Improving the uptake of the appropriate adult safeguard: training for Independent Custody Visitors and Scheme Managers

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Introduction

In this report the impact of Appropriate Adult (AA) safeguard training on Independent Custody Visitors (ICVs) and Scheme Managers (SMs) will be discussed.

This discussion will first begin with detail on the context for the training and the necessity of the training (owing to issues with the implementation of the AA safeguard). In order to provide such context, we detail the nature of the AA safeguard and its scope, in addition to detail on the remit of the safeguard and the definitions of vulnerability under Code C. Thereafter, we examine the obstacles to implementation of the safeguard and the potential remedies for non-implementation. We offer an additional mechanism for scrutiny and oversight – ICVs and SMs. In order to examine the potential of this scrutiny and oversight mechanism, we provide detail on the roles of ICVs and SMs, and further explore how training has improved their understanding, knowledge, and confidence vis-à-vis the AA safeguard (and its implementation). We then provide detail on the event itself – including information on ethical approval, recruitment, and methods. In the following section, the pre-training survey results are discussed, the training described, and the impact of the event (evidenced through a comparison of the pre- and post-training survey results) explored. We then identify areas for improvement, based on attendee/respondent feedback.

Part 1: The AA Safeguard and Problems with Implementation

The AA Safeguard

The AA safeguard aims to protect the rights of suspects who are (a) under 18[1] or (b) 18 or over but considered 'vulnerable'. This safeguard can be found principally in Code C to the Police and Criminal Evidence (PACE) Act 1984.[2] In respect of those over the age of 18, there are two main 'categories' of vulnerability under Code C, premised upon (i) mental health condition or (ii) mental disorder. Crucially,

[1] This was set at 17 prior to *R (on the application of HC)* [2017] UKSC 73. See *R (on the application of HC) v The Secretary of State for the Home Department, The Commissioner of Police of the Metropolis* [2013] EWHC 982 (Admin).

[2] Home Office, *Code C Revised Code of Practice for the detention, treatment and questioning of persons by Police Officers* (TSO, 2019).

however, the suspect must display one or more of the characteristics under the 'functional test'.[3] Under this functional test, an individual who is vulnerable is someone who has difficulty understanding or communicating effectively the implications of any procedures or processes, is unable to understand what they are told or asked as well as any answers they may provide, may provide unreliable, misleading or incriminating evidence without knowing or wishing to do so, or may otherwise be suggestible or acquiescent. Prior to the changes in 2018, the safeguard was available to those under the age of 18 and adults considered 'mentally vulnerable' (adults who, because of their mental state or capacity, may not understand the significance of what is said, of questions or of their replies) or 'mentally disordered' (adults with any 'disorder or disability of the mind').

There are a number of individuals who can perform the role of the AA. For those under 18, the AA can be a parent, guardian, a person from a local authority or voluntary organisation (where the young person is in the care of that local authority or voluntary organisation), or a social worker. When such individuals are unavailable, the AA may be any 'responsible adult' who is aged 18 or above, subject to certain exceptions (see below).[4] For those 18 and over and considered 'vulnerable' according to Code C, the AA may be their parent, guardian or another person who cares for the adult, or someone trained in dealing with the vulnerable, subject to exceptions (below).[5] For adults, it is preferred that the AA is someone with, rather than lacking in, qualifications in relation to the care of the vulnerable. However, should the suspect wish to have a relative (lacking in qualifications) involved, their choice should be, where practicable, respected.[6] Notably, the AA safeguard exists on a statutory basis for those under 18,[7] but there is no equivalent statutory provision for adults.

There are also a number of individuals who cannot – or should not – perform the AA's role. These are: anyone involved in the offence, a solicitor (or other legal representative),[8] an independent custody visitor (if present at the station for that purpose), or a victim or a witness (again, if present at the station for that purpose).[9] Those who are police officers, employed by the police, under the direction or control of the chief of police, or are providing services, under a contractual arrangement to the police, to assist with the chief of police's functions, are also not permitted to act as AAs.[10]

Problems with Implementation

Previous research has identified significant issues with the implementation of the AA safeguard, particularly for adult suspects.

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[3] R. Dehaghani and C. Bath. 'Vulnerability and the appropriate adult safeguard: examining the definitional and threshold changes within PACE Code C' (2019) 3 *Criminal Law Review* 213.
[4] Ibid: para 1.7.
[5] Home Office, *Code C 2019* (n 2): para 1.7.
[6] Ibid: Note for Guidance 1D.
[7] Crime and Disorder Act 1998 s 38(4).
[8] Home Office, *Code C 2019* (n 2). Although see Dehaghani, R. and Newman, D. 'Can – and should – lawyers be considered 'appropriate' appropriate adults?' (2019) *Howard Journal of Crime and Justice* 58(1), 3; R. Dehaghani *Vulnerability in Police Custody: police decision-making and the appropriate adult safeguard* (Routledge, 2019).
[9] Home Office, *Code C* (n 2). For serious offences, family member are often witnesses – but are still used as AAs. Thus, it can be suggested that this guidance is not always adhered to – Personal Correspondence (20/12/2019) with Jennifer Holmes.
[10] Home Office, *Code* C 2019 (n 2): para 1.7.

These issues relate to the inadequate identification of vulnerability and the need for an AA by police officers, the limited availability of AAs, and variations in the quality of AAs.[11] Regarding issues with identifying vulnerability, the National Appropriate Adult Network (NAAN) suggested that this problem consists of two parts: first, that the police do not have adequate training and knowledge on vulnerabilities; and, second, that many police officers do not request an AA owing to a lack of AA availability, because they are not aware of when an AA should be present, and are sceptical of the AA's role.[12] Additionally, NAAN also noted that many police officers do not have access to appropriate screening tools.[13] Yet, identification of vulnerability and issues with the AA role are not the only factors affecting the implementation of the safeguard. Bean and Nemitz, for example, acknowledged that the issue is not solely with identification, but rather how police officers make sense of the information provided to them.[14] Dehaghani's previous and ongoing research has identified three overarching barriers to the implementation of the AA safeguard: definition, identification (as per previous research), and decision-making.[15] Below we provide details on the specific issues within each of these barriers.

