

# IMPROVING THE UPTAKE OF THE APPROPRIATE ADULT SAFEGUARD



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**A recap of the appropriate adult  
workshop provided by the  
Cardiff School of Law & Politics**

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## Why was the AA safeguard introduced?

A miscarriage of justice in 1972 highlighted the need for the introduction of the AA safeguard. The three individuals wrongfully convicted in this miscarriage of justice each had vulnerabilities:

- Collin Lattimore was aged 18, had an IQ of 75 (borderline disability) and was susceptible to succumbing to pressure.
- Ronnie Leighton was aged 15, had a mental age of an eight year old and was extremely suggestible.
- Ahmet Salih was aged 14 and his first language was Turkish.



### All these vulnerabilities were ignored by police at trial.

- There was a failure of the 'Judges' Rules'.
- Fisher Report in 1977 (and Royal Commission Report in 1981) led to Police and Criminal Evidence Act (PACE) 1984.



I'M AN  
APPROPRIATE  
ADULT

- A PARENT
- A GUARDIAN
- LOCAL AUTHORITY
- VOLUNTARY ORGANISATION

## Who is the AA?

In respect of those under the age of 18:

- Parent, guardian, someone from local authority or voluntary organisation (where child/YP under care of).
- Or a responsible adult aged over 18.

In respect of those 18 and over and are considered 'vulnerable':

- Parent, guardian, or another person who cares for the adult, or someone trained in dealing with the vulnerable.
- Preference for someone trained in qualifications relating to the care of the vulnerable.
- No statutory duty.

**Youth Offending Teams have a statutory duty to provide AAs under s.38(4)(a) of the Crime and Disorder Act 1998.**

**Important:** Code C is 'soft-law' - it doesn't have the same force as statute. One notable difference is that a breach of Code C cannot give rise to civil or criminal sanction; the most significant remedy is exclusion of evidence at trial (see s.67 PACE).

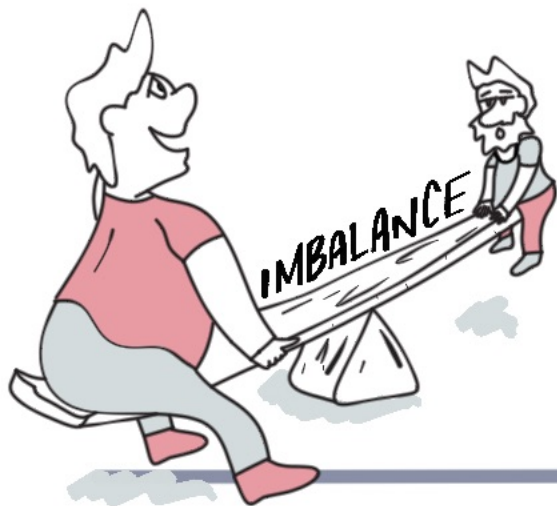
## Who must not act as the AA?

- Someone involved in the offence such as a co-defendant.
- A solicitor or legal representative can't be an AA. There is further information later in this document around decision-making.
- An Independent Custody Visitor shouldn't be an AA. The main concern is around independence as often OPCCs will commission AA services. See ICVA and NAAN stance on this matter.
- A victim or a witness.
- A police officer, someone employed by the police (or under the direction or control of chief of police) or someone providing services under contractual arrangement to the police.

I'M NOT AN  
APPROPRIATE  
ADULT

- INVOLVED IN OFFENCE
- SOLICITOR
- WITNESS
- POLICE OFFICER





Remember, there is a statutory duty to provide an appropriate adult for young children.

This is not the case for adults.

### What does/should the AA do?

- Aim to support, assist and advise the suspect in relation to any aspect of the Code or any other Code; or when the suspect is given or asked to provide info or participate in any procedure such as:
  - Interview, charge, caution, warnings in relation to adverse inferences, samples (fingerprints, photos, DNA), reviews of detention, intimate searches.
- Observe that the police are acting properly and fairly, and inform the office of the least rank inspector if not.
- Assist with communication (whilst also respecting the right to silence).
- Help understand rights and entitlements, and ensure the rights are protected and respected.
- For the use of live link (for children aged 14-18 and 'vulnerable adults') as per the Policing the Crime Act 2017 (s74).

❑ SUPPORT

❑ ASSIST

❑ ADVISE

❑ OBSERVE

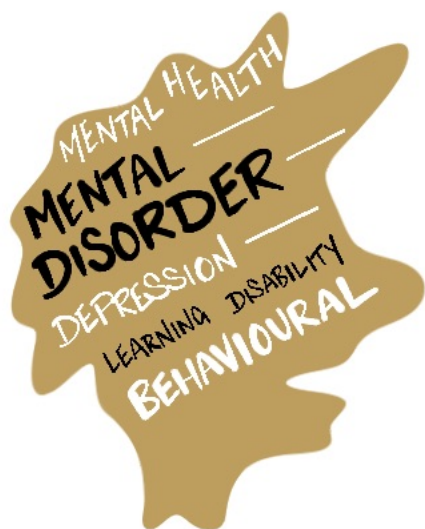


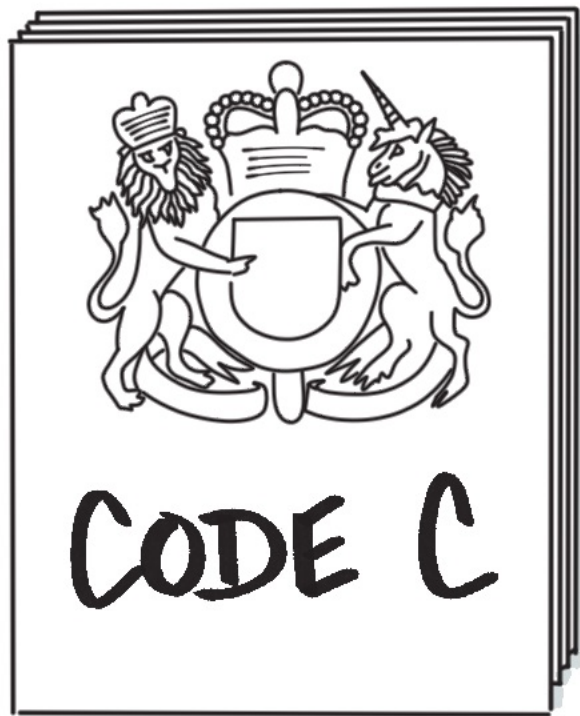
### Who is vulnerable/needs an AA?

