

PACE VULNERABILITY AND APPROPRIATE ADULTS

A seminar

April 2022

TOPICS

1. **Why** is this subject important?
2. How does PACE **define** a vulnerable person?
3. What's the **threshold** for an AA being needed?
4. What are the key responsibilities for **action**?
5. What is the role of the **appropriate adult**?

FORMAT

1. Presentation
2. Quiz
3. Questions

WHY IS THIS IMPORTANT?

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1. Vulnerable people are at **higher risk** of giving **unreliable evidence**, incl. false confessions
2. Unreliable evidence leads to **miscarriages of justice** and **failed prosecutions**
3. Evidence suggests we are not meeting need - **most** vulnerable people **don't** have an AA

Risk to justice



08:01

Risks to justice

A. Miller vs DPP [2018] EWHC 262 (Admin)

- Learning difficulties, autism, Asperger's Syndrome
- Conviction quashed: Failing to provide a specimen of blood in breach of s.7 of the Road Traffic Act 1988

B. R v Beattie (Alfred David) [2018] (N.Ireland)

- "Frightened", upset, shaking, crying
- Upheld after assessing FME gave evidence in *voir dire*

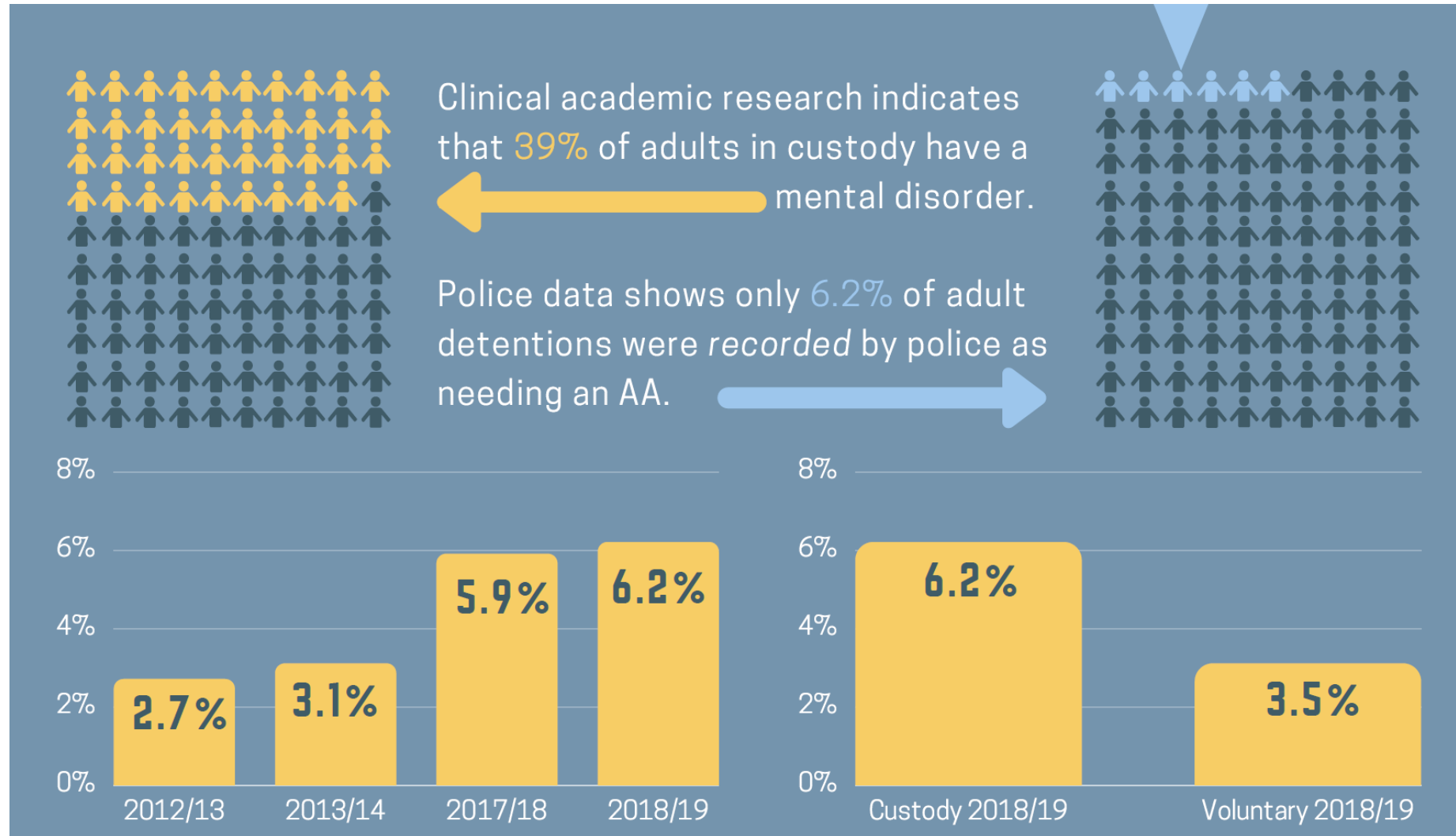
Risks to justice

C. Sussex Police 2 x unreported cases

"...a couple of court cases where someone with **depression** was not convicted at court due to not having an appropriate adult in interview. The solicitor successfully argued that PACE, as written at the time, should mean that **ANY vulnerability** identified ensures the detainee is provided with an **appropriate adult**."

Source: There to Help 3 (2020), National Appropriate Adult Network

Under identification



Source: There to Help 3 (2020), National Appropriate Adult Network

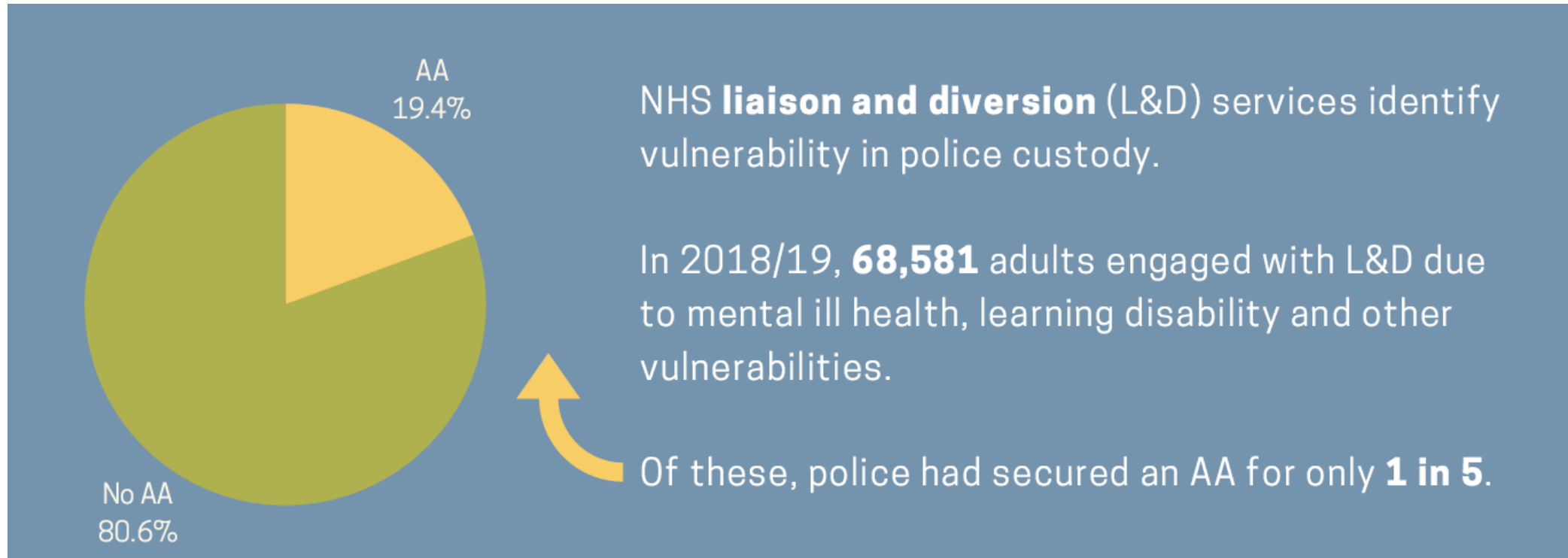
Under identification

Different police forces recorded different rates of AA need in 2018/19.
Between 24% and 0.1% of adult detentions.