Regarding definitions, custody officers often do not understand or consult Code C. Moreover, they may interpret 'vulnerability' in a restrictive manner. Further, the custody officer may fail to associate vulnerability with the need to implement the AA safeguard. There are also numerous barriers to identification: custody officers may lack the relevant skills, knowledge and training that would have allowed them to identify vulnerability; they may not always trust what suspects say and could view some sources – e.g. fellow officers, custody records and healthcare professionals (HCPs) – as more authoritative than others – e.g. self-reports and information from family members; and they do not have the appropriate tools through which to identify vulnerability. However, the tools that are available to custody officers – such as the risk assessment – are often not fully utilised. Further, even where vulnerability has been identified, custody officers may decide not to implement the AA safeguard. They may, for example, defer to the HCP, Forensic Medical Examiner (FME) or Approved Mental Health Practitioner (AMHP);[16] they may take into consideration the offence type and its seriousness, including the likelihood of the case reaching court; and may also give the suspect a 'choice' in the matter (without explaining the advantages and disadvantages of obtaining an AA). In instances where a legal representative is present, the custody officer may take the view that the legal representative can 'act' as an AA.[17] Custody officers also take into account the length of time it may take to secure an AA and the cost of securing an AA/paying for the AA service. There are, however, factors that may persuade a custody officer to implement the AA safeguard: custody officers are reluctant to challenge the legal representative if the legal representative is adamant that an AA must

[11] C. Bath et al *There to Help: Ensuring Provision of Appropriate Adults for Mentally Vulnerable Adults Detained or Interviewed by Police* (National Appropriate Adult Network, 2015) p.4.
[12] Ibid p.11.
[13] Ibid.
[14] P. Bean and T. Nemitz *Out of Depth and Out of Sight* (University of Loughborough, 1995).
[15] Dehaghani, *Vulnerability in Police Custody* (n 8).
[16] Code C neither expressly prohibits nor allows such an approach. However, it does make clear that the decision rests with the custody officer. As such, it is questionable whether the decision should rest with a medical/healthcare professional. It is also important to note that medical/healthcare professionals may lack the necessary legal – and often medical/mental health – training and knowledge necessary to make such a decision on the AA safeguard.
[17] This is despite the fact that the AA and legal representative perform different roles, that this approach is prohibited within Code C, and that the AA, fundamentally, is an additional legal entitlement for vulnerable suspects whereas all suspects are entitled to legal advice and representation.

be provided;[18] and/or they may believe that the suspect is genuinely in need of an AA and it is thus in that person's best interests that an AA is secured. Moreover, as noted above, custody officers consider offence seriousness; where the offence is one of significant seriousness (such as murder, rape, or arson with intent to endanger life, for example) they may decide to implement the AA safeguard as a precautionary measure, even where the suspect is not considered vulnerable.

Remedies for non-implementation

Dehaghani, in her previous work,[19] identified two principal remedies for non-implementation of the AA safeguard. The first, and most notable, is addressed through the case itself, through the exclusion of evidence on the basis of ss 76 and 78 of PACE.[20] Section 76 PACE allows for a confession – 'any statement wholly or partly adverse to the person who made it; whether made to a person in authority or not and whether made in words or otherwise'[21] – to be excluded at trial where it has been obtained through oppression or as a consequence of something said or done which was likely, in the circumstances existing at the time, to render it unreliable. The relevant circumstances can include a non-implementation of the AA safeguard in breach of the requirements under Code C. However, s 76 includes confession evidence only; any evidence that is gathered on the basis of this excluded confession remains admissible,[22] unless it falls within the remit of s 78. Section 78 provides that any evidence can be excluded if it is considered to ''have such an adverse effect on the fairness of the proceedings that [it ought not to be admitted]'. The court may also, or instead, issue a direction to the jury under s 77 PACE in Crown Court trials. Section 77 allows for a direction to the jury where a 'mentally handicapped' person confessed in the absence of an 'independent person'. As Dehaghani illustrates, however, the courts have interpreted 'independent person' to include a solicitor or legal representative. As such, if a suspect is attended by a solicitor or legal representative but is not provided with an AA, the judge may decide that a jury direction under s 77 is not required.[23] The courts have also read s 77 in conjunction with ss 76 and 78, such that the presence of a solicitor or legal representative could render the confession reliable (and therefore admissible) and/or could render the proceedings fair.[24]

Thus, remedies for non-implementation can be found in the rules of evidence in PACE, but a case must reach trial before the rules of evidence can act as a remedy for non-implementation of the safeguard. There are a few obstacles to using the exclusionary rules of evidence as a remedy: first, the case must reach the court; second, the breach must be raised by counsel at trial – an issue that is worsened by restrictions on legal aid; third, the court may decide that the breach does not render the evidence inadmissible; and fourth, worse still, the court may actually condone police malpractice.[25] It is worth noting that cases often do not reach trial; indeed, as Jackson has noted, the police station is more

