

This advice should be read with our standard guidance for parents and other untrained AAs, available at <http://www.appropriateadult.org.uk/information/guidance-aa>

## What has changed because of Covid-19?

- In some circumstances, legal advisors are providing legal advice remotely in interviews (by phone or by video conferencing).
- This is supported by a *Joint Interim Interview Protocol* (JIIP) developed by the National Police Chiefs Council, Crown Prosecution Service, and lawyers' representative bodies.
- The police have made changes to custody to make it safer for everyone. This includes providing equipment to visitors. This includes masks and gloves, and sometimes goggles and aprons.

## What has not changed?

- The legal rules that police must follow (Police and Criminal Evidence Act) have not changed.
- The core role of an appropriate adult (AA) has not changed (there are some extra things to do).
- The police must still have an AA physically present for the same processes and procedures, including interviews.
- While lawyers can provide advice remotely, they do not have to. They often still attend.
- Lawyers are expected to always attend physically for serious cases.
- Any person who has an AA always has a right to have a lawyer physically attend.

## What do I need to do first?

- Read the [Joint Interim Interview Protocol](#) and take it when you attend as the AA.
- If you have been told that you can participate as AA remotely, you should say, "This is not compliant with PACE Code of Practice C or the Joint Interim Interview Protocol".
- If you have been told that legal advice will be delivered remotely, you should say, "As appropriate adult that cannot happen without an assessment and my informed consent".

## What does assessment mean?

- The custody officer has to consider whether the person's "ability to communicate confidently and effectively for the purpose of the interview" is likely to be "adversely affected, undermined or limited" without a lawyer being physically present.
- If remote legal advice might make it harder for the person, it should not be used.
- The police must involve you in this assessment. Tell them about any concerns you have.
- If they want to go ahead despite your concerns, you can still refuse your consent.

## What does informed consent mean?

Legal advice cannot be done remotely unless the police get agreement (consent) from:

1. The person they are detaining and/or interviewing
2. The appropriate adult (you).

Before asking if you consent, the police must make sure both of you understand:

- what remote legal advice involves
- any risks that it may present to the person
- the alternatives (i.e. a lawyer physically coming in person)
- their right to not agree to remote legal advice.

Make sure the police explain everything to the person and to you.

The person you are supporting does not have to consent to remote legal advice.

Check whether the person understand the information by asking them these questions:

- Where would your lawyer be during the interview?
- Would you be able to see/hear your lawyer during the interview?
- How would you tell your lawyer how you are feeling?
- What would you do if you needed to speak to your lawyer privately?
- Can you have a lawyer here with you if you prefer?
- Why might it be better not to have a lawyer here with you?
- Why might it be better for you to have a lawyer here with you?
- Would you prefer to have a lawyer here with you?

Ask these questions even if the person has already given their consent.

If they cannot answer these questions, you can ask the police to explain again.

If they still do not understand, they are not able to give informed consent.

You do not have to consent to remote legal advice, even if the person you are supporting does.

You must make your own decision about what you think is in their best interests.

People often focus on what will get them out of custody quickly. But it is your role as AA to think about whether the process will be fair if remote advice is used.

If either of you does not consent, the legal advisor should be informed and either:

1. They, or someone from their company, attends the interview, or
2. They hand the case back to the Duty Solicitor Call Centre, and
3. The police put through another call. Another criminal defence company is appointed.

These steps are repeated until a legal advisor who agrees to attend is found.

### **What if the police are happy to use remote?**

If the police are not concerned that the person will be disadvantaged, they should:

- Inform you both of their belief that it does not present a risk
- Explain and show you how the everything will work
- Advise you both of the chief officer's obligations concerning the security of remote communications
- Ask you both if they wish to make representations that remote legal advice should not be used
- Ask you both if they require more information about how things would work
- Tell you both that at any time that remote legal advice is in use, you may tell the custody officer or the interviewer that its use should stop and that the physical presence of the legal advisor should be arranged.

### **What should I do if the rules are not being followed?**

If the person you are supporting is in police custody:

- Make sure you have a copy of the Joint Interim Interview Protocol with you.
- Raise your concerns with the custody officer.
- If they do not resolve them, you have a number of options:
  1. Ask them to record your concerns on the custody record (check this happens)
  2. Ask to speak to the Duty Inspector (a more senior officer in charge of custody)
  3. Say what your concerns are at the start of the person's recorded interview (if it goes to court there will be a record of them)
  4. Refuse to act as the AA (remember that they may find an alternative)

If the person you are supporting is attending a voluntary interview:

- Make sure you have a copy of the Joint Interim Interview Protocol with you.
- Raise your concerns with the interviewing officer.
- If they do not resolve them, you have a number of options:
  - Ask to speak to their senior officer
  - Say what your concerns are at the start of the person's recorded interview (if it goes to court there will be a record of them)
  - Refuse to act as the AA (remember that they may find an alternative).