**The Role of the Appropriate Adult for Vulnerable Adults**

**Understanding the Role of an Appropriate Adult**

**Learner Guidance**

**User**





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**Part 1**

**Introduction to the Role of the AA**



The role of the appropriate adult (AA) was first introduced under the Police and Criminal Evidence Act 1984 (PACE) (Home Office, 1985a) and its accompanying Codes of Practice (Home Office 1985b). PACE was introduced in the wake of growing public concern over the detention, treatment and questioning of detained persons (DPs), particularly those identified as vulnerable: juveniles (any person under the age of 17) and adult DPs believed to be suffering from mental disorder or a learning disability. In an effort to strengthen the fairness and reliability of confessional evidence, PACE introduced a number of new procedures, including formalising the concept of the AA: an independent third party, called in by the police to provide special assistance to the vulnerable DP. The AA could be a relative, friend, guardian, mental health professional, volunteer or paid member of staff working within the voluntary, statutory or private sector.

The role of the AA is not set out in a single section in the Codes of Practice but is referred to where relevant to other issues. This makes it difficult to locate a clear definition of the role and responsibilities within the Codes themselves, however, the following outline is provided by the Home Office in their guide for appropriate adults:

“You have a positive and important role. You should not expect to be simply an observer of what happens at the police station.

You are there to ensure that the detained person for whom you are acting as appropriate adult understands what is happening to them and why. Your key roles and responsibilities are as follows:

* To support, advise and assist the detained person, particularly while they are being questioned.
* To observe whether the police are acting properly, fairly and with respect for the rights of the detained person. And to tell them if you think they are not.
* To assist with communication between the detained person and the police”

See Code C Annex E for further details.

The inclusion of the AA role in the PACE guidelines was an acknowledgement that convictions for vulnerable DPs risked being unsafe and unsatisfactory where existing guidelines for dealing with them were not fully understood or implemented.

Two cases illustrate the issues well:

An example is the case of Anthony Everett who confessed to 391 burglaries and thefts during interrogation by Essex police. He was charged and went to prison. Sometime later, after treatment for his mental health problem, he realised that he could not have been guilty of many of the offences as he had actually been in prison when most of them had been committed[[1]](#footnote-1).

# Structure of PACE 1984 and the Codes of Practice

The role of the AA was formalised in the Police and Criminal Evidence Act (PACE), 1984 and is therefore statutory (i.e. outlined in the law).

The Codes of Practice (revised Codes effective 1 January 2006, as amended July 2006 and January 2008) are separated into the following:

**Code A**: the exercise by police officers of statutory powers of stop and search.

**Code B**: the searching of premises by police officers and the seizure of property found by police officers on persons or premises.

**Code C**: the detention, treatment and questioning of persons by police officers.

**Code D**: the identification of persons by police officers.

**Code E**: the audio recording of interviews with suspects

**Code F**: the visual recording with sound of interviews with suspects.

**Code G**: the statutory power of arrest by police officers.

**Code H**: the detention, treatment and questioning by police officers of persons under section 41 and Schedule 8 to the Terrorism Act 2000.

**Annexes:** Each Code is followed by a number of annexes, for example, Code C, Annex E is a summary of provisions relating to ‘mentally disordered and mentally handicapped’ people.

**Notes for Guidance** are included in the Codes and are intended as guidance on the interpretation and application of the Codes and are not statutory.

**Most of the sections relevant to AAs are in Code C.**

Both DPs and AAs have the right to consult the Codes of Practice.

The Codes are revised frequently and clarity is sought where there may be ambiguity or room for AA schemes to interpret them differently.

A full copy of Code C can be viewed on the Home Office website.

**The Need to Protect Vulnerable Detained Persons (DPs)**

Juveniles and those who are mentally disordered or mentally vulnerable are considered at risk as they may:

1. have limited understanding of their legal rights
2. be incapable of understanding the significance of questions put to them or the implications of their replies
3. provide information which is unreliable, misleading or self-incriminating
4. make false confessions possibly for short term gain (e.g. being released from custody)

## Vulnerable Groups who require an AA (under PACE Codes[[2]](#footnote-2))

1. Juveniles (under 17)
2. Mentally vulnerable (terms used in PACE to include any person who is or is suspected to be suffering from a mental health problem and/or a learning disability)

The following may require some assistance at the police station:

* People who are deaf or hard of hearing
* People who are blind or seriously visually handicapped
* People who cannot read or write
* People who are unable to speak or have difficulty orally because of a speech impediment
* People who cannot understand English

This assistance may be provided by an AA, legal representative or other person. However, the role here is to provide the specific assistance needed, rather than the advice and support which is part of the AA role.

Interpreters should be called for any person with language difficulties. There is a national agreement concerning the use of interpreters and translators in the Criminal Justice System, issued by the Office of Criminal Justice Reform in 2007. The police should follow the guidelines outlined in this agreement. Interpreters should be registered with CACDP (Council for the Advancement of Communication with Deaf People).

**Who can Act as an AA?[[3]](#footnote-3)**

**‘In the case of:**

**a) a juvenile**

i) the parent, guardian or, if the juvenile is in local authority or voluntary organisation care, or is otherwise being looked after under the Children Act 1989, a person representing that authority or organisation;

ii) a social worker of a local authority social services department;

iii) failing these, some other responsible adult aged 18 or over who is not a police officer or employed by the police.

**b) a person who is mentally disordered or mentally vulnerable**:

i) a relative, guardian or other person responsible for their care or custody;

ii) someone experienced in dealing with mentally disordered or mentally vulnerable

people but who is not a police officer or employed by the police;

iii) failing these, some other responsible adult aged 18 or over who is not a police

officer or employed by the police.

###### Note 1D

In the case of people who are mentally disordered or otherwise mentally vulnerable, it may be more satisfactory if the appropriate adult is someone experienced or trained in their care rather than a relative lacking such qualifications. But if the detainee prefers a relative to a better qualified stranger or objects to a particular person their wishes should, if practicable, be respected.’

## Who can not Act as an AA?[[4]](#footnote-4)

**‘Note 1B**

A person, including a parent or guardian, should not be an appropriate adult if they:

* are
* suspected of involvement in the offence
* the victim
* a witness
* involved in the investigation
* Received admissions prior to attending to act as the appropriate adult.

**Note 1F**

A solicitor or independent custody visitor (formerly a lay visitor) present at the police station in that capacity may not be the appropriate adult.’

In addition to the list in Code C, there are others who cannot act as an AA.

As already indicated police officers or those employed by the police cannot be AAs (except as a relative). There needs to be actual and perceived independence. A parent who is estranged from the juvenile should not be the AA if the juvenile objects.

The police have the final say, and can exclude anyone they consider ‘unfit’ for any reason. They should, however, give the reason.

# Part 2

# Overview of Learning Disability and Learning Difficulty

It is important to identify the difference between, and not confuse, learning disabilities with mental illness.

**Learning difficulty**

Under the Education Act 1986 children have a learning difficulty if they have a significantly greater difficulty in learning than the majority of children of their age or they have a disability which prevents or hinders them from making use of educational facilities.

In a similar vein, the definition in the Learning and Skills Act 2000 defines people as having learning difficulties if they have a significantly greater difficulty learning than the majority of people their age, or have a disability which prevents or hinders them from making use of the educational facilities generally provided by institutions providing post-16 education or training.

