it should not be assumed that the term '*vulnerable adult*' is widely used, nor that there is agreement about what it means where it is used.

¹⁸ Dehaghani R (forthcoming), Vulnerability in Police Custody: police decision-making and the appropriate adult safeguard. Abingdon: Routledge.

59. The term 'vulnerability' has indeed enjoyed increasing recognition in policing in recent years. However, it is important to consider what the term has come to mean. In September 2016, the Home Secretary approved £1.9 million of funding to improve policing's response to vulnerability¹⁹. The College's approach is shaped by its definition of vulnerability: *"A person is vulnerable if, as a result of their situation or circumstances, they are unable to take care of or protect themselves or others from harm or exploitation"*. The funding has been invested in four strands of work. Three of these are on child sexual exploitation/abuse (CSEA). One focuses on vulnerability and involves a one-day training course and a self-assessment for forces. We believe this does not cover suspects in custody. In summary, the no doubt increasing recognition of the term 'vulnerable' in the policing context is closely associated with victims.
60. This may be less the case in custody but in revising the PACE Codes we must be aware that an increasing proportion of interviews are taking place outside the custody officer's domain. In any case, academic evidence regarding the way that custody officers identify, determine and interpret vulnerability, suggests a tendency towards associating vulnerability with people who behave in an 'abnormal' or 'childlike' manner²⁰. Those who 'present well' may not be determined to be vulnerable enough for the AA safeguard to be applied. This reflects how the word 'vulnerability' is generally understood by the public. It leaves us concerned that, at least in the absence of training, certain groups may be less likely to be interpreted as being 'vulnerable' than others, despite having the same or greater level of need.
61. Even in the specific context of PACE 1984, there is variance in meaning. The PACE Act historically included no reference to mentally disordered, mentally vulnerable or vulnerable adult. With the exception of the specific (and archaic) reference to *'confessions by mentally handicapped persons'*, everything was contained within the Codes. However, the Policing and Crime Act 2017 very recently introduced not one but two statutory definitions of a *'vulnerable adult'*. Both are related specifically to the use of live link (video conferencing) technology with suspects in custody, rather than being generally applicable.
62. Under PACE 1984 s.45ZA (Functions of extending detention: use of live links) (8) a *"vulnerable adult" means a person aged 18 or over who may have difficulty understanding the purpose of an authorisation under section 42(1) or (2) or anything that occurs in connection with a decision whether to give such an authorisation (whether because of a mental disorder or for any other reason)"*;
63. Under PACE 1984 s.45ZB (Warrants for further detention: use of live links) (4) *"vulnerable adult" means a person aged 18 or over who may have difficulty understanding the purpose of the hearing or what occurs at it (whether because of a mental disorder or for any other reason)"*;

¹⁹ http://www.college.police.uk/News/College-news/Pages/police_transformation_fund.aspx

²⁰ He's Just Not That Vulnerable: Exploring the Implementation of the Appropriate Adult Safeguard in Police Custody, The Howard Journal Vol 55 No 4. December 2016

64. PACE Code C section 11 D covers *‘Vulnerable suspects - urgent interviews at police stations’*. It provides a list of those defined as *‘vulnerable suspects’* in paragraph 11.18. These include a *‘juvenile or vulnerable adult without the appropriate adult being present’*. In this definition a vulnerable adult is only defined as a vulnerable suspect if their AA is not present, yet they are being referred to as a vulnerable adult. Furthermore, it goes on to list other categories of vulnerable suspect. These include those who do not understand what is happening due to drink, drugs, illness, ailment or condition; and situations in which an interpreter is required but not present and police seek to communicate directly themselves. In summary, there are a number of situations which would render a person a *‘vulnerable suspect’* and this is a wider group than those for whom an AA is required. The suggested term *‘vulnerable adult’* is therefore confusing.
65. In health and social care, a *‘vulnerable adult’* was previously defined in the statutory guidance *No Secrets*²¹ and *In Safe Hands*²² as a *“person aged 18 years or older who is or may be in need of community care services by reason of mental or other disability, age or illness; and who is or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation”*. This is a quite different definition that sets a significantly higher threshold. It is not the case that all people that meet the proposed Code C definition of *‘vulnerable adult’* would meet the threshold for community care services.
66. A Law Commission report, presented to Parliament in 2011, in advance of new social care legislation, is highly instructive: *“This is an area where terminology is of some importance. Our consultation paper pointed to concerns that the term vulnerable adult appears to locate the cause of abuse with the victim, rather than placing responsibility with the actions or omissions of others. It can also suggest that vulnerability is an inherent characteristic of a person and does not recognise that it might be the context, the setting or the place which makes a person vulnerable. We, therefore, proposed that the term vulnerable adults should be replaced by adults at risk...A large majority of consultees who expressed a view agreed with our proposal to replace the term vulnerable adults with adults at risk. Many consultees criticised the term vulnerable adult as stigmatising, dated, negative and disempowering. A small number of consultees did, however, argue that the term vulnerable adults describes more accurately the status of certain people, in particular those with long-term or profound learning disabilities.”*²³
67. Social care language was redefined by the Care Act 2014, which created a new framework for adult social care. The Act refers to adults with *‘needs for care and support’* and *‘adults at risk of abuse or neglect’*, the latter defined as *‘a person who has needs for care and support, is experiencing, or is at risk of, abuse or neglect, and as a result of those needs is unable to protect himself or herself against the abuse or neglect or the risk of it’*. An assessment under the act aims to, *‘identify what needs the person may have and what outcomes they are looking to achieve to maintain or improve their wellbeing’*, not to determine whether they are an *‘vulnerable adult’* – in fact that term does not appear in the Care Act 2014 at all.

²¹ Department of Health and Home Office, *No Secrets* (2000) para 2.3

²² National Assembly for Wales, *In Safe Hands* (2000) para 7.2

²³ The Law Commission (2011) *Adult Social Care*: Law Com No 326, paras 9.21 and 9.24, London: The Stationery Office http://www.lawcom.gov.uk/app/uploads/2015/03/lc326_adult_social_care.pdf

68. As stated above, it is perfectly possible that it is the *circumstances*, rather than factors internal to the person, that render a person at risk of unfairness. The label '*vulnerable adult*' therefore feels inappropriate and would add to confusion for those making decision about to whom the AA safeguard needs to be applied.
69. The term '*vulnerable adult*' is conveniently succinct. This makes it an attractive option and indeed is widely used in appropriate adult circles, including the NAAN website. However, it does imply deficiency in the person, rather than the system. It also labels the person vulnerable in their entirety (as if some people are *invulnerable*) when in fact both the system and the person are vulnerable to specific risks in a specific context. Once again, it is important to recognise that a person who is vulnerable to the risks specified in the Code may not be someone who is considered vulnerable outside of the context of being a suspect. In addition to being a regressive label it could increase the potential for the requirement to have an AA to be perceived as an insult – with consequent effects on the effectiveness of the safeguard and the investigation. Further consideration should be given to its appropriateness both in the Codes and in wider usage. Compared to the 'person first' language used both used in the existing Code and elsewhere, we believe that most people would consider it to be a regressive change.
70. Aligning terms across public service in order to serve partnership working is a worthy goal. However, this must involve aligning meaning and not just the words themselves. In the absence of this, there is a significant risk that meaning will be confused and misinterpreted because people assume that same meaning with which they are familiar.
71. In terms of health and social care, '*vulnerable adult*' is not the current terminology. Neither it, nor the new terminology in the Care Act 2014, align with the definition of the term set out in the PACE Code proposals. If there is no alignment of *definition*, then an alignment of terms will only drive misunderstanding.
72. The term '*at risk*', proposed by the Law Commission in 2011 presents a possible option. Police are extremely focused on risk. It may be that some groups who may be less likely to be perceived as vulnerable may be more likely to be perceived as being at risk. The term does appear in the Care Act in relation to adult safeguarding.
73. However, we suggest aligning with the spirit of the Care Act 2014 and draw on its language without seeking to match a specific term. We propose the term "*adults with additional needs*" or possibly "*adults with particular needs*" It is person-first. It promotes adult social care engagement without confusion over an existing term. It prompts police to consider whether a person has needs in order to participate effectively rather than requiring them to consider a person as '*vulnerable*' as a whole.
74. The recent addition of '*vulnerable adult*' to PACE 1984 does not provide sufficient reason to continue and expand its use in the PACE Codes. We suggest that, at the next opportunity for a legislative update, this should be re-visited with the goal of achieving a single definition of the group of people who require the support of an appropriate adult.

Who may act as an AA

Paragraphs: [Code C: 1.7, 1B, 1D, 1F](#)

Summary

75. The changes are almost all minor consequential changes due to the proposed new label of *'vulnerable adult'*. Additional wording in note for guidance 1F stresses that an AA must be independent of the police.
76. The reference to the need for the AA to be *'independent of the police'* is very welcome. However, the term is not defined and has varying interpretations. We have found evidence that, in some areas, AAs operate as police volunteers or are contracted and paid by police. We believe this cannot meet any reasonable test of independence and does not comply with Code C 1.7(ii). The meaning of independence needs to be operationalised.

In detail

Family

77. There are circumstances in which someone who is a relative or guardian may not act as an AA. These are set out in note for guidance 1B. We propose a minor amendment to point the reader to this note when reading the provision on relatives etc. at paragraph 1.7(b)(i)
78. The current and proposed wording contrasts family members with people who are *'experienced in dealing with 'vulnerable adults''*. We submit that family members may be amongst the most *experienced* people in this regard. We believe the distinction that the Codes are seeking to make is between those that are trained and/or qualified in working with people with particular/additional needs and those that are not. This is reflected in our proposed wording for paragraph 1.7 and 1D.

Respect for person's wishes

79. Paragraph 1D recognises the limitations and risks associated with family members and other untrained appropriate adults. However, it instructs police that if a person prefers a relative that their wish should be respected if practicable. We submit that, if practicable, a person's wishes should be respected in any case; including where they do not wish to have family informed. An arrest is highly personal information and an adult should be able to control whether their family is informed irrespective of any condition which they may have. Our amendment to 1D reflects this right, while also making clear that if a person's preferred AA is not available then an alternative should be sought.

Independence

80. While we believe independence from the police is absolutely critical, we also recognise that a police officer whose child or partner is arrested could make an effective (and well-motivated) AA. Our interpretation of 1.7 is that this is acceptable under the current rules as the exceptions against police officers, employees and contractors only apply to sub-paragraphs (ii) and (iii). However, we have proposed an amendment to paragraph 1B to clarify this.
81. NAAN and ICVA have jointly presented a paper to the PACE Strategy Board to the effect that a person who is an Independent Custody Visitor should not be allowed to also act as an AA in the same police force area. The paper was well received and there were no objections. Our proposed amendment to 1F reflect this. We acknowledge that an implementation time may be required and that it may not be possible to include this in the current changes. However, we include it to signal future direction.