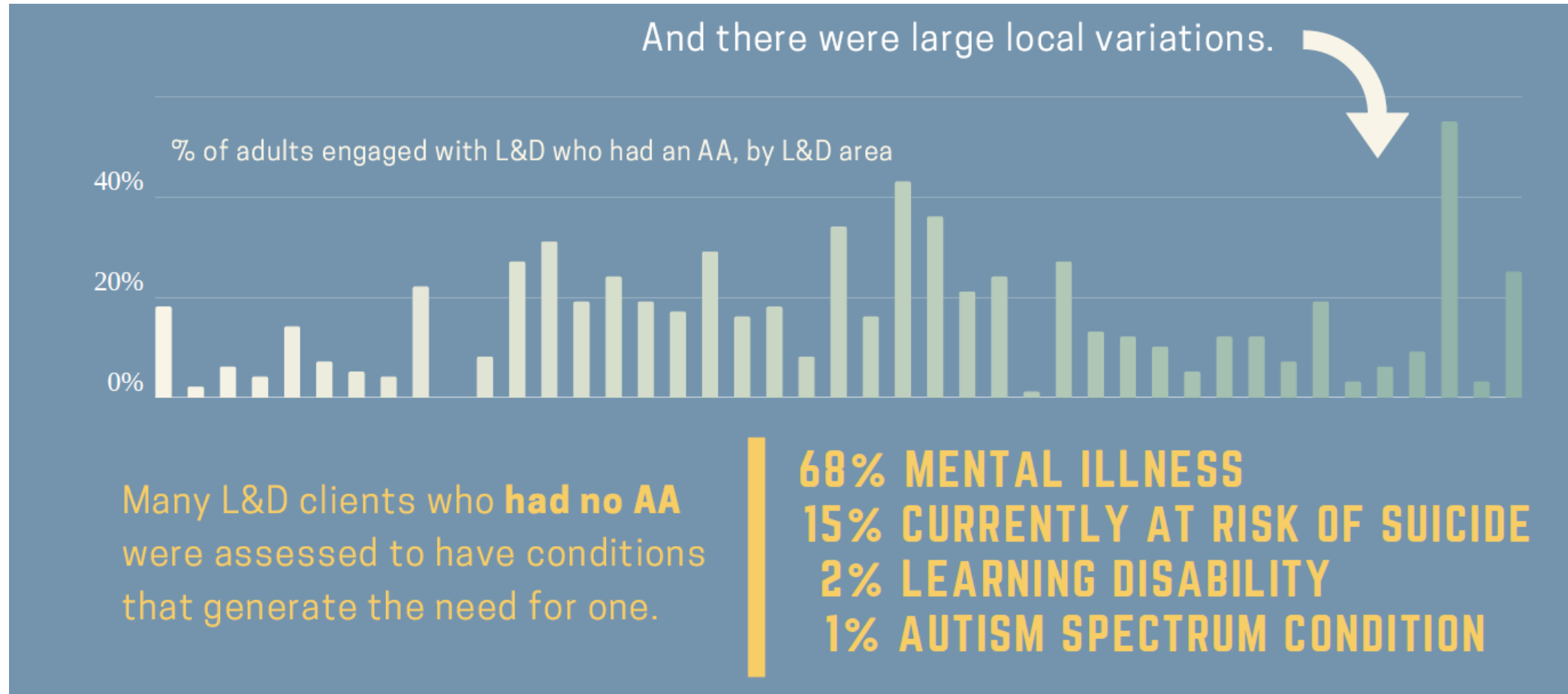


Source: There to Help 3 (2020), National Appropriate Adult Network

Under identification



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Under identification

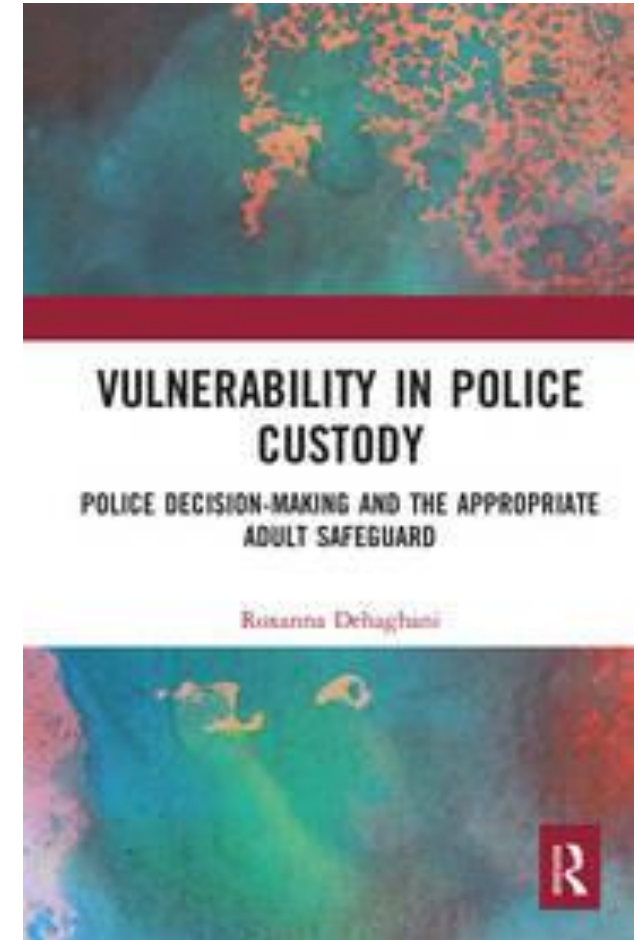
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<i>Correlation with "% with AA"</i>		-0.44	-0.44

Source: There to Help 2 (2019), National Appropriate Adult Network (Data: NHS L&D Q1 2016/17)

Definition, interpretation, conceptualisation

"The issue is not always identification; instead the problem lies equally (or perhaps more so) with definition and interpretation"

Dr R Dehaghani (2019)



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HOW DOES PACE DEFINE A VULNERABLE PERSON?

