

There to help

Ensuring provision of appropriate adults
for mentally vulnerable adults detained
or interviewed by police

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Supporting papers

This briefing paper is based on a research project conducted by NAAN and ICPR between December 2014 and March 2015. The briefing is not directly referenced as all references and findings are contained within the supporting papers.

Paper	Content
A	Literature review
B	Legislation review
C	Case law review
D	Results: data from police forces, AA schemes and liaison & diversion
E	Results: survey of custody sergeants
F	Results: stakeholder interviews
G	Results: discussion with members of the Working for Justice group
H	Analysis of costs of full provision
I	AA role as described by the PACE Codes

1. Summary

The role of appropriate adults (AA) is to safeguard the welfare and rights of children and mentally vulnerable adults who are detained or interviewed by police. The Codes of Practice of the Police and Criminal Evidence Act 1984 (PACE) set out the purpose and powers of AAs, and the responsibilities of the police in this regard.

In December 2014, the Home Secretary commissioned the National Appropriate Adult Network to examine current AA arrangements for vulnerable adults, identify shortcomings in provision, and develop recommendations for ensuring provision for all who need it. The project entailed a review of existing literature and law (Papers A to C), new data from police forces, liaison and diversion services, AA services and custody officers (Papers D to E) and interviews and consultation involving senior stakeholders and individuals with direct experience of the criminal justice system (Papers F and G).

Findings

The main findings of the research and consultation undertaken for this project are:

1. There are significant shortcomings in current AA provision for mentally vulnerable adult suspects, particularly in terms of:
 - inadequate police practices with respect to identification of suspects' vulnerabilities and the need for AAs, and the recording of relevant data
 - limited availability of AAs;
 - variable quality of AAs.
2. Many vulnerable adults do not receive the support of an AA or receive it only for part of the custody process. This undermines their welfare, inhibits the exercise of their legal rights, risks miscarriages of justice and lengthens custody times potentially increasing the risk of self-harm.
3. The underlying causes of these findings include: the absence of statutory duties either to secure or to provide AAs for vulnerable adults; lack of appropriate training and screening tools for police; time pressures in the custody suite; diminishing public sector funding and a lack of clarity over responsibility for commissioning.
4. Legislative changes aimed at promoting equality (such as the Equality Act 2010) and national initiatives focused on vulnerable people in the criminal justice system (such as liaison and diversion services) provide a favourable policy and commissioning context for the enhancement of AA provision.
5. On the basis of a conservative estimate, 11% of adult suspects require an AA (as defined by PACE Code C); the annual cost of ensuring full provision of trained AAs from organised schemes, throughout the custody process and across England and Wales, is estimated at £19.5 million (£113,000 per local authority). Current national spending on AA provision for adults is estimated to be in excess of £3 million per year.

Recommendations

Recommendations for ensuring full AA provision for all vulnerable adults are:

1. To develop a new approach at a national strategic level and a vision shared by relevant departmental bodies, agencies and organisations that:
In the interests of individuals' welfare and of justice, all mentally vulnerable adults should have access to the timely support of a competent AA throughout any period of detention in police custody or the conduct of any voluntary interview;
2. To locate AA provision within existing strategic frameworks, of which the preferred option is to incorporate AA services within the liaison and diversion framework
3. Establish AA provision within a clear and consistent national framework for local co-commissioning, with commissioning co-ordinated and informed by Health and Wellbeing Boards and Safeguarding Adults Boards
4. To develop enhanced national standards to provide national support for local co-commissioning;
5. To ensure consistent police record keeping on vulnerable suspects, identification of need for AAs, the securing of AAs, and where they came from;
6. To integrate simple screening questions in all police custody risk assessments and ensure all custody officers have received training on vulnerability and AAs;
7. To amend the PACE Codes of Practice to clarify and simplify their provisions on AAs;
8. To consider amending PACE 1984 to establish an explicit statutory duty on police officers to secure an AA for all mentally vulnerable adults; and to bring greater consistency to the approach of courts on the admissibility of evidence obtained in the absence of an AA;
9. To consider establishing a statutory duty to ensure provision of an AA when requested by police, to create parity with children's AA services;
10. To provide short-term programme funding of £3m to £5m per year to support the inclusion of AA provision within mainstream budgets. This could be to 2017 (subject to integration into the liaison and diversion framework and HM Treasury approval) or longer if required.

2. Introduction

Adults with mental ill health, learning disabilities, autism and other mental vulnerabilities face significant disadvantages in the criminal justice system. They are more likely than others to be drawn into it. Once within it, they often report not understanding what was happening to them or why; being uncertain about what to say or do; feeling alone and not knowing to whom to turn for support. Such circumstances not only undermine the welfare of these individuals and threaten to exacerbate their vulnerabilities, but put them at risk of providing information to the authorities which is inaccurate, unreliable or misleading – and thus, ultimately, at risk of miscarriages of justice.