There are many circumstances where a person could be identified as vulnerable:

- Not understanding or being able to exercise their rights.
- Not understanding the nature and purpose of the interview, the questions asked or implications of their answers.
- Problems with communicating their version of events.
- Not having the capacity for rational decision making (e.g. can't take the pressure so pay insufficient consideration to the long-term consequences of what they tell the police).
- Giving unreliable answers (admissions or denials) - inherently unreliable due to a disorder/current mental state (e.g. delusions, concrete thinking, preoccupation with getting out of the police station - including those addicted to drugs).
- Naivety about what is happening is sometimes a vulnerability to false confession.

Reference: Prof Gisli Gudjonsson - NAAN PDD, October 2016





### **Who is vulnerable according to Code C? And why?**

- Children, those below the age of 18.
- Adults: Pre-2018 definition:
  - mentally vulnerable or
  - mentally disordered.
- Children and adults pre-2018:
  - may provide unreliable, false or self-incriminating evidence.
- Adults: Post-2018 definition:
  - mental health condition or
  - mental disorder and
  - meets functional test.
- Children post-2018: remains the same.

### **Code C: 1.13(d) provides clarity on vulnerability:**

- (i) **may have difficulty understanding or communicating effectively about the full implications for them of any procedures and process connected with:**
  - their arrest and detention; or (as the case may be)
  - their voluntary attendance at a police station or their presence elsewhere.
  - the exercise of their rights and entitlements.
- (ii) **does not appear to understand the significance of what they are told, of questions they are asked or of their replies**
- (iii) **appears to be particularly prone to:**
  - becoming confused and unclear about their position.
  - providing unreliable, misleading or incriminating information without knowing or wishing to do so.
  - accepting or acting on suggestions from others without consciously knowing or wishing to do so; or
  - readily agreeing to suggestions or proposals without any protest or question.

**In practice the situation is a little bit more complicated than this (because a suspect need not actually have a mental health condition or mental disorder....the functional test above may be enough). (see Code C Note for Guidance 1G)**

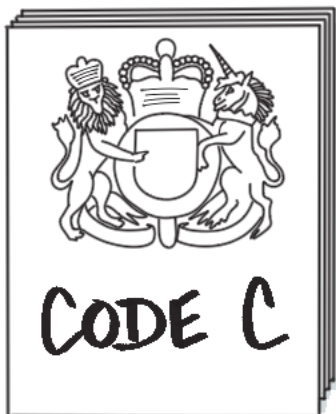
## Mental Disorder

- The term 'mental disorder' is elaborated upon in the Mental Health Act (MHA) 1983 Code of Practice, which provides a non-exhaustive list of "clinically recognised conditions which *could* [authors emphasis] fall within the statutory definition of mental disorder":
  - Affective disorders, such as depression and bipolar disorder.
  - Schizophrenia and delusional disorders.
  - Neurotic, stress-related and somatoform disorders, such as anxiety, phobic disorders, obsessive-compulsive disorders, post-traumatic stress disorder and hypochondriacal disorders.
  - Organic mental disorders such as dementia and delirium (however caused).
  - Personality and behavioural changes caused by brain injury or damage (however acquired).
  - Personality disorders.
  - Mental and behavioural disorders caused by psychoactive substance use.
  - Eating disorders, non-organic sleep disorders and non-organic sexual disorders.
  - Learning disabilities.
  - Autistic spectrum disorders (including Asperger's syndrome).
  - Behavioural and emotional disorders of children and young people.



### Problems picking up on the signs

- Lack of training, knowledge, resources.
- The identification of vulnerability is one of the main issues. However in Bean and Nemitz (1995) it was stated that vulnerability can be identified but issues arise with how officers make sense of information.
- NAAN, There to Help (2015): this study found that implementation was low due to identification (knowledge, training, etc) and problems with AA provision.
- NAAN, There to Help 2 (2019): again highlighted implementation continued to be low!
- NAAN, There to Help 3 (2020): Although this was after the Code C changes implementation was still found to be low.
- It's estimated that for every 100 adults, 39% will need an appropriate adult but only 6% will get one.



**LACK OF KNOWLEDGE**



Lack of legal representation.

False, misleading of self-incriminating confession > wrongful conviction.

'No smoke without fire': disbelief of innocence.

Ordeal of criminal process: time, money, relationships.



Suspect can understand rights and entitlements.

Suspect can communicate more effectively.

Suspect can understand the process more effectively.

Suspect is supported, advised and assisted.

Suspect can make rational decisions.

Suspect can provide reliable information.

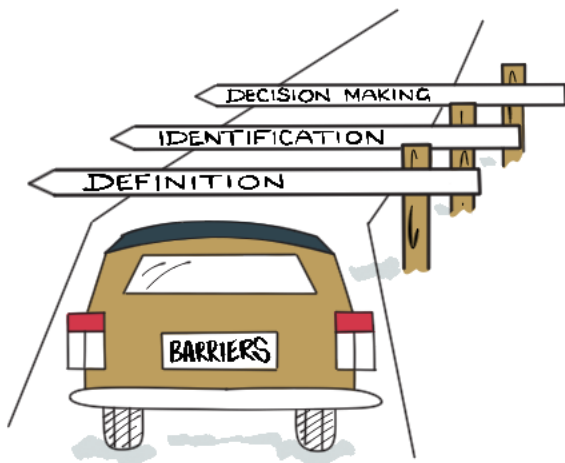
Legal representation more likely to be present (and active).

Legal representative can communicate clearly with suspect.

Police can communicate clearly with suspect.

Police can collect evidence in a fair manner.

Police can (potentially) safeguard the case.



What barriers are there to implementing the AA safeguard?

- Definition
- Identification
- Decision Making

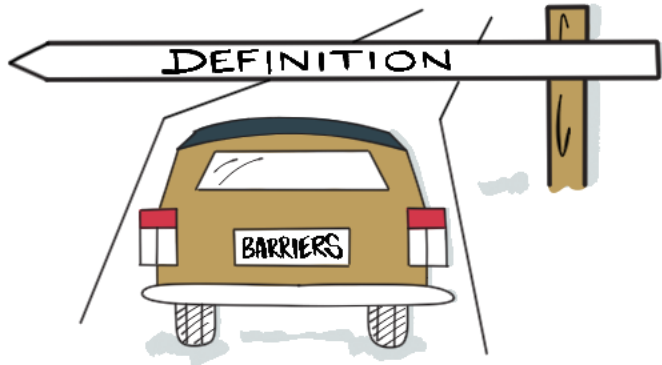


#### Interaction 116-W

*Suspect arrives handcuffed and is placed in a holding cell (handcuffs are later removed). Suspect is angry, agitated and her speech is slurred. She has been arrested under suspicion of criminal damage and for threatening behaviour. She reports no difficulty reading or writing but she suffers from fits and anxiety. She is also alcohol dependant and suffers from withdrawal symptoms.*