DEFINITION OF VULNERABILITY

1. Disjointed legislation means 'vulnerability' can mean **different things**, even in police context
2. PACE has a specific (if complex) definition, focused on the **reliability of evidence**
3. Can arise from personal, contextual and/or situational factors - and is **dynamic**

Vulnerability can mean different things

- College's Vulnerability Assessment Framework
- Capacity assessment (Mental Capacity Act 2005)
- Need for assessment (Mental Health Act 1983)
- Reasonable adjustments (Equality Act 2010)
- Fitness for interview (PACE Code C Annex G)

PACE definition of vulnerability (pre-2018)

- ***"may have any disorder or disability of mind"***

or

- *"because of their **mental state or capacity**, may not understand the significance of what is said, of questions or of their replies"*

PACE definition of vulnerability (2018 onwards)

(d) 'vulnerable' applies to any person who, because of a mental health condition or mental disorder (see [Notes 1G](#) and [1GB](#)):

- (i) may have difficulty understanding or communicating effectively about the full implications for them of any procedures and processes connected with:
 - their arrest and detention; or (as the case may be)
 - their voluntary attendance at a police station or their presence elsewhere (see [paragraph 3.21](#)), for the purpose of a voluntary interview; and
 - the exercise of their rights and entitlements.
- (ii) does not appear to understand the significance of what they are told, of questions they are asked or of their replies:
- (iii) appears to be particularly prone to:
 - becoming confused and unclear about their position;
 - providing unreliable, misleading or incriminating information without knowing or wishing to do so;
 - accepting or acting on suggestions from others without consciously knowing or wishing to do so; or
 - readily agreeing to suggestions or proposals without any protest or question.

1GA For the purposes of [paragraph 1.4\(a\)](#), examples of relevant information that may be available include:

- the behaviour of the adult or juvenile;
- the mental health and capacity of the adult or juvenile;
- what the adult or juvenile says about themselves;
- information from relatives and friends of the adult or juvenile;
- information from police officers and staff and from police records;
- information from health and social care (including liaison and diversion services) and other professionals who know, or have had previous contact with, the individual and may be able to contribute to assessing their need for help and support from an

1GB The Mental Health Act 1983 Code of Practice at page 26 describes the range of clinically recognised conditions which can fall with the meaning of mental disorder for the purpose of [paragraph 1.13\(d\)](#). The Code is published here:
<https://www.gov.uk/government/publications/code-of-practice-mental-health-act-1983>.

1GC When a person is under the influence of drink and/or drugs, it is not intended that they are to be treated as vulnerable and requiring an appropriate adult for the purpose of [paragraph 1.4](#) unless other information indicates that any of the factors described in [paragraph 1.13\(d\)](#) may apply to that person. When the person has recovered from the effects of drink and/or drugs, they should be re-assessed in accordance with [paragraph 1.4](#). See [paragraph 15.4A](#) for application to live link.

1G A person may be vulnerable as a result of a having a mental health condition or mental disorder. Similarly, simply because an individual does not have, or is not known to have, any such condition or disorder, does not mean that they are not vulnerable for the purposes of this Code. It is therefore important that the custody officer in the case of a detained person or the officer investigating the offence in the case of a person who has not been arrested or detained, as appropriate, considers on a case by case basis, whether any of the factors described in [paragraph 1.13\(d\)](#) might apply to the person in question. In doing so, the officer must take into account the particular circumstances of the individual and how the nature of the investigation might affect them and bear in mind that juveniles, by virtue of their age will always require an appropriate adult.