[18] Arguably because said legal representative may raise this issue later in the proceedings, such as at court when decisions are being made as to the admissibility of evidence under ss 76 and 78 of PACE.
[19] Dehaghani (n 8).
[20] These provisions apply to trials held summarily (i.e., in the magistrates' court) and trials held on indictment (i.e., in the Crown Court) and may be applied by the trial court or may be used on appeal.
[21] PACE s 82(1).
[22] PACE s 76 (4).
[23] Dehaghani (n 8).
[24] Ibid. See also R. Dehaghani 'He's Just Not That Vulnerable: Exploring the Implementation of the Appropriate Adult Safeguard in Police Custody' (2016) 55 (4) *Howard Journal of Crime and Justice* 396, 408-409; D. Dixon *Law in Policing: Legal Regulation and Police Practices* (Oxford University Press, 1997) p174.; M. McConville, A. Sanders and R. Leng *The Case for the Prosecution: Police Suspects and the Construction of Criminality* (Routledge, 1991); D. McBarnet *Conviction: Law, the State and the Construction of Justice* (Macmillan, 1981) p.155.
[25] See Dehaghani (n 8).

routinely becoming the site of the trial, with fewer and fewer cases reaching court.[26] It is therefore important that scrutiny, oversight and accountability of police decision-making is not left until the trial stage.

The second remedy for non-implementation arises in the form of a complaint to the Independent Office of Police Conduct (IOPC). Yet, problems also emerge with this potential avenue. First, suspects may not know to make a complaint, owing to their vulnerability or otherwise. Second, suspects even when making a complaint may not feel able to navigate the complaints process. Whilst the IOPC has been conducting work to improve the complaints process, particularly for those with mental health problems,[27] problems will nevertheless remain, particularly where individuals do not have ready access to advice and advocacy. Dehaghani's analysis of reported IOPC (then IPCC – Independent Police Complaints Commission) complaints in 2016 found only one complaint which mentioned the AA safeguard and, it should be noted, this complaint was not made on the basis of AA non-implementation.[28]

Part 2: An Alternative for Scrutiny and Oversight

Given that many cases are effectively tried at the police station, it is important to ensure effective and proper implementation of the AA safeguard at this first – and often only – stage in the criminal process. This goal could be achieved through ICVs and their SMs.

ICVs are volunteers who make 'unannounced visits to police custody to check on the rights, entitlements, wellbeing and dignity of detainees held in police custody, reporting to [Police and Crime Commissioners] and Policing Authorities who hold Chief Constables to account'.[29] The number of times an ICV visits a police station per year varies between schemes and is also significantly impacted by circumstances such as the COVID-19 pandemic.[30] However, it seems that the minimum is once a month. SMs, on the other hand, are those who oversee the work of the volunteers; SMs are typically paid individuals who work within the Office of the Police and Crime Commissioner (PCC).

ICV schemes are largely organised into areas covered by the PCC and those with Mayors (City of London and Greater Manchester).[31] The Independent Custody Visiting Association (ICVA)[32] supports, leads, and represents the 46 member schemes across England and Wales, Scotland, Northern Ireland, and Jersey. The responsibility for 'drawing together issues and identifying trends emerging from visits

[26] J.D. Jackson 'Responses to Salduz: Procedural Tradition, Change and the Need for Effect Defence' (2016) 79(6) *Modern Law Review* 987.

[27] "New research reveals major barriers for people with mental health concerns making a complaint about policing" (IOPC, 2018) <https://www.policeconduct.gov.uk/news/new-research-reveals-major-barriers-people-mental-health-concerns-making-complaint-about> accessed 17/02/2021.

[28] Dehaghani (n 8).

[29] "About Us" (ICVA) https://icva.org.uk/about/ accessed 17/02/2021. For a critique of custody visiting see J. Kendall, Regulating Police Detention: Voices from Behind Closed Doors (Policy Press, 2018). For a critique of (some of) Kendall's arguments see A. Wooff, 'John Kendall (2018). Regulating Police Detention: Voices from behind Closed Doors' (2020) 14(4) *Policing: A Journal of Policy and Practice* 1184; R. Dehaghani, 'John Kendall (2018). Regulating Police Detention: Voices from behind Closed Doors' (2018) *Criminal Law Review* 505.

[30] Personal Correspondence (17/02/2021) with Sherry Ralph (Chief Operational Officer) of ICVA.

[31] Ibid.

[32] ICVA 'is a Home Office, Policing Authority and Police and Crime Commissioner (PCC) funded membership organisation' - "About Us" (ICVA) <https://icva.org.uk/about/> accessed 17/02/2021.

in their area and addressing these with relevant police supervisors'[33] rests with the PCCs. Further, 'the PCC must have a regular and formal opportunity to raise concerns and issues with a designated senior officer with force-wide responsibilities.'[34] Regular reports – based on visits – are provided by the administrator of the scheme to the PCC; 'these reports must be discussed at PCC meetings as appropriate and reflected in an entry about independent custody visiting in the PCC's own annual report.'[35] Meetings with high-ranking officers must therefore be held and must be both regular and formal.[36] However, it is imperative that ICVs and SMs flag any issues with the PCCs in order for that matter to then be actioned by high ranking officers.

Similar to AAs, ICVs act to ensure fair treatment. Yet, importantly, ICVs work by visiting police stations to establish the quality of detainees' treatment. First, there must be systems 'in place to ensure that the output from visits is drawn rapidly to the attention of those in a position to make the appropriate response.'[37] They can then take actions to ensure that changes are made to improve the fairness of this treatment e.g., by recommending that a vulnerable suspect receive an AA (even where the police do not categorise the individual as vulnerable). SMs may be able to provide scrutiny at a force level by, for example, meeting with senior officers to discuss the implementation rates vis-à-vis the AA safeguard for adult suspects. Yet, ICVs and their SMs may not necessarily have the skills and knowledge required to challenge decisions on the AA safeguard. As such, when challenging individual decisions or scrutinising overall AA implementation rates, ICVs and SMs may not know of the legal requirements for the AA safeguard and the barriers to implementation. To improve the uptake of the AA safeguard through the scrutiny and oversight provided by ICVs and SMs, it is imperative that ICVs and SMs are knowledgeable and, thus, feel empowered to scrutinise decisions and implementation rates.