Role of an AA

Paragraphs: [Code C: 1.7A](#)

Summary

- 82. This new paragraph inserts a description of the AA role, taken from Home Office guidance from 2003.
- 83. We strongly support the inclusion of a clear and comprehensive description of the AA role. We believe this will be of value to police, AAs, suspects and the wider system. We have proposed a small number of amendments to ensure comprehensiveness.

Police Actions

Paragraphs: [Code C: 3.15, 3.16, 3.18, 11.15, 11.17, 11C](#)

Summary

- 84. Suspects must be informed of the AA decision that an AA is required and why. Officer's duty to *'inform'* an AA and *'ask'* them to come to the station is replaced by a duty to *'ensure that the attendance of the appropriate adult... is secured'*. People detained under section 135 or 136 Mental Health Act 1983 must be assessed within a period permitted by the revised MHA 1983. There is a new reminder that the discretion that superintendents have in certain circumstances to allow an urgent interview without an AA must be used only in exceptional circumstances.
- 85. We welcome efforts to ensure that suspects are better informed and, thinking of the many people who take on the role with no training, we would extend the same approach to appropriate adults. Efforts to strengthen the requirements on police officers to secure an AA are unlikely to make a significant impact since the availability of AA provision is the more important factor.

In detail

Duty to secure an appropriate adult

- 86. Replacing the requirement on police to *'inform'* and *'ask'* an AA to attend with a duty to *'ensure'* the AA is *'secured'* could be read as an increased requirement on officers. However in practice, we do not think this amendment will be as significant as perhaps hoped. A police officer has no power to secure a specific person as AA – a person is free to either agree or not agree. Furthermore, by virtue of the requirement to have an AA present for the many procedures defined by the Codes, officers already have to ensure that the presence of an AA is secured. The current expectation is not that they simply call one. If something went wrong, an investigation would be looking at whether police ensured an AA was present for required procedures. Our proposal is that the wording is amended slightly so that the requirement is to secure the attendance of *'an'* appropriate adult, rather than *'the'* appropriate adult.

Information provided to appropriate adults

87. We propose a requirement to provide a brief summary of the AA purpose and role to a prospective AA at the time they are contacted and asked to fulfil the role. There is an existing requirement under paragraph 11.17 to inform the AA of their role. However, this applies only when the AA is present at interview and only to their role in interview. Bringing this forward in the process, by virtue of inclusion in paragraph 3.15 would allow a person to make a more informed decision about whether they are able to discharge those responsibilities effectively. We submit that is fair and reasonable, would be beneficial to the quality of AAs provided to suspects, and avoid inefficiencies associated with people changing their minds once at the station. This should be in addition to providing the AA with comprehensive written guidance on their role when they arrive at the station (or in advance in the case of voluntary interviews).
88. It is important that a person who acts in the role of AA is clear on not only what they can do, but why they are doing it i.e. the intended outcomes. For that reason, we propose that paragraph 11.17 includes a requirement to highlight to the AA the risks which they are responsible for safeguarding against, as set out in paragraph 11.17. In practice, this would be easy to implement by adapting written guidance for AAs and/or with a set script.
89. Children and adults with additional needs often waive the right to free legal advice without being fully informed. Children aged 10-13 are the least likely to take up legal advice²⁴. It is the AA's general responsibility to ensure that a suspect makes informed decisions. They also have a specific power to secure legal advice on behalf of a suspect where they consider it to be in their best interest. Some would argue that this is the single most important action that an AA can take in terms of securing a person's human right to a fair trial. However, many untrained AAs are not aware of this responsibility and power. Accordingly, it is important that it is included in the short summary of their role in relation to interviews. We have proposed an amendment to paragraph 11.17 to that effect.

Information provided to suspects

90. We support the requirement to inform a suspect of the requirement for an AA, which we suspect is common practice in any case. The requirement to provide a specific reason may present difficulties in practice, as we have described in this document. It is not always possible for a police officer to provide a 'reason' beyond the existence of a hunch. This requirement also brings into relief the issue of the proposed label; with officers required to explain to a person has been classified as a 'vulnerable adult'.
91. Under paragraph 3.15, we propose that suspects should also be informed of the role of an AA (as described in new paragraph 1.7A) as soon as is practicable on detention – ideally as part of booking in. This would allow them to make a more informed decision about who they want to fulfil the role.

²⁴ Kemp, V., Pleasence, P., & Balmer, N. J. (2011). Children, young people and requests for police station legal advice: 25 years on from PACE. *Youth Justice*, 11(1), 28-46.

Detention for a mental health assessment

92. The current wording in the Codes is that, *'The appropriate adult has no role in the assessment process and their presence is not required'*. Although the Home Office has been clear that this means no AA is required in relation to detentions under the MHA 1983, we are aware that there is a lack of clarity amongst police officers. The confusion relates specifically to whether an AA is required for custody procedures (i.e. booking in). It is notable that existing paragraph 1.10 states, *'this Code applies...to those removed to a police station as a place of safety under the Mental Health Act 1983, sections 135 and 136'*.
93. This issue may become almost academic given the changes in the MHA 1983, which prohibit the use of police cells for children and make it allowable for adults only in exceptional circumstances. However, it is not clear how provisions related to adults will be implemented in practice. We suggest that the opportunity should be taken to clarify matters, and have made proposals accordingly.
94. For the avoidance of doubt, our position is that a person detained under the MHA is not subject to criminal procedures. They are ill and they are a patient. Any support which they require should operate under the auspices of the mental health system and related law, such as that provided by Independent Mental Health Advocates. The application of the AA safeguard is inappropriate.

Voluntary interviews

Paragraphs: [Code C: 3.21\(b\), 3.21A, 3.21B, 1.10, 1A, 6B](#)

Summary

95. The proposed revisions set out in significantly greater detail the responsibilities of an interviewer in relation to the information that must be provided to a suspect. It is stated explicitly that a person's rights, entitlement and safeguards are not diminished by virtue of the interview being voluntary, and that the interviewer takes on the responsibilities specified in the Codes as falling to the custody officer.
96. We strongly welcome efforts to improve procedural safeguards in the context of voluntary interviews, particularly for children and adults with additional needs. We are pleased to see this positive and substantial response to our [joint paper with ICVA](#). We believe that it would be preferable for this information to be in a distinct Annex to Code C and have proposed a small number of opportunities for improvement. At a more fundamental level, we remain concerned that the involvement of an officer who is entirely independent of the investigation (i.e. the custody officer) should not be lost under voluntary interviews.

In detail

[A separate annex](#)

97. Our joint paper with ICVA, recently presented to the PACE Strategy Board, set out a summary of our concerns about the risks attached to voluntary interviews, particularly those involving suspects who should have an AA. While it is clear that the avoidance of custody is beneficial to people who require an AA, this should not be at the cost of a fair process. For historical and practical reasons, safeguards and services have built up within custody. The move towards voluntary interviews has been happening for some time but it now appears to be an intentional strategy in many areas. Actions are required to translate safeguards and so to mitigate risks.
98. We welcome the addition of text concerning the information about rights and entitlements that must be provided to suspects in advance of a voluntary interview. Our preference remains for there to be a distinct Annex to Code C on voluntary interviews. Annex E (Summary of provisions relating to mentally disordered and otherwise mentally vulnerable people) is an example of how an Annex can be used to summarise the relevant content of the Codes for a specific purpose. Our view is that this would make the content easier for response officers to access and digest, and therefore increase the likelihood of compliance.

[Interviews on private property](#)

99. Paragraph 1.10 states that Code C applies to *'people in custody at police stations...whether or not they have been arrested'*. This would appear to *exclude* its application to voluntary interviews outside of police stations and probably those in police station but out of custody. However, note for guidance 1A advises, *Although certain sections of this Code apply specifically to people in custody at police stations, those there voluntarily to assist with an investigation should be treated with no less consideration, e.g. offered refreshments at appropriate times, and enjoy an absolute right to obtain legal advice or communicate with anyone outside the police station.'* The two paragraphs are not explicitly linked in the text. Paragraph 1A suggests parity of treatment but could be interpreted as saying that the absolute right to legal advice and communication with anyone outside the police station are examples of parity, when they do not actually apply to a detained person. We have

proposed minor amendment to paragraphs 1.10 and 1A to reflect the additional information that is now provided and reduce the risk of confusion.

100. The status of voluntary interviews at a person's home should be clarified in the Codes. Code G 2F refers consistently to voluntary attendance at a police station. Code C refers to people not being '*obliged to remain at the station or other location*'. Neither of these seem to be applicable to an interview where it takes place on a person's private property and they can withdraw permission for the police to enter it.

Communicating voluntary status

101. We are concerned by the wording in paragraph 3.21 that an officer must explain to a suspect that '*the voluntary interview is necessary to question them to obtain evidence about their involvement or suspected involvement in the offence*' (underline emphasis ours). The word *necessary* feels inappropriate as it could be understood as meaning it is a legal requirement that the person agrees to be interviewed. As it is a voluntary interview, it cannot be required. While it may seem necessary to the police, it may not to the person. It is more accurate to say that the police *wish*, or *would like*, to question them to obtain evidence. The person is under no obligation to do so and this should be clear at all times.
102. Similarly, a voluntary interview should not be 'offered' unless it is explicit that a person will be arrested if they decline the offer (which then has the implication that they are de facto detained).

Safeguards and support

103. While it is possible that some voluntary interviews may happen immediately, many will be arranged for a future date. In the case of suspects with additional needs, we suggest that this is, in general, preferable. We are very concerned about the potential for quick, 'informal', interviews that take place without a suspect truly understanding their rights and without an AA understanding their responsibilities and powers. It is important that information about the person's rights and entitlements, in particular the safeguard of the AA and the right to legal advice, are explained in advance. This gives a person time to understand and execute those rights effectively. Wherever possible, the purpose, responsibilities and powers of the appropriate adult should be explained in advance to the person taking on the role. We have not made specific suggestions to this effect but we suggest that thought is given to how this might be reflected in the Codes.
104. Charlie Taylor's Review of the Youth Justice System in England and Wales (2016) noted by Kemp et al that found, "*43% of children who go on to be charged do not ask to see a solicitor, and that 10-13 year olds are the least likely to request and receive legal advice*"²⁵. Under Code C paragraph 6.5A, an AA can request legal advice on behalf of a suspect who has waived it; this must be treated as a request from the suspect. This power is a hugely important part of the AA role. We propose referencing this fact where relevant in paragraphs 3.21A(b)(iii) and 3.21B(d)(v).
105. We suggest that the current wording in 3.21A(c) risks confusing the role of the AA and that of a person to assist with documentation. We propose a very minor restructuring to make clear that the two are separate and ensure that AAs are called for the right people.