In order to mitigate these risks, the police are required to secure an appropriate adult (AA) whenever they detain or question 'mentally disordered' or 'otherwise mentally vulnerable' adults - including people with mental illness, learning disabilities, traumatic brain injury, dementia and autism. The AA has a defined role under the Police and Criminal Evidence Act (PACE) 1984 Codes of Practice: namely, to provide the support, advice and assistance necessary to ensure fair treatment, effective participation and guard against false confessions. AAs help the police to fulfil their responsibilities under PACE and are a critical safeguard against the abuse of police powers.

Against a backdrop of widespread concern about the adequacy of AA provision for vulnerable adults in police custody, in December 2014 the Home Secretary commissioned the National Appropriate Adult Network to conduct a short project to:

- examine current AA arrangements for vulnerable adults;
- identify any gaps or shortcomings in AA provision; and
- develop recommendations for ensuring provision for all who need it.

The project was overseen by an expert advisory group (see page 2) and undertaken in partnership with the Institute for Criminal Policy Research. The method consisted of the following:

- a review of the existing research literature and relevant legislation;
- a data request to all 43 police forces;
- an online survey of Metropolitan Police custody officers;
- an online survey of AA schemes;
- analysis of data from liaison and diversion trial sites;
- analysis of costs data;
- in-depth interviews with 13 senior stakeholders from criminal justice, health and AA services;
- a semi-structured discussion with members of the Working for Justice group (who have a learning disability and direct experience of the criminal justice system as suspects or defendants).

Sections three and four of this briefing present the main findings of these various strands of primary and secondary research. Section five sets out recommendations, based on the main findings, for ensuring full provision of AAs for vulnerable adults. Fully referenced reviews, complete findings and detailed analyses are presented in a series of supporting documents (Papers A to I).

3. Legislation and policy

3.1 Background to appropriate adults

In 1972, a 'mentally handicapped' man aged 18 and two children and were arrested on suspicion of the murder of Maxwell Confait. After long interviews they made a series of confessions. Their subsequent convictions were quashed by the Court of Appeal on the basis of scientific evidence.

A subsequent government inquiry found that interviews of the suspects had taken place without a parent or responsible adult, and had been 'unfair and oppressive to a person of his mental age'. The suspects were not informed of their right to legal advice or to communicate with another person. The inquiry recommended no person should be convicted where there had been a breach of the Judges' Rules (the existing set of rules governing police behaviour towards suspects), with particular concern for 'mentally handicapped' people and children. This led to the establishment of the Royal Commission on Criminal Procedure (1977-1981) which in turn led to the Police and Criminal Evidence Act (PACE) 1984 and its Codes of Practice. PACE Code of Practice C replaced the Judges' Rules and established the role of the appropriate adult (AA) to support children and vulnerable adults in the criminal justice system.

3.2 PACE and the legal framework for AAs

The Police and Criminal Evidence Act (PACE) 1984 and its Codes of Practice provide the legal framework of police powers and safeguards relating to such matters as arrest, detention and the interviewing of suspects. The PACE system comprises the Act; the Codes of Practice, which do not have the full force of law but set out how police powers under PACE should be used; and Notes for Guidance.

The Act itself contains no provisions relating to AAs for vulnerable adults; these provisions are, instead, spread out across Codes C, D, E, F and H. The Codes set out – with respect to both children and vulnerable adults who have been detained by the police – the purpose and powers of AAs; who may act as an AA; the threshold of vulnerability defining when an AA is required; the responsibilities of the police in regard to obtaining an AA; and the circumstances and procedures for which an AA must be present. Although the Codes focus on police detention, their requirements also apply, so far as is possible, to 'voluntary attenders': that is, individuals who are interviewed under caution but without arrest.

Home Office *Guidance for Appropriate Adults*, produced in 2003, defined the main responsibilities of an AA as being:

- 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.

Subject to a small number of exceptions, the police may legally ask any person over the age of 18 to be an AA, including a member of the general public. A wide variety of individuals and agencies currently fulfil the role, including: family members, carers, social workers, youth offending team (YOT) staff and statutory, private or voluntary sector providers. In some areas, AAs are volunteers from the local community, organised and supported by a local charity or agency.

Section 38 of the Crime and Disorder Act 1998 places a statutory duty on local authorities, via YOTs, to 'ensure the provision of persons to act as appropriate adults to safeguard the interests of children and young persons detained or questioned by police officers'. This is the only definition of the AA role which appears in legislation. There is no equivalent statutory duty with respect to provision of AAs for vulnerable adult suspects.

