

HMICFRS Expectations for police custody

Consultation submission

31st January 2022

Contents

About us.....	3
Our interest in the Expectations.....	3
Our observations.....	4
Introduction.....	4
Section 2. Pre-custody: first point of contact.....	4
Expectation – Assessment and diversion at first point of contact.....	4
Section 3. In the custody suite: booking in, individual needs and legal rights.....	5
Expectation – Respect.....	5
Expectation – Meeting individual and diverse needs.....	6
Expectation – Risk assessments.....	7
Expectation – Individual legal rights – detention.....	7
Expectation – Reviews of detention.....	8
Expectation – Complaints.....	9
Section 4. In the custody cell, safeguarding and health care.....	9
Expectation – Use of force.....	9
Expectation – Safeguarding children and vulnerable people.....	10
Expectation – Appropriate adults.....	11
Expectation – Children.....	14
Expectation – Healthcare.....	15
Expectation – Mental health.....	16
References.....	16

About us

Appropriate adults (AA) safeguard the interests, rights, entitlements and welfare of children and vulnerable people who are suspected of a crime. AAs are independent of the police and ensure people are treated in a fair and just manner, and can participate effectively.

The National Appropriate Adult Network (NAAN) was established in 1995 by frontline practitioners, Mind, Mencap and Revolving Doors Agency, and registered as a charity in 2004. With over 100 member organisations, we provide an independent centre of expertise, innovation and infrastructure support. NAAN's vision is that every child and vulnerable person detained or questioned as a suspect is treated fairly with respect for their physical and mental welfare, can exercise their legal rights and entitlements, and can participate effectively. Its mission is to maximise the effectiveness of appropriate adults as a safeguard for children and vulnerable people. We are working towards:

- Local AA provision delivering more effective, efficient, consistent and sustainable support for children and vulnerable people, while remaining independent of policing
- Children, vulnerable people and their supporters making better-informed choices, with more effective familial AAs
- A system of rights and safeguards that work in a fairer way for children and vulnerable people.

At the centre of NAAN's work lie the national standards for appropriate adult schemes in England and Wales, which are approved by the Youth Justice Board (YJB), Association of Directors of Social Services (ADASS) and Association of Police and Crime Commissioners (APCC).

Our interest in the Expectations

HMICFRS' custody expectations play an important and influential role in improving police custody. NAAN was pleased to contribute to the 2018 Expectations, helping to strengthen the focus on children and vulnerable people detained by police as suspects.

We believe that HMICFRS Expectations have the potential to positively influence in several areas that overlap with our own objectives, in particular:

1. An increase in availability of high quality, sustainable AA services for local police forces to access, as a result of the commissioning and development of organised independent AA schemes becoming more effective, efficient, consistent and sustainable
2. All children and vulnerable people get an AA when required under the Police and Criminal Evidence Act 1984 and its Codes of Practice
3. Improved identification and recording of vulnerability, and application of the AA safeguard
4. A solution to the lack of a statutory responsibility for vulnerable adults
5. The inclusion of AA provision into accountability mechanisms which reflect the national standards, support AA effectiveness, and safeguard their independence from policing
6. Improve both strategic and frontline working relationships of AA schemes, in the best interests of children and vulnerable adults.

Our observations

Introduction

HMICFRS' commitment to continued improvements for children and vulnerable adults is clear in this consultation version of the Expectations. This is apparent, not only in the focus on fairness and dignity where custody is necessary, but critically on diversion from custody. Below, we provide some observations on the proposed revisions.

Section 2. Pre-custody: first point of contact

Expectation – Assessment and diversion at first point of contact

2.1 From the individual's first point of contact with the police, officers and staff consider diverting them away from custody, recognising and taking account of a person's vulnerability and individual circumstances.