PACE definition of vulnerability (2018 onwards)

- “‘vulnerable’ applies to any person who, **because of a mental health condition or mental disorder** (see Notes 1G...)” **PACE Code C 1.13(d)**

“‘simply because an individual does not have, or is not known to have, any such condition or disorder, does not mean that they are not vulnerable for the purposes of this Code” **PACE Code C 1G**

PACE definition of vulnerability (2018 onwards)

Functional (not diagnostic)

- Due to mental health **condition** or mental **disorder** (PACE Code C 1.13(d)); or
- Due to mental **state** or **capacity** (11C); or
- Due to **any reason** except drink/drugs (1G, 1GC)

PACE definition of vulnerability (2018 onwards)

1. They **may** have **difficulty** understanding or communicating **effectively** about the **full implications** for them of **any** procedures and processes (*custody, voluntary, rights*)

- Can they understand rights and communicate wishes?
- Do they understand the consequences (e.g. of consent)?
- Do they understand they can leave a voluntary interview?

PACE definition of vulnerability (2018 onwards)

2. They do not appear to understand the **significance** of what they are told, of questions they are asked, or of their replies

- Do they know what things mean?
- Can they answer questions about the police caution accurately?
- Do they understand that their answers may incriminate them without being explicit?

PACE definition of vulnerability (2018 onwards)

3. (i) They appear to be **particularly prone to confusion**, being unclear about their position

- In the context, are they likely to be unable to think clearly?
- 'Performance' in healthcare assessments vs interviews
- Challenge: What does particularly prone mean?

PACE definition of vulnerability (2018 onwards)

3. (ii) They appear to be particularly prone to **unintentionally** providing **unreliable**, **misleading** or **incriminating** information

- Confabulation: creation of false memories with no intent to deceive (untrue but not 'lying')
- Challenge: isn't getting guilty suspects to unintentionally incriminate the goal?

PACE definition of vulnerability (2018 onwards)

3. (iii) They appear to be particularly prone to being **suggestible**

- They personally accept messages communicated to them as true, and this affects their behaviour or responses
- When they are given a narrative containing inaccurate information, they incorporate this into their 'memory'
- Challenge: Personality types are linked to suggestibility

PACE definition of vulnerability (2018 onwards)

3. (iv) They appear to be particularly prone to readily **agreeing** to suggestions or proposals **without any protest** or question.

- For **benefit** e.g. avoid conflict or leave custody more quickly
- Not internalised like suggestibility (not accepted as true)
- Challenge: Desire for compliant detainees ('nicer' and 'easier')

DEFINITION OF VULNERABILITY

1. 'Vulnerability' can mean **different things**
2. The PACE definition is focused on the **reliability of evidence**, not diagnosis
3. Factors are personal, contextual, situational – so they can **change over time**

PACE definition of vulnerability (2018 onwards)

Further reading

Gudjonsson, G. H. (2018). The Psychology of False Confessions. Forty Years of Science and Practice.

Contextual

- nature of the crime
- pressure on police to solve the crime
- strength of evidence against the suspect
- relationship between the victim and suspect
- relationship with co-accused

Situational

- nature and duration of the custodial and interrogative procedure and process;
- Suspect's understanding of the police caution and their legal rights
- not having access to prescribed medication

Personal

- Age
- mental state
- mental disorder (as per MHA Code)
- personality traits (e.g. suggestibility)

Protective

- Presence of an effective appropriate adult
- Presence of an effective legal representative

WHAT'S THE THRESHOLD?

THRESHOLD FOR VULNERABILITY & AA

1. **Low** threshold ("reason to suspect they may...")
2. No AA only if determined not to be vulnerable due to **clear evidence** to **dispel suspicion**
3. If 'vulnerable person' then AA **always** needed
4. AA not a right – **cannot be waived** like lawyer

THRESHOLD FOR VULNERABILITY & AA

- “If at **any time** an officer has **any reason** to **suspect** that a person...may be vulnerable...in the absence of **clear evidence** to **dispel that suspicion**, that person **shall be treated** as such.”

PACE Code C 1.4

Low threshold

- Not just initial risk assessment – **ongoing**
- Should be able to say **why** you suspect
- Ask: “Do you **suspect** they **may** be vulnerable?”
- Don’t ask: “Do you **believe** they **are** vulnerable?”
- Unless suspicion **removed** by clear **evidence**

AA required for every vulnerable person

- “If the detainee is a...vulnerable person, the custody officer **must**, as soon as practicable, **ensure** that the attendance of the appropriate adult...is **secured**”.

PACE Code C 3.15

AA required for every vulnerable person

- If threshold is met, person is **vulnerable**
- Police **must** secure an AA (**not** two decisions)
- Procedural safeguard **imposed on police**
- Not a right, **not waivable** by anyone
- Not a decision/choice, so 'capacity' is irrelevant

THRESHOLD FOR VULNERABILITY & AA

1. **Low** threshold ("reason to suspect they may...")
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WHAT ARE THE RESPONSIBILITIES FOR ACTION?