²⁵ Kemp, V., Pleasence, P., & Balmer, N. J. (2011). Children, young people and requests for police station legal advice: 25 years on from PACE. *Youth Justice*, 11(1), 28-46.

Independent oversight

106. In police custody, the custody officer has a role in safeguarding the rights and welfare of a detained suspect. We do not argue that this model, which makes a police officer the 'guardian' of PACE is without issue. Like all other roles, it is only effective when its duties are discharged effectively. However, the underlying principle that the custody officer is independent of the investigation is both sound and of critical importance. The assumption that this role can simply be assigned to interviewers in the case of voluntary interviews is concerning. It appears to undermine and diminish the importance of the custody officer role. If investigating officers / interviewers are effective in applying safeguard against their own abuses of power, and if no conflict of interest is perceived therein, then why is it necessary to have such an independent role in custody? Could the role of custody officer be reduced to simply one of welfare? We suggest not. Serious thought is required regarding how this important safeguard can be applied outside of custody.

Separate codes

107. We are of the opinion that the trend away from arrest and towards voluntary interviews will ultimately necessitate separate Codes to disentangle the issues. We suggest that in the longer term, consideration is given to a Code on 'detention and questioning' plus one on 'voluntary questioning'. Alternatively, since some people are detained but are not suspects, and vice versa, a Code on 'detention and treatment' plus one on 'questioning'.

Live link

Paragraphs: [Code C 12ZA, 12.9A, 15.3C, 15.2A, 15.4, 15.11D, Annex N2](#)

Summary

108. We recognise that live link technology provides police with the potential for significant efficiency gains. However, efficiency cannot be gained at the loss of fundamental safeguards and the effective participation of suspects in the justice process. We propose a number of amendments that broadly give a greater role to suspects, their appropriate adults, and legal representatives, in determining the appropriateness of live link for various procedures.

In detail

Interviews

109. We recognise the efficiency benefits for police forces in delivering certain interviews remotely. We also note that this approach may even bring some benefits for a detained child or an adult with additional needs. However, as recognised in existing Code C provisions relating to the use of live link for interpreters, it also generates significant potential risks. Efficiency cannot be gained at the expense of effective participation in the justice process.

110. The lack of physical presence of an interviewer seems always likely to have some impact on communication. For those who have communication difficulties, this might be a significant impact. We suggest an amendment to paragraph 12.9A by which the custody officer must be satisfied that the suspect will be able to participate effectively in an interview using a live link. This amendment also has the effect of disambiguating the provision regarding fitness to be interviewed by live link in 12.9A(b) with questions regarding its use with people for whom an AA is required. Although the two are connected, they are not synonymous. In practice there is some confusion about decisions on fitness and the requirement for an AA. We submit that it would be helpful to make the distinction clear.

111. In addition, we suggest amendments to proposed note for guidance 12C, which sets out what the custody officer should have regard to when considering a live link interview with a suspect for whom an AA is required. We note that proposed provisions for the use of live link for a superintendent's extension require the prior provision of legal advice and the informed consent of the suspect (which in the case of a child would require the involvement of parents; and in the case of an adult with additional needs the presence of an AA). While this may not be appropriate for interviews, our preference would be that where a solicitor or AA makes representations that live link is inappropriate for interview, it would not be used at all. However, we suggest simply that in addition to the proposed requirement to involve the AA in the decision: the same is applied to the solicitor; the operation of the system is explained/demonstrated to both (mirroring Annex N9); and if there are representations against the use of live link, an inspector's authorisation will be required. We hope this will be seen as a reasonable approach to safeguarding effective participation in interviews in the interests of the fairness of the justice system.

112. Paragraphs 12ZA and 1.13(e)(i) both define 'live link' for the purpose of interviews. However the wording is slightly different, only including interpreters in the latter. We suggest amending the former to match the latter, or deleting the former and referring to the latter.

Inspector's reviews

113. Under Article 37 of the UN Convention on the Rights of the Child (ratified by the UK in 1991) children should be detained only as a measure of last resort and for the shortest appropriate period of time. It is widely acknowledged that, both for children and for adults with mental ill health or other forms of mental vulnerability, extended detention times can have significant negative psychological effects. The system of reviews of detention is key to ensuring that children and adults with additional needs spend no longer than necessary in custody.
114. Our concerns that the review system might become a 'tick box' exercise are not reduced by the idea of them being carried out remotely. We accept that, in the case of the first review of detention there are often no grounds to make representations that a detained person should be freed. We also accept that the decision is a matter for the review officer. However, we think that in cases involving children and adults with additional needs, the lack of physical presence in the custody suite may limit the review officer's ability to make an effective assessment and may significantly disadvantage the suspect.
115. The current (and proposed) Code requires the review officer to consider the benefits of a review in person and requires them to make 'specific additional consideration' in some circumstances (including suspects for whom an AA is required). We propose that where an AA is required, there is a presumption that a review will take place in person. If they wish to use live link, the review officer be required to first give the suspect and the AA (and solicitor if one is involved) an opportunity to make representations. The review officer is already required to provide them with an opportunity to make representations about the substance of the review. We submit that this should include the right to make representations about the format itself. Furthermore, in order to ensure this provision has impact, we suggest that if the review officer is unable to allay concerns about the use of live link for a review, it should not be used unless authorised by a superintendent.

Superintendent's extensions

116. Under the proposed revisions (and the underpinning legislation), before live link can be used for this purpose the suspect must have received legal advice on its use and have given their consent. The presence of an AA is required in relation to the provision of information and the request and provision of consent. We consider the rights of the suspect to be appropriately protected by these measures and propose no major amendments.
117. We do propose that the reference in paragraph 15.2A to '*the person's special vulnerability*' is replaced with '*the person's age and/or additional needs*' in order to bring it in line with the rest of the proposed Codes. We propose a minor amendment to paragraph 15.4 to ensure alignment with paragraph 15.11D, in that an AA must be present for the requesting and giving of consent. We propose a restructuring of paragraph 15.11D for readability.

Court warrant extensions

118. As per superintendent's extensions, appropriate safeguards are in place.
119. We believe that the reference in paragraph 1.13(e) to paragraph 15.11B may be intended to be a reference to 15.11C

Interpreters

120. When the use of live link interpreters was previously introduced to the Code, we expressed our concerns about its use for people for whom an AA is required. We recognise that, given the many possible languages and locations, there will be circumstances in which remote interpretation is the best available option for all concerned. However, while on paper the safeguards in relation to the use of live link for interpreters are stronger than for other uses of live link, we remain of the opinion that a police inspector is not the most appropriate final arbiter of whether live link should be used.
121. We have proposed an amendment that would mean that if a suspect, AA or solicitor made representations that a physical interpreter was required in order to secure effective participation, then live link could not be used. We believe that this safeguard would be used appropriately. Neither AAs nor solicitors have an interest, beyond safeguarding the rights and welfare of the suspect, in delaying matters.

Table of changes and proposed amendments

Key

Text removed or changed from current version

Text added or amended in the consultation version (versus current version)

Test added or amended by NAAN (versus consultation version)

Identification of mental vulnerability		
Code C (current version)	Home Office proposed October 2017	NAAN Proposed October 2017
3.5 The custody officer or other custody staff as directed by the custody officer shall: (c) determine whether the detainee: (ii) requires: an appropriate adult (see paragraphs 1.4, 1.5, 1.5A and 3.15);	3.5 The custody officer or other custody staff as directed by the custody officer shall: (c) determine whether the detainee: (ii) requires: an appropriate adult (see paragraphs 1.4, 1.5 and 3.15);	3.5 The custody officer or other custody staff as directed by the custody officer shall: (c) determine whether the detainee: (ii) requires: an appropriate adult (see paragraphs 1.4, 1.5, 1.13(d) and 3.15);
1.4 If an officer has any suspicion, or is told in good faith, that a person of any age may be mentally disordered or otherwise mentally vulnerable, in the absence of clear evidence to dispel that suspicion, the person shall be treated as such for the purposes of this Code. See Note 1G.	1.4 If at any time an officer has a reason to believe that a person is a 'vulnerable adult' (see paragraph 1.13(d)), in the absence of clear evidence to the contrary, the person shall be treated as such for the purposes of this Code. See Note 1G.	1.4 If at any time an officer has a reason to suspect that a person may have additional needs as defined in paragraph 1.13(d), in the absence of clear evidence to dispel that suspicion, the person shall be treated as such for the purposes of this Code. See Note 1G.
1G (Note for guidance) 'Mentally vulnerable' applies to any detainee who, because of their mental state or capacity, may not understand the significance of what is said, of questions or of their replies. 'Mental disorder' is defined in the Mental Health Act 1983, section 1(2) as 'any disorder or disability of mind'. When the custody officer has any doubt about the mental state or capacity of a detainee, that detainee should be treated as mentally vulnerable and an appropriate adult called.	1G A person may be vulnerable as a result of a having a mental health condition or some other reason. However, the fact that someone has a mental health condition does not, in itself, mean that they are vulnerable for the purposes of paragraph this Code. The custody officer must consider whether a person is vulnerable for any reason and therefore in need of an appropriate adult, on a case by case basis. 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. An appropriate adult will be	1G The custody officer must, on a case by case basis, take reasonable steps to establish whether a person may have additional needs. This must take into account the particular circumstances of the individual and how the nature of the investigation might affect them. An appropriate adult will be needed on any occasion that a suspect, in accordance with any requirement in this or any other Code of Practice: • is given information, • is asked to provide information, or