- **NEEDS:** We welcome reference to the “needs” of vulnerable adults and children (rather than just vulnerabilities and risks).
- **DIVERSION:** We welcome references to “help divert [vulnerable adults and children] away from custody when appropriate and prevent them from entering the criminal justice system where possible” and to “take full account of an individual's vulnerability when deciding what action to take when responding to an incident”. The importance of diversion cannot be underestimated. While arrests of children have been declining, our research indicates that police may only be currently applying the AA safeguard in 15% of the adult detentions in which they are required under PACE (NAAN 2020). A challenge this monumental can never be met via improved AA funding and provision alone. It requires the system to think differently and reduce demand.
- **VULNERABILITY:** The word ‘vulnerability’ is used here and throughout the document. This word has a range of interpretations across different contexts – even within policing. The College of Policing's recently published [guidance on vulnerability-related risks](#) adopts the THRIVE definition, along with mnemonics and approaches for frontline policing. However, this is different to the PACE Code C definition of a vulnerable person (which is legally definitive in relation to the requirement for an AA whether in custody or voluntary interview). Research also indicates that custody officers and staff often use different, wider and definitions of vulnerability (Dehaghani 2XXX). We therefore suggest that the Expectations could perhaps define what it means by ‘vulnerable’ or ‘vulnerability’. This could be achieved without seeking to create a new definition, but rather with reference to The College and PACE definitions. A potential benefit could be promoting awareness of ‘PACE vulnerability’ both amongst custody officers and response/investigating officers. This would support both appropriate diversion and improved application of the AA safeguard.
- **EVIDENCE-BASED APPROACHES:** We valued the reference to “evidence-based assessment approaches” to assessing vulnerability in the 2018 version. References are made to evidence-based tools and approaches elsewhere in the 2022 version (4.10, 4.11) but the phrase is no longer used in the indicators for assessment and diversion and first point of contact. We would value its retention, which we believe would support a more effective and consistent approach to assessing the needs and potential vulnerability of suspects.

- **MENTAL CAPACITY:** We note that the requirement has been removed for police officers and staff to apply the principles of the Mental Capacity Act (MCA) 2005 in their decision-making where appropriate. The only mention of capacity in the revised Expectations is relation to physical health (capacity to give consent to medical consultations). Informed consent is a concept that runs throughout the PACE Codes. We have found that in practice custody officers sometimes refer to ‘capacity’ considerations, for example in relation to the need for an AA or the waiving of legal advice. We have also found that there is a lack of understanding of the Act (e.g. its decision specific nature). NAAN has recently been giving further consideration to the relevance of the MCA 2005, as a piece of civil legislation, in the criminal/custody context. Some have advanced the argument that the MCA is not relevant in this context, where the criminal law revolves around the reliability of evidence and harm to the suspect (need for an AA, fitness to detain, to interview, to plead). Our sense is that these different legal tests, across both civil and criminal contexts, are often confused (or at least fused) in practice. It seems clear that the MCA was clearly designed to address issues in the health and social care context, with insufficient consideration of police custody. However, police officers are explicitly included in the “categories of people that are required to have regard to the Code of Practice” (DCA 2007), and other areas of civil legislation (e.g. the Equality Act 2010) are considered important in this context. We would be interested to understand the rationale for the removal of the reference to the MCA, and would be happy to discuss this further and suggest relevant academic experts.

Section 3. In the custody suite: booking in, individual needs and legal rights

Expectation – Respect

3.1 Detainees are treated respectfully and with dignity while in custody.

- **RECOGNISING STRESS:** We welcome the inclusion of the requirement that “Staff recognise the stress that detainees may be feeling and take account of this when communicating and dealing with them”.
- **IMPACT OF STRESS:** We would like to suggest that this is extended to *understanding* the *impact* of that stress. Stress can cause physical conditions, but also psychological ones, including confusion, and suggestibility. The 2018 revisions to PACE Code C allow for a suspect to a ‘vulnerable person’ (and therefore need an AA) in the absence of an underlying condition, including by virtue of the impact of stress, potentially as a result of detention or an incident preceding it (see paragraphs 1.13(d) and 1G). The 2018 Expectations require that staff “understand the impact of detention, particularly for those detainees identified as vulnerable. Effective support to cope with their detention is provided”. The ideal would be for staff to recognise stress, understanding what impact it may have, and apply effective responses (e.g. approaches, safeguards). This includes recognising stress in people that have not yet been identified as ‘vulnerable’ under PACE, and understanding that the impact of stress could lead to them meeting the criteria in Code C for an AA.
- **CCTV:** We welcome the indicator that people detained in custody should be “told where cameras are in cells and how their privacy is ensured”. We would add that this should include making them aware of cameras are or are not present in any spaces where strip searches and intimate searches take place.