*CO12-W discusses timing of interview with the investigating officer. He raises his concerns in relation to intoxication on the one hand and alcohol withdrawal on the other. He advises that the interview will have to be conducted when the suspect is sober but before alcohol withdrawal sets in. A fitness for interview assessment, on account of her 'vulnerability', is requested. An appropriate adult is deemed unnecessary as suspect "does not have mental health problems". Suspect asks to make a phone call, CO12-W agreed. She lifts her own phone from the 'Prisoner Belongings' bag and calls her parents. CO12-W tried to explain that she should be calling from the custody thine but she does not seem to understand this and replies, 'I'm using my own credit, not yours'. CO12-W makes a comment that 'At least this saves the taxpayer some money'. She is asked if she knows her rights and she replies 'yes'. She reads the screen and thinks 'misc.' is 'music'. This makes me question her ability to read, although this may be the result of alcohol consumption/intoxication. CO12-W does not query this, neither does he make any connection between this and the suspects ability to read.*

**This illustrates that even if fitness for interview is considered, and even where a suspect exhibits signs of being vulnerable, an AA may still be deemed unnecessary. This person should have been provided with an AA, but there are some reasons why she was not, some of which will be explored later in this document.**



# Defining Vulnerability

## Open to interpretation

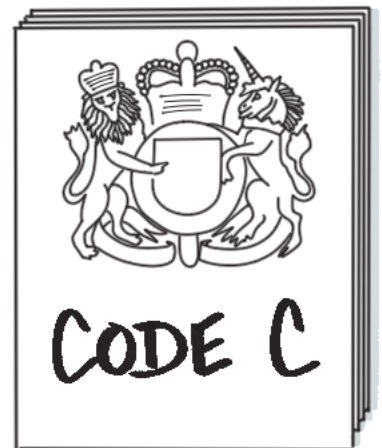
- The definition of vulnerability is broad, which can cause inconsistencies.
- There is a restrictive 'criteria' used by COs.
  - Also FMEs, HCPs, AMHPs.
- Code C definition [is often] not well understood.
  - No mention of Code C.
  - No paraphrasing of Code C.
  - Admissions of not having read Code C for a very long time.

*It's difficult to put into words. If somebody's got a mental illness...like schizophrenia or paranoia or something, then that comes under the umbrella of mental illness. But mentally vulnerable, I suppose, if somebody's really not understanding what's happening, they've got learning difficulties, maybe they struggle to read and write. Whether you class that as mental vulnerability or just vulnerability, I don't know (CO9-W interview).*

## Broad definition

- We don't have guidance as to what mentally vulnerable means (CO18-W interview).
- Vague understanding of 'mental vulnerability'.
- No mention of 'any disorder or disability of the mind' (the phrase used in the code).
  - Research suggested that learning disabilities were not included (which they are - although there is debate as to whether they should be).

*Define mentally disordered, there's such a variety of what it could be, such a misunderstanding of what it means...people equate learning disabilities into mental disorder and it's not' (CO22-M Interview).*



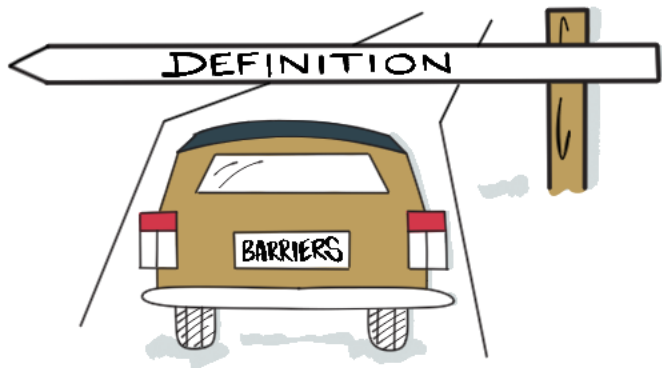
## Appropriate Adult Vulnerability

- More restrictive than 'Code C vulnerability' - which I refer to when I distinguish between how vulnerability is framed in the Code as compared with how it is framed by custody officers.

*I think when you're dealing with what people recognise as bi-polar and schizophrenia and paranoia, they are areas of vulnerability. Because they have a vulnerability due to mental illness, does that mean that they need an appropriate adult? I'm sure that people that I've dealt with have those issues, [those] who say 'I'm bi-polar' or 'I'm schizophrenic'. I don't just automatically tick 'Need an appropriate adult' if that's where you're running to (CO3-W Interview).*

**Note: those with schizophrenia were entitled to an AA according to the Code, although this may be a little different now with the functional test.**





# Defining Vulnerability

## Symptoms not condition

- This is possibly now consistent with the functional test but it's still problematic.
- 'Presenting' as vulnerable.

*Even if someone had a mental health diagnosis [which means that] you're dealing with a diagnosed mental condition [this] doesn't necessarily mean that they need an appropriate adult [because it comes down to] how they are when they're actually presented in front of you...particularly if somebody isn't taking their medication [which means that] they're much more likely to display symptoms, behaviours that are different that would cause concern than somebody who is. (CO4-W Interview).*

## Normality/Abnormality

- Medication means 'normality'

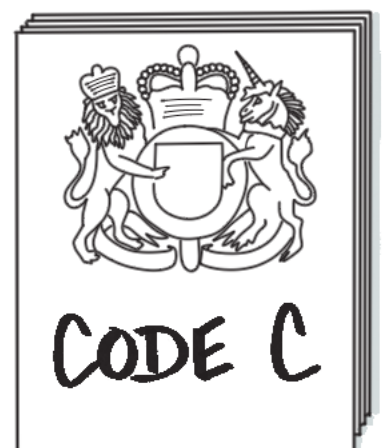
*[I]f someone came in with schizophrenia and they hadn't taken their medication, they probably would be displaying something and that to me would be a stone bonker [sic] that they need someone sit and make sure that they know what's going on (CO22-M Interview).*

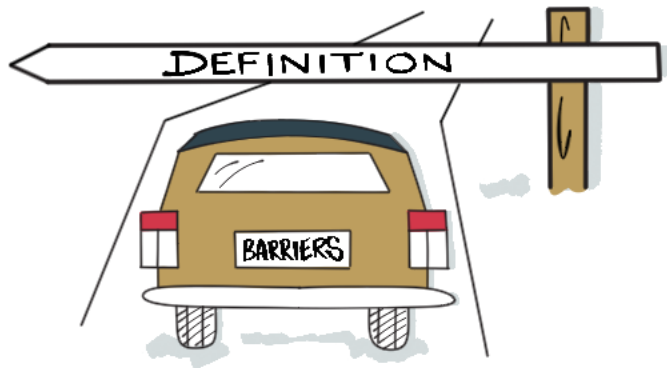
- Normality/abnormality:

*did not [act] how you would expect a normal person [to act when] booked in. Normal's [sic] not quite the right word but I can't think of another one (CO12-W Interview) would obtain an appropriate adult if the suspect requested one.*

Attending 'a school for people with issues' rather than 'a normal school' (CO2-W Interview).