RESPONSIBILITIES FOR ACTION

1. Police must:

- Make **reasonable enquiries** about what relevant information is available, **ASAP**
- **Determine** whether PACE 'vulnerable person' provision apply
- **Record** and **share** any relevant factors

2. L&D and HCPs can:

- Provide **relevant information** to support police decision

RESPONSIBILITIES FOR ACTION

"to establish whether any such reason **may** exist...the custody officer...or the officer investigating the offence...shall take, or cause to be taken...the following action.."

PACE Code C 1.4(a)

enquiries – recording - sharing

Reasonable enquiries

"...**reasonable enquiries shall** be made to ascertain what information is **available** that is **relevant** to any of the factors described in paragraph 1.13(d)...**might** apply; ."

PACE Code C 1.4(a)

Reasonable enquiries

- Must enquire into what information is available
- Enquiries must be **proactive** and **reasonable**
- Not enough to ask the person and check records
- CO/OIC can delegate this (but not to HCP/L&D)

Reasonable enquiries

“The custody officer or other custody staff as directed by the custody officer shall...determine whether the detainee...is vulnerable and therefore requires an appropriate adult :”

PACE Code C 3.5(c)

Reasonable enquiries (relevant information)

1. Their behaviour, mental health and capacity and what they say about themselves
2. Information from:
 - relatives and friends,
 - police officers, staff and records,
 - health and social care (including liaison and diversion services) and other professionals...

PACE Code C 1GA

Reasonable enquiries (relevant information)

*"...[health and social care and other professionals] who know, or have had previous contact with, the individual and may be able to **contribute to assessing their need** for help and support from an appropriate adult.*

This includes contacts and assessments **arranged by the police or at the request of the individual** or (as applicable) their **appropriate adult or solicitor.**"

PACE Code C 1GA

Reasonable enquiries (risk assessment)

- No standard risk assessment and common tools and training are insufficient and ineffective
- Focus on physical risk and identify only 52%-63% of those with MH and/or LD
- Challenge: Can we expect officers to "notice" or "screen" for assessment, without effective tools?

Reasonable enquiries (risk assessment)

- No visual or behaviour clues or greater signs of anxiety
- Some people seek to disguise it
- Alcohol or drugs complicate assessment
- Disregard of self-reporting
- Police records used more to identify MH than LD
- Standardised questions less likely to identify LD

Make a record

“...a **record** shall be made describing whether any of those factors appear to apply and provide any reason to suspect that the person may be vulnerable or (as the case may be) may not be vulnerable; ”

PACE Code C 1.4(b)

Make a record

- Made whether any factors apply **or not**
- Record of **factors**, not enquiries made

Share the record

"...the record...shall be made available to...police officers, police staff and any others who [*under the Codes*]...are required or entitled to communicate with the person...[*including*] any solicitor, appropriate adult and health care professional."

PACE Code C 1.4(c)

Share the record

- The record (of which factors appear to apply) must be **made available** to the:
 - appropriate adult (whatever the source)
 - solicitor or legal rep
 - HCP and L&D

RESPONSIBILITIES FOR ACTION (HCP/L&D)

“Healthcare professionals should **advise** on the need for an appropriate adult to be present...and whether a **further specialist opinion** may be required”.

Code C Annex G 5

RESPONSIBILITIES FOR ACTION (HCP/L&D)

“The service shall provide **advice** to **decision makers** within youth and criminal justice agencies on the range and appropriate use of reasonable adjustments for those individuals identified with vulnerabilities:...Advise on the appointment of an appropriate adult”.

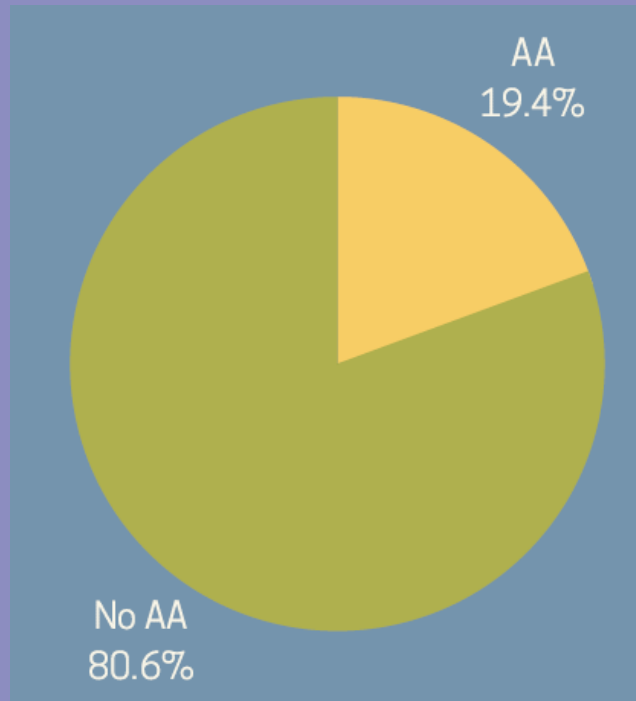
Liaison and Diversion Standard Service Specification 2019