Expectation – Meeting individual and diverse needs

3.2 Staff recognise and meet the individual and diverse needs of all detainees

- **INCLUSIVITY:** We welcome the separation of this expectation from 3.1 in the 2018 Expectations, and the more inclusive reference to “individual and diverse needs of all detainees” compared to the list of characteristics protected under the Equality Act 2010 (which remain covered by expectation 1.3)
- **CAPACITY AND DISABILITY:** The following indicator from 2018 has been replaced: “Custody staff are equipped to assess mental capacity and to identify detainees with intellectual impairments (learning disabilities) to ensure that effective safeguards are appropriately implemented”. We agree that this required revision. It did not adequately distinguish between people with an intellectual/learning disability (who may or may not have capacity to make a specific decision at a specific time) and people who do not have capacity (which may or may not be due to an intellectual/learning disability). We again note with interest the removal of a reference to mental capacity. It leaves the question of what is expected in custody in relation to assessments of mental capacity. To what extent are police officers and staff expected to make assessments? Should they be trained to make formal assessments? Or is there an expectation of familiarity with the MCA 2005 Code of Practice, sufficient to identify where a person should have a formal assessment by a suitably qualified medical professional?
- **DISABILITIES:** The revised indicators include references to “disabilities, including non-physical disabilities”. We were not sure whether this referred to learning disabilities and those arising from mental health conditions, or non-visible disabilities (which may be mental or physical), or both. If the latter, we would like to suggest something similar to “physical and mental disabilities, including non-visible conditions”.
- **NEURODIVERSITY:** We support the inclusion of a standalone reference to neurodiversity, which is inclusive of people with conditions such as autism, dyslexia, dyspraxia and ADHD. Neurodiversity, and which can be conflated with learning disabilities and/or mental health. While neurodiversity is a strength in many contexts, it is clear that police custody and investigations currently include disabling barriers. We note for interest that [guidance from the National Autism Society](#) states that, “An autistic person has the right to an appropriate adult”. Putting aside the fact that an appropriate adult is a mandatory procedural safeguard imposed on police, rather than waivable right of a suspect, the 2018 revisions to PACE Code C could be said to make this assertion arguable. Prior to the 2018 revision an appropriate adult was required for anyone who had “any disorder or disability of the mind”, which would have included autism (which is included in the Mental Health Act Code of Practice’s Clinically recognised conditions). While there remains a requirement to effect reasonable adjustments under the Equality Act 2010, the situation with regard to appropriate adults is less clear.
- We note that this expectation makes no reference to the need for an AA. This may be intentional – the result of a choice to separate the requirement of the Equality Act 2010 from those of PACE 1984, or to focus on appropriate adults elsewhere.

Expectation – Risk assessments

3.3 All detainees are held safely and any risk they pose to themselves and/or others is competently assessed, managed and kept under review.

- **MOVE:** We agree with moving the following indicator from 3.1 (Respect) to 3.3 (Risk Assessments): “Police officers and staff listen to detainees and are alert to and understand the impact of detention, particularly for those detainees identified as vulnerable. They provide effective support to help detainees cope with their detention”.
- **LEGAL RISK:** Custody risk assessments typically focus on the risk of physical harm to the person who has been detained, or others, including as a result of their mental state. There can be less emphasis on the risks outlined in PACE Code C 1.13(d), which reflect the legal risks to the individual (e.g. unintentional self-incrimination) and to the investigation (unreliable and inadmissible evidence). That said, the risk assessment is typically what informs decisions about the appropriate adult safeguard – albeit with an over-focus on welfare.
- **PACE VULNERABILITY:** We note that there is currently no reference to what we might call ‘PACE vulnerability’ in these indicators, or the need for an AA in the risk assessment section. PACE Code C requires that officers make reasonable enquiries into what information may be available regarding a person’s potential status as a vulnerable person including, but not limited, to asking the detainee. Indeed, PACE Code C 1GA states that “what the adult or juvenile says about themselves” is relevant information for the test (in Code C 1.4) that an AA is required “If at any time an officer has any reason to suspect that a person of any age may be vulnerable”. We would encourage consideration of an amendment to include them, or to explicit that ‘risk of harm’ includes the legal risk to the suspect. And to clarify that these risks can change over the course of a detention, and require active reassessment alongside care planning.

Expectation – Individual legal rights – detention

3.4 Detention is appropriately authorised, understood by detainees and lasts no longer than is necessary

- **AUTHORISATION:** We welcome the continued focus on the authorisation of detention. Research indicates that only 1% of requests for detention are not authorised (Transform Justice, 2020). While this figure could in part indicate a low level of unnecessary arrests, our own work indicates that decisions on authorising detention are sometimes conflated with whether the necessity to arrest criteria had been met. We believe this is an important area with significant potential for improvement.
- **INFORMATION:** We welcome the focus on ensuring people are informed about the reason why they are in custody as soon as possible. We note that the revised text refers to “the reason(s) and necessity for their arrest”. We would suggest that “arrest” is replaced with “detention”, as the latter relates to a separate custody decision.
- **PRIORITISATION:** We note the new indicator that “Cases are progressed to minimise the time detainees spend in custody. Officers use information about a detainee’s vulnerability and any risks this poses to prioritise cases”. We welcome as a matter of principle efforts to decrease the amount of time that children and vulnerable adults spend in custody. We will be interested to see how police respond and how this is managed, and whether those investigations that are consequently de-prioritised are considered expeditious.