	needed on any occasion that a suspect, in accordance with any requirement in this or any other Code of Practice: • is given information, • is asked to provide information, or • participates in any procedure, if on that occasion, the custody officer is satisfied that paragraph 1.13(d) applies to the person.	• participates in any procedure, if on that occasion, an officer has reason to suspect that paragraph 1.13(d) applies to the person. Depending on the additional needs of the person, further adjustments may need to be made in addition to an appropriate adult. Paragraph 1.13(d) is a functional test. The fact that someone has been diagnosed with a mental illness does not, in itself, mean that they have additional needs for the purposes of this Code. However, any evidence to dispel suspicion should be sought from professionals with qualifications relevant to the suspected condition wherever practicable. A person who has a learning disability should always be considered to have additional support needs. In the absence of any other reason to suspect a person has additional needs, a person who is intoxicated does not require an appropriate adult. If an officer is told in good faith that a person may have additional needs, then they should be treated as such in the absence of clear evidence to the contrary. <i>[Note: moved from existing paragraph 1.4]</i> A person with additional needs does not necessarily lack capacity and may be fit to detain and interview.
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Definition of mental vulnerability		
Code C (current version)	Home Office proposed October 2017	NAAN Proposed October 2017
N/A (new paragraph) <i>However, Note for Guidance 1G includes: ‘Mentally vulnerable’ applies to any detainee who, because of their mental state or capacity... may not understand the significance of what is said, of questions or of their replies.</i> <i>And, Note for Guidance 11C includes: Although juveniles or people who are mentally disordered or otherwise mentally vulnerable are often capable of providing reliable evidence, they may, without knowing or wishing to do so, be particularly prone in certain circumstances to provide information that may be unreliable, misleading or self-incriminating.</i> <i>Note for Guidance 1G also includes ‘any disorder or disability of mind’ (see below).</i>	1.13 In this Code: (d) ‘vulnerable adult’ means any person who, because of their mental state or capacity, or for any other reason, may have difficulty understanding the implications for them of the procedures and processes connected with their detention, or (as the case may be) their voluntary attendance at a police station or elsewhere (see paragraph 3.21), including their rights and entitlements because: (i) they may not understand the significance of what they are told, of questions they are asked or of their replies: (ii) may be particularly prone in certain circumstances to: • providing unreliable, misleading or self-incriminating information, or without knowing or wishing to do so; • accepting or acting on suggestions from others without consciously knowing or wishing to do so; or • becoming confused and unclear about their position. See Note 1G	1.13 (d) a person has additional needs for the purposes of this and any other Code if, because of their mental state, mental disorder, intellectual functioning, personality traits, they may: (i) not understand the significance of what they are told, of questions they are asked or of their replies; or (ii) have difficulty understanding the implications of the procedures and processes connected with the investigation and/or their detention; or (iii) have difficulty understanding and/or exercising their rights and entitlements; or (iv) have difficulty with consequential thinking; or (v) have difficulty with communication; or (vi) be particularly prone in certain circumstances to: • providing unreliable, misleading or self-incriminating information, without knowing or wishing to do so; or (vii) suggestibility, compliance or acquiescence; or • becoming confused and unclear about their position (viii) See Note 1G

Who may act as AA		
Code C (current version)	Home Office proposed October 2017	NAAN Proposed October 2017
1.7 'The appropriate adult' means, in the case of a: (b) person who is mentally disordered or mentally vulnerable: See Note 1D. (i) a relative, guardian or other person responsible for their care or custody; (ii) someone experienced in dealing with 'vulnerable adults' but who is not: • a police officer; • employed by the police; • 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, whether or not they are on duty at the time. (iii) failing these, some other responsible adult aged 18 or over who is other than a person described in the bullet points in sub-paragraph (b)(ii) above. See Note 1F.	1.7 'The appropriate adult' means, in the case of a: (b) vulnerable adult: See paragraph 1.13(d) and Note 1D. (i) a relative, guardian or other person responsible for their care or custody; (ii) someone experienced in dealing with 'vulnerable adults' but who is not: • a police officer; • employed by the police; • 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, whether or not they are on duty at the time. (iii) failing these, some other responsible adult aged 18 or over who is other than a person described in the bullet points in sub-paragraph (b)(ii) above. See Note 1F.	1.7 'The appropriate adult' means, in the case of: (b) an adult who may have additional needs: See paragraph 1.13(d) and Note 1D. (i) a relative, guardian or other person responsible for their care or custody; (see Note 1B) (ii) someone with relevant training or qualifications but who is not: • a police officer; • employed by the police; • 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, whether or not they are on duty at the time. (iii) failing these, some other responsible adult aged 18 or over who is other than a person described in the bullet points in sub-paragraph (b)(ii) above. See Note 1F.
1B A person, including a parent or guardian, should not be an appropriate adult if they: • are: ~ suspected of involvement in the offence; ~ the victim; ~ a witness; ~ involved in the investigation.	No change	1B A person, including a parent or guardian, should not be an appropriate adult if they: • are: ~ suspected of involvement in the offence; ~ the victim; ~ a witness; ~ involved in the investigation.

received admissions prior to attending to act as the appropriate adult.		received admissions prior to attending to act as the appropriate adult. A police officer may be an appropriate adult for a person if they are their spouse or civil partner, parent or guardian and have no other involvement in the investigation.
1D - In the case of people who are mentally disordered or otherwise mentally 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.	1D In the case of a vulnerable adult, 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.	1D In the case of adults with additional needs, it may be more satisfactory if the appropriate adult is someone with relevant training or qualifications. However, a person's wishes concerning who acts as their appropriate adult should be respected if practicable. If the preferred person cannot be available within a reasonable time period, an alternative should be sought.
1F A solicitor or independent custody visitor present at the police station in that capacity may not be the appropriate adult.	1F An appropriate adult who is not a parent or guardian in the case of a juvenile, or a relative, guardian or carer in the case of a vulnerable adult, must be independent of the police as their role is to safeguard the rights and entitlements of a detained person. Additionally, a solicitor or independent custody visitor who is present at the police station and acting in that capacity, may not be the appropriate adult.	1F An appropriate adult who is not a parent or guardian in the case of a juvenile, or a relative, guardian or carer in the case of a vulnerable adult, must be independent of the police as their role is to safeguard the rights and entitlements of a detained person. A solicitor who is present at the police station and acting in that capacity, may not be the appropriate adult. A person who is an independent custody visitor within the police force responsible for the detention or investigation, except under paragraphs 1.7(a)(i) or 1.7(b)(i), may not be the appropriate adult.

Role of an AA		
Code C (current version)	Home Office proposed October 2017	NAAN Proposed October 2017
N/A (new paragraph) However, Home Office guidance (2003) states: You have a positive and important role. You should not expect to be simply an observer of what happens at the police station. You are there to ensure that the detained person for whom you are acting as appropriate adult understands what is happening to them and why. Your key roles and responsibilities are as follows: • To support, advise and assist the detained person, particularly while they are being questioned. • To observe whether the police are acting properly, fairly and with respect for the rights of the detained person. And to tell them if you think they are not. • To assist with communication between the detained person and the police. • To ensure that the detained person understands their rights and that you have a role in protecting their rights.	1.7A The role of the appropriate adult is to safeguard the rights, entitlements and welfare of juveniles and vulnerable adults (see paragraphs 1.4, 1.5 and 1.13(d)) 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 juveniles and vulnerable adults when, in accordance with this Code or any other Code of Practice, any such person is given or asked to provide information or participates in any procedure; • observe whether the police are acting properly to respect the rights of juveniles and vulnerable adults, and inform an officer of the rank of inspector or above if they consider that they are not; • assist with communication between juveniles and vulnerable adults and the police; • help juveniles and vulnerable adults to understand their rights and ensure that those rights are protected.	1.7A The role of the appropriate adult is to safeguard the rights, entitlements, welfare and effective participation of juveniles and adults with additional needs (see paragraphs 1.4, 1.5 and 1.13(d)) 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 any such person when, in accordance with this Code or any other Code of Practice, they are given or asked to provide information or participates in any procedure; • observe whether the police are acting properly to respect the person's rights, and inform an officer of the rank of inspector or above if they consider that they are not; • assist with communication between the person and the police; • help the person to understand their rights and ensure that those rights are protected. • ensure issues which may disadvantage the person are recorded on the custody and/or interview record • consult privately with the person at their request (see paragraph 3.18) • ensure they have legal advice where it is in their best interests (see paragraph 6.5A)

Police Actions		
Code C (current version)	Home Office proposed October 2017	NAAN Proposed October 2017
3.15 If the detainee is a juvenile, mentally disordered or otherwise mentally vulnerable, the custody officer must, as soon as practicable: - inform the appropriate adult, who in the case of a juvenile may or may not be a person responsible for their welfare, as in paragraph 3.13, of: - the grounds for their detention; - their whereabouts. - ask the adult to come to the police station to see the detainee.	3.15 If the detainee is a juvenile or a vulnerable adult, the custody officer must, as soon as practicable, ensure that: - the detainee is informed of the decision that an appropriate adult is required and the reason for that decision (see paragraph 3.5(c)(ii) and; - the detainee is advised that: - the duties of the appropriate adult include giving advice and assistance; and - they can consult privately with the appropriate adult at any time. - the appropriate adult, who in the case of a juvenile may or may not be a person responsible for their welfare, as in paragraph 3.13, is informed of: - the grounds for their detention; - their whereabouts; and - the attendance of the appropriate adult at the police station to see the detainee is secured.	3.15 If the suspect is a juvenile or an adult with additional needs, the custody officer must, as soon as practicable, ensure that: - the suspect is informed of the decision that an appropriate adult is required and the reason for that decision (see paragraph 3.5(c)(ii) and; - the suspect is advised of the duties of the appropriate adult as described in paragraph 1.7A - the appropriate adult, who in the case of a juvenile may or may not be a person responsible for their welfare, as in paragraph 3.13, is informed of: - the grounds for their detention; - their whereabouts - the purpose and role of the AA as set out in paragraphs 1.13 and 1.7A; and - the attendance of an appropriate adult to see the suspect at the earliest opportunity is secured
3.18 The detainee shall be advised that: - the duties of the appropriate adult include giving advice and assistance; - they can consult privately with the appropriate adult at any time.	Not used (text moved to 3.15)	See amendments to 3.15