Evidence obtained in breach of the Codes may be deemed inadmissible by the courts or result in a conviction being quashed on appeal (with particular reference to sections 76-78 of PACE, which deal with the admissibility of confession evidence). This gives the Code of Practice provisions on AAs some practical effect in law, albeit this is not consistently applied by the courts (see Paper C).

3.3 Other relevant legislation

Beyond PACE, a variety of other legislative developments have served to underline the importance of the AA role in safeguarding the rights and welfare of vulnerable individuals who are detained by the police. For example, sections 6 and 15 of the Equality Act 2010 define disability as a physical or mental impairment which has a substantial and long-term adverse effect on the individual's ability to carry out normal day-to-day activities. The Act requires the anticipation and prevention of discrimination against people with disabilities and requires service providers to make 'reasonable adjustments' to standard provisions, criteria, practices or physical features to avoid disadvantage. Section 149 of the Act establishes a proactive, public sector equality duty to eliminate any conduct prohibited by the Act and advance equality of opportunity. The provision of an AA is an example of a reasonable adjustment.

Article 2 of the Human Rights Act 1998 (right to life) imposes an obligation on the state to protect individuals in state detention whose life is at risk, including from suicide. Article 6 (right to a fair trial) sets out a number of minimum rights, which include being informed, in a way that the person understands and in detail, the nature of the accusation against them. Courts have interpreted Article 6 as applying to suspects interrogated in police custody (see Paper B). This has clear implications, in particular, for individuals with learning disabilities, autism and certain mental health conditions who may experience difficulty understanding the prosecution process.

Among other relevant legislation is the Mental Capacity Act 2005, Section 1 of which sets out five underpinning principles: presumption of capacity; the right for individuals to be supported to make their own decisions; the right to make 'unwise' decisions; best interests; and least restrictive intervention. Sections 35 and 36 establish Independent Mental Capacity Advocates (IMCAs) to safeguard people who are considered to lack capacity, and enable the local authority to 'make such arrangements as it considers reasonable' to ensure IMCA availability. Suspects identified as 'mentally vulnerable' under PACE should be presumed to have capacity. AAs can help to ensure the necessary support for people to make decisions and to ensure their best interests are considered.

3.4 Policy focus on mental vulnerability and justice

The connections between mental vulnerability and policing have been periodically highlighted in Home Office policy documents since 1990. In 2009, the Bradley Report examined this issue in close detail. A range of political and public policy commitments have been made in response to Lord Bradley's recommendations, aimed at improving responses to vulnerable people caught up in (or on the edges of) the criminal justice system.

A particularly significant development is the expansion of liaison and diversion schemes, under which mental health professionals based in police stations and courts carry out screening of suspects and defendants, and

make referrals to relevant services (whether as part of, or as an alternative to, the prosecution process). A large-scale government trial of liaison and diversion services is being conducted in sites across England, with a planned 50% population coverage by April 2015 and a possible national roll-out in 2017 subject to HM Treasury business case and ministerial approval.

Other related initiatives include: the Crisis Care Concordat, which aims to bring about more coordinated crisis care for people with mental health problems; street triage, which entails collaborative working between mental health professionals and front-line police officers in response to incidents at which immediate mental healthcare and support is required; and the development of new screening tools to assist the identification of vulnerability.

One of the stated objectives of these initiatives is to improve the awareness and identification of vulnerabilities among individuals entering the criminal justice system. To the extent that this aim is achieved, it inevitably increases the demand for AAs, without necessarily bringing about any associated increase in supply. Another consideration in the context of the discussion of AA provision is the critical importance of co-ordination between related programmes, such that differing strands of activity mutually support rather than duplicate (or potentially undermine) each other; mechanisms are put in place to support sharing of learning, skills and expertise; and cost-effectiveness is maximised. One senior stakeholder interviewed for this project said:

There must be joined-up thinking between liaison and diversion, street triage, victim services (most offenders with mental health problems are also victims) and AA services. These four services need to be under the same umbrella and funded in the same way. Mental health agencies and the police do not link up and work well together; there is a huge tension. There is a real need for community advocates to help bridge that gap. There is a data disconnect and a professional disconnect.

4. Gaps and shortcomings in provision

A series of research and policy reports have, over the past 15 years, highlighted gaps and shortcomings in provision of AAs for vulnerable suspects (see Paper A). In the past two years, NAAN has regularly been contacted by AA schemes and police forces stating that existing shortcomings in AA provision are worsening. Where specific provision for vulnerable adult suspects has existed, it has historically been provided or funded principally by adult social services (see Paper D). As the effects of public sector spending cuts have been felt, these services – which do not have a statutory footing – have reduced.