- **FIRST PERIOD:** We note the revised indicator, “Forces finalise investigations during the first period of detention wherever possible. Where this is not possible, the force uses bail or release under investigation (RUI) to release the detainees without undue delay”. We observe that the expectation on police to finalise investigations in the first period of detention can sometimes conflict with the expectation to minimise detention times. We believe that in some cases, people who could have been released from custody have remained detained for longer so that the investigation is completed before release. This is a challenging issue. We do not want children and vulnerable people living with unresolved investigations hanging over their heads for weeks and months. However, we also do not want them to spend any longer in police detention that is necessary. Both can be hugely damaging to mental health. We want investigations and custody processes to be as expeditious as possible. But it is not in the interest of children and vulnerable people for matters to be so rushed that reasonable enquiries cannot be made about vulnerability and needs, procedural safeguards are not applied, and reasonable adjustments are not made. This tension is perhaps not easily resolvable. Many of the solutions lie with investigations rather than custody – for example where possible leaving arrests until later in the investigation, and making them at specific times. However, the reference to releasing without undue delay is welcome. Furthermore, we would suggest that “Where this is not possible” could be amended to something like, “As soon as it becomes apparent that this is not possible”.
- **INDIVIDUAL NEEDS:** We would suggest adding “taking account of a person’s individual needs and vulnerabilities” to “Conditions are manageable and any restrictions placed on the detainee can be justified”. AAs sometimes observe that bail conditions are setting individuals up to fail because their vulnerability means that they are unlikely to be able to comply, particularly over a long period. This is not simply a matter of providing support to ensure people understand the conditions, but the ability of individuals to retain the information and apply it.

Expectation – Reviews of detention

3.6 Reviews of detention are carried out by appropriately authorised officers and conducted in the best interests of the detainee to make sure that ongoing detention is necessary.

- **CODES OF PRACTICE:** We would suggest adding “and Codes of Practice” to “Police officers of an appropriate rank conduct reviews of detention in accordance with legislation”, to encompass the important requirements in PACE Code C.
- **REMOTE TECHNOLOGY:** We welcome the indicator that “Reviews are conducted in person for vulnerable adults and children...”. The pandemic has accelerated the use of remote technology, but has also uncovered its significant shortcomings when dealing with people with high levels of need, risk and vulnerability. We know of officers of inspector rank who feel uncomfortable conducting reviews without being physically present – especially those involving children and vulnerable adults. We are concerned that organisational pressures may lead them to use remote approaches against their better judgement. On the same indicator, we would suggest that “...unless there is adequate justification not to do so” may benefit from further explanation. We accept that the full detail of the PACE Codes cannot be reflected in an indicator, and that it is difficult to account for all possible scenarios. However,

we propose “unless there is clear justification not to do so in line with PACE Code C 15.3C.” We welcome reference to ensuring any justification is “clearly recorded in the custody record”.

- AA INVOLVEMENT: PACE Code C 15.3 and 15CA an AA must be involved in any review or extension of *detention if they are available at the time*, including remotely. Code C15H requires that, for or children and vulnerable adults, an appropriate adult should *always* be involved in considerations about the use of live link for an extension of detention, even if they themselves are not physically present at the time. We would propose that this is reflected in the indicators, as we believe that AAs are not always involved in reviews.

Expectation – Complaints

3.7 Detainees know how to make a complaint and can do so before they leave police custody.

- SUPPORT: We are concerned that children and vulnerable adults are underrepresented in complaint statistics. We therefore welcome the indicator that people “are provided with relevant information in a format they understand”. However, we also believe that the system must go further than providing accessible information and the avoidance of discouragement or negative repercussions. To achieve equity, the police complaint system should actively encourage and support complaints from these groups. We do note however, that police will often not be the appropriate people to provide support around a complaint against their own organisation or colleagues. We have encouraged the IOPC to consider what additional support could be offered to these groups, in recognition of their needs. While it has not yet been possible to establish a system of advocacy (which is what we believe is needed), the IOPC has undertaken to ensure vulnerable people will have a named contact. We would encourage police forces to ensure that children and vulnerable people are aware of any such arrangements, whether in the national, PCC, or force complaints processes. We would also propose an expectation that “Children and vulnerable people are provided with appropriate support and signposting to independent advocacy services to assist with their complaint”.

Section 4. In the custody cell, safeguarding and health care

Expectation – Use of force

4.2 Any force used in custody is lawful, necessary and proportionate, used as a last resort and subject to robust accountability. It is carried out by trained staff using approved techniques.

