

NAAN | Standards Review

Evidence Report December 2017

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Introduction

This report is based upon a literature review of case law and academic articles on vulnerability and the appropriate adult safeguard in England and Wales. It also includes a limited number of policy reports. This literature was coded thematically using NVivo (Computer Assisted Qualitative Data Analysis Software). The information is correct as on 19 December 2017.

Within this report the following abbreviations are used: AA for 'appropriate adult', HCP for 'healthcare professional', AMHP for 'approved mental health professional' and FME for 'Forensic Medical Examiner'.

The information contained herein is in addition to guidance already available on the AA's role.

The Evidence

The AA's role

When the AA should be available

- The presence of the AA is not for interview only
 - The AA's role should be viewed as something which extends over/throughout the process (Cummins 2007)
- The AA's role extends to interviews conducted outside the custody suite such as on the street (*R v Fogah*) and in a vehicle (*R v Maguire*). Although it is fundamental that the questioning constitutes an interview (*R v Maguire*). An appropriate adult should be present when the suspect starts to make admissions to the police (*R v Weekes*)
- The AA should be there to witness any other procedures that follow the interview (Cummins 2007)
- The AA should be present for charge and caution (Code C: 10.12; 16.1)
- The AA should also be available during a mental health assessment but AAs have no role in the doctor's assessment or the AMHP's interview and their presence is not required for those to be undertaken (Department of Health 2015)
- An AA is not needed for a breath-test (*DPP v BE*; *DPP v Preston*; *R v Stanesby*)

What should the AA do

- The AA should ensure that a suspect understands his/her rights and has appropriate breaks (Cummins 2007; Rock 2007)
 - Ensuring that a suspect understands his/her rights requires 'reading and discussing rights texts with the [suspect]' (Rock 2007: 104)
- The AA should ensure that the police properly explain things to the suspect or that the suspect otherwise understands the information provided (such as by the AA explaining that him/herself)
- The AA should facilitate communication between the suspect and the police (and any others such as the legal adviser) (McKinnon, Thorp and Grubin 2015; Bucke and Brown 1997; Thomson, Galt and Darjee 2007; Pierpoint 2001; Fenner, Gudjonsson and Clare 2002. Although see Jessiman and Cameron 2017)
- The AA should advise and assist (*R v Aspinall*; *R v Brown (Delroy)*)
- The AA should help the suspect understand his/her right to silence. If the suspect wishes to remain silent, the AA should respect this and inform the officer(s) that the suspect wishes to do so and that the officer should respect this
- An AA should be active and should intervene if he/she thinks that the police are acting unfairly or not doing something that they are required to do.
- The AA can and should make representations regarding the review of detention (Cummins 2007)
- 'AAs should review the content of the interview with the police officers who conducted it and identify any problem areas; provide police with a statement about their involvement in proceedings; and ensure the police have informed the interviewee of available support and relevant services' (Thomson, Galt and Darjee 2007)

- AAs should request a copy of the custody record to ensure that the police have complied with PACE and the various welfare and health requirements set out in the College of Policing APP on Detention and Custody
- Service-users value emotional support. It is important that the AA helps develop trust with the suspect (Jessiman and Cameron 2017)
- It is imperative that the AA understands the nature and scope of his/her role (Cummins 2007; Dehaghani 2016; Hodgson 1997)
- It is important that the AA finds out and relays to the suspect: 'why they were in custody, how long they would be there, the questions that were being asked of them, and what their rights were' (Jessiman and Cameron 2017). Information regarding the process(es) should be communicated by the AA to the suspect as early as possible (Jessiman and Cameron 2017)
- The AA should be mindful of his/her own perceptions of the police: does the AA think highly of the police? If so, the AA is disinclined to look for oppressive tactics or other breaches of the rules
- Whilst the FME may be involved in assessing whether the suspect is fit for interview, there is nothing to stop the AA from suggesting that the suspect should be assessed (where he/she has not been) or recommending that an interview is not conducted (where an assessment has been conducted and the FME has deemed the suspect fit for interview) (Dehaghani, in progress)

The role of the AA in Scotland

The AA is involved in pre-interview by 'confirm[ing] the emotional and physical state of the interviewee as observed by the police; clarify[ing] the presence of any sensory impairments that would hinder communication; not[ing] the role the interviewee is alleged to have played in the events leading to interview; and discuss[ing] with officers how the interview can be suspended or terminated if there are concerns about the interviewee' (Thomson, Galt and Darjee 2007)

At interview, the AA: 'should provide support and reassurance to the interviewee; ensure the interviewee understands the purpose of the interview, the questions being put, and the implications of his/her answers; facilitate communication between the interviewee and the police officer; check that proper interview procedures are followed and that the interviewee knows who is present and the role of each individual; and ensure a suspect with a mental disorder is not disadvantaged by that disorder and that he/she fully understands his/her rights and the stages of the process as explained by the police.