Improving Implementation

Training

To provide ICVs and SMs with the confidence and knowledge to scrutinise police decision-making on the AA safeguard, a training event was arranged (with funding from the ESRC, and additional funding in 2019/20 from Cardiff School of Law and Politics). The event sought to do the following:

- Train ICVs and SMs on the nature of the AA safeguard;
- Train ICVs and SMs on the definition of 'vulnerability' under Code C;
- Train ICVs and SMs on the risks of non-implementation of the AA safeguard;
- Train ICVs and SMs on the barriers to implementing the AA safeguard for adult suspects; including detail on how and why police custody officers make their decisions in relation to the safeguard, and, finally;
- Discuss with ICVs and SMs the ways in which they can hold the police to account for decisions on the AA safeguard.

[33] Home Office "Code of Practice on Independent Custody Visitors" (TSO, 2013) <https://icva.org.uk/wp-content/uploads/2018/11/Independent_custody_visitors_code_of_practice-1.pdf> accessed 25/02/21, para 81.
[34] "The senior officer is usually an officer of at least the rank of Assistant Chief Constable/Commander." Ibid, para 82.
[35] Ibid, para 82.
[36] Personal Correspondence (17/02/2021) with Sherry Ralph (Chief Operational Officer) of ICVA.
[37] Home Office "Code of Practice on Independent Custody Visitors" (n 33), para 80.

This face-to-face/in-person training event was originally planned for 31 March 2020 but had to be postponed following the Covid-19 pandemic. It was rearranged and held on 13 January 2021 as an online event through Zoom (owing to the restrictions placed on large face-to-face/in-person gatherings). To provide as much interaction as possible, the event was arranged to incorporate breakout rooms, which were managed by the PI (Dehaghani) and three research assistants (O'Shea, Riedel and Holloway). The purpose of the training was to train a number of ICVs and SMs in each force area, with a spread across force areas, such that they could (i) improve their own knowledge and practices, and (ii) pass this knowledge onto other ICVs/SMs in their force area. In order to do so, it was decided that a training pack would be provided and that this would consist of: (i) PowerPoint slides (those used for the session), (ii) a visual storyboard, and (iii) a visual 'playbook'. These materials were provided to attendees and to other ICVA members via an email from Sherry Ralph (ICVA's Chief Operational Officer).

Ethics

Ethics approval was granted by the School Research Ethics Committee (SREC) at Cardiff School of Law and Politics in respect of (i) the training event and the data gathered therefrom, and (ii) the pre- and post-training surveys [SREC/20022006 and SREC/19022004].

Throughout this report, the identity of attendees/respondents is protected through the use of pseudo-anonymisation, whereby attendees/respondents, where relevant, are referred to only by their role (ICV or SM), location (England and Wales; Northern Ireland; Scotland; Isle of Man) and breakout room number (R1-R4). In doing so, we minimise the risk of jigsaw identification. Attendees/respondents were advised that the main event (and their comments therein) and their responses in the breakout rooms would be recorded, subject to pseudo-anonymisation (outlined above). Moreover, attendees/respondents were advised that participation in the event and the surveys was entirely voluntary; they could withdraw by (i) not attending the event and/or (ii) not submitting their response to the survey(s). Attendees/respondents were provided with participant information sheets and were given ample opportunity to ask questions regarding the research.

Recruitment

Attendees were recruited via an email sent to all ICVs and SMs through ICVA's Newsletter; recruitment was achieved through volunteer sampling.[38] Out of the 63 attendees, the majority were situated in 21 police forces in England[39] with some from elsewhere in the UK (1 in Scotland,[40] 1 in Northern Ireland,[41] and 3 police forces in Wales[42]). Of the 63 attendees, 39 were ICVs, 23 were SMs and one person was in a different role.[43]

Methods

Before the session, pre-training surveys were sent via email to attendees. The pre-training survey sought to assess the attendee/respondent's overall knowledge of the AA safeguard and their expectations of the event. The results of the survey were analysed by O'Shea and discussed with Dehaghani who then ensured that the training event – in both content and delivery – was geared

[38] V. Jupp. *The sage dictionary of social research methods* (SAGE Publications, 2006) 322-323.

[39] There are 39 police forces in England – see "Police" (*HMICFRS*) <https://www.justiceinspectorates.gov.uk/hmicfrs/police-forces/police-forces/> accessed 25/02/21.

[40] There is one police force in Scotland – Police Scotland.

[41] There is one police force in Northern Ireland – the Police Service of Northern Ireland (PSNI).

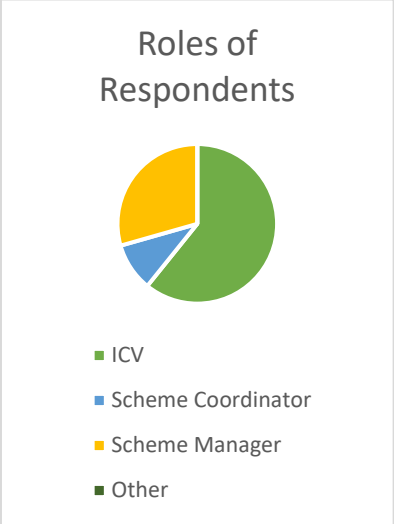
[42] There are four police forces in Wales – Dyfed Powys, Gwent, North Wales, and South Wales.