- WRITTEN RECORD: We welcome the addition of the requirement for a written record of the justification for a strip search.
- APPROPRIATE ADULT: We also welcome the reference to the presence of an appropriate adult. Our research indicates that appropriate adult are not always present for strip searches when required under PACE (NAAN, 2015). Again, we recognise that it is not possible to reflect the full complexities of the PACE Codes in the Expectations. However, we would propose reflecting the fact that strip searches of a child or vulnerable adult *must* take place

in the presence of an appropriate adult, except in cases of urgency where there is risk of serious harm.

- A non-urgent search of a child *may* take place in the absence of the appropriate adult, but only if the child signifies in the presence of the appropriate adult that they do not want them present *and* the appropriate adult agrees (and this is recorded and signed by both). Although this is extra detail, this is important when considering what the possible relationships are between children and their appropriate adults. For example, consider the 16 year old female who is provided with an unfamiliar middle-aged male AA from an organised scheme.

Expectation – Safeguarding children and vulnerable people

4.4 Detainees are protected from harm and neglect.

- **VULNERABILITY:** We note the indicator, “Staff are trained in safeguarding and have the knowledge needed to protect vulnerable groups in their care. This includes arrangements for support from appropriate adults and making suitable referrals to partner agencies”. As discussed above the word “vulnerabilities” does not have a singular meaning within police custody. It is therefore important that it is clear what is meant by vulnerabilities in this context. If this meaning is broader than the PACE definition of a vulnerable person (which we suspect it is and should be), then the two should be clearly defined.
- **SAFEGUARDING:** Similarly, the term “safeguarding” can be seen to have more than one meaning. In general, this refers to situations in which a vulnerable suspect can also be seen to be a victim of potentially criminal acts, such as domestic abuse. This is something that police, healthcare workers and appropriate adults will be expected to work together on. However, the appropriate adult’s role is to “safeguard” the person’s interests from the abuse of police power – whether intentional or otherwise. It is important that all parties, including police and healthcare professional think about both contexts when identifying vulnerability and acting on safeguarding.
- **LANGUAGE:** We have a minor concern that the current wording could be interpreted as support from appropriate adults being in response to broad ‘safeguarding concerns’ about someone whose life context makes them ‘vulnerable’ to neglect (for example), rather than a procedural safeguard to safeguard the interests of a ‘vulnerable person’ (as defined by Code C) during the detention and questioning. Our use of language makes this difficult because the same words are being used to describe two subtly (but critically) different issues and response.

Expectation – Appropriate adults

4.5 Children and vulnerable adults receive early support from appropriate adults (AAs).

- **ACCOUNTABILITY:** We believe that subjecting the provision of appropriate adults to accountability mechanisms is to the benefit of children and vulnerable adults. We welcome HMICFRS' continued interest in appropriate adults, and its encouragement of forces to work with local partners to ensure access to appropriate adults that are independent of police, as per PACE. Similarly, we agree that provision should be available 24 hours a day, as per NAAN national standard 5.2.
- **RESPONSIBILITIES:** However, on both points, the boundaries of the responsibilities of the police force should be made clear. The provision of appropriate adult services, to act in the absence of family and friends, is explicitly not the responsibility of police custody or the wider police force. Under PACE, an appropriate adult must be independent, and must not be a police officer, employee, under the control or direction of a chief officer or under contractual arrangements to them. Local authorities have an explicit duty to ensure provision for children under the Crime and Disorder s.38. While the absence of statutory provision for vulnerable adults is well known issue, it has historically been integral to local authority social care, which remains the main provider/commissioner. We value HMICFRS' commitment and support in ensuring appropriate adult provision is subject to some measure of accountability. However, we feel it is important that the police are only held accountable for their responsibilities. To broaden them is not only unfair on police but counter-productive, because accountability is not applied in the correct place. We have engaged with HMI Probation towards the inclusion of appropriate adult provision for children in full joint YOT inspections, and plan to engage with the CQC regarding provision for vulnerable adults.
- **FOCUS:** We share the objectives of HMICFRS in ensuring that all children and vulnerable people in custody benefit from this procedural safeguard. There are several areas of concern that are *within* the responsibilities and control of police forces, on which HMICFRS Expectations can focus:
 - a. Police improving the identification of vulnerability, in partnership with their healthcare professionals and NHS Liaison and Diversion, and ensuring that an appropriate adult is secured if at any time there is reason to suspect that a detainee may be vulnerable as defined by PACE Code C (unless there is clear evidence to the contrary), even where a person says they do not wish to have one..
 - b. Police requesting appropriate adults as soon as is practicable
 - c. Police asking appropriate adults to attend as soon as possible and not encouraging them to simply attend for interview (holding them to the NAAN national standards)
 - d. Police understanding and respecting that the role of the appropriate adult involves more than welfare, that they are active participants, and have specific powers including the ability to require the attendance of a legal advisor when it has been declined by a suspect
 - e. Police ensuring that appropriate adults have a full understanding of their role and are encouraged to carry it out robustly
 - f. Police involving appropriate adults in all process required by the PACE Codes