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| **Dyslexia** | People with dyslexia may have had an early history of delayed language development. They may find it hard to learn the alphabet, to learn letter-sound associations, and to form letters properly when they start to write, and progress with reading and writing may be very slow. Some people with dyslexia may have more difficulty with numbers and may find it difficult to calculate time or money for example. People with dyslexia may suffer low self-esteem. Dyslexia has no relationship to underlying intelligence. They may find that reading material printed on coloured paper and in ‘Comic Sans’ or other clear sans serif fonts may be better for them. ‘Range left’ type format may be better than ‘justified’ paragraph as the ragged right hand edge helps them follow the direction of the text and reduces the effect of the gaps between the words appearing as white rivers in the text. |
| **Dyspraxia** | This condition affects around 2% of the British population severely. Males are four times more likely to have Dyspraxia than females. It involves the impairment of movement but it can also involve problems with language, perception, thought and organisation. |
| **Dyscalculia** | It is estimated that between 3-6% of the British population have Dyscalculia. The condition causes an inability to understand simple number concepts and to learn basic number skills. It can mean difficulties when learning number based facts and procedures, including understanding finances |
| **Attention Deficit Hyperactivity Disorder (ADHD)** | ADHD affects between 3-9% of school-aged children and young people. Although it is more common in childhood the condition can continue into adulthood  Signs of ADHD include:-   * not paying attention to things for very long * being restless or impulsive * disorganised * blurting out inappropriate comments * interrupting a lot |

**Learning disability**

The Government’s working definition of a person with a learning disability is someone who has:

“a significantly reduced ability to understand new or complex information, to learn new skills (impaired intelligence), and a reduced ability to cope independently (impaired social functioning), and which started before adulthood, with a lasting effect on development.” Baroness Blackstone, House of Lords, February 2001

Learning disability is defined for the purpose of travel concessions in the Greater London Authority Act 1999 and in the Transport Act 1985 (as amended by the Transport Act 2000) as:

*“a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning.”*

In the Social Security (Incapacity for Work) (General) Regulations 1995 and the Social Security (Incapacity Benefit) (Transitional) Regulations 1995, learning disability is defined as:

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| **Degree** | **IQ** | **Mental Age** | **Conclusion** |
| Mild | 50-69 | 9-12 years | Likely to result in some learning difficulties in school. Many adults will be able to work and maintain good social relationships and contribute to society. |
| Moderate | 35-49 | 6-12 years | Likely to result in marked development delays in childhood but most can learn to develop some degree of independence in self-care and acquire adequate communication and academic skills. Adults will need varying degrees of support to live in the community. |
| Severe | 20-34 | 3-6 years | Likely to result in continuous need of support. |
| Profound | Under 20 | Under 3 years | Results in severe limitation in self-care, continence, communication and mobility. |

*“a condition which results from the arrested or incomplete physical development to the brain, and which involves severe impairment of intelligence and social functioning.”*

It is believed that most of the DPs identified as having a learning disability that AAs will meet in custody centres, will have this to a mild to moderate degree in accordance with the table.

A learning disability is not a mental disorder. People with learning disabilities are no more likely to have a mental disorder than any other section of the population. Learning disabilities are generally recognised as lifelong conditions caused by incomplete development of, or damage to, the brain and nervous system, before, during or shortly after birth, resulting in learning and performance limitations and social disadvantage.

Unlike an illness, such a condition cannot be reversed or cured because it results from damage to or malformation of the brain or nervous system before, during or shortly after birth, although much can be achieved to improve learning ability and performance.

It is estimated that two in every 100 people in the United Kingdom have a learning disability, the majority of these at the mild end of the scale with some 10-15% of this total having a severe disability. People with a severe learning disability who also exhibit challenging behaviour make up a small proportion of this second number.

Learning disabilities affect people from all social classes and all races. The estimate of 2% of the population – over 1 million people – is not based on any centralised data and includes people with very mild impairment. It is possible that less than half of these people will ever have been identified by educational or other authorities as suffering impaired intellectual ability.

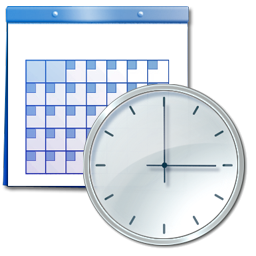
Recent research from the Prison Reform Trust[[5]](#footnote-5) shows that there are a significant number of people with learning disabilities or difficulties in prison whose problems were not identified at any stage through the Criminal Justice process.

N.B. Although this Module is about adults, these points may equally apply to juveniles.

# Communication Issues for those who have Mild/Moderate Learning Disabilities or Difficulties[[6]](#footnote-6)

These may arise from the nature of the impairment, from the social stigma associated with labels about the learning disability or from previous social relationships.

**Memory:** People with a learning disability may not have the cognitive powers of memory shared by others. Some may be reluctant to say they are unable to remember and may make up events.



**Times and dates:** These are difficult concepts to manipulate and many experience problems with them even when they are able to tell the time.

**Frequency:** This presents similar difficulties to that of time. Vague concepts relating to ‘often’, ‘a lot’ may be used but there may not be a shared meaning.

**Immediacy:** People with learning disabilities may appear to want to do something suggested to them ‘now’. This may be because they have been let down in the past or may be worried that they will forget if memory is a problem.

**Giving the right answer:** People with learning disabilities may have been in situations where they have ‘failed’ repeatedly. Some may have become very socially skilled at ‘passing’ and will give an answer they perceive to be ‘correct’.

**Safe answers:** If people do not know the ‘correct’ answer they may give bland responses e.g. ‘I don’t mind, ‘it’s alright’.

**Reluctance to offer criticism:** There is a particularly strong tendency to be reluctant to criticise any arena or setting in which the person is situated.

**Tendency to acquiesce:** People are more likely to answer ‘yes’ to a question, where the answer is unknown, than ‘no’.

**Recency:** Given a choice of two options people will sometimes repeat the last choice offered if the question is not understood.

**Concrete thinking:** Some people may be unable to deal with complex concepts and language and may take everything said literally, including axioms in common speech.

**Level of language:** People may be unable to work with complex language construction as well as more advanced vocabulary.

**Different frame of reference:** People with a learning disability may have experienced very different life events or have contended with different attitudes from the general public than professionals involved in any interview with them. This can make communication particularly challenging.

# Overview of Mental Disorder/Vulnerability

Mental illness is a social and intellectual construction of perceived suffering. It is known in different forms throughout the world. There are enormous differences in the way mental illnesses are observed, socially accepted and treated. In the western world the dominant model of mental disorder is the psychiatric or biomedical model. Within this framework ‘illness’ can be seen as a state which is outside the statistical norm, in which people feel, behave or experience things differently. However, practitioners may have markedly different views about what constitutes a diagnosis.

Under this model mental illness is far more common than many people may assume with about one in four of the population experiencing a mental health problem in their lifetime. These states encompass a broad range of experience from mild feelings of unease to florid psychotic states where the sufferer has lost touch with an objective reality. It is worth remembering that only about 20% of those who experience mental illness suffer from acute or severe forms.

These groups of men, women and children can be amongst the most marginalized, misunderstood and discriminated-against members of society. Mental illness sufferers are often seen as odd, dangerous, ‘polluted’ or wrong. Implicit in the term is the sense of difference. Individuals can be seen or described solely as their diagnosis. Often people can say that ‘he is a schizophrenic’. Would we say that ‘someone is a cancer’ or ‘someone has a diagnosis of cancer’?

Causes of mental illness are often complex and misunderstood. They can include biological factors (genetic and substance misuse), responses by the individual to social, environmental or familial stressors and trauma to the brain following an injury.

Traditionally, in psychiatric definitions, the diagnoses are broken into groups; Psychotic disorders; Neurotic disorders; Organic disorders; Personality disorders.

