

NAAN Briefing Paper

Revised PACE Code C – May 2012

NAAN is pleased to note that many of the suggestions made in our response to the consultation on the Review of PACE Code C have been taken into account in the revised version.

This Briefing draws attention to the key changes that could have an impact on, or be relevant to, appropriate adults.

C Notes for Guidance 1G

The definition of 'mental disorder' in the Mental Health Act 1983 was amended by the Mental Health Act 2007 to: '*any disorder or disability of mind*'. As suggested by NAAN, the amended definition is now used here and elsewhere in the Codes.

C.3.5 The custody officer can now delegate to other custody staff the responsibility for (*among other things*) determining whether a detainee needs an appropriate adult.

NAAN opposed this change as we were concerned that more junior staff would be unlikely to have the necessary experience and training to make this assessment. We know that there is already a significant under-identification of mental vulnerability in many custody suites.

However, the custody officer retains overall responsibility and must be satisfied that the officer or police staff to whom this responsibility is delegated must be '*suitable, trained and competent to carry out the task or action in question*'. (**Note 3F**)

NAAN members may wish to consider making representations to a senior police officer if there is evidence that such assessments are made by staff who do not appear to be suitably trained.

C 3.16 This section now makes it absolutely clear that, with regard to S136 assessments '*The appropriate adult has no role in the assessment process and their presence is not required*'.

This is in line with NAAN's recommendation.

C 6.5A The right for an appropriate adult to ask for legal advice (and the attendance of a solicitor) on behalf of a mentally vulnerable adult detainee as well as a juvenile has now been made explicit.

This is an important clarification and follows NAAN's recommendation. It should now be easy for all AAs to quote this section if they have any problems persuading the police that they have this right.

C15.3 This section deals with reviews of detention.

A new **Note 15CA** makes it clear that efforts should be made to enable the AA to make representations '*remotely by telephone or other electronic means or in person by attending the station*'. '*Reasonable efforts*' must be made to give the AA (and solicitor) '*sufficient notice of the time the decision is expected to be made so that they can make themselves available*'.

This change again follows NAAN's suggestion. NAAN members may need to consider how they will work with their local police to ensure as far as possible that AA representations can be made at reviews. There could also be implications for AA training if making such representations has not been routine practice in the past.

Note 16 C (relating to **Section C16.1**) This deals with the AA's presence for charge or other disposal and has been substantially rewritten.

While charge still cannot be delayed solely to await the arrival of the AA, the note now adds: '*Reasonable efforts should therefore be made to give the appropriate adult sufficient notice of the time the decision (charge etc.) is to be implemented so that they can be present*'.

The Note continues: '*If the appropriate adult is not, or cannot be, present at that time, the detainee should be released on bail to return for the decision to be implemented when the adult is present, unless the custody officer determines that the absence of the appropriate adult makes the detainee unsuitable for bail for this purpose.*'

This is a significant change and in line with NAAN's view that the AA should be present for charge or other disposal to help ensure that the detainee understands the process and any obligations or conditions placed on him or her.

However, there will be implications for the management of schemes and for AA training, particularly where attending for charge has, for whatever reason, not been usual practice in the past. There are also likely to be financial implications as police requests for AAs for charging are likely to increase as a result of this change.

Annex A2B concerns 'appropriate consent' for intimate searches and **Annex K3** concerns consent for X-rays and ultrasound scans.

Both these sections have now been expanded to clarify the position with regard to juveniles and vulnerable adults as follows:

'In the case of juveniles, mentally vulnerable or mentally disordered suspects the seeking and giving of consent must take place in the presence of the appropriate adult. A juvenile's consent is only valid if their parent's or guardian's consent is also obtained unless the juvenile is under 14, when their parent's or guardian's consent is sufficient in its own right.'

This is a helpful clarification of what has been a confusing area.