

The purpose of an AA

Police are required to explain that the purpose of the AA's presence is to:

- advise the person interviewed;
- observe whether the interview is being conducted properly and fairly; and
- facilitate communication

This is similar to, though not as expansive as Home Office Guidance which states:

- 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

The nature of the AA

Eligibility to be an AA

Under Code C 1.7(b), a vulnerable adult's AA may be: -

- a) a relative, guardian or other person responsible for their care or custody;
- b) someone experienced in dealing with mentally disordered or mentally vulnerable people but who is not a police officer or employed by the police;
- c) failing these, a responsible adult aged 18 or over (Home Office, 2014)¹

The Codes state that, "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."

The AA role may not be filled by: police or their employees; solicitors and independent custody visitors at the police station in those capacities; suspects, victims, witnesses and anyone otherwise involved in the investigation; or anyone who has received admissions prior to acting as the AA (Home Office, 2014)²

¹ Revised code of practice for the detention, treatment and questioning of persons by police officers, Police and Criminal Evidence Act 1984, (PACE) – Code C, May 2014 paragraph 1.7(b)

² Revised code of practice for the detention, treatment and questioning of persons by police officers, Police and Criminal Evidence Act 1984, (PACE) – Code C, May 2014 paragraphs 1B, 1C, 1F, 1.7(a)(iii) and (b)(iii)

Who an AA is required for

Under the PACE Codes, an AA is required for a person that is 'mentally disordered' or otherwise mentally vulnerable who is detained by police. The same requirements apply, so far as is possible, to people interviewed without arrest but under caution regarding suspected involvement in an offence (voluntary attenders)³.

Definition of mentally disordered

'Mental disorder' is defined as per the Mental Health Act 1983⁴ (see Paper B).⁵

Definition of mentally vulnerable

'Mentally vulnerable' is a broader term and 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.⁶

There is no requirement for a diagnosis or for a state or level of capacity to be long-standing or permanent. The choice of the word 'may' (versus for example 'is likely to') means there is no requirement on custody officers to determine the likelihood of a suspect not understanding. The test relates not just to understanding what is actually happening but to understanding its *significance*. This applies equally to *questions* put to them by police, *what is said* by other parties such as solicitors and their own *replies*.

In this document, the phrase 'mentally vulnerable adult' is used to describe all those who require an AA.

Actions on arrival at the police station

Determining vulnerability

As part of their initial actions, the custody officer must determine whether a person requires an appropriate adult.⁷

The police must treat a person, of any age, as mentally disordered or mentally vulnerable if they have any suspicion or are told in good faith that they are, unless there is clear evidence to dispel that suspicion⁸. The notes for guidance in Code C expand this stating that, "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, or mentally incapable of understanding the significance of questions or their replies that person shall be treated as mentally disordered or otherwise mentally vulnerable for the purposes of this Code"⁹.

³ Code C 3.21

⁴ Code C 3.15

⁵ Mental Health Act 1983 s.1(2A) to (4)

⁶ Code C 1G

⁷ C 3.5(c)(i)

⁸ PACE Code C 1.4

⁹ PACE Code C Annex E 1

The Codes state that there is no requirement for an appropriate adult to be present if a person is detained under section 136 of the Mental Health Act 1983 for assessment. There is some debate amongst police officers as to whether this means an AA is still required for the booking in procedure though the Home Office asserts that it does not. This may arise in part from the fact that this provision is included only in the Notes for Guidance appended to Annex E (in Code C).

Informing an AA

If the custody officer authorises the detention of a person who is mentally vulnerable or appears to be suffering from a mental disorder, the custody officer must *as soon as practicable* inform the appropriate adult of the grounds for detention and the person's whereabouts, and ask the adult to come to the police station to see them. This must be done *without delay* even where there is an authorised delay in notifying arrest or allowing access to legal advice.¹⁰ However, it is not a breach of the Code if the delay is justifiable, reasonable steps are taken to prevent unnecessary delay and the custody record shows any delays and the reasons why they occurred.

Clinical needs

If they appear to be suffering from a mental disorder, the custody officer must ensure they receive appropriate clinical attention, making sure all relevant information which might assist in the treatment of the detainee's condition is made available to the responsible healthcare professional¹¹.

Rights and entitlements etc.

The custody officer must provide the detained person with a written notice (including Easy Read) of the person's rights and entitlements including their right to free legal advice. They must explain it and give them opportunity to read it. The reasons for arrest and the grounds for detention must also be explained. The custody officer must inform the person that AA duties include advice and assistance and they can consult privately, ask whether the person would like legal advice and/or someone informed of their detention.¹²

If the AA is already at the station, the above must be complied with in their presence. If they are not yet present, the above must be repeated in their presence *when they arrive*¹³. Although no specific time frame is given for the repetition, a custody officer must perform the functions of the Code as soon as is practicable¹⁴.

¹⁰ Code C 3.15, Annex B: B1, Annex E:3

¹¹ Code C 9.4, Annex E:5

¹² Code C 3.1, 3.2(b)(i),3.2A, 3.3A, 3.17,3.18), Annex E:3

¹³ PACE Code C 3.17

¹⁴ PACE Code C 1.1

Access to information

AAs must be allowed to inspect the whole of the detainee's custody record as soon as possible and at any time on request while in detention, and have a copy of it up to 12 months after release¹⁵. They are also allowed to consult with the detained person privately¹⁶. The AA is allowed access to the content of any risk assessment if not to do so would put them at risk¹⁷.