- Bradley (2009): this is an inaccurate measure because of the tendency towards education in mainstream schools.
- BUT discussing a suspect who had been arrested for assaulting a police officer: 'had two knives in his hands and...was stabbing himself and...turned on us [referring to the arresting officers] with the knives. Straight away you're starting to think "that's not normal behaviour, there's obviously some issues there" (CO28-M Interview).
  - This person was not given an AA: why?





# Defining Vulnerability

## Childlike behaviour

*It's childlike, in so much as the kids can happily be sat at school now but if you walk into the classroom in the school round the corner and then they'll say, 'Me, me, me' because you've suggested that [they go for ice-cream] and they'll sort of acquiesce and go along with whatever you're saying and that is that understanding issue. People here will say 'Yes boss!' and they'll nod their heads a lot. (CO16-W Interview)*

*If you've got a 25-year-old man stood in front of you, "I've got the mental age of a 12-year-old" - 12-year-old, juvenile, appropriate adult, vulnerable. (CO24-M Interview)*

## (Lack of) understanding

*Vulnerable is anyone who for any reason has a lack of understanding as to their circumstances, why they're being investigated, why they're under arrest and the processes that we go through during investigation whilst they're in custody. (CO33-M Interview)*

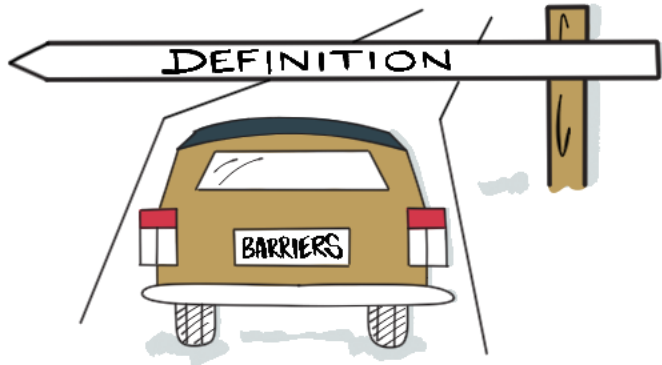
*Suspect's 'understanding of consequence is a little retarded'. (CO27-M Interview)*



## 'Recidivists'

*This person had had an awful lot of contact with the police and had been through the process of being arrested and dealt with quite a number of times and had quite a number of convictions. So I was quite comfortable with that decision. But if someone had very few dealings with the police then I would probably have had an appropriate adult. But that would be purely because I would be concerned about their level of understanding of what was going on. (CO2-W Interview)*

Although, Fenner, Gudjonsson and Clare's (2002: 90) research would suggest that even those experienced in the criminal process may struggle to understand their rights.



# Defining Vulnerability

## Autism

*I have a friend who's a consultant anaesthetist who's on the autistic [spectrum], his son's at Oxford University doing languages. You would say that their behaviour sometimes is a bit, hmm, is bit, how they talk, that's a bit different. But does that make them different? No... There are degrees and I think they show themselves when you talk to people, I think. It's a judgment call. The Autistic Society - is it the Autistic Society? - recommend that everybody has an appropriate adult. Do they? Does my friend who's a consultant anaesthetist need one for interview? I'd say not. So, you know, everyone has to be dealt with individually. You can't just sort of say, blanket, across the board, that everybody needs an appropriate adult. (CO4-W Interview)*

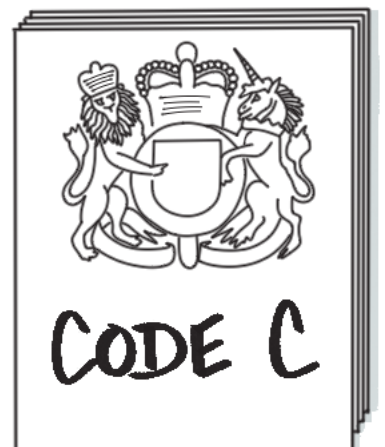
**It is true that many autistic individuals may be very bright. However, autistic individuals may, for example, struggle to pick up on social cues, get very stressed in an interview situation, have a touch phobia (and thus struggle with many processes and procedures in custody), avoid eye contact and be therefore deemed suspicious, and/or not understand particular lines of questioning (see, for example, Holloway et al, 2020). An autistic individual may therefore need an AA at interview.**

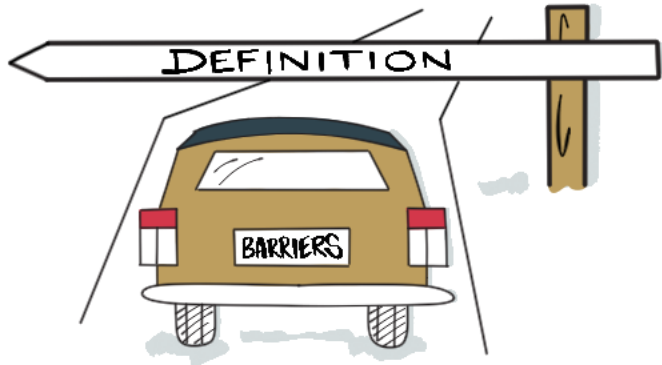
## Disproving vulnerability

*And if I ask someone if they can read and write and they tell me that they can, it's extremely rare that I ask them to read, extremely rare. But if people say to me that they can't read or write then I'll give them the piece of paper that gives the rights and entitlements, I'll ask them to read the top line for me and that then gives me a measure of whether or not this person can in fact read or write. Quite a lot of people will say, 'I really struggle' and you'll say, 'Can you read that for me?', 'You're entitled to a solicitor free of charge', 'Well, you've not really got a big issue with reading or writing. Perhaps someone down the line told you that you're not very good at it but it's more than adequate for what you need in custody. (CO22-M Interview)*