The findings of the primary research conducted for this project (see Papers D to G) reinforce and elaborate many of the concerns raised by prior work in this area. It is clear that there are three fundamental, and inter-related, problematic aspects of AA provision:

1. Inadequate identification of suspects' vulnerabilities and their need for AAs;
2. The availability of AAs is insufficient
3. The quality of AA provision is variable.

The net result of these problems is that many vulnerable suspects are not provided with an AA, or are not properly supported by the AA who is provided. This, in turn, compounds the disadvantage these individuals experience within the criminal justice system. It can delay the progress of cases through the system; add to suspects' distress, anxiety or confusion and inhibit or prevent the exercise of their legal rights; and contribute to miscarriages of justice. Furthermore, it generates increased costs, inefficiencies and risks for the police.

Before briefly considering the issues of identification, availability and quality in turn, it should be noted that there is a further, overarching concern which impedes efforts not only to address the existing problems with AA provision, but also to establish the scale of the problems. There are significant challenges with regard to the current data recorded by police on requests for, availability and use of, AAs. There is no standardised system of recording or retrieving data on AAs across police forces (reflecting, in part, the lack of standardised custody management information systems) making it impossible to obtain an accurate national picture with confidence. Limited or inconsistent recording practices within forces limit the availability of local data on levels of AA requests and AAs secured. In response to the data request submitted for this project, some forces stated that data on AAs could be retrieved only through a manual trawl of custody records, and some were unable to distinguish between multiple call-outs for a single custody episode and call-outs for separate custody episodes (see Paper D).

4.1 Identification of vulnerability and need for AAs

Since the 1990s, various studies have reported that the vulnerability of suspects frequently goes unrecognised by police officers. Research which has sought to estimate the prevalence of mental health problems, learning disabilities and other vulnerabilities among criminal justice populations encounters a range of methodological and definitional problems; nevertheless, on the basis of the existing research evidence it is reasonable to assume that between 11% and 22% of suspects detained by the police have a level of vulnerability that would meet the threshold for an AA (see Paper A).

However, police data obtained for this project (from 23 of the 43 forces to which the request was submitted) indicate that the percentage of custody episodes identified as requiring an AA in the year 2013/14 ranged between 0.5% to 9.2%, with the average rate of identification being 3.1% (see Paper D). These data must be treated with caution given the quality of data currently available; however, there appears to be significant under-identification of need for AAs and variability between forces.

PACE Code C provides a sensible approach to identification, simply requiring police to recognise information or behaviour that gives them a suspicion that a person *may* be mentally vulnerable, rather than diagnose or identify conditions. Findings of the research conducted for this project, and existing research evidence, strongly suggest that there are two elements to the under-identification of need for AAs. One element is that the police frequently lack the expertise and training to recognise when a suspect may have a vulnerability. For example, many forms of vulnerability are complex and sometimes hidden and custody officers operate under significant time pressures. Moreover, they do not have access to appropriate screening tools to assist this process. The second element is that officers opt not to request AAs for a substantial proportion of those whom they do identify as vulnerable or who identify themselves as such. This appears to reflect officers' concerns about lack of availability of AAs and the likelihood of delay associated with securing them; a lack of clarity over the threshold for requiring an AA; and/or officers' scepticism about the need for AAs in some cases.

Data from liaison and diversion schemes submitted to this project reveal that, across eight sites, an average of only one in five of adults who had engaged with the schemes (and were therefore likely to be vulnerable) had received an AA (see Paper D). A rate close to 100% would be expected given that the threshold for an AA is at least the same as, if not lower than, that for liaison and diversion services. Furthermore, the lack of consistency in courts' responses to breaches of the PACE Codes may serve to encourage police officers to regard the securing of AAs for vulnerable suspects as optional rather than required (see Paper C).

4.2 Availability of AAs

It has been noted above that no agency has a statutory duty to provide AAs for vulnerable adult suspects, and those who act as AAs include suspects' friends and family members, carers, social workers, and members of the general public. Across the country, there is a patchwork of statutory, private and voluntary sector schemes which provide AAs – but police forces' access to such schemes is highly variable. Where friends or family members are not available, the police frequently struggle to obtain AAs for suspects deemed to require one, particularly outside office hours (see Papers A and E). The resultant delays can be of several hours, causing additional stress to suspects, increasing their care needs and potentially contributing to higher incidences of self-harm. Delays are wasteful of police time and cause procedural difficulties since suspects can only be held for a limited time.

