

The 40-year gap: A statutory duty to provide independent appropriate adults for vulnerable adults, enabling police to meet their legal duties in custody, interviews, and strip searches.

Summary

- When police detain, question, or strip search a child or a vulnerable person, they have a statutory duty to secure someone *independent of policing* to act as that person's appropriate adult (AA).
- People may be defined as vulnerable for a range of reasons, including learning disability, mental health conditions, neurodivergence (e.g. ADHD, and autism) or physical conditions (e.g. dementia).
- Local authorities have a statutory duty to provide an AA, but this only applies to children – a 40-year gap in the law means no equivalent provision for vulnerable people aged 18+.
- Many local authorities have terminated their AA provision for vulnerable people (but not children) due to financial pressures, leaving patchy and unstable services.
- A statutory duty, first proposed by Royal Commission in 1981, would protect the rights and participation of the most vulnerable and improve the efficiency, effectiveness and legitimacy of policing and justice.

Appropriate adults provide vital support and help to demystify what can be a confusing, sometimes frightening, experience in police custody. Evidence suggests there is a lack of appropriate adults to safeguard the welfare and rights of mentally vulnerable adults in police custody. The status quo is clearly not acceptable...the priority must be to act to ensure that vulnerable people are provided with the support they are entitled to."

Home Secretary Rt Hon. Theresa May (2015)

About appropriate adults

When an appropriate adult (AA) is required

Police must secure an AA when they detain, question, or strip search (exposing intimate body parts) a child or person who may be vulnerable. A vulnerable person is someone whom there is reason to suspect:

- May have difficulty understanding the full implications, or communicating effectively, about their arrest, detention, interview, rights or entitlements; or
- Does not appear to understand the significance of what they are told, questions they are asked, or their replies; or
- Appears particularly prone to confusion, suggestibility, compliance, or providing unintentionally unreliable, misleading or self-incriminating information (Home Office 2019, 2022).

Relevant factors include learning disability, mental health conditions (e.g. schizophrenia, bipolar, PTSD), neurodivergence (e.g. autism, ADHD), and physical conditions (e.g. brain injury, dementia).

Appropriate adults play a unique and critical role

The AA safeguards a person's interests (including their rights, entitlements, and welfare) by:

- Providing them with support, advice and assistance and helping them to understand their rights
- Assisting them with communication, whilst supporting and respecting their right to silence
- Observing whether police are acting properly and fairly towards them
- Intervening to ensure their rights are protected and respected (Home Office 2019).

A person has the right to speak privately to their AA at any time. AAs can view the custody record, ensure the attendance of a solicitor, intervene in interviews, and make representations. Examples of support and advice include spending time with someone; checking they understand their rights; explaining the pixelation of cell toilets on CCTV; offering to watch when police prepare their food and drink; and explaining the importance and independence of solicitors and legal representatives.

Appropriate adults have a significant impact in both policing and justice

- Supporting access to justice – the right to equality before the law and the right to a fair trial.
- Ensuring vulnerable people, including those with disabilities, are treated fairly and equitably.
- Increasing inclusion by addressing disadvantage during detention and questioning.
- Providing emotional support during a confusing and humiliating experience, with some people feeling additionally vulnerable due to race and gender (Jessiman and Cameron 2017).
- Preventing both intentional abuse and unintended misuse of police power.
- Providing assurance that evidence was not obtained in circumstances likely to make it unreliable.
- Reducing the need for *voir dire* (trial within a trial) to determine admissibility of evidence, and exclusion of evidence under PACE 1984 s76-s78 (R v Aspinall [1999], Miller v DPP [2018]).
- Reducing the risk of miscarriages of justice and enabling people to be held accountable.

Background: a persistent issue

Police have a statutory duty to secure an AA for two groups (but cannot provide them)

While the AA is often a family member or friend, an alternative is required when this is inappropriate or impossible, for example when they are a witness or are caring for others. Under the Police and Criminal Evidence Act 1984 (see s.77(1)(b)(ii)) and statutory codes (PACE) it is critical that the AA is independent of policing: not a police officer or employee, not under the control and direction of the police, and not under contract with the police.

Local authorities have a statutory duty to provide AAs since 1998 (but only for children)

Local authorities (LAs) have historically ensured the provision of AAs via volunteers, social workers, sessional staff, and providers. However, their explicit statutory duty to provide AAs only applies to children (Crime and Disorder Act 1998 s38). There is no statutory equivalent for vulnerable people.