**The problem here is that people can -and do- lie about their capabilities because they are ashamed or do not think it's important, or only read well within their support networks. The custody officer here is only trying to disprove that a person is vulnerable rather than checking whether someone who may not be vulnerable may not actually be vulnerable.**

**The question is also whether a person's reading level is enough - custody officers struggle to read and understand the code; surely someone with reading difficulties would struggle even more.**



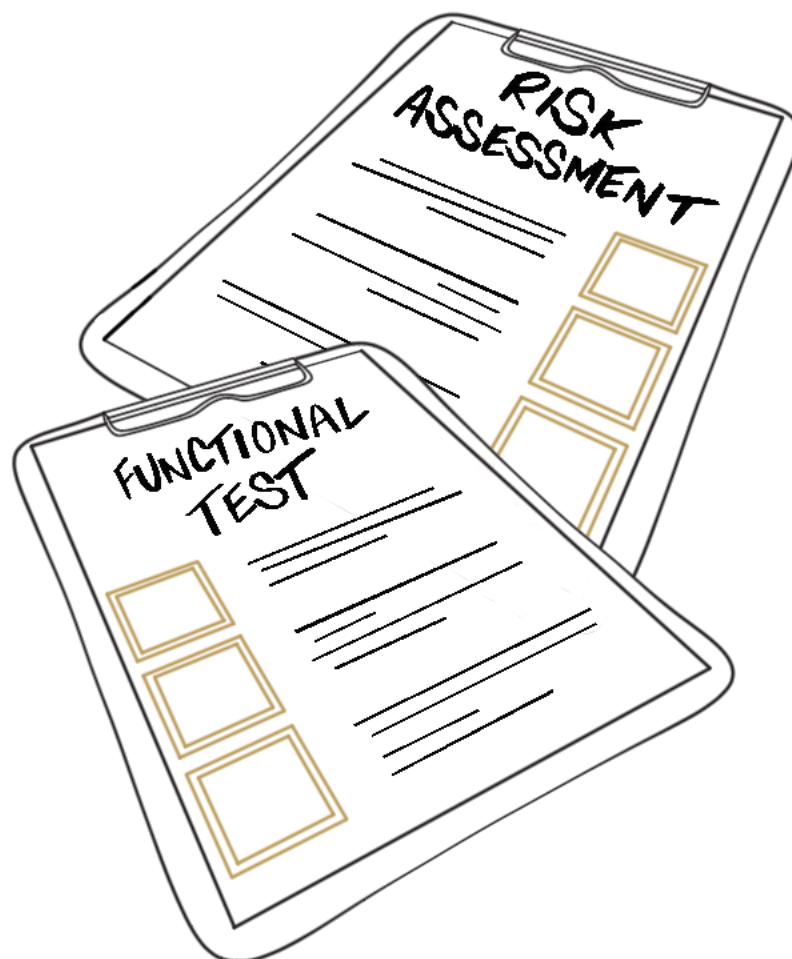


# Defining Vulnerability

## Diagnoses and medication

*You're just struggling with life like most people do and because you haven't got much else to do, you go to your doctors, and your doctor's a very busy person and they think, 'if I put you these low level little anti-psychotic tablets, these little low level anti-depression tablets, at least it gets rid of you for a fw months and it might even have that mellowing effect of you deciding that your depression's all dealt with'... You can probably pre-empt most of the answers that they'll give you on the risk assessment in relation to which GP they're under, which medication they're taking... (CO16-W Interview)*

*I don't know what kind of condition, say schizophrenia, for example or depression. If somebody has been diagnosed with that and they're being treated for it medically and they're up to date with all they're medication and they can function normally in society then I wouldn't necessarily say that they were vulnerable. (CO30-M Interview)*





# Identification

## Records and risk assessment

*When I first started in custody, the risk assessment was probably like four or five questions, in all truth, 'Have you ever harmed yourself? Do you feel like harming yourself?' and that would really be about it and then looking at very, very basic mental health. It has evolved tremendously. There [are] a lot of questions in there now. (CO22-M Interview)*

*Let's explore what was previously, if you've got the luxury of that. What was done previously in interview when this person's been in custody; have they had an appropriate adult before? (CO18-W Interview)*

*Been in custody that many times you just know... they will always have an appropriate adult. (CO9-W Interview)*

## Medical professionals and 'informants'

*Sometimes, you know, you get that feeling that, "I'm going to refer them to the medical staff to assess them" and they usually, because they have skills and experience and knowledge, can often push in that direction as well. (CO14-W Interview)*

*Very rarely does somebody come up to the desk where we're not pre-loaded. We know a lot of information about them. Even if it's the officer who's coming, 'What are the circumstances of arrest?', 'Well, yeah, he had two knives in his hands and he was stabbing himself and he turned on us [the arresting officers] with the knives'. Straight away you're starting to think 'That's not normal behaviour, there's obviously some issues there'. Call it mental health issues. (CO28-M Interview)*



## Observation

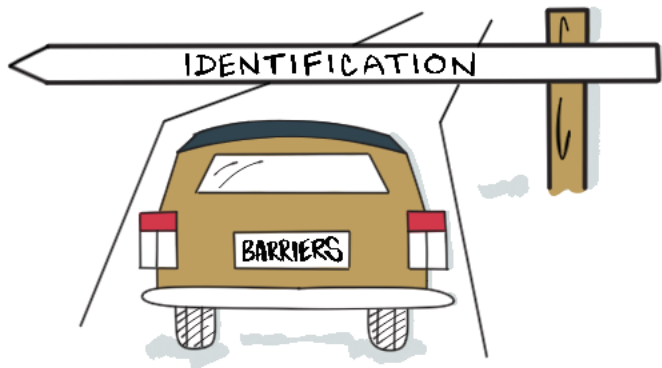
*Risk assessments aren't just about asking questions, it's what you see as much as what you ask' and 'sometimes its the way that [the risk assessment is] answered, gives you clues as to their state of mind. (CO22-M Interview)*

*You've got to look at how that person's demeanour is. (CO21-M Interview)*

*[i]t's all about their behaviour, their demeanour, and some clear mental health illnesses. (CO3-W Interview)*

*[i]t's not just the words; you've got to look at the people whilst you're doing this risk assessment. You're assessing people's demeanour at the same time, it's not just the answers they give you. (CO21-M Interview)*

*Picking up on clues: gut feeling. (CO14-W Interview)*



# Barriers to Identification

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## Limits to the risk assessment

- The types of questions asked and whether they are understood.
- It's a tick-box exercise.
- It relies on the subject telling the truth.