The limited supply of AAs is not only a cause of delays but also means that, in some cases, AAs are not provided at all even where requested by officers, or not for all procedures during a suspect's period of detention (see Paper D). As suggested above, officers' perceptions of limited supply can have a negative effect on their preparedness to identify vulnerability and the associated need for an AA. Examples of pragmatic responses to this problem emerged in the custody officer survey conducted for this project (see Paper E). When asked what they do if unable to secure an AA for a vulnerable adult suspect, 36 out of 38 respondents stated that this scenario had arisen for them. Most respondents stated that they would consider releasing the suspect on bail to return at a time when an AA was available. This approach, while understandable, provides a short-term response rather than a solution. The justice process is delayed further, costs generated and the issue may or may not be solved at a later date. Other responses from custody officers included:

I would, in the first instance, re-assess the detainee and see whether an AA is still required. Everything I would do would be with the best of intentions in order to get the job done even if not completely 'by the book'.

Consider range of available investigative disposals for subject, consider securing an AA by phone e.g. family member/relative etc. etc. to support/guide remotely.

4.3 Quality of AAs

Another recurring theme in the findings of prior research, and the research conducted for this project, is the variability in quality of AAs obtained for vulnerable suspects, reflecting the wide range of backgrounds from which AAs come into the role. The police, service users and providers alike have raised concerns about the suitability of using family members as AAs – who are unlikely to be trained or have any knowledge relating to the AA role, and are sometimes over-involved with or, conversely, antagonistic towards the suspect. In contrast, it has also been recognised that an AA's familiarity with the suspect and capacity to offer personal, emotional support can be of benefit.

Studies suggest that the AA role is too complex for the short explanation that a busy custody officer can deliver to an untrained individual, and that a very limited amount of information about the role can render AAs even less effective than if they had none (see Paper D). It has been widely recommended by practitioners and others that only those who have received some level of training should act as AAs. The senior stakeholders interviewed for this project (see Paper F) largely supported the introduction of mandatory training for AAs and greater professionalisation of the service – stating, for example:

AAs should be trained, equipped to provide the best service and have a degree of professionalisation; they can be volunteers, however, rather than professionals

AAs need to be individuals that are trained, understand what the role of an AA is, are on-call, available and able to refer to other services

5. Ensuring full provision

[AA provision for adults] is a gaping hole. No one owns it, no one scrutinises it, and nobody inspects it. It needs to change. (Senior Stakeholder)

The primary and secondary research undertaken for this project has confirmed the need for AAs; stakeholders, professionals and practitioners involved in this project said that the role makes an important positive contribution. A number of barriers to achieving provision of AAs for all vulnerable adult suspects who need them have been identified. Full provision demands that any suspect's vulnerability and associated need for an AA are identified by the police. The police must then be ready to secure an AA, and have access to local services which can promptly supply individuals with the requisite knowledge and skills to fulfil the role.

5.1 A partnership approach

Ensuring full provision of AAs for adults requires a paradigm shift, recognising that health, social care and justice services share responsibility for this provision, even if local agencies approach it with different perspectives and are driven by different legislative requirements and policy goals. This partnership approach will ideally be underpinned by a cross ministerial commitment involving the Home Office, Ministry of Justice, Department of Health and Department for Communities and Local Government, alongside the Welsh Assembly Government for provision in Wales.

At the national level, a clear and shared vision would describe the cross ministerial commitment, which would be supported by relevant bodies including, for example, NAAN, the College of Policing, national policing leads, Local Government Association, NHS England, the judiciary and people with mental vulnerabilities. Suitable wording for the shared vision is as follows:

In the interests of individuals' welfare and of justice, all mentally vulnerable adults should have access to the timely support of a competent AA throughout any period of detention in police custody or the conduct of any voluntary interview.

The following strategic objectives would help to realise the vision:

- To improve the recording and sharing of information regarding mental vulnerability amongst adults detained or otherwise questioned by police;
- To increase the identification of mental vulnerability and need for an AA amongst adults detained or otherwise questioned by police;
- To extend the availability of AAs;
- To improve the competency of AAs.

Recommendation 1: To develop a new approach at a national strategic level and a vision shared by relevant departmental bodies, agencies and organisations.

5.2 Strategic frameworks

The development of a new and discrete strategic framework for AA provision for adults, to sit alongside other frameworks, is unnecessary. Integration is more cost effective, and complements current approaches to partnership working. AA provision is as a critical and integral part of those wider justice, health and social care services focused on improving outcomes for vulnerable people, and should be regarded as such. Locating AA provision within existing strategic frameworks – including those relating to liaison and diversion, Health and

Wellbeing Boards and adult safeguarding – has the potential to save resources, reduce complexity, and promote a consistent and coherent approach to people with mental vulnerability. A number of existing frameworks have been identified which, potentially acting together, could provide an effective framework for AA provision.