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| **Psychotic Disorders** | These are categorised by a loss of contact with an objective reality, personality change and impaired social functioning. Experiences would include: auditory hallucinations (commonly described as hearing voices), visual hallucinations, feelings of paranoia, persecution and thought disorders. Delusional belief systems are also commonly reported. These can take many forms but common examples include thought insertion and withdrawal (often focusing on electrical equipment) and delusions of reference where the sufferer can believe that the media are talking about them. Also observed are social withdrawal, passivity and poverty of speech and mood. Diagnoses can include: schizophrenia, schizo-affective disorder and delusional disorder. |
| **Organic Disorders** | **Organic Disorders**  These have an underlying medical reason or a demonstrable pathology of the brain.  Classification is in two groups:   1. Chronic impairment 2. Acute generalised impairment (delirium)   Experiences in both groups would include confusion, memory and communication problems and mood changes. Diagnoses can include: Alzheimer’s and dementia. |

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| **Neurotic Disorders** | In this type of disorder reality testing is intact unlike in psychotic states described above. There are two main types:  **1. Anxiety Disorders:**  Generalised Anxiety Disorder  Panic Disorders  Phobic Disorders  Obsessive Compulsive Disorder (OCD)  Post-Traumatic Stress Disorder  Eating Disorders  **2. Mood Disorders:**  Mood disorders concern the individual’s emotional state. This ranges from an all-pervading sense of hopelessness in depression, to mania at the other end of the emotional spectrum when an individual experiences an abnormally elevated mood.  Diagnoses can include: depression (both reactive and clinical) and bi-polar affective disorder (previously known as manic depression). Bi-polar disorder is a condition which involves a swing of mood from depression to mania and back. This is considered as a major mental illness which may be very disabling. In many cases it is treatable. Many people can manage this illness by the use of the drug Lithium, by managing stress and recognising early symptoms. |
| **Personality Disorder** | These historically contentious and difficult to define aspects of mental disorder are commonly described as ‘deeply ingrained mal-adaptive patterns of behaviour that are formed in childhood or adolescence.’ These rigid ways of thinking, feeling and relating cause significant difficulties in that person’s life and unless successfully treated remain throughout adult life.  Whilst there are a number of recognised personality disorders, the likelihood is that for AAs the two most commonly found are likely to be:  **Anti-Social -** Characterised by behaviour that is disruptive and harmful to others, traits include recklessness about the safety of the individual or others, a lack of remorse, impulsivity, irritability and aggressiveness.  **Borderline** -The term ‘borderline’ is somewhat misleading. Originally the condition was described as such because it was thought to be on the cusp of neurosis and psychosis.  This disorder usually involves very unstable personal relationships, poor self-image, polarised thinking, mood swings and a disturbed sense of self. |
| **Autism and Asperger’s Syndrome** | Autism has a spectrum of conditions. Asperger’s is part of the Autism Spectrum Condition (ASC). People with Autism look the same as everybody else but they sometimes behave in strange and puzzling ways. It is estimated that 1 in 100 children are somewhere on the ASC spectrum. Autism covers a wide spectrum, from those living a near normal life in the community to those needing a constant, very high degree of support. Asperger’s Syndrome is a condition which affects the way a person relates to and communicates with others. It shares a number of the traits of classic autism such as difficulty in communication, difficulty with social relationships and inflexibility of imagination. |

**Dual Diagnosis**: It should be noted that some people may have a dual diagnosis, which means that they have been diagnosed as having more than one condition at the same time. This could be various combinations, for example that they have a learning disability and have become mentally ill, or have a substance misuse problem and also are experiencing mental illness.

**Important Terms**

**Approved Mental Health Professional (AMHP):** Under the Mental Health Act 2007, this role has replaced the approved social worker’s (ASW’s) role. The functions are broadly similar in providing a non-medical perspective to assessments under the Mental Health Act 1983.

‘**Mental Disorder’:** Specifically defined, and updated from the Mental Health Act 1983, in the Mental Health Act 2007 as ‘any disorder or disability of the mind.’ Note that a learning disability is not included within these terms unless it accompanies ‘abnormally aggressive or seriously irresponsible conduct’ by the individual. The term has exactly the same meaning in the PACE Codes of Practice.

‘**Mentally Vulnerable**’: Used in the PACE Codes of Practice this is defined in Notes for guidance in Code C 1G as ‘any detainee, who because of their mental state or capacity, may not understand the significance of what is said, or questions or of their replies.’

It is important for AAs to be aware that a detained person (DP) could be temporarily vulnerable because of the circumstances surrounding their arrest, for example if someone had been injured in a car accident or they had been accused of a particularly distressing or serious crime.

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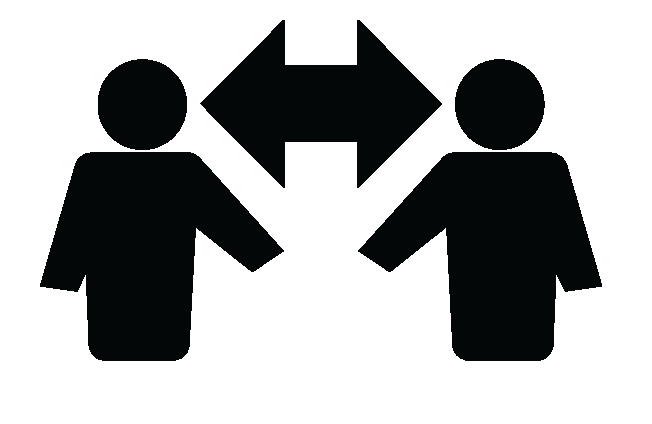
**Medication:** Some people with mental health problems will be taking prescribed medication which may have side effects. Some of the most common side effects are: sedation or drowsiness; movement disorders; heart problems; digestive problems and nausea; confusion and memory loss; fatigue.

**Communication Issues for those who are Mentally Disordered/Vulnerable**

Communication issues may arise as a result of the condition or syndrome itself or from any medication taken to treat it.

Some of those with **Autism Spectrum Condition (ASC)** may be sensitive to strong light, or loud noise. Others may have a very high pain threshold and may demonstrate an unusual response to pain, including laughter, humming, singing, removing clothing. Likewise they may be very sensitive to pain and any touching of the skin can prove extremely painful.

A person with **ASC** can easily be overloaded with sensory information in busy places such as custody charge rooms or where there are lots of people. The way this sensory overload is dealt with depends on the individual. It can trigger a fight or flight reaction. Some may rock, tap objects, talk incessantly, pace, ask repetitive questions etc., whereas others might withdraw, place their fingers in their ears etc. These behaviours help calm the individual so it is important not to stop these behaviours unless necessary, as this may lead to more challenging behaviour.

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**Mental health problems** can cause significant difficulties both in custody and interview settings and the appropriate adult should be mindful of this and respond as necessary. Any diagnosis may well be unknown to the AA but often responding sensitively and appropriately to observed behaviour can aid communication.

Obvious examples might include someone with a **depressive illness** being unable to provide anything other than cursory answers or having difficulty concentrating. At the other extreme a person in a manic phase of **bi polar affective disorder**, or one of the **mood disorders associated with mania**, may come across as verbose and provide a wealth of information that is not necessarily relevant. As such there could be an increased risk of self-incrimination.

Due to their nature the **psychotic disorders** can prove the most disabling to effective communication. Whilst at times it may be obvious when someone is floridly unwell that is not always the case. Long pauses before responding to a question, inappropriate answers, laughing out of turn are often indicators that the individual is responding to some other stimuli than an objective reality. If the AA is comfortable, and there are no cultural or religious bars, then touch can be a very grounding action.