3.16 It is imperative that a mentally disordered or otherwise mentally vulnerable person, detained under the Mental Health Act 1983, section 136, be assessed as soon as possible. A police station should only be used as a place of safety as a last resort but if that assessment is to take place at the police station, an approved mental health professional and a registered medical practitioner shall be called to the station as soon as possible to carry it out. See Note 9D. The appropriate adult has no role in the assessment process and their presence is not required. Once the detainee has been assessed and suitable arrangements made for their treatment or care, they can no longer be detained under section 136. A detainee must be immediately discharged from detention under section 136 if a registered medical practitioner, having examined them, concludes they are not mentally disordered within the meaning of the Act.	3.16 It is imperative that a mentally disordered person detained under the Mental Health Act 1983, section 135 or 136, be assessed as soon as possible within the permitted period of detention specified in that Act. A police station may only be used as a place of safety in accordance with the provisions of the 1983 Act. If that assessment is to take place at the police station, an approved mental health professional and a registered medical practitioner shall be called to the station as soon as possible to carry it out. See Note 9D. The appropriate adult has no role in the assessment process and their presence is not required. Once the detainee has been assessed and suitable arrangements made for their treatment or care, they can no longer be detained under section 135 or 136. A detainee must be immediately discharged from detention if a registered medical practitioner, having examined them, concludes they are not mentally disordered within the meaning of the Act.	3.16 It is imperative that a person detained under the Mental Health Act 1983, section 135 or 136, be assessed as soon as possible within the permitted period of detention specified in that Act. A police station may only be used as a place of safety in accordance with the provisions of the 1983 Act. If that assessment is to take place at the police station, an approved mental health professional and a registered medical practitioner shall be called to the station as soon as possible to carry it out. See Note 9D. As the person is not being held under the Police and Criminal Evidence Act 1984, there is no role for an appropriate adult and their presence is not required either for custody procedures or the assessment. Once the detainee has been assessed and suitable arrangements made for their treatment or care, they can no longer be detained under section 135 or 136. A detainee must be immediately discharged from detention if a registered medical practitioner, having examined them, concludes they are not mentally disordered within the meaning of the Act.
11.15 A juvenile or person who is mentally disordered or otherwise mentally vulnerable must not be interviewed regarding their involvement or suspected involvement in a criminal offence or offences, or asked to provide or sign a written statement under caution or record of interview, in the absence of the appropriate adult unless paragraphs 11.1 or 11.18 to 11.20 apply. See Note 11C.	11.15 A juvenile or vulnerable adult must not be interviewed regarding their involvement or suspected involvement in a criminal offence or offences, or asked to provide or sign a written statement under caution or record of interview, in the absence of the appropriate adult unless paragraphs 11.1 or 11.18 to 11.20 apply. See Note 11C.	11.15 A juvenile or adult with additional needs must not be interviewed regarding their involvement or suspected involvement in a criminal offence or offences, or asked to provide or sign a written statement under caution or record of interview, in the absence of the appropriate adult unless paragraphs 11.1 or 11.18 to 11.20 apply. See Note 11C.

11.17 If an appropriate adult is present at an interview, they shall be informed: • that they are not expected to act simply as an observer; and • that the purpose of their presence is to: ○ advise the person being interviewed; ○ observe whether the interview is being conducted properly and fairly; and ○ facilitate communication with the person being interviewed.	11.17 If an appropriate adult is present at an interview, they shall be informed: • that they are not expected to act simply as an observer; and • that the purpose of their presence is to: ○ advise the person being interviewed; ○ observe whether the interview is being conducted properly and fairly; and ○ facilitate communication with the person being interviewed.	11.17 If an appropriate adult is present at an interview, they shall be informed of the risks set out in paragraph 1.13 and that: • they are not expected to act simply as an observer; and • the purpose of their presence is to: ○ advise the person being interviewed; ○ observe whether the interview is being conducted properly and fairly; and ○ facilitate communication with the person being interviewed. ○ ensure that the person has legal advice if it is in their best interest (see paragraph 6.5A)
11C Although juveniles or people who are mentally disordered or otherwise mentally vulnerable are often capable of providing reliable evidence, they may, without knowing or wishing to do so, be particularly prone in certain circumstances to provide information that may be unreliable, misleading or self-incriminating. Special care should always be taken when questioning such a person, and the appropriate adult should be involved if there is any doubt about a person's age, mental state or capacity. Because of the risk of unreliable evidence it is also important to obtain corroboration of any facts admitted whenever possible.	11C Although juveniles or vulnerable adults are often capable of providing reliable evidence, they may, without knowing or wishing to do so, be particularly prone in certain circumstances to provide information that may be unreliable, misleading or self-incriminating. Special care should always be taken when questioning such a person, and the appropriate adult should be involved if there is any doubt about a person's age, mental state or capacity. Because of the risk of unreliable evidence it is also important to obtain corroboration of any facts admitted whenever possible. Because of the risks, which the presence of the appropriate adult is intended to minimise, officers of superintendent rank or above should exercise their discretion under paragraph 11.18 to authorise the commencement of an	11C Although juveniles or adults with additional needs are often capable of providing reliable evidence, they may be prone to the risk set out in paragraph 1.13. Special care should always be taken when questioning such a person, and an appropriate adult should be involved if there is any doubt about a person's age, mental state or capacity. Because of the risk of unreliable evidence it is also important to obtain corroboration of any facts admitted whenever possible. Because of the risks, which the presence of the appropriate adult is intended to minimise, officers of superintendent rank or above should exercise their discretion under paragraph 11.18 to authorise the commencement of an

	rank or above should exercise their discretion to authorise the commencement of an interview in the appropriate adult's absence only in exceptional cases, if it is necessary to avert one or more of the specified risks in paragraph 11.1.	interview in the appropriate adult's absence only in exceptional cases, if it is necessary to avert one or more of the specified risks in paragraph 11.1
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Voluntary interviews		
Code C (current version)	Home Office proposed October 2017	NAAN Proposed October 2017
3.21(b) If they are not arrested but are cautioned as in section 10, the person who gives the caution must, at the same time, inform them they are not under arrest and they are not obliged to remain at the station or other location but if they agree to remain, they may obtain free and independent legal advice if they want. They shall also be given a copy of the notice explaining the arrangements for obtaining legal advice and told that the right to legal advice includes the right to speak with a solicitor on the telephone and be asked if they want advice. If advice is requested, the interviewer is responsible for securing its provision without delay by contacting the Defence Solicitor Call Centre. The interviewer is responsible for confirming that the suspect has given their agreement to be interviewed voluntarily. In the case of a juvenile or mentally vulnerable suspect, this must be given in the presence of the appropriate adult and for a juvenile, the agreement of a parent or guardian of the juvenile is also required. The interviewer must ensure that other provisions of this Code and Codes E and F concerning the conduct and recording of interviews of suspects and the rights and entitlements and safeguards for suspects who have been arrested and detained are followed insofar as they can be applied to suspects who are not under arrest. This includes: • informing them of the offence and, as the case may be, any further offences, they are	Information to be given when arranging a voluntary interview: 3.21(b) If the suspect's arrest is not necessary but they are cautioned as required in section 10, the person who, after describing the nature and circumstances of the suspected offence, gives the caution must at the same time, inform them that they are not under arrest and that they are not obliged to remain at the station or other location. The rights, entitlements and safeguards that apply to the conduct and recording of interviews with suspects are not diminished simply because the interview is arranged on a voluntary basis. For the purpose of arranging a voluntary interview (see Code G Note 2F), the duty of the interviewer reflects that of the custody officer with regard to detained suspects. As a result: (i) the requirement in paragraph 3.5(c)(ii) to determine whether a detained suspect requires an appropriate adult, help to check documentation or an interpreter shall apply equally to a suspect who has not been arrested; and (ii) the suspect must not be asked to give their informed consent to be interviewed until after they have been informed of the rights, entitlements and safeguards that apply to voluntary interviews. These are set out in paragraph 3.21A and the interviewer is responsible for ensuring that the	Information to be given when arranging a voluntary interview: 3.21(b) If the suspect's arrest is not necessary but they are cautioned as required in section 10, the person who, after describing the nature and circumstances of the suspected offence, gives the caution must at the same time, inform them that they are not under arrest and that they are not obliged to remain at the station or other location or, as the case may be, to allow the police to remain on their property. The rights, entitlements and safeguards that apply to the conduct and recording of interviews with suspects are not diminished simply because the interview is arranged on a voluntary basis. For the purpose of arranging a voluntary interview (see Code G Note 2F), the duty of the interviewer reflects that of the custody officer with regard to detained suspects. As a result: (i) the requirement in paragraph 3.5(c)(ii) to determine whether a detained suspect requires an appropriate adult, help to check documentation or an interpreter shall apply equally to a suspect who has not been arrested; and (ii) the suspect must not be asked to give their informed consent to be interviewed until after they have been informed of the rights, entitlements and safeguards that apply to voluntary interviews. These are set out in paragraph 3.21A and the interviewer is responsible for ensuring that the

suspected of and the grounds and reasons for that suspicion and their right to be so informed (see paragraph 3.1(b)); - the caution as required in section 10; - determining whether they require an appropriate adult and help to check documentation (see paragraph 3.5(c)(ii)); and - determining whether they require an interpreter and informing them of that right. See paragraphs 3.1(a)(iv), 3.5(c)(ii) and 3.12, Note 6B and section 13 but does not include any requirement to provide a written notice in addition to that above which concerns the arrangements for obtaining legal advice.	suspect is so informed and for explaining these rights, entitlements and safeguards.	suspect is so informed and for explaining these rights, entitlements and safeguards.
N/A (new paragraph)	3.21A The interviewer must inform the suspect that the voluntary interview is necessary to question them to obtain evidence about their involvement or suspected involvement in the offence(s) described when they were cautioned and told that they were not under arrest. The interviewer shall then inform the suspect that the following matters will apply if they agree to the voluntary interview proceeding: (a) Their right to information about the offence(s) in question by providing sufficient information to enable them to understand the nature of any such offence(s) and why they are suspected of committing it. This is in order to allow for the effective exercise of the rights of the defence as	3.21A The interviewer must inform the suspect that they wish to question them to obtain evidence about their involvement or suspected involvement in the offence(s) described when they were cautioned and told that they were not under arrest. The interviewer shall then inform the suspect that the following matters will apply if they agree to the voluntary interview proceeding: (a) Their right to information about the offence(s) in question by providing sufficient information to enable them to understand the nature of any such offence(s) and why they are suspected of committing it. This is in order to allow for the effective exercise of the rights of the defence as