Legal advice & legal privilege

AAs are allowed to request legal advice on the person's behalf if they consider it in their best interest. It remains the right of the person to choose not to use the legal advisor once they arrived at the station¹⁸.

On receiving a request for legal advice from the detained person (or the AA on behalf of that person), the police must act without delay¹⁹ to secure the provision of legal advice. Police must inform the detained person as soon as the legal advisor arrives at the station, even if an interview is in progress and/or they have previously declined legal advice, and take an interview break if the detained person wishes to speak to them²⁰.

AAs do not have legal privilege and it is the decision of the individual, in consultation with their legal advisor, to decide whether the AA is present in any legal consultation²¹.

Procedures

Identification, testing and searches

Code D (Identification of persons by police officers) states that if any procedure in the Code requires information to be given to or sought from a mentally vulnerable adult, an AA must be present. Confusingly, it also states that if the AA is not present when the information is first given or sought, the procedure must be repeated when they arrive. This, albeit pragmatic, addendum has the unfortunate potential effect of negating the safeguard²². What is clear is that any procedure involving the *participation* of a mentally vulnerable adult must take place in the presence of the AA²³. Procedures might include physical or video identity parades, photographs, foot wear impressions, body samples for DNA, evidential searches and examinations for marks etc., and fingerprinting. Wherever consent is required for ID procedures it will only be valid if given in the presence of an AA²⁴.

¹⁵ Code C 2.4, 2.4A, 2.5

¹⁶ Code C 3.18

¹⁷ Code C 3.8A

¹⁸ Code C 3.19, 6.5, 6.5A, Annex E: 4, Annex E: E1

¹⁹ Subject to the rules in Code C/H Annex B, whereby police can delay allowing access to legal advice.

²⁰ Code C 3.19, 6.5, 6.5A, 6.6(d)(v), 6.15,

²¹ Code C 1E

²² Code D 2.14

²³ Code D 2.15

²⁴ Code C 2.12

Strip searches and intimate searches

The presence of an AA is required for strip searches, unless it is an urgent case where there is risk of serious harm to the detainee or others²⁵. The AA should be of the same sex as the person unless they specifically request an AA of the opposite sex²⁶. The presence of an AA is also required for intimate searches²⁷ including informing of authority and grounds for the search and any required requests for and giving of consent²⁸. The AA should be of the same sex as the person for an intimate search, unless; the person requests someone of the opposite sex who is readily available, or they state in the presence of the appropriate adult that they do not want one present.²⁹

X-Ray and Ultrasound

Although an AA must be present for the informing of the authority and grounds and seeking and giving of consent for an x-ray or ultrasound, there is no requirement that they are present when one is carried out³⁰.

Interviews

A mentally vulnerable person must not be interviewed, or asked to provide or sign a written statement under caution or record of interview, without an AA. There are a number of strict exceptions to this, covering the need for interviews that need to be conducted urgently to avoid serious damage to the investigative process or harm to others. In custody, the authorisation of an officer of Superintendent rank is required.³¹ An AA must be present for the caution given by police before questions are put to them as well as any special warnings.³² The AA may read and sign the interview record or any written statement taken down during the interview³³.

Documents and translations

The AA must be present when police ask the person whether they wish to waive their right to written translations of essential documents; necessary relevant information under Code C Annex M is provided; the reminder about their right to legal advice is made; and when consent to waive is given³⁴. The AA should be allowed to make representations that a document that is not listed in the table of essential documents is essential and that a translation should be provided.³⁵

²⁵ Code C Annex A: 11(c), Annex E: 12

²⁶ Code C Annex A: 5, 11(b), Annex E: 12

²⁷ under PACE 1984 s.55 (a search which consists of the physical examination of a person's body orifices other than the mouth)

²⁸ Code C 1M(d)(i), Annex A: 2A, 2B, 5

²⁹ Code C Annex A: 5, Annex E: 12

³⁰ Code C Annex K: 2 and 3

³¹ Code C 12.3, 11.1 or 11.18 to 11.20

³² Code C 10.11A, 10.12, Annex E:7

³³ Code C 11.12

³⁴ Code C Annex M: 7(a) and (b)

³⁵ Code C Annex M: 8

Class A drug testing

An AA is required for the taking of a sample for Class A drug testing (and associated requests, warnings and information) only for those who have not attained the age of 17. An AA is not required for vulnerable adults for this procedure.

Reviews

Police should make reasonable efforts to give the AA sufficient notice to make themselves available in person or by phone/electronic means to make representations whenever detention is reviewed³⁶. They should be consulted and their views considered before detention beyond 24 hours is authorised³⁷.

Charging and related actions (when there is sufficient evidence for a prosecution)

The custody officer must make reasonable efforts to give the AA sufficient notice of the time the decision (charge etc.) is to be implemented so that they can be present³⁸. However, there is no legal power by which police can detain a person solely to wait for an appropriate adult. If the AA is not, or cannot be, present at that time, the person should be bailed under PACE 1984 s.37(7)(b) to return when they can be present (unless the Custody Officer determines that the absence of the AA makes the person unsuitable for bail for this purpose). The AA should be given a copy of the notice of particulars of charge at the point of charge or when they arrive³⁹.

³⁶ Code C 15.3(c), 15CA. Representations can be made in person or remotely (Code C 153B), however specific additional consideration must be given to the benefits of carrying out reviews in person if the detained person is suspected of being mentally vulnerable (Code C 15.3C(b)).

³⁷ Code C 15.2A(c)

³⁸ PACE Code C 16C

³⁹ Code C 16.3