- g. Police facilitating the suspect’s right to speak to their appropriate adult privately at any time
 - h. Appropriate adults remain independent of police, both strategically (e.g. commissioning; recruitment, selection and vetting; avoidance of embedding) and practically (e.g. proper professional relationships that do not raise concerns with suspects about independence).
 - i. The choice of source of appropriate adult (i.e. familial or organised scheme) is driven by the requirements of PACE, rather than convenience to police
- GUIDANCE: As reflected in (e) above, we strongly support the retention of an indicator on providing guidance to appropriate adults, and encouraging them to take an active role in protecting rights. The current indicator states “They are given written guidance on the role and are encouraged to actively protect the child’s rights”. We have a couple of suggestions regarding how this could be improved.
 - The official written guidance located on Gov.uk was produced by NAAN and the Home Office in 2003 and is out of date. NAAN now produces both a simple guide and a more comprehensive written guide. However, NAAN has been working in partnership with Dr Miranda Bevan at the LSE to develop an animation for familial appropriate adults. This has been done in consultation with the NPCC Custody Portfolio and the Home Office. The project is close to completion and discussions are underway as to a dissemination strategy. The aim is for police officers to share a link to the animation with familial AAs before they attend, and for it to be accessible via Gov.uk. We would ask whether there is scope to reflect the use of this more modern method of guidance. We would not want to exclude written guidance because this important.
 - The current indicator refers only to children but applies equally to vulnerable adults.
 - A possible alternative is “They are given the best available guidance on the role, including in writing. They are encouraged to actively protect the person’s rights, welfare and effective participation”.
- EARLY AA REQUEST: As reflected in (b) above, we strongly support the addition of the indicator “Appropriate adults are called at the earliest opportunity”. We support the continued inclusion of an indicator on collecting data on the provision of appropriate adults. We also support “The request for an AA and their arrival time is recorded”, though we suggest this is rephrased to ““The times of the request for an AA, and of their arrival, are recorded”. This would make clear that the police are expected not just to record the fact that they have requested an appropriate adult, but the time at which they did so. Research by the Children’s Commissioner indicated that delays in police requesting an appropriate adult were a significantly larger issue than delays in appropriate adults attending (Childrens Commissioner, 2018). We support the idea that “Any delays in securing or the arrival of an appropriate adult are appropriately escalated and the details recorded”. Equally, we would suggest that any delays in requesting appropriate adults are considered by senior officers.
- EARLY AA ATTENDANCE: As reflected in (c-g) above, we suggest that, “asked to attend to provide support in helping the detainee understand their rights and entitlements” is amended to “asked to attend as soon as possible to help the detainee understand their rights and entitlements and meeting with them privately”.