Liaison and diversion

Liaison and diversion services work to ensure that individuals receive the support they need at each stage of the criminal justice process. The Bradley Report linked AA and liaison and diversion provision and there remains a strong rationale for placing AAs within the same framework, including:

- Alignment of purpose: both services support vulnerable individuals caught up in the criminal justice system;
- Scope of provision: both services encompass the full range of mental vulnerabilities
- Location: both services operate within police custody suites and liaison and diversion provides a link to courts, where need for support of the type offered by AAs has been identified
- Structure: liaison and diversion is an established programme with momentum, support, strong oversight and a route to mainstream funding from 2017.

Strategic alignment should not, however, be confused with the merging of AA with liaison and diversion services. AAs fulfil a criminal justice role that is, and must remain, distinct from the health role of liaison and diversion services. A conflict of interest is likely to arise if those responsible for health screening and assessment also take the role of the AA.

Health and Wellbeing Boards

Health and Wellbeing Boards are well-placed to assess the local need for, and support the inclusion of, AA provision in local commissioning plans. AA provision should be integrated with the preparation of the local Joint Strategic Needs Assessment and Joint Health and Wellbeing Strategy. This would help ensure the sustainability of AA services at a local level.

Adult safeguarding

Safeguarding Adults Boards are statutory bodies bringing together local authorities, health and police to help and protect adults where there is reasonable cause to suspect they have needs for care and support and are at risk of abuse or neglect. They share their annual strategies and reports (which are drawn from those of their constituent agencies) with Health and Wellbeing Boards. Statutory guidance for the Care Act 2014 highlights the AA role in relation to safeguarding but this could be given greater clarity. Subject to this clarity, Safeguarding Adults Boards could provide an accountability framework for local AA partnerships.

Whole place / community budgets

As per the Troubled Families programme, whole place/community budgets offer a person-centred approach to public services. This approach identifies fragmented, reactive and acute services; focuses on outcomes over organisational responsibilities; is user focused; and pools or aligns resources to maximise both available funds and provision. The approach relies on access to funding for the up-front costs of transformation but not more money overall. A relevant example is the Better Care Fund which has made £3.8 billion available to be deployed locally on health and social care through pooled budget arrangements.

Transforming Care

The Transforming Care programme, which arose out of the abuse at Winterbourne View hospital, has been committed to by a wide range of partners including police, adult social services and health. The Transforming Care and Commissioning Steering Group has recognised how 'fundamentally important' the concerns set out in the Bradley Report are to its agenda and encouraged the Government to respond to the recommendations in the recent report 'The Bradley Report five years on' which included the need for improvements in AA provision and clarity on their funding.

Regulation and inspection

Consideration should be given to including AAs within the regulatory framework of the Health and Care Professions Council which has been made responsible for 'regulating health, psychological and social work professionals' and is being accorded powers to set up voluntary registers for unregulated professions or related professions. In addition, consideration should be given to responsibility for the inspection of AA services – for example the potential role of the Care Quality Commission.

Wales

Health and social care is devolved to the Welsh Assembly Government. Hence, for example, liaison and diversion services in England are distinct from criminal justice liaison services in Wales. However, the suggested approach can readily be adapted for AA provision in Wales.

Recommendation 2: To locate AA provision within existing strategic frameworks, of which the preferred option is to incorporate AA services within the liaison and diversion framework

5.3 Implementing the new approach

Realising full AA provision for vulnerable adult suspects will demand a series of reforms and actions relating to: police identification of need; recording and data-sharing; legislation; the PACE Codes of Practice; commissioning; and the development and implementation of national standards. The resource implications of the proposed changes should also be examined and addressed.

Commissioning

A clear and consistent commissioning framework for AA provision is required. Recent reforms integrating health and social care and focusing on outcomes over organisational boundaries have removed a historical barrier to progress: namely, that AA commissioning does not easily 'sit' with a single organisation. It is proposed here that AA provision be incorporated within the liaison and diversion framework, with commissioning to be co-ordinated and informed by Health and Wellbeing Boards and Safeguarding Adults Boards. This would provide a local platform for criminal justice, health and social care services to share data regarding the prevalence and nature of needs, which in turn would inform strategy development and commissioning. It also provides a multi-agency framework for accountability in terms of provision and use of services.