	required by paragraph 11.1A. It applies whether or not they ask for legal advice and includes any further offences that come to light and are pointed out during the voluntary interview and for which they are cautioned. (b) Their right to free legal advice by: (i) explaining that they may obtain free and independent legal advice if they want it, and that this includes the right to speak with a solicitor on the telephone and to have the solicitor present during the interview; (ii) asking if they want legal advice and recording their reply; and (iii) if the person requests advice, securing its provision before the interview by contacting the Defence Solicitor Call Centre and explaining that the interview will be delayed until they have received the advice unless, in accordance with paragraph 6.6(c) (Nominated solicitor not available and duty solicitor declined) or paragraph 6.6(d) (Change of mind), an officer of the rank of inspector or above agrees to the interview proceeding; or (iv) if the person declines to exercise the right, asking them why and recording any reasons given (see Note 6K).	required by paragraph 11.1A. It applies whether or not they ask for legal advice and includes any further offences that come to light and are pointed out during the voluntary interview and for which they are cautioned. (b) Their right to free legal advice by: (i) explaining that they may obtain free and independent legal advice if they want it, and that this includes the right to speak with a solicitor on the telephone and to have the solicitor present during the interview; (ii) asking if they want legal advice and recording their reply; and (iii) if the person, or their appropriate adult on their behalf in accordance with paragraph 6.5A, requests advice, securing its provision before the interview by contacting the Defence Solicitor Call Centre and explaining that the interview will be delayed until they have received the advice unless, in accordance with paragraph 6.6(c) (Nominated solicitor not available and duty solicitor declined) or paragraph 6.6(d) (Change of mind), an officer of the rank of inspector or above agrees to the interview proceeding; or (iv) if the person declines to exercise the right, asking them why and recording any reasons given (see Note 6K). When explaining the right to legal advice and the arrangements, the interviewer must take care not
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	Note: When explaining the right to legal advice and the arrangements, the interviewer must take care not to indicate, except to answer a direct question, that the time taken to arrange and complete the voluntary interview might be reduced if: · the suspect does not ask for legal advice or does not want a solicitor present when they are interviewed; or · the suspect asks for legal advice or (as the case may be) asks for a solicitor to be present when they are interviewed, but changes their mind and agrees to be interviewed without waiting for a solicitor (c) Their right, if in accordance with paragraph 3.5(c)(ii) the interviewer determines: (i) that they are a juvenile or a vulnerable adult; or (ii) that they need help to check documentation (see paragraph 3.20), to have the appropriate adult present or (as the case may be) to have the necessary help to check documentation; and that the interview will be delayed until the presence of the appropriate adult or the necessary help, is secured. (d) Their right to an interpreter, if in accordance with, paragraphs 3.5(c)(ii) and 3.12, the interviewer determines that they require an interpreter and that if they require an interpreter, making the necessary arrangements in accordance with paragraph 13.1ZA and that the interview will be delayed to make the arrangements. (e) That interview will be arranged for a time and location that enables:	to indicate, except to answer a direct question, that the time taken to arrange and complete the voluntary interview might be reduced if: · the suspect does not ask for legal advice or does not want a solicitor present when they are interviewed; or · the suspect asks for legal advice or (as the case may be) asks for a solicitor to be present when they are interviewed, but changes their mind and agrees to be interviewed without waiting for a solicitor (c) Their right, if in accordance with paragraph 3.5(c)(ii) the interviewer determines: (i) that they are a juvenile or an adult with additional needs, to have the appropriate adult present; or (ii) that they need help to check documentation (see paragraph 3.20), to have the necessary help to check documentation; and that the interview will be delayed until the presence of the relevant person is secured. (d) Their right to an interpreter, if in accordance with, paragraphs 3.5(c)(ii) and 3.12, the interviewer determines that they require an interpreter and that if they require an interpreter, making the necessary arrangements in accordance with paragraph 13.1ZA and that the interview will be delayed to make the arrangements. (e) That interview will be arranged for a time and location that enables:
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	(i) the suspect's rights described above to be fully respected; and (ii) the whole of the interview to be recorded using an authorised recording device in accordance with Code E (Code of Practice on Audio recording of interviews with suspects) or (as the case may be) Code F (Code of Practice on visual recording with sound of interviews with suspects); and that their agreement to take part in the interview, also signifies their agreement for that interview to be audio-recorded or (as the case may be) visually recorded with sound.	(i) the suspect's rights described above to be fully respected; and (ii) the whole of the interview to be recorded using an authorised recording device in accordance with Code E (Code of Practice on Audio recording of interviews with suspects) or (as the case may be) Code F (Code of Practice on visual recording with sound of interviews with suspects); and that their agreement to take part in the interview, also signifies their agreement for that interview to be audio-recorded or (as the case may be) visually recorded with sound.
	3.21B The provision by the interviewer of factual information described in paragraph 3.21A and, if asked by the suspect, further such information, does not constitute an interview for the purpose of this Code and when that information is provided: (a) the interviewer must remind the suspect about the caution as required in section 10 but must not invite comment about the offence or put specific questions to the suspect regarding their involvement in any offence, nor in respect of any comments they may make when given the information. Such an exchange is itself likely to constitute an interview as in paragraph 11.1A and require the associated interview safeguards in section 11. (b) Any comment the suspect makes when the information is given which might be relevant to the	3.21B The provision by the interviewer of factual information described in paragraph 3.21A and, if asked by the suspect, further such information, does not constitute an interview for the purpose of this Code and when that information is provided: (a) the interviewer must remind the suspect about the caution as required in section 10 but must not invite comment about the offence or put specific questions to the suspect regarding their involvement in any offence, nor in respect of any comments they may make when given the information. Such an exchange is itself likely to constitute an interview as in paragraph 11.1A and require the associated interview safeguards in section 11. (b) Any comment the suspect makes when the information is given which might be relevant to the

	offence, must be recorded and dealt with in accordance with paragraph 11.13. (c) The suspect must be given a notice summarising the matters described in paragraph 3.21A and which includes the arrangements for obtaining legal advice. If a specific notice is not available, the notice given to detained suspects with references to detention-specific requirements and information redacted, may be used. (d) For juvenile and vulnerable adult suspects (see paragraphs 1.4, 1.5 and 1.13): (i) the information must be provided or (as the case may be) provided again, together with the notice, in the presence of the appropriate adult; (ii) if cautioned in the absence of the appropriate adult, the caution must be repeated in the appropriate adult's presence (see paragraph 10.12); (iii) the suspect must be informed of the decision that an appropriate is required and the reason (see paragraph 3.5(c)(ii)); (iv) the suspect and the appropriate adult shall be advised: • that the duties of the appropriate adult include giving advice and assistance in accordance with paragraphs 1.7A. and 11.17; and • that they can consult privately at any time (v) If the suspect wants to exercise the right to legal advice, the appropriate action should be taken and should not be delayed until the appropriate	offence, must be recorded and dealt with in accordance with paragraph 11.13. (c) The suspect must be given a notice summarising the matters described in paragraph 3.21A and which includes the arrangements for obtaining legal advice. If a specific notice is not available, the notice given to detained suspects with references to detention-specific requirements and information redacted, may be used. (d) For juvenile and vulnerable adult suspects (see paragraphs 1.4, 1.5 and 1.13): (i) the information must be provided or (as the case may be) provided again, together with the notice, in the presence of the appropriate adult; (ii) if cautioned in the absence of the appropriate adult, the caution must be repeated in the appropriate adult's presence (see paragraph 10.12); (iii) the suspect must be informed of the decision that an appropriate is required and the reason (see paragraph 3.5(c)(ii));` (iv) the suspect and the appropriate adult shall be advised: • that the duties of the appropriate adult include giving advice and assistance in accordance with paragraphs 1.7A. and 11.17; and • that they can consult privately at any time (v) If the suspect wants to exercise the right to legal advice, the appropriate action should be taken and should not be delayed until the appropriate adult arrives. If the suspect indicates that they do
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	adult arrives. If the suspect indicates that they do not want legal advice, the appropriate adult has the right to ask for a solicitor to attend if this would be in the suspect's best interests. However, the suspect cannot be forced to see the solicitor if they are adamant that they do not wish to do so (see paragraph 6.5A). (vi) their informed agreement to be interviewed voluntarily must be sought and given in the presence of the appropriate adult and for a juvenile, the agreement of a parent or guardian of the juvenile is also required.	not want legal advice, the appropriate adult has the right to ask for a solicitor to attend if this would be in the suspect's best interests and this must be treated as if it is a request by the suspect. However, the suspect cannot be forced to see the solicitor once they attend if they are adamant that they do not wish to do so (see paragraph 6.5A). (vi) their informed agreement to be interviewed voluntarily must be sought and given in the presence of the appropriate adult and for a juvenile, the agreement of a parent or guardian of the juvenile is also required.
1.10 Subject to paragraph 1.12, this Code applies to people in custody at police stations in England and Wales, whether or not they have been arrested, and to those removed to a police station as a place of safety under the Mental Health Act 1983, sections 135 and 136, as a last resort (see paragraph 3.16). Section 15 applies solely to people in police detention, e.g. those brought to a police station under arrest or arrested at a police station for an offence after going there voluntarily	No change	1.10 Subject to paragraph 1.12, this Code applies to people in custody at police stations in England and Wales, whether or not they have been arrested, and to those removed to a police station as a place of safety under the Mental Health Act 1983, sections 135 and 136, as a last resort (see paragraph 3.16). Section 15 applies solely to people in police detention, e.g. those brought to a police station under arrest or arrested at a police station for an offence after going there voluntarily. This Code applies to persons who are questioned voluntarily insofar as it can be applied to suspects who are not under arrest (see paragraphs 3.21, 3.21A and 1A).

1A Although certain sections of this Code apply specifically to people in custody at police stations, those there voluntarily to assist with an investigation should be treated with no less consideration, e.g. offered refreshments at appropriate times, and enjoy an absolute right to obtain legal advice or communicate with anyone outside the police station.	No change	1A A person who attends a police station or other location voluntarily for questioning should be treated with no less consideration than a detained person e.g. they should be offered refreshments at appropriate times. In addition, a person who attends voluntarily has an absolute right to obtain legal advice and to communicate with anyone outside the police station.
6B A detainee has a right to free legal advice and to be represented by a solicitor. This Note for Guidance explains the arrangements which enable detainees to obtain legal advice. An outline of these arrangements is also included in the Notice of Rights and Entitlements given to detainees in accordance with paragraph 3.2. The arrangements also apply, with appropriate modifications, to persons attending a police station or other location voluntarily who are cautioned prior to being interviewed. See paragraph 3.21.	No change	No change

Live link (general)		
Code C (current version)	Home Office proposed October 2017	NAAN Proposed October 2017
New	1.13 (e) Note: Chief officers must be satisfied that live link used in their force area for the above purposes provides for accurate and secure communication between the detainee, the detainee's solicitor, appropriate adult and interpreter (as applicable). This includes ensuring that at any time during which the live link is being used: a person cannot see, hear or otherwise obtain access to any such communications unless so authorised or allowed by the custody officer or, in the case of an interview, the interviewer and that as applicable, the confidentiality of any private consultation between a suspect and their solicitor and appropriate adult is maintained.	No change
New	1N For the purpose of the provisions of PACE that allow a live link to be used, any impairment of the detainee's eyesight or hearing is to be disregarded. This means that if a detainee's eyesight or hearing is impaired, the arrangements which would be needed to ensure effective communication if all parties were physically present in the same location, for example, using sign language, would apply to the live link arrangements.	No change