- **REMAINING WITH PEOPLE:** As reflected in (d) above, we support the addition of vulnerable adults to the indicator requiring “adequate facilities to ensure” people can speak to their appropriate adult “in private”. We would suggest that “at any time” could usefully be added to reflect the requirements of Code C 3.15. We note that “to sit with them if the adult considers this necessary to ensure the welfare of the child” has been revised to “remain with them, if this is agreed as necessary, to ensure their welfare”. On first reading, this would appear to be a shift of power from the appropriate adult (for example a parent) to the police, requiring the latter’s agreement. We have long been concerned about police emphasis on the welfare aspect of the appropriate adult. This includes a concern that a child or vulnerable adults access to their appropriate adult may depend more on whether it serves a purpose for police (welfare) than on the protection of rights (which can be more challenging for police). To be clear, the PACE Codes do not bestow appropriate adults with a right to consult with the child or vulnerable adult – it is the other way around. So technically, the 2018 Expectations go beyond the PACE Codes (as they can and do in many areas). We therefore accept that an appropriate adult remaining with a person relies on agreement of all parties, including the child or vulnerable adult. Our concern with the proposed construction is that it maintains the focus on welfare to the exclusion of right and implies police control. We would hope to prioritise the right of the child or vulnerable adult to consult privately with their appropriate adult at any time, and make clear that their remaining would be to ensure their welfare, rights and/or effective participation. For example, “Adequate facilities are available to ensure that children or vulnerable adults can speak in private to their appropriate adult at any time, and remain together if necessary to ensure their welfare, rights or effective participation”.
- **VETTING:** Reflecting (h) above, we note with significant concern the inclusion of the phrase “suitably vetted adults”. We have worked closely with the National Police Chiefs’ Council and College of Policing to clarify the matter of vetting for appropriate adults. A very small number of police forces misunderstood the Authorised Professional Practice on Vetting, interpreting the provisions related to Non-police personnel vetting (NPPV) as applying to appropriate adults. They do not apply to appropriate adults or legal representatives, as is now made explicit in the Vetting APP at paragraph 7.39. We also identified cases in which custody officers had conducted live PNC checks of AAs, or asked them to conduct an enforced subject access request under the Data Protection Act – both of which are legally dubious. ACC Nev Kemp, NPCC lead for Custody and CC Debbie Tedds, NPCC lead for Vetting, wrote to all Chief Constables on 8th July 2021 to highlight this fact (we would be happy to share a copy). The independence of appropriate adults from police is of paramount importance and is required under PACE. The vetting of appropriate adults is a responsibility of the providing organisation, in line with NAAN national standard 2.4 and its related indicators. The standard sets out the legal use of the DBS scheme. It allows for schemes to share information about its vetting policies with police to maintain confidence. We do not mean to imply that HMICFRS intended to suggest appropriate adults should be vetted by police forces. However, this is a sensitive area and the current wording could be interpreted in different ways. If necessary, a line could be included that encourages forces to request the vetting policy of the providing organisation. However, since this is not a responsibility of, not in the control of custody or the wider police force, we request that “suitably vetted” is removed, and would be grateful if this could be confirmed to us.
- As reflected in (i) above, we strongly support the revised indicator “The parents or guardians of those under 18 are considered first for the role of appropriate adult whenever they are

willing and able and suitable, and where the circumstances of the case don't exclude their use". We would go further, and stress that every effort should be made to establish whether a parent or guardian will be acting as the appropriate adult as soon as possible, so that a request can be made to the organised service immediately if they are not. We are aware that police often have difficulty ascertaining whether a familial appropriate adult will be available. However, we remain concerned that, in some cases, organised schemes are not being contacted until many hours into the detention episode. We are also concerned by occasional reports of schemes being used because police find them easier to work with. Equally we are concerned about occasional reports of police informing organised schemes mid-detention that they have been dropped for a familial AA (there may be good reasons for this, but there is also a sense that robust appropriate adults can be replaced with more compliant and less well-informed parents).

Expectation – Children

4.6 Children are kept safe in custody and treated according to their needs. They are held for the minimum time possible and not overnight, except as a last resort.

- VULNERABILITY: We welcome the continued focus on children and individuals, with both shared vulnerability by virtue of age (cognitive and emotional development) and individual needs. We would suggest that:
 - The explicit mention of learning disability in the 2018 Expectations should be retained
 - A reference to both physical and mental disability and/or health conditions would be welcome
 - It may be helpful to include explicit reference to trauma and adverse childhood experiences alongside the specific examples of "history of abuse or exploitation"; these terms seems to be gaining increasing awareness amongst police
 - Abuse and exploitation may be live issues, rather than just historical. Feedback from our members indicates that there can be tensions between accessing support for trafficked and exploited children and vulnerable adults and the need to admit involvement in an offence.
 - While being in custody for the first time does indicate significant risks, children who have been in custody multiple times are also indicating risk. We have concerns that the latter are sometimes considered to "know custody procedures better than the police". However, we would suggest that a child repeatedly coming into police custody indicates a high level of risk, perhaps in some cases more so that those detained for the first time. We would suggest that an exclusive focus on first timers could unintentionally imply the second category of children does not present elevate risk.
 - The 2018 Expectation stated, "Where it is safe to do so, children are not held in cells". The proposed revision is, "Where appropriate, children are not held in a cell". PACE Code C 8.8 states that a child "shall not be placed in a police cell unless no other secure accommodation is available and the custody officer considers it is not practicable to supervise them if they are not placed in a cell or that a cell provides more comfortable accommodation than other secure accommodation in the

station". The revision would appear to be a weaker indicator than previously and, if not less demanding, then perhaps less clear than the PACE Codes. It is unclear to us what is meant by "appropriate".