In addition, an AA should sign any document or statement signed by the interviewee and indicate if they consider it to be inaccurate; advise police if the interviewee's statements appear to be unreliable or if the interviewee is becoming distressed and requires a break, and medical or other assistance, in a manner agreed in advance; make notes if wished, on the conduct but not the content of the interview; and ensure that any intimate search or medical examination only takes place in front of the AA (of the same sex) if the interviewee agrees' (Thomson, Galt and Darjee 2007)

What the AA should not do

- The AA is not there to help the police (see Littlechild 1995; Dehaghani forthcoming; Hodgson 1997; Williams 2000). In the same vein, the AA should not be anti-suspect (see Pierpoint 2000; 2001; Bucke and Brown 1997; Quinn and Jackson 2007; Williams 2000. See also Jessiman and Cameron 2017; Dehaghani forthcoming; in progress)
- The AA is not there to simply observe (Dehaghani in progress; forthcoming; Evans 1995; HMIC 2015)¹
 - The issue here is that there is no elaboration on what is meant by fairness (Dehaghani forthcoming; Evans 1996; Nemitz and Bean 2001. See also Jessiman and Cameron 2017; Quinn and Jackson 2007)
 - Other aspects of the AA's role are also subject to interpretation (Dehaghani forthcoming; in progress; Hodgson 1997; Pierpoint 2004; Palmer 1996; Quinn and Jackson 2007)
 - The AA's inactivity may be perceived negatively by the suspect; the suspect may think that the AA is useless or pointless (Kemp and Hodgson 2016)
- An AA should not try to get the suspect to confess or 'tell the truth'; he/she should not belittle the suspect or be otherwise hostile or unsupportive (see Pierpoint 2000; 2001)
- The AA should not assume that the suspect is guilty and should not judge the suspect for any reason (see Pierpoint 2000; Dehaghani forthcoming; in progress)
- The AA should not place themselves in the position where it is likely that the suspect will confess to them. If the suspect confesses to the AA, then the AA may wish to request that someone else performs the role of AA. The AA is not required to divulge this information but may find themselves in a difficult position morally (Dehaghani forthcoming)
- The AA should not provide legal advice. If the AA believes that legal advice is required, then he/she must request a legal representative (Dehaghani forthcoming)
- The AA should not assume that someone who has been suspected of an offence before knows anything more about the processes than someone who has not been in custody (Dehaghani in progress)
- The AA should not rush the process. Whilst it is important that the individual is released from custody as soon as possible, an efficient approach can result in the AA failing to challenge key due process breaches and may make the AA susceptible to pressure (Pierpoint 2011)

¹ Professional AAs are more likely to contribute than non-professional AAs (Dhami and Sim 2014)

AAs and legal advice

- AA and legal privilege – AA not entitled to legal privilege but does not destroy legal privilege (*A Local Authority v B*)
- Role of AA overlaps with legal adviser (see *R v Lewis*)
 - Legal adviser can be AA for purposes of ss 76, 77 and 78 PACE
- AA can improve quality of legal advice (see Cummins 2007)
- AA increases likelihood that legal representative is present (see Cummins 2007; Medford, Gudjonsson and Pearse 2003; Pleasence, Kemp and Balmer 2011)
- The absence of legal advice compounds absence of AA and vice versa (*R v Aspinall*; *R v Brown (Delroy)*; *R v Lewis*)
- An AA can impose legal advice on the suspect/detainee (Code C: 6.5A)
- An AA should be able to impose legal advice upon suspect (Pierpoint 2004)
- The AA should not refuse to attend on the basis that the suspect has not requested legal advice (see CJI 2014)
- The AA should be careful not to provide legal advice

Knowledge and qualities of the AA

- The AA should not be involved in the offence (*DPP v Morris*; Code C), should not be a solicitor (or other legal representative), independent custody visitor (Code C: Note for Guidance 1F), probation officer (*R v O'Neill*), and should not be a victim or a witness (Code C: Note for Guidance 1B)
- The AA should also know about the role of the custody officer and of the various custody processes
 - This is particularly important as the police rarely provide the AA with information regarding the role.
 - If the AA is unsure about his/her role, he/she should ask the police to explain this (Dehaghani in progress)
- It is helpful if the AA knows about the individual's particular needs (Jessiman and Cameron 2017)
- The AA should have some knowledge regarding mental health and learning disability/difficulty. The AA should also have some legal knowledge (Evans 1996)
- The ideal AA looks something like this (see Jessiman and Cameron 2017):
 - Calm; caring; calming; has psychiatric knowledge; is respectful of race, culture, and sexual identity; is protective; kind; confident; knows the correct procedures; is a people person; is the same gender as the suspect; is a good listener and good communicator; is training in aspects of learning disability; is trustworthy; honest; and is able to keep things confidential
- The AA should also have empathy with the suspect (*DPP v Blake*)
- The AA should be 'appropriate' (*R. v Jefferson* Times, June 22, 1993 (CA); *R. v Morse* [1991] Crim. L.R. 195; *R. v W* (Unreported))
- The AA should not be unsupportive
- The AA should be well-prepared (Thomson, Galt and Darjee 2007; Pierpoint 2001; Jessiman and Cameron 2017)