Live link interviews		
Code C (current version)	Home Office proposed October 2017	NAAN Proposed October 2017
New	12ZA 'Live link' means an arrangement by means of which the interviewing officer who is not at the police station is able to see and hear, and to be seen and heard by, the detainee concerned, the detainee's solicitor, any appropriate adult present and the officer who has custody of that detainee.	'Live link' means an arrangement by means of which the interviewing officer who is not present at the police station where the detainee is held, is able to see and hear, and to be seen and heard by, the detainee concerned, the detainee's solicitor, appropriate adult and interpreter (as applicable) and the officer who has custody of that detainee (see Note 1N).
New	1.13 (e) 'Live link' means:(i) for the purpose of paragraph 12.9A; an arrangement by means of which the <i>interviewing officer</i> who is not present at the police station where the detainee is held, is able to see and hear, and to be seen and heard by, the detainee concerned, the detainee's solicitor, appropriate adult and interpreter (as applicable) and the officer who has custody of that detainee (see Note 1N).	No change
New	Interviewer not present at the same station as the detainee– use of live link 12.9A Amendments to PACE, section 39, allow a person in police detention to be interviewed using a live link by a police officer who is not at the police station where the detainee is held. In these cases: (a) The custody officer is responsible for deciding whether to deliver the detainee into the physical custody of an officer who is not involved in the investigation, for the purpose of enabling	Interviewer not present at the same station as the detainee– use of live link 12.9A Amendments to PACE, section 39, allow a person in police detention to be interviewed using a live link by a police officer who is not at the police station where the detainee is held. In these cases: (a) The custody officer is responsible for deciding whether to deliver the detainee into the physical custody of an officer who is not involved in the investigation, for the purpose of enabling another officer who is investigating the offence for

	another officer who is investigating the offence for which the suspect is detained and who is not at the police station where the suspect is detained, to interview the detainee by means of a live link (see Note 12ZA). (b) The custody officer must be satisfied that: - The live link to be used provides for accurate and secure communication with the suspect. The provisions of paragraph 13.13 shall apply to communications between the interviewing officer, the suspect and anyone else whose presence at the interview or, (as the case may be) whose access to any communications between the suspect and the interviewer, has been authorised by the custody officer or the interviewing officer. - that the suspect is fit to be interviewed using a live link (see paragraph 12.3) and Note 12C). (c) The officer who is given custody of the detainee and the interviewer take over responsibility for the detainee's care, treatment and safe custody for the purposes of this Code until the detainee is returned to the custody officer. On that return, both must report the manner in which they complied with the Code whilst having custody of the detainee and whilst the interview was being carried out.	which the suspect is detained and who is not at the police station where the suspect is detained, to interview the detainee by means of a live link (see Note 12ZA). (b) The custody officer must be satisfied that: - The live link to be used provides for accurate and secure communication with the suspect. The provisions of paragraph 13.13 shall apply to communications between the interviewing officer, the suspect and anyone else whose presence at the interview or, (as the case may be) whose access to any communications between the suspect and the interviewer, has been authorised by the custody officer or the interviewing officer. - that the suspect is fit to be interviewed using a live link (see paragraph 12.3). - that the suspect will be able to participate effectively in an interview using a live link (see note 12C). (c) The officer who is given custody of the detainee and the interviewer take over responsibility for the detainee's care, treatment and safe custody for the purposes of this Code until the detainee is returned to the custody officer. On that return, both must report the manner in which they complied with the Code whilst having custody of the detainee and whilst the interview was being carried out
New	12C In considering whether the use of the live link is appropriate in the case of a juvenile or vulnerable adult, the custody officer should have regard to the detainee's ability to understand and take part in the	12C In considering whether the use of the live link is appropriate for a detainee requiring an appropriate adult under paragraph 1.4, the custody officer should involve the appropriate adult, and any solicitor involved, in the decision making process. Before the interview commences, the

	interviewing process and involve the appropriate adult.	operation of live-link shall be explained and demonstrated to the suspect, their solicitor and appropriate adult, unless it has been previously explained and demonstrated. If the officer or interviewer is unable to allay any representations that live-link should not be used, or should cease to be used, live-link interpretation may not be used unless authorised by an officer of the rank of inspector or above.
New	12.9B When a suspect detained at a police station is interviewed using a live link in accordance with paragraph 12.9A, the officer given custody of the detainee at the police station and the interviewer who is not present at the police station, take over responsibility for ensuring compliance with the provisions of sections 11 and 12 of this Code, or Code E (Audio recording) or Code F (Audio visual recording) that govern the conduct and recording of that interview. In these circumstances: (a) the interviewer who is not at the police station where the detainee is held must direct the officer having physical custody of the suspect at the police station, to take the action required by those provisions and which the interviewer would be required to take if they were present at the police station. (b) the officer having physical custody of the suspect at the police station must take the action required by those provisions and which would otherwise be required to be taken by the interviewer if they were present at the police	No change

	station. This applies whether or not the officer has been so directed by the interviewer but in such a case, the officer must inform the interviewer of the action taken. (c) During the course of the interview, the officers in (a) and (b) may consult each other as necessary to clarify any action to be taken and to avoid any misunderstanding. Such consultations must, if in the hearing of the suspect and any other person present with the suspect (for example, a solicitor, appropriate adult or interpreter) be recorded in the interview record.	
Live link reviews of detention (up to 24 hours by Inspector)		
Code C (current version)	Home Office proposed October 2017	NAAN Proposed October 2017
New	1.13 (e) 'Live link' means: (ii) for the purpose of paragraph 15.9A; an arrangement by means of which the <i>review officer</i> who is not present at the police station where the detainee is held, is able to see and hear, and to be seen and heard by, the detainee concerned and the detainee's solicitor, appropriate adult and interpreter (as applicable) (see Note 1N). The use of live link for decisions about detention under section 45A of PACE is subject to regulations made by the Secretary of State being in force.	No change
15.1 The review officer is responsible under PACE, section 40 for periodically determining if a person's detention, before or after charge, continues to be necessary. This requirement continues throughout the detention period and, except as in 15.10, the	15.1 The review officer is responsible under PACE, section 40 for periodically determining if a person's detention, before or after charge, continues to be necessary. This requirement continues throughout the detention period and, except when a telephone	No change

review officer must be present at the police station holding the detainee. See Notes 15A and 15B.	or a live link is used in accordance with paragraphs 15.9 to 15.11C, the review officer must be present at the police station holding the detainee. See Notes 15A and 15B.	
15.3C The decision on whether the review takes place in person or by telephone or by video conferencing (see) is a matter for the review officer. In determining the form the review may take, the review officer must always take full account of the needs of the person in custody. The benefits of carrying out a review in person should always be considered, based on the individual circumstances of each case with specific additional consideration if the person is: (a) a juvenile (and the age of the juvenile); or (b) suspected of being mentally vulnerable; or (c) in need of medical attention for other than routine minor ailments; or (d) subject to presentational or community issues around their detention.	15.3C The decision on whether the review takes place in person or by telephone or by live link (see paragraph 1.13(e)(ii)) is a matter for the review officer. In determining the form the review may take, the review officer must always take full account of the needs of the person in custody. The benefits of carrying out a review in person should always be considered, based on the individual circumstances of each case with specific additional consideration if the person is: (a) a juvenile (and the age of the juvenile); or (b) a vulnerable adult; or (c) in need of medical attention for other than routine minor ailments; or (d) subject to presentational or community issues around their detention.	15.3C The decision on whether the review takes place in person or by telephone or by live link (see paragraph 1.13(e)(ii)) is a matter for the review officer. In determining the form the review may take, the review officer must always take full account of the needs of the person in custody. The benefits of carrying out a review in person should always be considered, based on the individual circumstances of each case. There will be a presumption that a review will be carried out in person if the suspect is: (a) a juvenile; or (b) an adult with additional needs; or (c) in need of medical attention for other than routine minor ailments; or (d) subject to presentational or community issues around their detention. In the case of any person for whom an appropriate adult is required, before deciding whether the review takes place in person or by telephone or by live link the review officer shall give an opportunity to make representations about the detention to: (a) the detainee, unless they are asleep; (b) the detainee's solicitor if available at the time; and (c) the appropriate adult if available at the time.

		If the review officer is unable to allay any representations that live-link should not be used, it may not be used unless authorised by an officer of the rank of superintendent or above.
Live link extended detention (Up to 36 hours by Superintendent)		
Code C (current version)	Home Office proposed October 2017	NAAN Proposed October 2017
	1.13 (e) 'Live link' means: (iii) for the purpose of paragraph 15.11A; an arrangement by means of which the <i>authorising officer</i> who is not present at the police station where the detainee is held, is able to see and hear, and to be seen and heard by, the detainee concerned and the detainee's solicitor, appropriate adult and interpreter (as applicable) (see Note 1N).	No change
15.2 Under PACE, section 42, an officer of superintendent rank or above who is responsible for the station holding the detainee may give authority any time after the second review to extend the maximum period the person may be detained without charge by up to 12 hours. Further detention without charge may be authorised only by a magistrates' court in accordance with PACE, sections 43 and 44. See Notes 15C, 15D and 15E.	15.2 Under PACE, section 42, an officer of superintendent rank or above who is responsible for the station holding the detainee may give authority any time after the second review to extend the maximum period the person may be detained without charge by up to 12 hours. Except when a live link is used as in paragraph 15.11A, the superintendent must be present at the station holding the detainee. Further detention without charge may be authorised only by a magistrates' court in accordance with PACE, sections 43 and 44 and unless the court has given a live link direction as in paragraph 15.11B, the detainee must be brought before the court for the hearing. See Notes 15C, 15D and 15E.	No change
15.2A An authorisation under section 42(1) of PACE extends the maximum period of detention permitted before charge for indictable offences	No change	15.2A An authorisation under section 42(1) of PACE extends the maximum period of detention permitted before charge for indictable offences

from 24 hours to 36 hours. Detaining a juvenile or a vulnerable adult for longer than 24 hours will be dependent on the circumstances of the case and with regard to the person's: (a) special vulnerability; (b) the legal obligation to provide an opportunity for representations to be made prior to a decision about extending detention; (c) the need to consult and consider the views of any appropriate adult; and (d) any alternatives to police custody.		from 24 hours to 36 hours. Detaining a juvenile or a vulnerable adult for longer than 24 hours will be dependent on the circumstances of the case and with regard to the person's: (a) age and/or additional needs; (b) the legal obligation to provide an opportunity for representations to be made prior to a decision about extending detention; (c) the need to consult and consider the views of any appropriate adult; and (d) any alternatives to police custody.
15.4 Before conducting a review or determining whether to extend the maximum period of detention without charge, the officer responsible must make sure the detainee is reminded of their entitlement to free legal advice, see paragraph 6.5, unless in the case of a review the person is asleep.	15.4 Before conducting a review or determining whether to extend the maximum period of detention without charge, the officer responsible must make sure the detainee is reminded of their entitlement to free legal advice, see <i>paragraph 6.5</i>, unless in the case of a review the person is asleep. When determining whether to extend the maximum period of detention without charge, it should also be pointed out that for the purposes of paragraph 15.2, the superintendent or (as the case may be) the court, responsible for authorising any such extension, will not be able to use a live link unless the detainee has received legal advice on the use of the live link (see paragraphs 15.11A(ii) and 15.11C(ii)) and given consent to its use (see paragraphs 15.11A(iii) and 15.11C(iii)). The detainee must also be given information about how the live link is used. If the detainee is a juvenile or a vulnerable adult, the appropriate adult must be present when the reminder and information concerning legal advice and about the live link is given (see paragraph 15.11D).	15.4 Before conducting a review or determining whether to extend the maximum period of detention without charge, the officer responsible must make sure the detainee is reminded of their entitlement to free legal advice, see <i>paragraph 6.5</i>, unless in the case of a review the person is asleep. When determining whether to extend the maximum period of detention without charge, it should also be pointed out that for the purposes of paragraph 15.2, the superintendent or (as the case may be) the court, responsible for authorising any such extension, will not be able to use a live link unless the detainee has received legal advice on the use of the live link (see paragraphs 15.11A(ii) and 15.11C(ii)) and given consent to its use (see paragraphs 15.11A(iii) and 15.11C(iii)). The detainee must also be given information about how the live link is used. If the detainee is a juvenile or an adult with additional needs, the appropriate adult must be present when the reminder and information concerning legal advice and about the live link is given, and consent is requested and provided (see paragraph 15.11D).