Recommendation 3: Establish AA provision within a clear and consistent national framework for local co-commissioning, with commissioning co-ordinated and informed by Health and Wellbeing Boards and Safeguarding Adults Boards

National standards

It is important that decision-making on the specifics of service delivery are made at the local level involving partner agencies and those who use the service. However, commissioning and oversight of AA provision should be supported by an enhanced set of national standards. Key elements of these national standards would include:

- AA provision is swiftly and easily available in all areas of England and Wales via organised schemes, operating in alignment with liaison and diversion services 24-hours and 7 day per week, with a mix of operating times and out-of-hours arrangements based on local need
- Whether paid or voluntary, all AAs have appropriate support, have completed accredited training, operate within a framework of continual professional development, and are competent and confident to act
- In addition to the AA, subject to the wishes of a mentally vulnerable adult, police and AA services should facilitate the involvement of a family member or friend to provide moral support and provide information about the individual's support needs.
- Continuity of support when a mentally vulnerable adult moves from one part of the criminal justice process to another.

Recommendation 4: To develop enhanced national standards to provide national support for local commissioning

Recording and data-sharing

There is an urgent need for improvement in police recording practices with respect to mentally vulnerable people who are detained or interviewed as voluntary attenders. At a minimum, consistent records should be kept on the numbers of individuals identified as vulnerable; for whom an AA was required; for whom an AA was secured; who were bailed due to the lack of an AA; and the background or status of the AA. The data should be shared with local partners and should inform Joint Strategic Needs Assessments and commissioning plans. The data should also be used to inform internal improvement plans, made available to HMIC to support transparency and accountability and be available for the purpose of monitoring AA provision.

Recommendation 5: To ensure consistent police record keeping on vulnerable suspects, identification of need for AAs, the securing of AAs, and where they came from

Identification of need

Effective AA provision depends on the capacity and preparedness of the police to first recognise possible vulnerabilities in police suspects and their need for an AA. Due to the low threshold in PACE Code C, police do not need to identify or diagnose conditions. Rather, they need to be able to recognise information or behaviour that gives them a *suspicion* that a person *may* be mentally vulnerable. To that end, simple screening questions should be integrated into all police custody risk assessments, which are themselves already recognised by custody officers as a critical tool. Training on vulnerability, the role of an AA and how to secure one, should be required for all custody officers. Custody officers should be aware that the responsibility for identifying possible need lies with them (with support provided, as necessary, by health and social care partners) and there is no discretion as regards securing an AA once the threshold in Code C is met. This requirement is not negated by practical constraints, the convenience of the police or solicitors, or indeed the wishes of the suspect themselves.

Recommendation 6: To integrate simple screening questions in all police custody risk assessments and ensure all custody officers have received training on vulnerability and AAs

Review of PACE Codes of Practice

The Home Office should undertake a review of the Codes of Practice with the purpose of clarifying and simplifying their provisions relating to AAs. The labyrinthine nature of the current provisions permits them to be purposefully misinterpreted, simply ignored or, more typically, genuinely misunderstood.

I think at the moment some bits of the [PACE] guidance are open to interpretation...The guidance needs to be clear....It shouldn't be that different forces in the country interpret the guidance in their own way. (Senior stakeholder)

It's about applying the Codes in the way they were intended. (Senior stakeholder)

Consideration should be given to replacing them with the simple principle that all mentally vulnerable individuals have the right to be supported by an AA throughout their periods of detention or questioning by police. Limited exceptions to this, on practical grounds, could be introduced; for example, where the collection of evidence is time critical such as a breathalyser test.

Recommendation 7: To amend the PACE Codes of Practice to clarify and simplify provisions on AAs

Legislative change

Government should give consideration to amending the PACE Act 1984 to establish an explicit statutory duty on police officers to *secure* an AA for all mentally vulnerable adults – thereby aligning the Act with the Codes of Practice, and removing any ambiguity about whether AA provision for vulnerable adults is a requirement or matter of guidance. This would also help to achieve consistency in provision for children and for vulnerable adults in police custody. References in the Act to 'mentally handicapped persons' should be amended to bring it into line with the Mental Health Act 1983 and the PACE Code of Practice. As highlighted in section 3.1 above, evidence obtained in the absence of an AA represents a significant risk to justice. The corollary of the Court of Appeal's increasingly variable approach to accepting of such evidence (Paper C) is that there is no clear and consistent message to custody sergeants. This should be considered in a future review of PACE 1984.

Recommendation 8: To consider amending PACE 1984 to establish an explicit statutory duty on police officers to secure an AA for all mentally vulnerable adults; and to bring greater consistency to the approach of courts on the admissibility of evidence obtained in the absence of an AA

A statutory duty to ensure *provision* was a strong, consistent and uncontroversial theme across all stakeholders: it would be consistent with the PACE requirement on police to secure an AA, and with the statutory duty on YOTs to ensure provision for children. It would make explicit the Government's intention (implied in the Codes) that services for adults must have the same consistency of provision as those for children. As a new requirement, it would represent a new burden with associated costs for central government. However, the 'burden' is not entirely new as some of the costs are already currently being met by local authorities, health and police (see section 5.4 below and Paper H for cost estimates).