A statutory duty was recommended by the Royal Commission in 1981 that led to PACE

The Royal Commission on Criminal Procedure (1981), which led to PACE 1984, called for a *"systematic approach... consideration should be given to placing some obligation on local authorities to make provision for social workers to be always available out of ordinary working hours"*.

The non-statutory approach has been patchy, ad-hoc, insecure, and inefficient for many years

According to research, *"Most forces commented that the poor level of service provision was due to a lack of statutory responsibility for vulnerable adults...provision varies widely across the country...[with] various statutory bodies arguing about who had responsibility for the service...[and that] need for an AA is around half as likely to be recorded where there is no organised provision"* (NAAN 2004, 2006, 2010, 2019).

"There is no body or agency with a statutory responsibility... In places, this means that response to requests is patchy and ad-hoc, with local social services emergency duty teams responding if they have no higher priorities" (Bradley Commission 2014).

The home secretary-commissioned 'There to Help' report identified the causes as the *"absence of a statutory duty, diminishing funding, and a lack of clarity over responsibility"* (NAAN and ICPR 2015).

The policing minister confirmed that, due to feedback from HM Inspectorate of Constabulary, ICVA (custody visitors) and NAAN, *"we know that appropriate adult provision across England and Wales is varied and could be much improved"* and that *"vulnerable people...are at risk of being let down...this can lead to miscarriages of justice...investigations cannot proceed - placing a strain on police resources and detaining vulnerable adults for longer than is necessary"* (Hurd, N. 2017).

The Angiolini Review into deaths and serious incidents in police custody recommended *"increased funding...a national framework for commissioning [for] improved consistency"* (Angiolini 2017).

Current situation: from problem to crisis

In recent years, local authorities (LAs) increasingly terminated AA schemes, sometimes with little notice, citing non-statutory status and financial pressures in social care. Police forces and PCCs have been forced to find immediate solutions to maintain operations. PCCs replaced police authorities and are tightly bound to police forces; they are responsible for the totality of policing (APCC 2023) and securing an efficient and effective police force (House of Lords Library 2022).

Covid further exposed the systemic fragility of a non-statutory approach. While the vast majority of AA schemes continued throughout, some unfunded schemes simply stopped – and with no alternative.

The *Appropriate Adult PCC-Local Authority Partnership Agreement England* was published to encourage local authorities (LAs) to improve AA provision, working with police and crime commissioners (PCCs) to understand demand (Home Office 2018). However, it was voluntary and did not address funding.

All LAs continue to ensure AAs for children, and many do so for vulnerable adults. However, NAAN data indicate that in England, 51% (20) PCCs or police forces now commission (41%) or provide (10%) AAs for adults, with a further 13% (5) co-commissioning with LAs/NHS. In Wales, 100% (4) PCCs or forces commission them. In total, 67% (29) provide funds. Local issues vary but include: limited operating hours; under staffing; multiple schemes causing conflict and independence concerns (for example where police are perceived to prefer their own provision to local government); and no organised provision at all.

Solutions: a statutory duty to ensure provision

The **Association of Police and Crime Commissioners** (APCC) has called for *"local authorities to be a named authority with clear statutory responsibility for the provision of appropriate adults for vulnerable adults, just as it is currently their responsibility to do so for children"* noting that, *"Our colleagues across England and Wales have worked hard seeking to establish collaborative approaches locally"* but, *"police forces and PCCs have increasingly become a stopgap measure in commissioning [AA] services"* (APCC 2018a, 2018b, 2019). APCC lead for custody PCC Emily Spurrell has called for, *"an urgent change to the law...after she was forced to step in to deliver the service on Merseyside"* saying that a reliance on *"local collaborative arrangements...is simply not realistic"* (Merseyside PCC, 2022).

The **Association of Directors of Adult Social Services** (ADASS) has stated, *"Helping to support and safeguard our most vulnerable citizens, whether victims or suspects, is central to the role of adult social care services. Many local authorities have a long history of providing social workers or funding dedicated AA schemes. ADASS supports the [NAAN & ICPR 2015] report's recommendations and is keen to work with central Government and local partners to ensure sustainable services are available for all."*

The **Local Government Association** has expressed *"concerns that vulnerable adults fall through the net as a consequence of a scattergun approach"* and LAs *"will have to pick up safeguarding"* as a result; that it did not *"feel empowered to indicate other organisations or agencies that should take this on"*; but that LAs are *"not prepared to take on more statutory duties without further funding"* (LGA 2017).