2.7.1 Effective participation in criminal justice processes

RESPONSIBILITIES FOR ACTION (HCP/L&D)

- Professional competency is critical
 - Training in forensic psychiatry, mental health, learning disability, speech and language?
 - Training in PACE? (e.g. fitness vs vulnerability)
- Challenge: Are you being asked for information to confirm or dispel suspicion?

RESPONSIBILITIES FOR ACTION (HCP/L&D)



Source: There to Help 3 (2020),
National Appropriate Adult Network

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RESPONSIBILITIES FOR ACTION (POLICE)

- **Make reasonable enquiries** about what relevant information is available
- **Determine** whether PACE 'vulnerable person' provisions apply
- **Record** any relevant factors
- **Share** that record

RESPONSIBILITIES FOR ACTION (HCP/L&D)

- L&D and HCPs should act within their personal professional **competencies** to provide **relevant information**.
- If police ask HCP/L&D opinion because they have a reason to suspect the person may be vulnerable, an AA is **already mandatory**, unless HCP/L&D can provide **evidence** to dispel it.

ROLE OF THE APPROPRIATE ADULT

- Procedural safeguard imposed on police
- Safeguard interests (rights, entitlements, welfare)
- Wide range of possible actions
- Wide involvement across PACE processes
- Significant powers/rights

Purpose of the appropriate adult

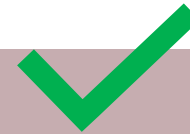
“To safeguard the **interests** of children and young persons detained or questioned”

Crime and Disorder Act 1998 s.38(4)

“To safeguard the **rights, entitlements** and **welfare** of juveniles and vulnerable persons”

PACE Code C 1.7A

Role of the appropriate adult



Actions of the appropriate adult

- Support, advise, assist (any PACE procedure)
- Observe police (and inform inspector rank or above if not proper, fair and respecting rights)
- Assist communication (including right to silence)
- Help them to understand their rights and ensure rights are protected and respected

PACE Code C 1.7A

Scope of the appropriate adult

-  Rights and entitlements
-  Interviews (inc caution & warnings)
-  ID procedures
-  Searches
-  Reviews
-  Charge decision related actions

Rights/powers of the appropriate adult

- Attendance of **solicitor** even if legal advice waived
(*capacity not relevant as final decision is retained*)
- Access to the **full** custody record
- **Intervention** in interview
- **Representations** (reviews, identity procedures, live-link)
- Private consultations **any time** the *suspect* wants
- And many more...