Aside from the mental health problem itself, some **medications** can cause drowsiness or problems with concentration.Often this will mean that questions need to be repeated or clarified. More breaks during the interview may also be necessary. The AA may need to check that the DP has access to any medication that he or she should be taking regularly.

Most DPs who are mentally vulnerable are likely to be even more anxious when arrested and confined in custody. Facilitating good communication may help to prevent self-harm or other behaviour that could have negative consequences for the DP.

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| If an AA is particularly concerned about the DP’s mental state they should make the custody officer aware of this concern, and consider suggesting a medical or Mental Health Act assessment. This is especially important if the DP appears to have any signs of psychosis. If the AA feels the situation requires a level of knowledge or experience that is beyond them, they should not hesitate to seek guidance from their manager/scheme coordinator, considering at all times the best interests of the DP and the justice process. |

# The Legal Framework

**The Mental Health Act 1983 (As amended by the Mental Health Act 2007)**

The Mental Health Act 1983 is the legislation that describes the formal assessment, detention, care and rights of people believed to be mentally disordered. It is divided into ten parts with each being split into numbered paragraphs or groups of paragraphs. These are known as ‘sections’.

It is not thought that intimate knowledge about the Act is needed by anyone acting in the AA role. However, for those assisting adults that are deemed vulnerable under PACE, some basic knowledge is likely to be useful.

A small number of professionals are identified in the application of the Act. The ones that AAs are most likely to have contact with are:

**Approved Mental Health Professionals (AMHPs):** Under the Mental Health Act 2007, this role has replaced the approved social worker’s (ASW’s) role. The functions are broadly similar in providing a non-medical perspective to assessments under the Mental Health Act 1983.

**GPs and Doctors approved under section 12 of the Act:** Section 12 Doctors are approved by the Secretary of State for Health and are identified as doctors who have "special experience in the diagnosis or treatment of mental disorder". These are often psychiatrists or other Doctors who have been certified by the Department of Health. Forensic Physicians can be and often are (but do not have to be) Section 12 Doctors.

These professionals would complete ‘mental health assessments’ under section 2 of the Act for individuals who are seen to have a ‘mental disorder’. Each professional would complete a detailed assessment of the person’s mental state and make recommendations as to whether that person should be detained in hospital. If any of the professionals feels that there is not enough evidence to detain someone then they cannot be admitted to a hospital. All assessments need to be completed by two medical professionals and an AMHP.

Some relevant Sections of the Mental Health Act 1983**:**

***SECTION 2: Admission for Assessment (28 days) Not Renewable:*** The individual suffers from mental disorder and this is of a nature that merits such an admission (up to 28 days) and they have to be detained for their own health, or safety or the protection of others Normally the AMHP makes the application and two medical recommendations are required. One must be from a Section 12 approved practitioner.

***SECTION 3: Admission for Treatment (6 months) Renewable:*** As previous section. Two medical recommendations with an AMHP application.

**SECTION 136: *Mentally disordered persons found in public places:*** A police officer who finds someone who appears to be suffering from a mental disorder in a public place, or where they have access, can remove them to a place of safety if that person

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| Appears to be in need of care and control | **AND** | They think that it is necessary to do so in the person’s; interest or for the protection of others |

A police station is a recognised place of safety where they can be held for an assessment for up to 72 hours.

The Mental Health Act does not affect any aspect of the role of the AA as laid out in the PACE Codes. However the investigative process could be delayed if an assessment under the Mental Health Act is required. Under these circumstances the Police can only detain the person for 24 hours from the start of the PACE clock as the above sections cannot be applied retrospectively. (The 24 hour period can be extended by the police and subsequently by a court/magistrate in some circumstances.)

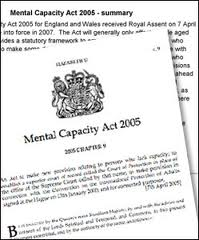
“The custody officer must make sure a person receives appropriate clinical attention as soon as reasonably practicable if the person appears to be suffering from a mental disorder or in urgent cases immediately call the nearest health care professional or an ambulance. It is not intended these provisions delay the transfer of a detainee to a place of safety under the Mental Health Act 1983, section 136 if that is applicable. If an assessment under that Act is to take place at a police station, the custody officer must consider whether an appropriate health care professional should be called to conduct an initial clinical check on the detainee. See *paragraph 9.5* and *9.6*

It is imperative a mentally disordered or otherwise mentally vulnerable person detained under the Mental Health Act 1983, section 136 be assessed as soon as possible. If that assessment is to take place at the police station, an approved social worker and registered medical practitioner shall be called to the station as soon as possible in order to interview and examine the detainee. Once the detainee has been interviewed, examined and suitable arrangements been made for their treatment or care, they can no longer be detained under section 136. A detainee should be immediately discharged from detention if a registered medical practitioner having examined them, concludes they are not mentally disordered within the meaning of the Act. See *paragraph 3.16*”

PACE – ANNEX E – 6 & 7

**The Mental Capacity Act 2005**

The **Mental Capacity Act (MCA)** provides protection and empowerment for anyone aged 16 or over who may lack capacity to make decisions for themselves. It also provides safeguards for people who look after or care for (whether in a professional capacity or more generally) a person who lacks capacity. The legislation provides a framework for professionals and others who have to make decisions that will affect the care of that person. It consolidates the common law position; it focuses minds; it provides a statutory process for reviewing capacity and acting in someone’s best interests but it does not significantly alter or affect the role of the AA. Set out in Section 1 of the Act are five underlying principles:



1. A presumption of capacity – everyone is assumed to have the right to make their own decisions and also to hold capacity to inform those choices unless it is proved otherwise.
2. Individuals being supported to make their own decisions – all practical help must be provided before that person is considered to not to be able to make their own decisions.
3. Unwise decisions – just because someone makes what might appear to be an unwise decision does not necessarily mean that they lack capacity.
4. Best interests – an act done or decision made for someone under the Act must be in their best interests.
5. Less restrictive option – anything done for or on behalf of a person who lacks capacity should be the least restrictive of their basic rights and freedoms.

The Mental Capacity Act Code of Practice applies to anyone:

* Acting in a professional capacity for, or in relation to, a person who lacks capacity
* Being paid for acts for or in relation to a person who lacks capacity.

However, the Act itself applies more generally to everyone who looks after, or cares for, someone who lacks capacity to make particular decisions for themselves; including family or other carers.

**How is Capacity Defined?**

“For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.” “It does not matter whether the impairment or disturbance is permanent or temporary.”

(Section 2)

A person is unable to make a decision for her/himself if s/he is unable:

* To understand the information relevant to the decision
* To retain that information
* To use or weigh that information as part of the process of making the decision, or
* To communicate his/her decision.

(‘Information’ includes information about the reasonably foreseeable consequences of either deciding one way or the other, or of failing to make the decision.)

**What does this mean for the AA?**

Most of the DPs identified as ‘mentally vulnerable’ will not lack capacity as defined by the Act. However, this does not mean that they do not need an AA or that they have the right to refuse to have an AA present when they are being detained and interviewed by the police.

However, the principles of the Act, that a professional or carer should always act in the ‘best interests’ of the person lacking capacity are very similar to the principles underlying the AA role. The AA should always facilitate communication and seek to ensure that a DP understands the process and procedures in the police station and is aware of the importance of getting legal advice. They should be helped, as far as possible, to make informed decisions for themselves. If the AA has doubts about the DP’s capacity as defined in the Act they should make the custody officer aware of this and suggest further professional assessment.