*I think the questions on the risk assessment as they stand, it gives the person the opportunity to disclose any medical or mental health issues; whether they choose to or not is entirely up to them, I can't force them. (CO30-M Interview)*

**NOTE: the risk assessment is not focused on vulnerability for AA safeguard and therefore questions are not geared towards ascertaining whether someone needs an AA or not.**

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## Further barriers

- Adequacy of healthcare expertise.

*Some of the FMEs and some of the nurses are more savvy [sic] with mental health issues. I think the training that they had will be in the mental health field or won't be. So in that respect it's a bit hit and miss in respect of what service the detainees get when they're here. (CO13-W Interview)*

**Note: healthcare experts may not be mental health trained (or otherwise) and are most certainly not legally trained.**

- **Observation - is it always obvious?**
- **Records and history - not always used.**



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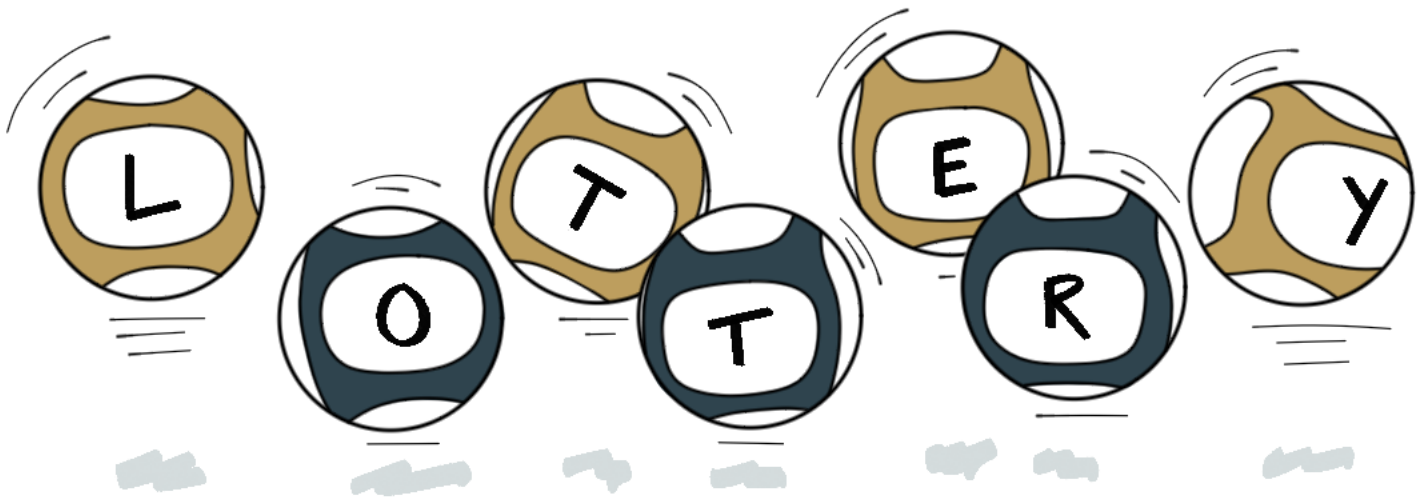
## Training, knowledge, ability

CO12-W Interview; CO28-M Interview; CO21-M Interview:

*I'm not be any means an expert on mental health but you get bi-polar, schizophrenic, psychotic. There are other ones as well, which I can't quite remember.*

*We can be bamboozled with all sorts of terms and phrases and medication that people are taking... you know, I'm not an expert in that field.*

*I sometimes think that some of the mental health stuff that we're dealing with these days, I don't feel qualified for it and I'm asking questions of people on a mental health assessment which I don't think I should be asking.*



### A custody officer lottery?

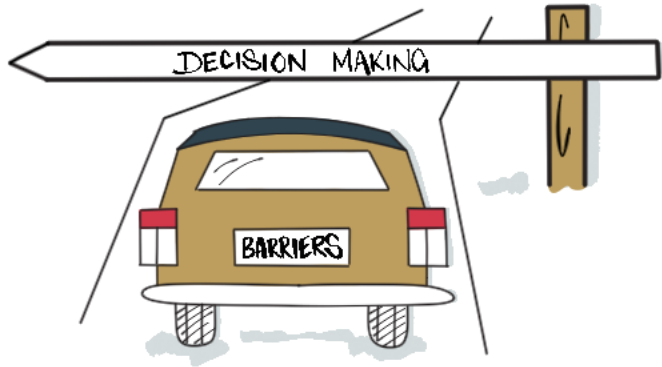
*Down to personal opinion and experience and you could present the same person to two sergeants and one would say, "This person needs [an appropriate adult]" and one would say, "No, they're OK with that" (CO18-W Interview).*

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### An investigation?

*Interview techniques, questioning, body language, signs that they give off, their eyes... There are signs that people will give off but you have to be able to pick up on, or should be able to pick up on... I think the main crux that you [referring to the researcher] perhaps won't see when we ask the questions, is what's going on in the head of the custody sergeant and the copper's nose and that copper that sniffs out a crime, can sniff out an issue. Just that penny drops or the light bulb moment. There's just something not quite right. I'm not happy that this person doesn't have an appropriate adult and should. (CO24-M Interview)*





# Decision-making: dissuasive factors

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## Solicitor as substitute:

*I would also argue that there are sometimes that once I know someone's having a solicitor, if I'm in a little bit of a grey area and I'm a little bit unsure and know that they're having a solicitor, sometimes that decision that they're fit for interview without an appropriate adult might be swayed by them having legal representation. (CO2-W Interview)*

**Refer to earlier in the guide regarding who cannot be an appropriate adult. The solicitor/legal representative does not perform the same functions as the AA. All suspects are entitled to a solicitor/legal representative. The AA is an additional entitlement for vulnerable suspects.**

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## Cost: Time and money

*When we bring in an appropriate adult, the person is paid for by the public purse and there's quite a cost involved in relation to it. Does this person need an appropriate adult in my opinion? If the answer to that is 'no' because it's very, very, very minor depression, in fact it's not even depression, they're just fed up, then I won't get an appropriate adult... The practicalities are, if we adhere absolutely strictly to what my interpretation of PACE is, we'd basically be getting an appropriate adult for every single person that comes in and the practicality of that would be to slow the system down tremendously and to cost the public an absolute fortune. (CO22-M Interview)*



AND



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## Advice of HCP, FME, AMHP (could also be persuasive)