[43] The specific role has not been identified as doing so would increase the risk of jigsaw identification.

towards attendees' needs. The post-training survey was designed to ascertain whether there had been any improvements in attendee/respondent knowledge and confidence levels through self-assessment. Attendees/respondents were also asked to rate their knowledge and confidence in the pre- and post-training surveys and these ratings were compared in aggregate to ascertain whether the event had improved knowledge and confidence in respect of the AA safeguard. We also asked attendees/respondents to provide their top three learning outcomes for the event (pre-training) and to assess whether these outcomes had been met by the event (post-training). We provided space for attendees/respondents to advise us of good practice within their force area vis-à-vis the AA safeguard. In addition, the post-training survey results allow us to ascertain how to further improve the content of the training, with a view to delivering additional training in future. Notes were also taken at the event in both the main session (where applicable) and the breakout rooms (as above).

Part 3: Results

Pre-Training Survey Results



From analysing the survey results, it was evident that, among the 53 respondents, there was a lack of confidence in their knowledge of the safeguard. This appeared to stem from a lack of experience with the AA safeguard, i.e., some respondents only had experience of the safeguard through the reading of custody records or in their initial training.[44]

When asked to rate their knowledge of the AA safeguard this lack of experience meant that 52 respondents rated their knowledge – on average – at 2.92 out of a possible 5 (with 1 being poor knowledge and 5 being excellent knowledge).[45] When providing an explanation of the factors influencing this rating, respondents said that they felt that whilst they vaguely knew of the safeguard, their knowledge lacked depth and so they did not feel comfortable with giving themselves a higher rating. This was echoed when 52 respondents were asked to explain why they had rated their knowledge on the implementation of the safeguard as 2.52 on average. However, it should be noted that whilst this lack of confidence was the case for most of our respondents, there were a minority (N = 14) who felt that they were well-versed in the safeguard with some having previously been AAs or having come into contact with AAs through prior personal experiences and in previous roles.

We also asked why respondents had signed up for the event; the responses indicated that they were eager to improve their confidence and knowledge in respect of the safeguard. 10 respondents also said that they wanted to train others about the safeguard following the event.

As noted above, in preparation for the event, we asked respondents to outline their top three key learning outcomes. The most common key learning outcomes were as follows: (1) to understand the role of an AA and to be able to identify when one is needed (mentioned 32 times), (2) to be able to understand how vulnerability is identified and to become better at doing so (identified 19 times), (3)

[44] It must be noted that not all ICVs would have had training on the AA safeguard.
[45] One respondent answered the first question only and, therefore, a response was not provided to later questions.

to train others (10 times) and/or generally be more informed in carrying out their role (noted 28 times).

Respondents were asked to contribute any additional comments including experiences of good practice. In response to this, 24 detailed their experiences with AAs; they noted that interactions with AAs had further dwindled following the COVID-19 pandemic. Another 3 respondents discussed AA schemes established in their locality or how proficient the custody officers were at requesting AAs.

Event Results

Structure and Content of the Training

During the training session, Dehaghani utilised an approach that extended beyond lecturing attendees about the safeguard, but also – as noted above – used interactive Mentimeter software to integrate Question and Answer sections into the session, in addition to the use of breakout rooms for in-depth discussion on key points.

The structure of the event went as follows: the training began with summarising the results of the pre-training survey and reassuring the attendees that the majority of their desired learning outcomes would be included in the training. Following this, attendees were introduced to the AA safeguard, including: a description of the role, who can and cannot perform the role, and a brief account of the reason for the introduction of the safeguard within PACE Code C. Moreover, whilst the event focused on the implementation issues for adults, early in the event, the categories of vulnerability, vis-à-vis the safeguard, were explored. After this introduction, issues with the implementation of the safeguard were discussed as per previous research (as noted earlier in this report). Thereafter, ICVs and SMs were informed of the various risks of non-implementation and the benefits of having an AA present.

The following section of the training was dedicated to exploring barriers to the implementation of the safeguard, based on Dehaghani's ethnographic research on police custody.[46] The first of these barriers focused on the definition of 'vulnerability' and its impact upon the identification of vulnerability/need for an AA. Dehaghani emphasised the vagueness of Code C (and notably how it is subject to interpretation), and the manner in which the Code C definitions of vulnerability were interpreted by custody officers. In doing so, she drew out the core themes of her research: that custody officers did not understand the Code C provisions, that suspects were expected to 'present' as vulnerable, that those who were medicated were deemed not to be in need of the AA safeguard, and that 'vulnerability' was interpreted as equivalent to 'childlike' behaviour or 'abnormality'. Custody officers also lacked an understanding of the scope of 'mental disorder' as per the Mental Health Act Code of Practice,[47] and, for example, deemed those on the Autism Spectrum as 'highly intelligent' and therefore not in need of an AA. Throughout, Dehaghani challenged these assumptions with reference to research and the Code C requirements.

Thereafter, Dehaghani explored the ways in which vulnerability could be identified, such as through records and risk assessments, assessment by medical professionals (HCPs, FMEs, and AMHPs) and "informants" (arresting officers, the suspect, family members, and the aforementioned medical professionals), and observation. Dehaghani also explored the problems and obstacles that can arise when using these means of identification: the limited scope of the risk assessments, particularly the focus on physical risk and the absence of questions designed to identify the need for an AA; the

[46] See Dehaghani, *Vulnerability in Police Custody* (n 8).
[47] Department of Health, "Mental Health Act 1983: Code of Practice" (TSO, 2015) p.26.

limitations on medical professionals' knowledge of the AA safeguard (namely the legal requirements, but also the (often) lack of mental health training); the difficulties in using observational methods to identify vulnerability as this requires that there is an outward presentation of internal (mental) conditions; records (history) were not always used (and could be, in any event, only partial or erroneous); and the subjective nature of decision-making such that obtaining an AA may depend upon a custody officer 'lottery'. Dehaghani also pointed to the 'hierarchy' of 'informants'' whereby custody officers more readily accepted the information provided by other officers and medical professionals and privileged these over the information provided by suspects (who were noted by officers as inherently unreliable).