**Mental Capacity and Fitness for Interview**

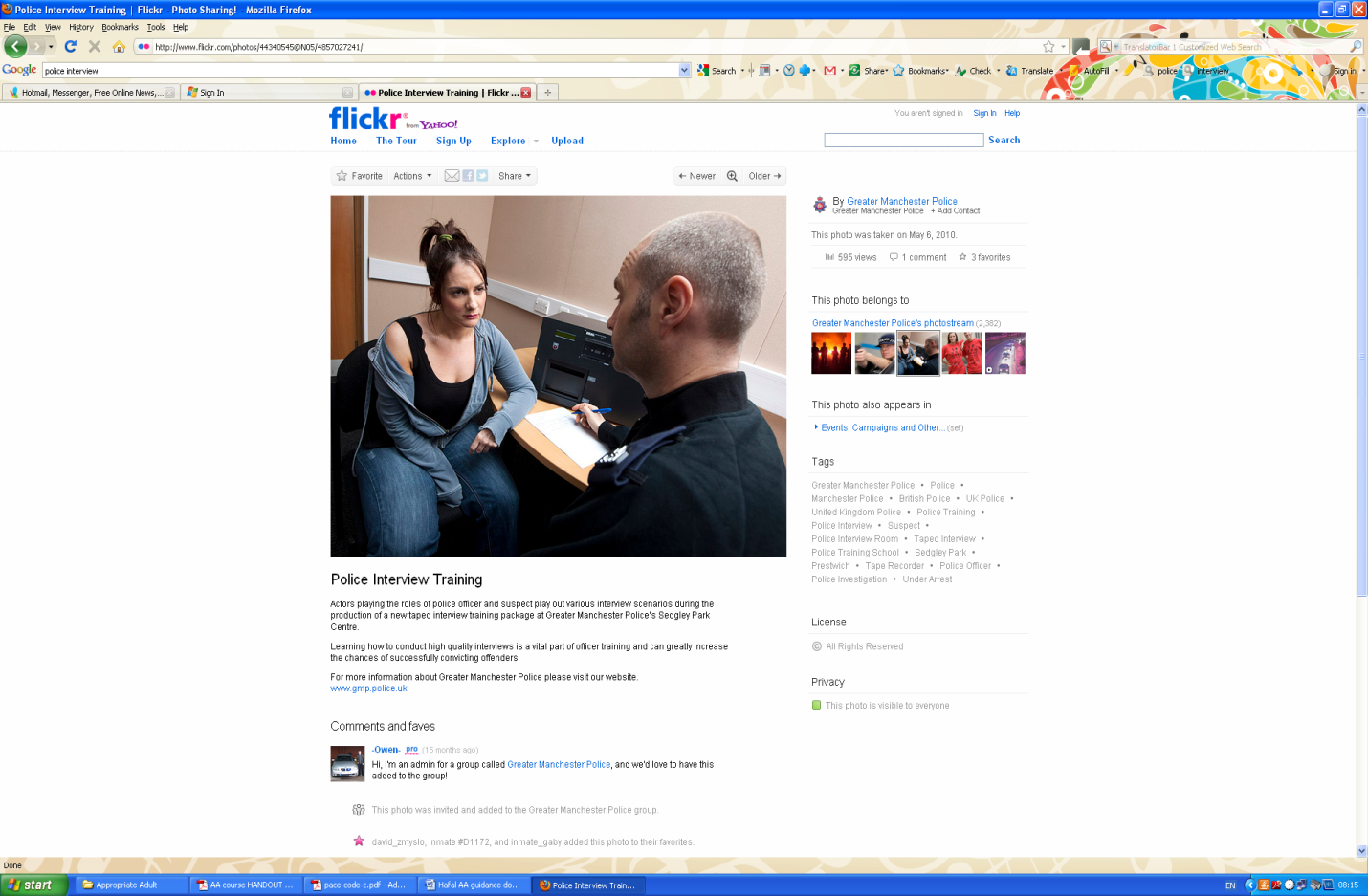
The PACE Codes of Practice (Annex G) explain that someone may be at risk if it is considered that:

(a) Conducting the interview could significantly harm the detainee’s physical or mental state;

(b) Anything the detainee says in the interview about their involvement or suspected involvement in the offence about which they are being interviewed might be considered unreliable in subsequent court proceedings because of their physical or mental state.

In assessing whether the detainee should be interviewed, the following must be considered:

(a) how the detainee’s physical or mental state might affect their ability to understand the nature and purpose of the interview, to comprehend what is being asked and to appreciate the significance of any answers given and make rational decisions about whether they want to say anything;



(b) The extent to which the detainee’s replies may be affected by their physical or mental condition rather than representing a rational and accurate explanation of their involvement in the offence;

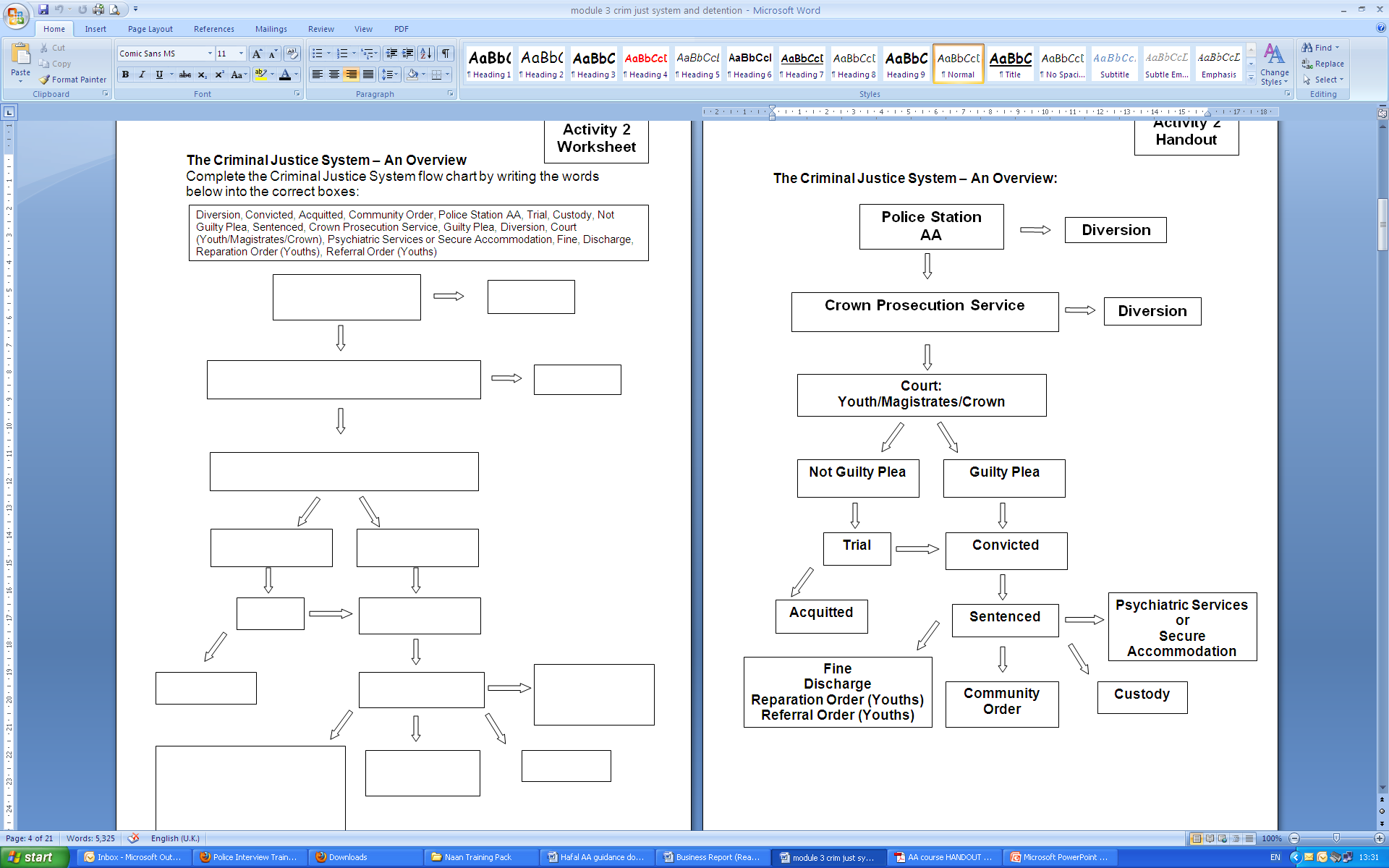
(c) How the nature of the interview, which could include particularly probing questions, might affect the detainee.