The creation of a statutory duty would enjoy broad support and is non-controversial, subject to funding. The annual cost (combining both existing and required provision) has previously been estimated at £19.5 million (NAAN & ICPR 2015), equating to approximately 0.05% of the combined current adult social care (House of Commons Library 2023) and policing budgets (Home Office 2022); and to 0.01% of Department for Health and Social Care (DHSC) expenditure (BMA 2023).

A duty could be placed on central government (the Northern Ireland Department of Justice commissions a charity-run 24/7 volunteer scheme for children and adults) or local government (Scottish local authorities were recently given a statutory duty to ensure AA provision via the Criminal Justice (Scotland) Act 2016 (Support for Vulnerable Persons) Regulations 2019). Or alternatively, on a multi-agency partnership (e.g. integrated care boards, health and wellbeing boards, safeguarding adults boards, crime and disorder reduction partnerships). Notably health and social care are devolved to the Welsh Government, while policing and justice is not. Independence from police is critical.

References

- Angiolini, E. (2017) [Report of the Independent Review of Deaths and Serious Incidents in Police Custody](#)
- APCC (2018a) [APCC leads welcome national focus on support for vulnerable adults in custody 31/07/2018](#) [accessed 18th June 2023]
- APCC (2018b) [APCC leads write to minister outlining next steps to protect vulnerable adults in police custody 22/08/2018](#) [accessed 18th June 2023]
- APCC (2019) [APCC mental health & custody lead responds to NAAN, 'There to Help 2', report 31/05/2019](#) [accessed 18th June 2023]
- APCC (2023) [Role of the PCC](#). [accessed 18th June 2023]
- BMA (2023) [Health funding data analysis](#) [accessed 18th June 2023]
- Bradley Commission (2014) [The Bradley Report five years on: An independent review of progress to date and priorities for further development](#). London: Centre for Mental Health
- Criminal Justice (Scotland) Act 2016 (Support for Vulnerable Persons) Regulations 2019 available at <https://www.legislation.gov.uk/ssi/2019/437/regulation/4/made>
- Home Office (2018) [Appropriate Adult PCC-Local Authority Partnership Agreement England](#)
- Home Office (2019) [Police and Criminal Evidence Act 1984 \(PACE\) Code C](#)
- Home Office (2022) [Police and Criminal Evidence Act 1984 \(PACE\) Code H](#)
- House of Commons Library (2023) [Adult Social Care Funding \(England\)](#) [accessed 18th June 2023]
- House of Lords Library (2022) [Police and crime commissioners: Powers and functions](#) [accessed 18th June 2023]
- Hurd, N. (2017) Letter from the Minister of State for Policing and Fire Services Nick Hurd MP to Police and Crime Commissioners, 21st September 2017
- Jessiman, T. & Cameron, A. (2017) [The role of the appropriate adult in supporting vulnerable adults in custody: Comparing the perspectives of service users and service providers](#). British Journal of Learning Disabilities, 45(4), 246-252.
- LGA (2017). 'Review of Appropriate Adult provision for vulnerable adults' [Note of last Community Wellbeing Board meeting](#) 16th February 2017. Local Government Association
- May, T. (2014) [Home Secretary at the Policing and Mental Health Summit](#), 23 October 2014
- May, T. (2015) Letter from the Home Secretary Theresa May MP to Chris Bath CEO of the National Appropriate Adult Network. 14th July 2015
- Merseyside PCC (2022) [PCC calls for changes in the law to provide improved protection for vulnerable adults in custody 09.02.22](#) [accessed 18th June 2023]
- [Miller v DPP \[2018\]](#) EWHC 262 (Admin) 15 February 2018)
- NAAN (2004) [Final report of the mapping exercise of appropriate adult provision in England and Wales](#).
- NAAN (2006) [Appropriate adult provision in England and Wales: Report prepared for the Home Office](#).
- NAAN (2010) [Appropriate adult provision in England and Wales: Report prepared for the Department of Health and the Home Office](#).
- NAAN (2019) [There to Help 2: Ensuring provision of appropriate adults for vulnerable adults detained or interviewed by police - An update on progress 2013/14 to 2017/18](#).
- NAAN & ICPR (2015) [There to help: Ensuring provision of appropriate adults for mentally vulnerable adults detained or interviewed by police \(The Home Secretary's Commission on Appropriate Adults\)](#).
- [R v Aspinall \[1999\]](#) CA (Crim Div) MHLR 12
- Royal Commission on Criminal Procedure (Report, 1981) p.107 para 4.108. London: HMSO 1981