Dehaghani then explored decision-making, including the dissuasive and persuasive factors that may provide an obstacle to, or encourage, the use of the AA safeguard. The dissuasive factors explored were: (i) the presence of a solicitor/legal representative (as they were viewed as an adequate 'substitute' for an AA); (ii) the costs – both in time and money – of calling an AA; (iii) advice from HCP, FME or AMHP (yet this could also be persuasive); and/or (iv) the suspect's 'choice' (although, as Dehaghani noted, the purpose of the AA and the benefits of having an AA were not explained to suspects).[48] The persuasive factors explored were: (i) that an AA was requested by a solicitor/legal representative; (ii) that the offence was of a serious nature (because the police were keen not to 'lose' the case); (iii) previous AA;[49] and/or (iv) that officers believed that obtaining an AA would be of benefit to the suspect and would ensure fairness.

Dehaghani thereafter examined why officers take into account offence seriousness and highlighted that the police are keen not to lose 'serious' cases and these cases are more likely to be scrutinised by lawyers and, crucially, reach the courts. Dehaghani also explored the courts' and IOPC's impact on accountability and how this is somewhat limited (see earlier).

The event concluded with an explanation of what ICVs and SMs could do to improve the uptake of the AA safeguard. For ICVs, the training would allow them to have knowledge about the provision of AA services. They would also – in the context of adult detainees – have a more developed understanding of vulnerability both generally and under the scope of Code C. Additionally, training would empower them to question custody officers when the AA safeguard is not implemented. This questioning would then be informed by their improved knowledge of "obstacles" to the safeguard and, from this questioning, they may then be able to challenge the decision. In the case of SMs, the training would enable them to communicate more constructively with ICVs about the implementation of the AA safeguard such as asking ICVs about how often they encounter vulnerable adult suspects who are not provided with AAs. SMs could also speak to Inspectors/Custody Managers and ask them about their implementation rates, comparing the ideal with the actual force average.[50] This improvement would then be eased by keeping these lines of communication open. Furthermore, communication between

[48] Code C also appears not to give suspects any choice in the matter – if the suspect is vulnerable, they must be provided with an AA. See generally Home Office, Code C (n 2). This last point was emphasised as many suspects do not know what the safeguard is and so do not fully understand the choice that they are being asked to make.

[49] It is worth noting that decision-making was often guided by records (as noted above) and that the officer may decide to simply obtain an AA because the suspect had had one previously. However, there were also suggestions that some suspects, owing to their regular/frequent contacts with the police and the criminal justice system, knew the system well and therefore did not require an AA – see Dehaghani, *Vulnerability in Police Custody* (n 8).

[50] There to Help 3 places this implementation rate at 6% across England and Wales. This compares with the estimated 39% (at least) of adults who may actually need an AA – see C. Bath and R. Dehaghani *There to Help 3: the identification of vulnerable adult suspects and application of the appropriate adult safeguard in police investigations in 2018/19* (National Appropriate Adult Network, 2020).

SMs would also be valuable as then the approaches of different schemes and forces could be compared and could be used to inform and guide further work in this area.

The event then ended with a recap of the take-away messages relating to definition, identification, and decision-making.

Discussion in main session

Whilst the majority of attendees' discussion took place in the breakout rooms, several questions were raised in the main session. At the beginning of the session, one attendee asked how AAs are appointed and Dehaghani responded with an explanation of the complexities of AA scheme organisation across England, Wales and Northern Ireland (particularly in E&W). Another attendee asked if vulnerability had to be confirmed, to which Dehaghani explained that the standard that must be met is 'reason to suspect' and, as such, custody officers must only have a suspicion that the person is vulnerable before obtaining an AA. Some questions did not directly relate to the AA safeguard but touched upon risk (broadly defined): one attendee asked how police should respond to an unmedicated person in a psychotic state who has the propensity to become violent; Dehaghani responded by saying that the physical risk would need to be evaluated and explained how such risks could be managed by the HCP and the custody officer. Finally, one attendee asked if, as an ICV, they could ask the HCP if they have had mental health training, to which Dehaghani explained that this would be a valuable question but that there was no legal obligation that HCPs had specialist mental health training.

Discussion in breakout rooms

Throughout the session, breakout rooms were used to discuss specific questions; the discussion was thus framed according to these questions.

1. Do you agree with the purpose of the AA safeguard? Should it be amended? Why? How?

This question was posed after the purpose had been explained. In response to these questions, the majority of attendees agreed with the purpose of the safeguard, but nevertheless had suggestions for how it could be improved. The vast majority were enthusiastic about the role of the AA and thought that more information should be provided to ICVs on this matter. The consensus was that the AA's role should cover more than simply the interview and that AAs should be present, as Code C requires, for various processes and procedures. Some noted, however, that the AA's presence, echoing Dehaghani's findings, seems to be restricted to interview. Yet, it was noted by ICVs/SMs that the AA's presence throughout the custody process could be impractical. Other concerns regarding different aspects of the question included the attendees scrutinising the knowledge of each party, querying whether all agencies are prioritising the same factors (such as the best interests of the suspect). Additionally, concerns were raised regarding the use of family members as AAs. Some attendees opposed this fully whilst others questioned how effective family members would be at fulfilling the role, owing to their lack of training and knowledge. There were also concerns about the lack of a statutory requirement for AAs for adults in England and Wales; R1 SM Scotland highlighted that AAs were potentially soon to be a statutory requirement for all vulnerable suspects and witnesses in Scotland.