If the AA thinks that the DP lacks capacity to understand the nature and purpose of the interview, to comprehend what is being asked and to appreciate the significance of their answers or to make a rational decision about whether they want to answer the questions, then these concerns should be put to the custody officer and noted on the custody record. The FME or healthcare professional may need to be called. It is recommended that legal advice is sought if a solicitor is not already present. If an interview does take place in spite of the AA’s concerns then the AA may want to put their concerns on tape at the start of the interview.

Remember that as a last resort the AA can decide not to continue. The interview cannot proceed without their presence. However, the police may be able to find another person to act as an AA who may be more compliant. The decision to withdraw is a serious one and the manager/scheme co-ordinator should be consulted before such a decision is made.

**Part 3**

**The Criminal Justice System and Custody procedures**

****

Adult cases are heard in the adult magistrate’s court or Crown Court. Adults have the right to elect Crown Court trial in most cases. Offenders are dealt with by the probation service.

Full Adults – Aged 22+ - Full criminal powers apply; Prison terms served in adult prisons run by Her Majesty’s Prison Service (HMP)

Young Adult – Aged 18 – 21 – Some limitations on court and sentencing powers; Prison terms served in Young Offenders Institutes (YOI) or the YOI wings of an adult prison

# Brief Summary of the Court System in England and Wales

###### **Youth Court**

Deals with all young people aged 10 years to 17 years. If the offence is a serious one, it can be committed to Crown Court and dealt with there.

###### **Magistrates Court**

###### Deals with adults for less serious crimes, as well as some domestic and civil cases.

###### **Crown Court**

###### Deals with both adults and youths for more serious criminal matters.

###### **County Court:**

###### Hears most civil disputes while some difficult or specialised cases are dealt with in the High Court.

**Family Court:**

Deals with civil and welfare cases. Deals with care proceedings, families and welfare cases involving children.

###### **The High Court**

Hears the more complicated, substantial and more important civil cases.

###### **Court of Appeal**

There are two divisions to the Court of Appeal:

* Criminal Division, which hears appeals in criminal cases
* Civil Division, which hears appeals in civil cases

###### **House of Lords**

This is the final appeal court. It hears appeals on points of law of general public importance.

There are also other courts that do not deal with crime or civil matters e.g. Coroners Court and Ecclesiastical Courts.

# Sequence of Procedures at the Police Station

All actions and procedures listed below can happen. However, they will not all always happen. Please note that these procedures may not occur in the order listed.

* Arrested
* Conveyed to Police Station
* Booked into Custody
* Placed in cell
* Call to Solicitor/legal representative
* Call for Appropriate Adult
* Interview
* Decision (to release or charge)
* Fingerprint
* Photograph
* DNA
* Searches
* SmartWater
* Footwear
* Disposal
* Charge (bail or refuse bail)
* Bail (CPS advice, CPS charging decision or further police enquiries)
* Fixed Penalty Ticket
* Report
* Caution (adults only i.e. 18 and over)
* Reprimand/Final warning (Youths under 18)
* Conditional Caution (18 and over)
* No Further Action (NFA)

# Currently the term juvenile under PACE covers those up to and including age 16, while for most other legislation (including the Act that introduced reprimands and final warnings) the term ‘youths’ covers those up to and including 17 year olds. At the end of 2008, a PACE Review suggested changing the definition of juvenile to include 17 year olds. If and when this change happens it will remove a long standing anomaly in the CJS.

# Please note procedures and disposal options may change.

# The Role of Others at the Police Station

**Custody Officer/Sergeant:**

The custody officer must be the rank of sergeant or above and is responsible for the welfare of those in custody (ensuring for example that there is decent ventilation and light, that the person gets properly fed and that nothing improper occurs (PACE s39 and Code C s8 cover this in detail). The custody officer is not involved in the investigation of the offence but can be called to court to give evidence about what happened in the custody suite. The custody officer keeps a full record of the DP’s time at the police station and decides what happens to them at the end of the investigation having spoken with the officer in the case. They will take into account representations from the DP’s solicitor/legal representative and the AA.

###### Role according to PACE and the Codes of Practice

1. To decide whether or not there are any grounds for detaining a person, record this in writing and inform the person of these grounds (PACE s37). Detention is usually authorised on the grounds that it is necessary to secure or preserve evidence or to obtain evidence by questioning.
2. To keep the custody record for each detainee (Code C 2.1, 2.3)
3. To ensure that the suspect is advised of rights (both verbally and in writing, and including notice of entitlements) (PACE s58, Code C3.1, 3.2 and s6)
4. To ensure that the police doctor (F.M.E.) is contacted where necessary (Code C 9)
5. To ensure that an AA is contacted where necessary (Code C 3.15)
6. To make decision whether suspect is charged when presented with the evidence by the investigating officer (PACE s37(7), Code C 16.1)
7. To make decision after charge whether to release suspect on bail (with or without conditions) or to detain (PACE s38).

**Duty Inspector:**

This officer is responsible for the general management and running of the police station and in many cases the custody centre. They have many responsibilities under PACE and the Codes of Practice. These include:

1. Regularly reviewing the grounds of a DP’s detention and authorising its continuation. As part of this process he/she will listen to and take into account any representations made by the DP, their solicitor/legal representative and AA (if available at the time).
2. Authorising certain searches of DPs and their property.
3. Authorising the withholding of certain rights from a DP, including the right to have someone informed of their arrest.
4. Authorising the taking of certain samples in specific circumstances.
5. Dealing with any formal complaints regarding police officers/staff behaviour.

**Superintendent:**

The Superintendent is responsible for authorising the detention of a DP beyond 24 hours and up to a maximum of 36 hours. When considering such an authorisation the Superintendent will listen to, and take into account, any representations made by the DP, their solicitor/legal representative and the AA (if available at the time). A Superintendent may only authorise extended detention in cases where the offence is an indictable offence, he/she is satisfied that the investigation is being conducted expeditiously and diligently and further detention is necessary.

Additionally a Superintendent will act as arbiter in any case where an officer, more senior to the custody officer, challenges a decision made by the custody officer.