There is currently no legislative barrier to ensuring provision for all vulnerable adults. Both street triage and the liaison & diversion programmes have made significant progress without it. Legislative change is therefore recommended but should not be a pre-requisite for progress.

Recommendation 9: To consider establishing a statutory duty to ensure provision of an AA when requested by police, to create parity with children's AA services

Investment

An alternative to immediate statutory provision is to invest in encouraging funding at the local level from mainstream budgets through strategic investment.

The alignment of AAs within the liaison and diversion framework could be supported with programme funding. This would enable preparation for the mainstreaming of budgets in 2017. This approach has been taken successfully by the Department of Health both for liaison and diversion and for street triage, the latter of which is now operational in parts of 36 police forces. Funding could be managed by a collaborative led by the liaison and diversion programme (NHS England), and including NAAN and, it is suggested, the Local Government Association. This transformation funding would be used to develop services, test approaches to delivery and commissioning across differing geographies and demographics, evaluate best practice and shape a core model. Evaluation would include analysis of outcomes and develop estimates of costs savings, enabling 'invest to save' business cases to be promoted to local commissioners.

The objective would be for funding would be mainstreamed alongside liaison and diversion from 2017, subject to HM Treasury approval. Alternatively, clinical commissioning groups could be asked to expand the commissioning of AA services for adults. This could be achieved either through enhancement of the £30m support fund to the Crisis Care Concordat or the £60m police custody health care budget as it is transferred to the Department for Health.

Police budgets are a potential source of funds contributing to the upfront costs of transformation, as improved provision of AAs will generate efficiency savings in custody. Measures would be required to avoid any additional funding being substituted for existing spending.

A budget of £3m-£5m per year is proposed, for a minimum period of two years.

Recommendation 10: Provide short-term programme funding of £3m to £5m per year to support the inclusion of AA provision within mainstream budgets. This could be to 2017 (subject to integration into the liaison and diversion framework and HM Treasury approval) or longer if required.

5.4 The cost of full provision

Full provision through organised schemes

Estimates of the cost of full provision are provided in Table 1. There are significant challenges in calculating the costs of provision, not least the limitations of the quality and quantity of data currently available (see Paper H). Key assumptions include: -

- All AA provision is via trained individuals from organised schemes with a high use of volunteers. Family members and friends may be engaged in the process in addition
- Mentally vulnerable adults are supported fully throughout the custody process, as described by the PACE Codes of Practice (not simply for the interview).
- AAs are provided both for all detentions and for all voluntary interviews
- A call out cost of £69.75 is used (average cost for schemes using volunteers and able to meet demand), which is below the current average rate (£80.79) and compares favourably with the estimated cost of and AA call out when delivered by a social worker (£375).
- The upper bound of estimates of need (22% of adults) is unlikely to be achieved in the medium term, rendering estimates of cost irrelevant at this stage.

ID rate	ID rate description	National cost (£)	Cost per force area (£)	Cost per local authority (£)
3.12%	Current rate	5,574,789	129,646	32,039
4.90%	Current rate where there are AA services	8,766,099	203,863	50,380
11.00%	Actual need (lower bound)	19,678,999	457,651	113,098

Table 1: Estimated annual costs of full AA provision across England and Wales

Continued use of untrained individuals as AAs

If statutory provision were established without a requirement to use the locally trained and provided AAs, costs would likely be marginally lower. This is estimated to be in the region of a very conservative 10% reduction, resulting in an average annual cost, at an 11% ID rate, of £17.7 million (national) or £102,000 per local authority (see Paper H).

This is based on an assessment that 90% of AA call outs would be serviced by AA schemes. If reliable AA schemes were available, the police would be highly likely to use them, in line with the existing instructions to police that trained/experienced individuals are likely to be more satisfactory than family members (PACE Code C, paragraph 1D). Unlike children, mentally vulnerable adults are often estranged from their families. Their friends may not always be appropriate for the AA role.

Estimated savings do not factor in consideration of the appropriateness or effectiveness of a mentally vulnerable adult's family member or friend, or any future savings to be gained through high quality, consistent AA services. Consideration of savings should be considered in the context of wider efforts to bring quality and consistency to care and support services to people who are mentally vulnerable.

Existing spending

Existing spending on dedicated schemes is estimated to be in the region of £3m per year and is provided mainly by local authorities (66%), police or police and crime commissioners (24%) and clinical commissioning groups (6%). However, this excludes existing spending on local authority social workers acting as AAs within their core role which, though low in volume, could be significant in cost.