2. Do you agree with the categories of vulnerability? Yes/No? Why/Why not?

The majority of attendees disagreed with the categories of vulnerability under Code C as they were perceived as too narrow in scope and application. There were concerns raised regarding the custody

officers' focus on presentation (as noted above) and mental health awareness (as also noted above). There were also particular concerns about "regular" visitors, i.e., those who are arguably vulnerable but not perceived as such as they come into regular contact with the police and criminal justice system and are deemed to, thus, 'know the system'.[51] Specific concerns were also raised regarding those on the Autism Spectrum and how, often, they were not supported. Moreover, there were concerns regarding the fluctuation of a suspect's condition whilst in custody and, crucially, whether any deterioration of the suspect's condition would be properly identified by custody staff and thus whether this would trigger the AA safeguard.

In terms of application, attendees noted how the severity of the charge was important; they elaborated on the discussion in the main session through critiquing how custody officers may approach vulnerability in the context of offences with different severity. This point then prompted some to evaluate how subjective the categories could be interpreted and another attendee – R1-ICV2 (E&W) – raised their concerns regarding how custody officers may defer to HCPs (and other medical professionals) and how the decision-making may thus narrow, owing to the HCPs lack of legal knowledge on vulnerability and the need for/role of the AA.

Attendees also discussed the issue of 'presentation' (noted above), specifically the reliance of custody officers on the suspect's 'presentation' as a means through which to identify whether an AA was required. Whilst this point was being explored, one respondent – R4-ICV (E&W) – explained that they have seen custody officers being dismissive of a suspect as 'drunk' when, in fact, the suspect was actually in a hypoglycaemic state. R4-ICV (E&W) explained that they recognised this only because of their own personal experiences with diabetes. The custody officers' lack of awareness of the impacts of health conditions on a suspect was then reflected upon in respect of the AA safeguard.

As noted above, the subjectivity of categories can engender inconsistencies; attendees suggested that procedural safeguards be put in place such as two officers having to check the initial decision. Attendees also suggested that mandatory mental health training be provided to officers, along with refresher sessions on the content of Code C. It was noted by some attendees that, in their experience, officers deem it impractical to review and remember Code C in-depth. The practicalities of reform were then discussed; one ICV – R4-ICV2 (E&W) – explained that they thought it unavoidable that decisions were made based on experience and "emotional gut feelings". However, despite this 'gut feeling' being universally acknowledged, attendees felt that greater accountability on the part of individual officers would be a step in a more positive direction. Additionally, R1-ICV1 (E&W), said they felt that a more mental health-aware "culture shift" would take place with the retiring of older custody officers and the intake of new staff. It was also acknowledged (as mentioned above) how custody officers' encounters with "regular" visitors can cause custody officers to be more dismissive of underlying conditions even when these "regular" visitors fall within the Code C categories (R1-ICV3 (E&W)). This conflicted with the discussion previously had by attendees who believed that "regular" visitors would be more able to gain access to an AA if they had previously had one.[52]

Those who agreed with the categories acknowledged these weaknesses (above). However, whilst not in disagreement with the categories, these attendees nevertheless thought that the categories were in need of a vital update.

[51] See Dehaghani, *Vulnerability in Police Custody* (n 8).

[52] Although, as Dehaghani has noted, the 'previous AA' approach was nuanced – some 'regulars' received the AA, yet others did not because they were said to 'know the system' - see Dehaghani, *Vulnerability in Police Custody* (n 8).

3. What do you think could be the specific barriers under each category?

In answering this question, attendees were given one potential barrier - definition, identification or decision-making - each with the fourth group assigned the task of discussing 'other' potential barriers.

Definition

The attendees' thoughts on barriers presented by the definition were summarised in the following points. R1-Panel Coordinator (E&W) said that "everyone is vulnerable, but perhaps need to scale/respond to specific vulnerabilities." This reflected prior concerns on categorisation and was also seen to impact the practicalities. R1-ICV3(E&W) believed that the term "functional test" – one used by Dehaghani and Bath[53] – would benefit custody officers' understanding of Code C and could develop their use of the vulnerability criteria.

Identification

Attendees felt that identification was a very complex issue that required a multi-faceted approach to overcome any existing barriers. The issues that they highlighted were (i) self-identification and (ii) how to account for 'less severe'[54] vulnerabilities.

The attendees in this breakout room believed that 'self-identification' was helpful to some extent, but some attendees were concerned that some suspects may not understand the questions asked on the risk assessment and may not wish to identify themselves as 'vulnerable', whereas others will falsely label themselves as 'vulnerable' as a form of manipulation and control.[55] Then in discussing "less severe" vulnerabilities, attendees explained that they believed police forces would be willing to magnify vulnerabilities to ensure that they get the benefit of an AA if they believed the AA would benefit them as well as the suspect.

Decision Making

Attendees identified several factors that could affect decision-making which included (i) cost, (ii) subjectivity of the officer and 'experience' of the suspect such as the effect of detention in police custody on the individual, (iii) familiarity, and (iv) legal representation. The main concern was the time taken for AAs to attend and how this may interact with the statutory time limits on detention in custody.[56] It was also queried whether, in the time available to them, custody officers could adequately identify vulnerability according to the 'functional test'. The monetary cost was also raised as a concern, particularly where AAs are paid rather than voluntary. The barrier posed by the subjectivity of decision-making was also explored; here, concerns were raised regarding custody officers' unconscious bias (particularly issues such as institutional racism and the bearing this may have on the interpretation of 'vulnerability') and how different officers may place value on different factors when making their decision as to whether an AA is required (such as the suspect's prior experience in police custody or the presence of a solicitor). There were also concerns that suspects would be keen to leave the custody suite as quickly as possible and, for that reason, may decide that

[53] Dehaghani and Bath (n 3).