**Detention Officer:**

Can be police officers but often are civilians employed by the police. They work under the custody officer and carry out their instructions. They may also be called to give evidence in court

**Investigating Officer/Officer in the Case:**

The investigating officer is responsible for investigating the alleged crime and is often, but not always, the arresting officer. They collect evidence to determine whether a prosecution can proceed. They would usually conduct the interview with the DP and should not speak to the DP except in your presence. The investigating officer is not responsible for the conditions that a DP is kept in or for their treatment in the custody suite, unless the suspect has to leave the custody centre as part of the investigation, in which case they are temporarily under the supervision of the investigating officer, e.g. for a house search.

###### Role during a PACE interview according to Codes of Practice

1. Inform suspect that interview is being recorded
2. Give their name, rank and number and introduce everybody in the interview room (Code C 12.7)
3. Caution the suspect in the presence of the AA
4. Good practice to repeat reason for arrest, purpose of interview. The suspect must also be reminded of his/her right to free legal advice (Code C 11.2)
5. Inform the AA of their role during the interview (Code C 11.17)
6. At conclusion of interview, offer suspect opportunity to clarify and/or add to anything that has been said
7. To give suspect notice explaining what will happen to recordings following interview (See form TR3 4/95)

###### **Solicitor/Legal Representative:**

###### Any DP is entitled to consult with a solicitor/legal representative privately either in person, in writing or by telephone, at any time whilst in custody (PACE s58, Code C s6). There are a few exceptions to this (see Code C, Annex B). It is the solicitor/legal representative’s job to represent their client’s interests and to protect their basic and legal rights, ensuring that all the correct legal procedures are followed by the police involved in the case. The solicitor can be the person’s own solicitor, if they have one and they can be contacted, or failing this, a Duty Solicitor Scheme operates at all police stations, providing a free service. The DP and solicitor/legal representative can meet privately without an AA present.

###### **Forensic Physician or Healthcare Professional:**

###### Forensic physicians are doctors (including GPs) who are employed by the police to assess people in police detention. Healthcare professionals are nurses/paramedics.

The PACE Codes of Practice state that the custody officer must immediately call the police healthcare professional if a person brought to the police station or already detained there:

a) appears to be suffering from physical illness or a mental disorder; or

b) is injured; or

c) does not show signs of sensibility or awareness; or

d) fails to respond normally to questions or conversation (other than through drunkenness alone); or

e) otherwise appears to need medical attention. (Code C, 9. Also see Code C, Notes 9A; 9B and 9C)

If an assessment under the Mental Health Act 1983 is to take place the police have discretion not to call the police healthcare professional so long as the assessment can be undertaken without delay.

**Approved Mental Health Professional (AMHP):**

Under the Mental Health Act 2007, this role has replaced the approved social worker’s role. The functions are broadly similar in providing a non-medical perspective to assessments under the Mental Health Act 1983.

# The Call to the AA

**Making the call**

The Custody Sergeant will make the decision to call the Appropriate Adult if they suspect that a person has mental health problems and/or learning disabilities.

They have no formal training in this and will be relying on their past experience and the information they have at that moment about the person in custody.

# They will take into account the conduct of the prisoner, their responses and observations of behaviours etc.

“If an officer has any suspicion, or is told in good faith, that a person of any age maybe mentally disordered or otherwise mentally vulnerable, or mentally incapable of understanding the significance of questions or their replies that person shall be treated as mentally disordered or otherwise mentally vulnerable for the purposes of this Code. See *paragraph 1.4”*

PACE – ANNEX E

“Where the custody officer has any doubt as to the mental state or capacity of a person detained an AA should be called”(PACE C, 1G)

“If the custody officer authorises the detention of a person who is mentally vulnerable or appears to be suffering from a mental disorder, the custody officer must as soon as practicable inform the appropriate adult of the grounds for detention and the person’s whereabouts, and ask the adult to come to the police station to see them. If the appropriate adult:

* is already at the station when information is given as in *paragraphs 3.1* to *3.5* the information must be given in their presence
* is not at the station when the provisions of *paragraph 3.1* to *3.5* are complied with these provisions must be complied with again in their presence once they arrive.”

See *paragraphs 3.15* to *3.17*

“In the case of people who are mentally disordered or otherwise mentally vulnerable, it may be more satisfactory if the appropriate adult is someone experienced or trained in their care rather than a relative lacking such qualifications. But if the detainee prefers a relative to a better qualified stranger or objects to a particular person their wishes should, if practicable, be respected.” (PACE C, 1D)

# Receiving the call

# While on the phone, write down the information you need as detailed in Section 1 (contact record) of the Appropriate Adult Scheme Reporting Form. Find out as much as you can at this stage

The form needs to be completed in clear, legible handwriting.

The Custody Sgt must sign the back page of the Reporting form to confirm your attendance.

Each station has a lock box where all forms must be placed prior to leaving – Reporting Forms should never leave the station.

**Consider the need for a solicitor at this point, it will save time later.**

Consider the seriousness of the offence(s). A solicitor should be requested if:

1. The offences are serious
2. The case is complex **If in doubt, call one out**
3. The charges are disputed

It is not always essential to wait until you arrive at the police station before requesting a solicitor – follow the advice and procedure for your AA scheme. You can also ask to speak to the detained person on the phone before you attend the police station – this will not always be allowed but can be worth trying and will usually save time if the solicitor can be requested before the AA arrives.

Structure the question so that the DP is more likely to agree with you e.g. “I’m going to be your appropriate adult. I think you should have a solicitor. I’ll tell the police to organize one, shall I? It’ll save time if we do it now”.

**If the DP wants a solicitor, always get one**

The PACE codes that apply are:

“If the detainee, or appropriate adult on the detainee’s behalf, asks for a solicitor to be called to give legal advice, the provisions of *section 6* apply.” PACE code C, Section 3.19

PACE code, Section 6: The right to legal advice

# Rights of the Appropriate Adult (AA)

In the PACE Codes, the AA has a number of rights. You should bear these rights in mind so that you are confident about what you are able to do and request:

**An AA has the right:**

* To be told why the detained person (DP) is being held
* To speak to the DP in private at any time
* To inspect the DP’s custody record at any time and to request a copy for up to one year afterwards
* To ask for a legal representative
* To see a copy of the notice of rights and entitlements
* To see a copy of the Codes of Practice setting out the powers, responsibilities and procedures of the police
* To intervene in an interview if you feel it is necessary and in the interests of the DP to help them communicate effectively with the police
* To advise the DP during the interview (but NOT give legal advice)
* To ask for a break in any interview, either to seek legal advice or consult with the DP (particularly if the interview is a lengthy one or if the DP is distressed or ill)
* If the DP is charged with an offence, to have a copy of the charge sheet.

An AA is required to be present during any procedure requiring information to be given by or sought from the DP. Also, when any form of consent is sought from the DP or they are asked to agree with and/or sign any documentation.

**In particular, an AA is required to be present:**

* When the custody officer informs the DP of their rights and entitlements.
* When the DP is cautioned

# During any police interview with the DP at a police station (except as necessary to prevent danger to life or serious loss of property)

# When the DP is charged or informed that they may be prosecuted for an offence (this is in effect an entitlement only, as if the AA is not readily available, charging cannot be delayed unreasonably just to await the arrival of an AA)

* Subject to strictly limited exceptions and if the AA is of the same gender as the DP, during any search of the DP involving the removal of more than outer clothing (i.e. strip search or intimate search)
* During an identification parade. An AA should also be given a reasonable opportunity to see a complete set of images in a video identification, before it is shown to a witness.

Note that an AA is not required to be present during private legal consultations between the DP and their legal representative. The AA is not covered by legal privilege and it is therefore advisable not to be present in legal consultations, unless there are very good reasons to be there. You do, however need to make introductions between the DP and the solicitor and check that the DP has understood the legal advice and is happy with it, before going into the police interview.