New	15.11A For the purpose of paragraphs 15.2 and 15.2A, a superintendent who is not present at the police station where the detainee is being held but who has access to the use of a live link (see paragraph 1.13(e)(iii)) may, using that live link, give authority to extend the maximum period of detention permitted before charge, if, and only if, the following conditions are satisfied: (i) the custody officer considers that the use of the live link is appropriate (see Note 15H); (ii) the detainee in question has requested and received legal advice on the use of the live link (see paragraph 15.4). (iii) the detainee has given their consent to the live link being used (see paragraph 15.11D)	No change
New	15.11D References in paragraphs 15.11A(iii) and 15.11C(iii) to the consent of the detainee mean: (a) if detainee is aged 18 or over, the consent of that detainee; (b) if the detainee is aged 14 and under 18, the consent of the detainee and their parent or guardian; (c) if the detainee is aged under 14, the consent of their parent or guardian; and, that consent will only be valid: (i) in the case of a vulnerable adult, if information about how the live link is used, and the reminder about their right to legal advice mentioned in paragraph 15.4 and their consent, are given in the presence of the appropriate adult; and (ii) in the case of a juvenile, if • the consent of the juvenile's parents or guardian is also obtained, unless the juvenile is	15.11D References in paragraphs 15.11A(iii) and 15.11C(iii) to the consent of the detainee mean: (a) if detainee is aged 18 or over, the consent of that detainee; (b) if the detainee is aged 14 and under 18, the consent of the detainee and their parent or guardian; (c) if the detainee is aged under 14, the consent of their parent or guardian; In the case of a juvenile or an adult with additional needs, consent will only be valid if : (i) the information about how the live link is used; and (ii) the reminder about their right to legal advice mentioned in paragraph 15.4; and (ii) their consent;

	under 14, when their parent's or guardian's consent is sufficient in its own right; and the information about how the live link is used and the reminder about their right to legal advice mentioned in paragraph 15.4 and their consent, are given in the presence of the appropriate adult (who may or may not be their parent or guardian).	are given in the presence of the appropriate adult (who in the case of a juvenile may or may not be their parent or guardian)
Live link warrants for further detention (courts)		
Code C (current version)	Home Office proposed October 2017	NAAN Proposed October 2017
New	1.13 (e) 'Live link' means: iv) for the purpose of paragraph 15.11B; an arrangement by means of which the detainee when not present in the court where the hearing is being held, is able to see and hear, and to be seen and heard by, the court during the hearing (see Note 1N).	1.13 (e) 'Live link' means: iv) for the purpose of paragraph 15.11C; an arrangement by means of which the detainee when not present in the court where the hearing is being held, is able to see and hear, and to be seen and heard by, the court during the hearing (see Note 1N).
New	15.11C For the purpose of paragraph 15.7A and the hearing of an application to a magistrates' court under PACE, section 43 for a warrant of further detention to extend detention without charge of a person arrested for an indictable offence, or under PACE, section 44, to extend or further extend that warrant, the magistrates' court may give a direction that a live link paragraph 1.13(e)(iv) be used for the purposes of the hearing if, and only if, the following conditions are satisfied: (i) the custody officer considers that the use of the live link for the purpose of the hearing is appropriate (see Note 15H);	No change

	(ii) the detainee in question has requested and received legal advice on the use of the live link (see paragraph 15.4); (iii) the detainee has given their consent to the live link being used (see paragraph 15.11D); and (iv) it is not contrary to the interests of justice to give the direction.	
Live link interpreters		
Code C (current version)	Home Office proposed October 2017	NAAN Proposed October 2017
13.12 In this section and in Annex N, 'live-link interpretation' means an arrangement to enable communication between the suspect and an interpreter who is not physically present with the suspect. The arrangement must ensure that anything said by any person in the suspect's presence and hearing can be interpreted in the same way as if the interpreter was physically present at that time. The communication must be by audio and visual means for the purpose of an interview, and for all other purposes it may be either; by audio and visual means, or by audio means only, as follows	No change	No change
13.13 Chief officers must be satisfied that live-link interpretation used in their force area for the purposes of paragraphs 3.12(a) and (b), provides for accurate and secure communication with the suspect. This includes ensuring that at any time during which live link interpretation is being used: a person cannot see, hear or otherwise obtain access to any communications between the suspect and interpreter or communicate with the suspect or interpreter unless so authorised or allowed by the	No change	No change

custody officer or, in the case of an interview, the interviewer and that as applicable, the confidentiality of any private consultation between a suspect and their solicitor and appropriate adult (see paragraphs 13.2A, 13.6 and 13.9) is maintained. See Annex N paragraph 4.		
Annex N 2 Decisions in accordance with this Annex that the physical presence of the interpreter is not required and to permit live-link interpretation, must be made on a case by case basis. Each decision must take account of the age, gender and vulnerability of the suspect, the nature and circumstances of the offence and the investigation and the impact on the suspect according to the particular purpose(s) for which the suspect requires the assistance of an interpreter and the time(s) when that assistance is required (see Note N1). For this reason, the custody officer in the case of a detained suspect, or in the case of a suspect who has not been arrested, the interviewer (subject to paragraph 13.1(b)), must consider whether the ability of the particular suspect, to communicate confidently and effectively for the purpose in question (see paragraph 3) is likely to be adversely affected or otherwise undermined or limited if the interpreter is not physically present and live-link interpretation is used. Although a suspect for whom an appropriate adult is required may be more likely to be adversely affected as described, it is important to note that a person who does not require an appropriate adult may also be adversely impacted by the use of live-link interpretation.	No change	Annex N 2 Decisions in accordance with this Annex that the physical presence of the interpreter is not required and to permit live-link interpretation, must be made on a case by case basis. Each decision must take account of the age, gender and additional needs of the suspect, the nature and circumstances of the offence and the investigation and the impact on the suspect according to the particular purpose(s) for which the suspect requires the assistance of an interpreter and the time(s) when that assistance is required (see Note N1). For this reason, the custody officer in the case of a detained suspect, or in the case of a suspect who has not been arrested, the interviewer (subject to paragraph 13.1(b)), must consider whether the ability of the particular suspect, to communicate confidently and effectively for the purpose in question (see paragraph 3) is likely to be adversely affected or otherwise undermined or limited if the interpreter is not physically present and live-link interpretation is used. Suspects for whom an appropriate adult is required are more likely to be adversely affected as described. However, it is important to note that a person who does not require an appropriate adult may also be adversely impacted by the use of live-link interpretation.

Annex N4 If the custody officer or the interviewer (subject to paragraph 13.1(b)) is satisfied that for a particular purpose as described in paragraphs 2 and 3 above, the live-link interpretation would not adversely affect or otherwise undermine or limit the suspect's ability to communicate confidently and effectively for that purpose, they must so inform the suspect, their solicitor and (if applicable) the appropriate adult. At the same time, the operation of live-link interpretation must be explained and demonstrated to them, they must be advised of the chief officer's obligations concerning the security of live-link communications under paragraph 13.13 (see Note N2) and they must be asked if they wish to make representations that live-link interpretation should not be used or if they require more information about the operation of the arrangements. They must also be told that at any time live-link interpretation 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 an interpreter should be arranged.	No change	
Annex N 5 If representations are made that live-link interpretation should not be used, or that at any time live-link interpretation is in use, its operation should cease and the physical presence of an interpreter arranged, and the custody officer or interviewer (subject to paragraph 13.1(b)) is unable to allay the concerns raised, live-link interpretation	No change	Annex N 5 If representations are made that live-link interpretation should not be used, or that at any time live-link interpretation is in use, its operation should cease and the physical presence of an interpreter arranged, and the custody officer or interviewer (subject to paragraph 13.1(b)) is unable to allay the concerns raised, live-link interpretation

may not be used, or (as the case may be) continue to be used, unless authorised in writing by an officer of the rank of inspector or above, in accordance with paragraph 6.		may not be used, or (as the case may be) continue to be used.
Annex N 6 Authority may be given if the officer is satisfied that for the purpose(s) in question at the time an interpreter is required, live-link interpretation is necessary and justified. In making this decision, the officer must have regard to: (a) the circumstances of the suspect; (b) the nature and seriousness of the offence; (c) the requirements of the investigation, including its likely impact on both the suspect and any victim(s); (d) the representations made by the suspect, their solicitor and (if applicable) the appropriate adult that live-link interpretation should not be used (see paragraph 5) (e) the availability of a suitable interpreter to be physically present compared with the availability of a suitable interpreter for live-link interpretation (see Note N3); and (f) the risk if the interpreter is not physically present, evidence obtained using link interpretation might be excluded in subsequent criminal proceedings; and (g) the likely impact on the suspect and the investigation of any consequential delay to arrange for the interpreter to be physically present with the suspect.	No change	Delete
Annex N 9 (d) Code C paragraph 11.2 and Codes E and F, paragraph 4.4 - interviews	Annex N 9	No change

At the beginning of each paragraph, insert: “Before the interview commences, the operation of live-link interpretation shall be explained and demonstrated to the suspect, their solicitor and appropriate adult, unless it has been previously explained and demonstrated (see Code C Annex N paragraph 4).”	(d) (Code C paragraph 11.2, Code E paragraphs 3.4 and 4.3 and Code F paragraph 2.5).- interviews At the beginning of each paragraph, insert: “Before the interview commences, the operation of live-link interpretation shall be explained and demonstrated to the suspect, their solicitor and appropriate adult, unless it has been previously explained and demonstrated (see Code C Annex N paragraph 4).”	
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