[54] It is understood that ICVs meant those who had a health condition but did not require additional support beyond having access to (and being able to take) medication. It should be noted that Code C does not suggest that there is a spectrum or sliding scale.

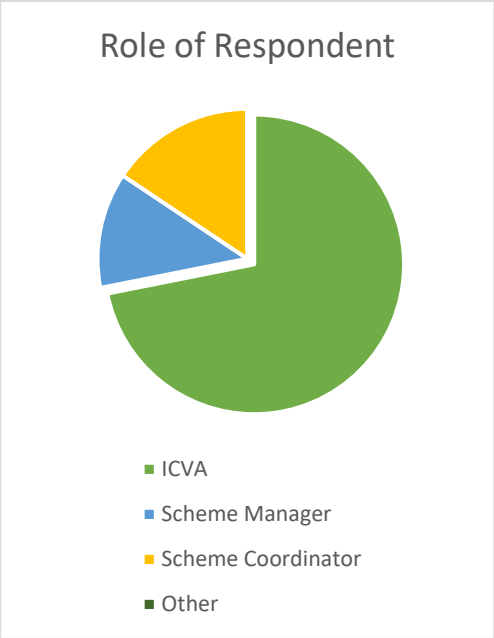
[55] This latter element was also suggested by custody officers in their disbelief of (some) suspects – see Dehaghani, *Vulnerability in Police Custody* (n 8).

[56] Suspects can be held for up to 24 hours prior to charge under PACE s 41. This can, however, be extended – see PACE s 42.

they do not wish to have an AA present.[57] Concerns were also noted in relation to the variable levels of detail on custody records.[58]

Post-training Survey Results

The responses to the post-training survey will now be explored.



Respondents were asked to rate their current knowledge of the AA safeguard; across the 33 respondents, knowledge was rated at an aggregate average of 4.03 (out of a possible 5). When asked why they rated their knowledge as such, 31 respondents said that they felt that the session had "improved [their] knowledge", made them feel "much more informed" and had generally broadened their understanding and knowledge of the safeguard. Five respondents also noted that, on the basis of the training, they were keen to continue developing their knowledge on the AA safeguard.

Respondents were also asked to rate their understanding of the implementation of the safeguard; in aggregate this was ranked as 3.88. When asked why they had rated their understanding in this way, respondents explained that they felt that the training had "cleared many misconceptions around the safeguard", made them "more aware of the subjectivity of assessing vulnerability" and had informed them of procedure. However, 2 respondents felt that they still needed to conduct additional research.

Respondents were also asked to recount their learning outcomes (as previously described in discussion of the pre-training survey); all respondents stated that their learning outcomes had been met, but 8 said that their learning objectives had been only partially achieved owing to the time restrictions on the event (9:30am to 1pm).

When rating the training session, respondents gave it a score of 4.09 (out of a possible 5), explaining that, whilst the training was clear, informative, and engaging, they struggled with the online delivery of the event and, notably, the use of digital tools (Mentimeter quizzes) for some parts of the session.[59]

Respondents were also asked if they would like to provide feedback on the event. 2 respondents' answers concerned the technical aspects of the training – they wanted fewer interactive tools to simplify the session – whilst others mentioned concerns about timing and wished that the training had taken place over two half-days.

Comparing pre- and post-training results

It is evident that the training event has improved attendees' knowledge and understanding of vulnerability and the AA safeguard and the barriers to implementing the AA safeguard. Respondents

[57] Although note earlier that the suspect does not actually have this choice.
[58] See, for example, Sanders, A. et al, *Advice and Assistance at Police Stations and the 24 Hour Duty Solicitor Scheme* (Lord Chancellor's Department, 1989).
[59] It should be noted that, as volunteers, many ICVs are retirees and may therefore come from an older demographic (and one which is less comfortable with innovative technologies and software).

to the survey rated their knowledge and understanding more highly in the post-training survey as compared with pre-training – with the averages increasing from 2.92 to 4.03 (when rating their knowledge of the safeguard) and 2.52 to 3.88 (when ranking their understanding of the implementation of the AA safeguard). Impact is also demonstrated through respondents feeling confident in using technical language and their active engagement in the debates and discussions highlighted in the session (as demonstrated by feedback). Satisfaction in the training was also demonstrated in respondents expressing an enthusiasm to share their new knowledge with colleagues. Furthermore, and perhaps most importantly, the training encouraged curiosity in the respondents, as evidenced by the 5 attendees who wish to either carry out further research or attend additional training on the AA safeguard. However, technical and timing issues – generated by online delivery owing to the pandemic – must be noted to have potentially (albeit perhaps minimally) reduced the efficacy of the training.

Conclusion

From conducting this event, 'main lessons' were learnt regarding the content and development of (future) training and any potential impacts therefrom. The central themes of 'definition', 'identification', and 'decision-making' allowed the attendees to gain a comprehensive understanding of the barriers to implementation of the AA safeguard. The training, more generally, provided attendees with an understanding of who should be provided with an AA and what the AA's role entails. Attendees were, however, keen to find out more about potential reform of the AA safeguard and the impact of Covid-19 on vulnerable suspects. Such matters, if at the time relevant, could be discussed in any future sessions. It is evident that in-person training is preferred over online training; a physical event would have been more accessible to those who are less digitally capable. The event was, however, successful in achieving its overall aims. Moreover, it appears that there is significant appetite from ICVs and SMs to improve the uptake of the AA safeguard and some attendees were very keen to impart their knowledge onto others in their schemes (such was one of the ambitions of the training). Whilst training ICVs and SMs on the AA safeguard will not, of itself, ensure that vulnerable suspects receive the protection to which they are legally entitled, it should certainly be used as another means through which to ensure compliance with the AA safeguard and through which to secure oversight and scrutiny of custody officer decision-making on the AA safeguard.