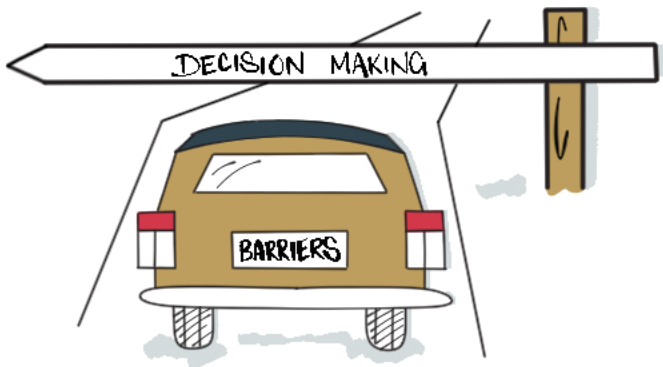
*Suspect is suffering from paranoia, personality disorder and depression and is referred to the HCP for an assessment. The HCP deems the suspect fit for interview but without an appropriate adult present. (Interaction 18-M)*

*The fella yesterday, although he wasn't interviewed... when he first came in with his mental health issues, you would probably think "He needs an appropriate adult". He was assessed by an [AMHP] and I asked if he needed one... and they said "No, although he has mental health issues, he clearly understands everything that's happening and everything around him". So he didn't need one. Normally, if I'm not sure, I'll put it over to them and take their advice on it. (CO11-W Interview)*



## A suspect's choice?

*It's either way and you say, "Do you want an appropriate adult?" and they say, 'No' ... if they're confident in themselves, who are we, 'There you are, this person you don't know, they're going to sit with you' ... 'I don't want this person in my interview. Don't know them, don't want them'. We've got to go with what these people want. You can't just force an appropriate adult on someone. (CO14-W Interview)*



# Decision-making: persuasive factors

## Requested by the solicitor

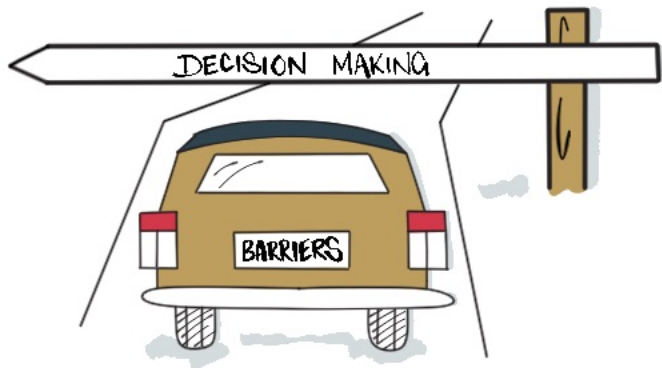
*If a solicitor says [that the suspect needs an appropriate adult because] there's always then going to be an issue at court. (CO10-W Interview)*

*Although: If... the solicitor flags it up saying, 'I think we do need an appropriate adult here', I say 'Well, your client's been assessed and it's deemed not necessary'. If I'm going to go over and above the head of the medical professional, it puts in jeopardy and queries their position within the organisation and justice system. If we're not going to be bound by the decision that they make, then why are they here? (CO13-W Interview)*

## Previous appropriate adult

*Some people, you just know, they've been in custody that many times, you just know... that they always have an appropriate adult. So you just get one because it's quicker to do it now rather than go right round the houses only to come back to the same answer. (CO9-W Interview)*

**BUT:** *I think that's a bit of a copout really, looking at previous records because you should, I think, base your decision on what you see in front of you at the time. And to me, if you ask a person, 'When you've been interviewed at the police station in the past, have you had an appropriate adult?', that's almost saying, 'I think you should have one' ... I'm not saying that I haven't done that myself but looking at the situation logically, if you're asking that question then clearly the question is going through your head that you suspect thatches person should have one... That's the reason why you're asking them if they had one in the past. And even if they say, 'No', that doesn't change the fact that you're looking at them.*



# Decision-making: persuasive factors

## Offence seriousness

*Because for a shop-theft, if we didn't have an appropriate adult present and they went to court and at court they said, 'Actually, I'm not admitting to that now. I wasn't very well and they didn't have an appropriate adult for me'. The consequence is a shop-theft that you lose at court. GBH, murder, obviously it's the serious end. That, I think, we would be so heavily criticised that why we didn't have an appropriate adult present for those offences... If it's at the higher end, you should have an appropriate adult. Just to safeguard, if not to negate any defence at court, but also to ensure that their needs are met whilst they're at the custody suite. (CO28-M Interview)*

## Benefit to the suspect

*It's all about making sure that we do it fairly, isn't it? If somebody's in custody and they're vulnerable, yes they might have committed a crime but if we're going to investigate that crime, we've got to be fair to everybody. So there's no point getting an interview done with somebody and the interview's not fair, that they feel pressurised in the interview, you know they haven't got any support. (CO9-W Interview)*



## Offence seriousness is important

The reason the offence seriousness is important is because...

- The likelihood of legal counsel (legal aid depends on means and merits tests. The merits test is linked with seriousness of the offence).
- The standard of legal assistance/amount of time spent on case **and therefore**
- The chance of breach detection **and thus**
- What is lost to the police is higher
- **BUT** also offence may be more complex and may require more of the suspect (and of the police in investigation).

**The problem here is that for the suspect it does matter whether the offence is one of shop theft or one of rape; if the suspect is vulnerable, he/she should get an AA.**



# The courts and accountability

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## The courts and accountability

- Breach of Code C cannot result in criminal or civil sanction (s 67 PACE).
- Breach can result in exclusion of evidence at trial (s 76 and 78 PACE) or a jury direction at Crown Court trial (s 77 PACE).
- However:
  - The case must reach trial - most cases do not get to trial.
  - Breach must be raised by counsel at trial. The issue here is that cuts to and restrictions on legal aid may mean that all aspects of the case do not receive the attention that they may well need.
  - Courts consider effect of breach not the fact that there was a breach.
  - Courts may condone police malpractice.

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## IOPC and accountability

- A complaint must be made - will a vulnerable detainee know to make a complaint? Or feel empowered/knowledgeable enough to do so? (IOPC have explored this issue in relation to individuals with mental health conditions)
- An analysis of IOPC (then IPCC) complaints in 2016 illustrated that no complaints were recorded for non-implementation of the AA safeguard. (one complaint mentioned non-implementation but this was not the reason for the complaint)
- Are the remedies sufficient?

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## What can ICVs do?

- To understand who provides AA services. This may be different depending on whether the suspect is a child or adult, and there may be 'restrictions' on the times an AA may be called out (e.g. AAs may not be available during the night).