- OVERNIGHT DETENTION: We note that expectations 4.6 and 4.7 have been blended. We support:
 - The continued focus on effective arrangements with local authorities to ensure children's safety and wellbeing, where children cannot be released to their parent, guardian, or other person responsible for their welfare
 - Close monitoring wherever children are detain overnight
 - The overall focus on diversion at the 'front end', and the prioritisation of cases involving children, to reduce issues with accommodation on release
 - Steps to address the crisis in some areas regarding transfers to local authority accommodation for children refused bail. This is another issue in which policing should be held responsible only for the factors that our within its mandate and control. We therefore welcome the indicator "Where children remain in custody because of a lack of alternative accommodation this is monitored at an operational level and addressed strategically with partner agencies".
- TRANSFERS: We would suggest an amendment to, "Children charged and refused bail are transferred to alternative appropriate or secure accommodation arranged through the local authority". On a small point, the wording currently states "appropriate *or* secure", whereas secure may be appropriate in some cases. That said, we have concerns that in some cases police are requesting secure accommodation without the threshold in PACE s.38(6)(b) being met, often resulting in unnecessary overnight detention in a cell. In most cases, the police duty is simply to secure the transfer, with the local authority having an absolute legal duty to provide accommodation but total discretion over the nature of the accommodation, including returning children home.
- CHILD IN NEED: We also have a concern that in some cases, an attempt to use s.38(6) is occurring where bail has been refused simply out of a lack of accommodation for the child (often where the family home is not appropriate). In this case, police have an option which may be more effective but is not always used – informing the local authority that they will be releasing a child (RUI or bail) who will not have accommodation, and that the local authority therefore has a legal duty to accommodate them as a child in need under s.20 of the Children Act 1989. This may be what is implied by "effective arrangements...where children cannot be released to their parent...", and if so it may be helpful to police to make explicit reference to s.20. The indicators could also mention that children should not be refused bail simply due to a lack of accommodation, where s.20 accommodation is available.

Expectation – Healthcare

4.7 Detainees in police custody have access to well managed health services characterised by informed commissioning, oversight and robust governance.

- We welcome the indicator that, "Health care practitioners are competent in recognising vulnerabilities in patients who require safeguarding and they contribute to/make appropriate onward referrals to specialist health and/or safeguarding services".

- We would note that, as discussed above within policing, the word “vulnerabilities” does not have a singular meaning across policing and health. It is therefore important that it is clear what is meant by vulnerabilities in this context. If this meaning is broader than the PACE definition of a vulnerable person (which we suspect it is and should be), then the two should be clearly defined.
- Similarly, the term “safeguarding” can be seen to have more than one meaning. In general, this refers to situations in which a vulnerable suspect can also be seen to be a victim of potentially criminal acts, such as domestic abuse. This is something that police, healthcare workers and appropriate adults will be expected to work together on. However, the appropriate adult’s role is to “safeguard” the person’s interests from the abuse of *police* power. It is important that all parties, including police and healthcare professional think about both contexts when identifying vulnerability and acting on safeguarding.

Expectation – Mental health

4.9 Detainees with mental health needs are promptly identified, assessed, and referred to appropriate mental health services.

- PLACE OF SAFETY: We strongly support the indicator that “No one detained in the community using mental health legislation is admitted to police custody as a place of safety, unless in exceptional circumstances”. It is an entirely inappropriate place. Furthermore, people detained in custody for this reason do not have access to an appropriate adult, or an Independent Mental Health Advocate.
- HEALTHCARE SKILLS: We support the indicator that “Custody officers identify detainees with behaviours that may indicate the presence of mental health problems or other conditions and refer them to health care practitioners so that they receive the correct care and support”. We suggest that reference is made to “appropriate skilled” healthcare practitioners, or an appropriate healthcare pathway, as not all HCPs will have skills in mental health.

References

Children’s Commissioner (2018), *A Night in the Cells*. Available at

<https://www.childrenscommissioner.gov.uk/report/a-night-in-the-cells/>

Dehaghani, R. (2019). *Vulnerability in police custody: Police decision-making and the appropriate adult safeguard*. Abingdon and New York: Routledge

Department for Constitutional Affairs (2007), *Mental Health Act 2005 Code of Practice*. Available at

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/921428/Mental-capacity-act-code-of-practice.pdf

National Appropriate Adult Network (2015), *There to Help: Ensuring provision of appropriate adults for mentally vulnerable adults detained or interviewed by police*. Available at

<https://www.appropriateadult.org.uk/policy/research/there-to-help>

National Appropriate Adult Network (2018), *National Standards: The national standards for the development and provision of appropriate adult schemes in England and Wales*. Available at

<https://www.appropriateadult.org.uk/national-standards>

National Appropriate Adult Network (2020), *There to Help 3: The identification of vulnerable adult suspects and application of the appropriate adult safeguard in police investigations in 2018/19*. Available at

<https://www.appropriateadult.org.uk/policy/research/theretohelp3>