Being an appropriate adult



Watch the video



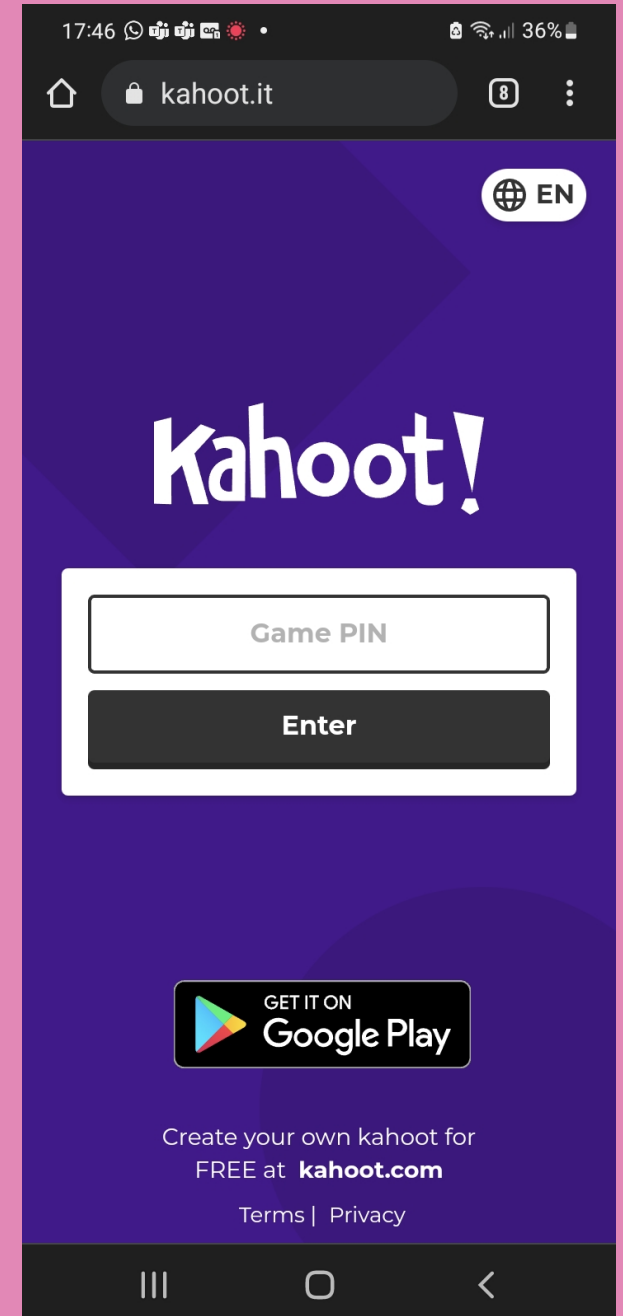
vimeo.com/appropriateadult/video

Video for family AAs

- Animated video
- Designed for public
- Available to all online
- Piloted by Northants Police
- Poster for custody/reception

Quiz

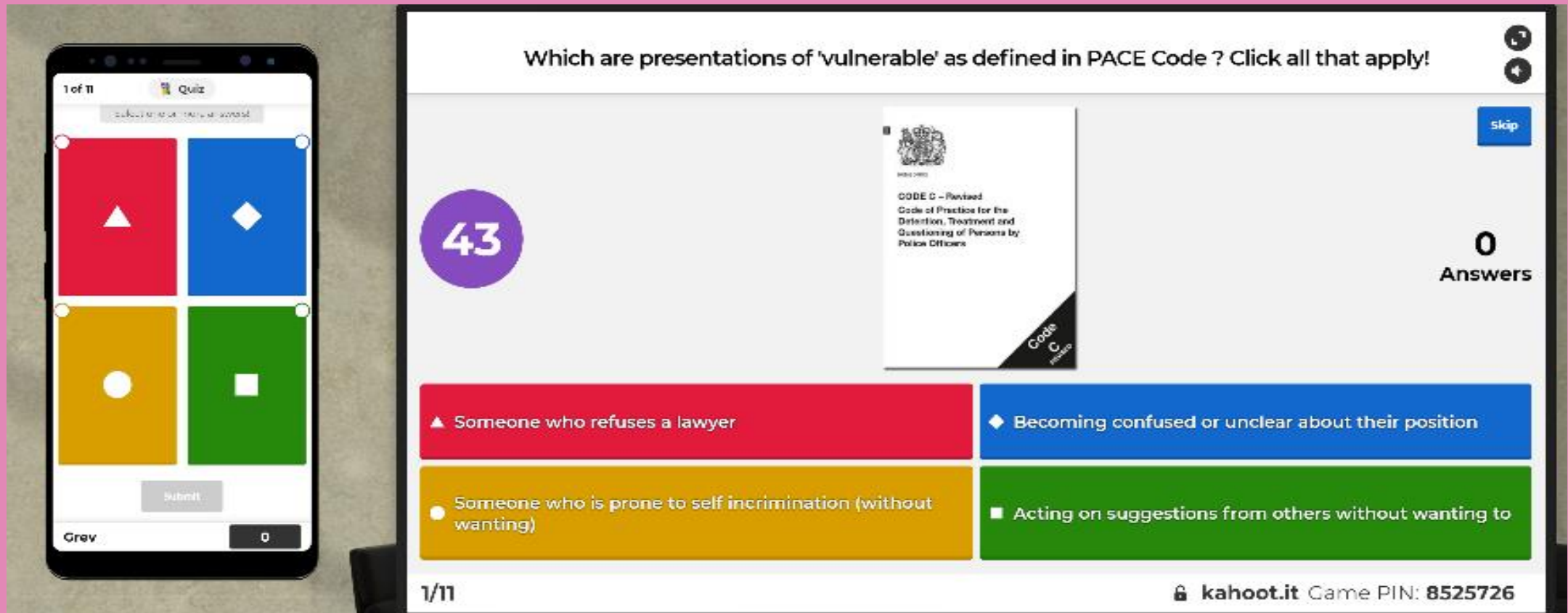
- Open a browser window on a mobile device (or your computer if needed).
- Go to www.kahoot.it
- Enter the PIN I'll give you
- Enter: Your first name + organisation



Quiz

Mobile (answers)

Laptop/desktop (questions)



QUESTIONS

FEEDBACK