Availability of the AA

- It is imperative that delays in arriving the custody suite are avoided so far as possible as this can impact negatively upon the suspect's well-being and time spent in custody, and on police and lawyer perceptions of the AA safeguard (Dehaghani in progress; Jessiman and Cameron 2017. See also CJI 2009; HMIC 2015; NAAN 2015; Hodgson 1997). Delays could also encourage police officers and custody officers to go ahead with the interview without an AA (if not on that occasion, perhaps on future occasions) (Palmer 1996; Dehaghani in progress)²
- The AA should be available both during and outside normal working hours (CJI 2014)
 - This issue may arise particularly with regard to volunteers (Pierpoint 2008)
- The AA should attempt to arrive with sufficient time before an interview so that he/she can introduce him/herself to the suspect and ensure that the suspect feels comfortable with the AA and with the process before proceeding to interview

The impact of the AA

- AA can influence police behavior (Medford, Gudjonsson and Pearse 2003)
- The AA may be helpful in assessing the suspect from diversion from the criminal process (Cummins 2007; Dehaghani forthcoming)
- The AA may be helpful in assisting the police in identifying issues pertaining the risk assessment (Dehaghani 2016; forthcoming)
- When assessing admissibility of evidence where an AA has not been provided, the courts will ask what impact the AA's presence would have made (*R v Kaur (Gill)*; *R v Kenny*; *R v Law-Thompson*; *R v Smith*; *R v Haroon-Ali*; *DPP v Stanesby*)

Concerns regarding the role of AA

- The name 'appropriate adult' may be off-putting (Dehaghani forthcoming; in progress)
- Service users have concerns regarding confidentiality (Jessiman and Cameron 2017)
- Concerns about confidentiality are not unfounded. Where admissions of guilt are made, particularly where there are issues of serious violence or child abuse, the AA may feel obliged to pass the information to the police. Such instances can bring about conflicts of interest (Littlechild 1995)
- Concerns regarding confidentiality are undoubtedly unhelped by the fact that the AA is not subject to legal privilege (Dehaghani in progress)

² Delays cannot always be attributed to the AA (see Pierpoint 2008).

Additional notes

- I. Parents, other relatives, and guardians have been subject to various criticisms. This does not mean that they are necessarily inappropriate as appropriate adults. It does mean, however, that the police should ensure that they understand the nature and scope of their role
- II. Volunteers lack the kudos of professionals, and particularly when their presence might be accounted for as a crude cost-cutting measure, they are unlikely to attract widespread support from those whose roles they have usurped. Without social service support, volunteer schemes are likely to find it difficult to establish themselves (Pierpoint 2000)
- III. Some suspects would welcome post-custody support, including managing ongoing legal proceedings such as court appearances. Also felt they could do with help to address their circumstances such as 'ill health, low income, poor housing increased their risk of rearrest' and wanted support to address these. Some simply wanted post-custody contact (Jessiman and Cameron 2017). The support with managing ongoing legal proceedings should, however, be the role of the intermediary (if applicable and if appointed) or the legal representative (if legal advice and representation is obtained) (Dehaghani in progress)
- IV. There may be issues with the representativeness and availability of volunteers (Pierpoint 2000).
- V. Resident AAs, whilst solving issues with delays and availability, lack independence (Pierpoint 2008). Some suspects may be reluctant to engage with an AA who they feel is not independent (ibid). The HMIC (2015) found such an issue in relation to HCPs: suspects found it difficult to trust HCPs as they did not believe that they were independent of the police. Given how essential trust between the AA and suspect is, it is important not to move towards an embedded model.
- VI. It is important that duty times are not too long as this may tire AAs to the point where they are unable to adequately fill out necessarily paperwork or perform other aspects of their role (Pierpoint 2008)
- VII. Adults present a particular problem because custody officers may fail to appreciate that the suspect is in need of an AA (Abedowale 2015; Bucke and Brown 1997; CJI 2009; 2014; Dehaghani 2016; forthcoming; HMIC 2015; Hodgson 1997; Jessiman and Cameron 2017; McKinnon and Grubin 2013; McKinnon, Thorpe and Grubin 2015; NAAN 2015; Young, Goodwin, Sedgwick and Gudjonsson 2013)
- VIII. Local authority adult services should recognise that an adult suspect in custody, whilst potentially free from harm, may nevertheless require an AA. An AA should not be declined on the basis that that a detainee in custody is deemed to be 'safe from harm' and therefore not high priority (CJI 2014)
- IX. Some AA schemes or different types of AAs may have access to more or less resources. For example, YOTs may have more access to resources that can assist young people with their mental and physical health needs (Kemp and Hodgson 2016). This can, of course, mean that some (young) people's needs are met, whereas others are not.
- X. The AA should be mindful of the fact that there are issues with the uptake of the safeguard and for that reason, they are often not called for suspects who require an AA
- XI. Training is imperative

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