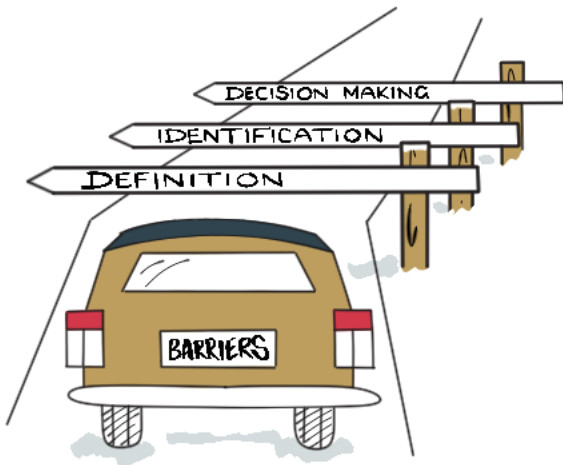
### For adults:

- Does the adult meet the Code C requirements of vulnerability?
- Do you think the adult might be vulnerable?
- Could you ask why the custody officer has chosen not to implement the safeguard?
  - Think about obstacles: officer doesn't consider the person to be vulnerable or 'vulnerable enough'; officer hasn't been able to identify vulnerability; officer doesn't consider the case serious enough/there is a solicitor present/the officer is concerned about delays in detention.
  - Think about what you have learnt and how this may enable you to challenge a decision.



## What can Scheme Managers/Co-ordinators do?

- Speak to ICVs: are they seeing lots of vulnerable adult suspects without an AA? Do they feel empowered to ask the custody officer why the AA was not called? What can you do to enable them to feel empowered?
- Speak to Inspectors (or Custody Managers): ask them about their implementation rates. Compare this with NAAN 'There to Help' rate (around 39% of adults should be given an AA). Ask the I/CM why this rate is low. Ask them to think of ways to improve this and keep lines of communication open to ensure that Is/CMs are treating this as an area for improvement and are taking steps to improve.
- Speak to each other: are some forces better than others at implementing the AA safeguard for adults? Is there something unique to that force which means this is the case? Could practices be changed in your force?



## Recap on main lessons

### Definition

- Custody officers often do not understand or consult PACE Code C.
- Custody officers may employ a restricted definition of vulnerability.
- Some suspects may be viewed as 'vulnerable' but the custody officer does not make the connection with the AA safeguard.

### Identification

- Custody officers may lack the skills, knowledge, training and tools to identify vulnerability.
- Custody officers may not always trust what suspects report and view some sources as more authoritative than others (FMEs, HCPs, AMHPs, fellow officers, custody record).
- **BUT there are often tools** at their disposal to identify vulnerability; it can be **what they choose to do with this information** that results in non-implementation.

### Decision-making

- Custody officers may defer to the HCP, or AMHP (they are not permitted to do so).
- Custody officers take into consideration offence type/seriousness, whether the case is going to get to court and have legal counsel, what the solicitor wants, whether a solicitor is present, whether obtaining an AA will lead to a 'delay', and the cost involved in paying an AA (although this should not concern an officer...).

# IMPROVING THE UPTAKE OF THE APPROPRIATE ADULT SAFEGUARD



## Get in touch

Please feel free to get in touch via twitter DM or email to let me know how your scheme is taking these lessons forward. I'm keen to find out more about any progress made in respect of improving the uptake of the appropriate adult safeguard for adult suspects in your scheme area

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## Further Resources

On the barriers to implementation:

Dehaghani, R. 2016. He's just not that vulnerable: exploring the implementation of the appropriate adult safeguard in police custody. Howard Journal of Crime and Justice 55(4), pp. 396-413. ([10.1111/hojo.12178](https://doi.org/10.1111/hojo.12178))

Dehaghani, R. 2019. Observations on PACE C safeguards and defining vulnerability. Learning the Lessons - Independent Office for Police Conduct 34, pp. 14-21.

On the 2018 changes to Code C (actual and proposed) and the 'functional' test:

Dehaghani, R. and Bath, C. 2019. Vulnerability and the appropriate adult safeguard: examining the definitional and threshold changes within PACE Code C. Criminal Law Review 3, pp. 213-232.

On the possibilities of using the Mental Health Act Code of Practice to inform the identification of vulnerability in adults:

Dehaghani, R. 2017. Custody officers, Code C and constructing vulnerability: implications for policy and practice. Policing 11(1), pp. 74-86. ([10.1093/police/paw024](https://doi.org/10.1093/police/paw024))

On the unsuitability of lawyers as 'appropriate adult replacements':

Dehaghani, R. and Newman, D. 2019. Can – and should – lawyers be considered 'appropriate' appropriate adults? Howard Journal of Crime and Justice 58(1), pp. 3-24. ([10.1111/hojo.12288](https://doi.org/10.1111/hojo.12288))

On the 'appropriateness' of the appropriate adult:

Dehaghani, R. 2020. Defining the "Appropriate" in "Appropriate Adult": restrictions and opportunities for reform. Criminal Law Review, pp. 1137-1155.

# IMPROVING THE UPTAKE OF THE APPROPRIATE ADULT SAFEGUARD

## Additional references:

Bean, P., and Nemitz, T. (1995). *Out of depth and out of sight*. Loughborough: University of Loughborough.

Holloway, C et al (2020) Exploring the autistic and police perspectives of the custody process through a participative walkthrough. 97 *Research in Developmental Disabilities*. <https://doi.org/10.1016/j.ridd.2019.103545>

Gudjonsson, G.H. (2016) Talk at NAAN Professional Development Day (Presentation Slides - Not Publicly Available)

Bath, C. et al (2015), The Home Secretary's Commission on Appropriate Adults: There to help: Ensuring provision of appropriate adults for mentally vulnerable adults detained or interviewed by police. National Appropriate Adult Network. Available at: <https://appropriateadult.org.uk/downloads/research>

Bath, C. (2019), There to Help 2: Ensuring provision of appropriate adults for vulnerable adults detained or interviewed by police: An update on progress 2013/14 to 2017/18. NAAN. Available at: <https://appropriateadult.org.uk/downloads/research>

Bath, C. and Dehaghani, R. (2020), *There to Help 3: The identification of vulnerable adult suspects and application of the appropriate adult safeguard in police investigations in 2018/19*. NAAN. Available at: <https://appropriateadult.org.uk/downloads/research>

Lord Bradley (2009), *The Bradley Report: Lord Bradley's review of people with mental health problems or learning disabilities in the criminal justice system*. London: Department of Health.

Fenner, S., Gudjonsson, G. and Clare, I. (2002) 'Understanding of the current police caution (England and Wales) among suspects in police detention' 12 (2) *Journal of Community and Applied Social Psychology* 83-93.