*“A detainee should always be given an opportunity, when an appropriate adult is called to the police station, to consult privately with a solicitor in the appropriate adult’s absence if they want. An appropriate adult is not subject to legal privilege.”* PACE Code C 1E

Note also that an AA should be consulted, if available, when the need to keep the person in detention is reviewed both during the initial 24 hours, and if the police are considering detention beyond that time. However, an AA is not required to be present for this process.

Please note also under the PACE Codes the AA is not required to give consent or sign documents on behalf of the DP, whether juvenile or vulnerable adult. They may be asked to sign to confirm their presence, for example, when consent was requested.

**Arrival at the police station**

**1**. Introduce yourself to the officer at the front desk and explain that the custody sergeant is expecting you. You may need to show some identifiaction at this point. Try to maintain client confidentiality.

**2**. Introduce yourself to the custody sergeant and ask to see the custody record – remember that you have the right to see this and to have a copy if you need one. This right lasts for up to 12 months.

**3**. Request a quiet room to read through the custody record. Check the basic information against what you have on your form to see if anything has changed. At this point you will complete **Section 2 (Arrival Record) of the Appropriate Adult Scheme Reporting form.**

**4**. Ask to meet with the Detained Person. They will be brought out and given their rights in your presence:

**Rights**

###### The DP has the following rights:

###### The right to have someone informed of their arrest (if a juvenile, this is in addition to their parents being informed).

* The right to free independent legal advice.
* The right to consult the Codes of Practice setting out the powers, responsibilities and procedures of the police.

The Home Office states that, “These are continuing rights which may be exercised at any stage during the person’s period in custody. However, there are some special times when some or all of these rights may be delayed.”

You will be asked to counter-sign the custody record.

**5**. Ask to meet with the DP in private, but be aware of safety issues.

**Health and Safety**

* Always be aware of your surroundings i.e. when meeting the DP know where your nearest exit/doors are.
* Keep alert and be aware of the custody environment
* Remember the types of incidents that can occur
* Recognise expressions of agitation/aggression
* Remove yourself from potentially harmful situations and alert police staff.

**Meeting the DP Pre-Interview**

1. Introduce yourself to the DP and explain why you’re there.
2. Be sure to explain to them that you are not interested in whether or not they committed the offence, but you will need to ensure that he/she understands why they have been arrested. Ask the question “What do the police say you’ve done?” rather than “What have you done?”.

**Remember:** The Appropriate Adult does not have full confidentiality. You could be required to disclose information to the police or a court. If you have any concerns check with your manager and if necessary seek legal advice from your agency’s or project’s solicitors. Solicitors do have full confidentiality; it is called “legal privilege”.

1. Does he/she want a solicitor? Do you think they should have a solicitor?

**The right to free legal advice**

The following guidance for AAs is given by the Home Office regarding the right to free legal advice:

You should consider whether legal advice from a solicitor is required. You should normally speak to the detained person in private before deciding whether legal advice should be requested.**\*** The detained person can speak to a solicitor at the police station at any time. It will cost them nothing and they can speak to the solicitor privately either on the telephone or at the police station.

Even if you decide that a solicitor is not necessary when you first arrive at the police station, you can change your mind about that at any time.

Even if the detained person says that they do not want legal advice you have the right to ask for a solicitor if you feel that would be in their best interests. However, while a solicitor can be called to the police station, the detained person cannot be forced to see them if they are adamant they do not wish to do so.

If you or the detained person wants a solicitor to be called you should tell the custody officer at once.

NAAN recommends strongly that you should make every effort to ensure the detainee

receives legal advice. An AA may overrule a detainees decision not to consult with a solicitor and request one, although cannot insist that they speak to one once they arrive.

**\*** It is not always essential to wait until you arrive at the police station – follow the advice and procedure for your AA scheme. You can also ask to speak to the detained person on the phone before you attend the police station – this will not always be allowed but can be worth trying and will usually save time if the solicitor can be requested before the AA arrives.

1. As the DP if anything has happened since the arrest? Have they been searched or questioned? (see appendix a)
2. You should go on to explain the following procedures/information:

* What they can expect to happen once they go into the interview room e.g. the formal reading of information from the guide book including the caution and the fact they will be asked whether or not they understand what it means to them
* That the interview will be recorded
* That once the interview has concluded the officer will need to consult with the custody sergeant and a decision will be made about how to proceed
* That fingerprints/photographs/DNA samples may be taken
* Clarify whether they would like to have anyone informed of their arrest and whether they would like free legal advice

**6.** Consider to what extent you think the detainee’s disability or mental health problem might affect their ability to understand what is happening. Will there be any communication problems – are they able to communicate effectively?Do you think a medical or psychiatric assessment might be needed?

**PACE Review**

As a result of the Carter reforms, in some instances legal advice will ONLY be available to the Defence Solicitor Call Centre

* Non-imprisonable offences
* (there are not very many of these; the most common are Drunk and Disorderly, Section 5 of the POA (alarm, distress and harassment), driving with no insurance, driving other than in accordance with a licence. All theft, all assaults, all criminal damage and all drugs offences are imprisonable.)
* Arrested on a Bench Warrant and held for production before the Court
* Arrested on suspicion of driving with excess alcohol
* Detained in relation to breach of police or court bail conditions

In all other cases, it is the DSCC who will decide whether legal advice needs to be given in person.

**The exceptions to the restrictions are:**

* the police are going to carry out an interview or ID parade
* **the detainee is eligible for assistance from an AA**
* the detainee is unable to communicate over the telephone
* the detainee alleges serious maltreatment by the police

What this means in practice is that detainees who have the support of an appropriate adult, or the appropriate adult on their behalf, can continue to request legal advice in person. The „sufficient benefit‟ test will still apply, i.e. attendance will have to be able to make a difference to the outcome, but it is the solicitor not the police who makes that judgement. If an interview is to take place, that will (according to NAANs advice from the LSC) automatically meet the “sufficient benefit‟ requirement.

**Confidentiality**



Anyone acting in the capacity of an Appropriate Adult must have regard to the Common Law Duty of Confidentiality.

Confidentiality is maintained because it is in the public interest. This means that the public will feel that it is safe to disclose information to professionals and others, including volunteers acting in a “professional” capacity. However, the law allows confidentiality to be breached if the public interest would be better served by doing so, for example to safeguard a child.

**Prior Admissions**

If the AA has received an admission from the DP prior to arriving at the police station, the PACE code states that they cannot act as an Appropriate Adult (Code C Note 1B). These are termed “prior admissions”.

Once at the police station, the AA can continue with the role even if they receive admissions from the DP, but this can create some additional complications.

**Admissions at the Police Station**

If the DP makes an admission to the AA, the AA could be called as a witness and could be required to pass on the information to the police and/or in court. In practice this is very rare, and the risk can be reduced by following the practice guidelines set out at the end of this section.

The most likely time for an AA to receive an admission, which may comprimaise their impartiality, is during the private meeting with the DP prior to interview.

Where a DP admits an offence or provides information to the AA and subsequently makes the same admission or provides the same information to the police, there is no problem. The AA does not need to breach the confidentility of his/her discussions with the DP.

Where a DP provides information about an offence or makes an admission to the AA but goes on to deny or withhold this information from the police, the AA will need to consider the common law duty of confidentiality.

In deciding whether or not the information should be passed on, the AA will need to consider the consequences of maintaining the detained person’s confidentiality as opposed to breaching it, and decide which is more in the public interest. **In deciding this, the AA should consult in private with the co-ordinator of the AA scheme.**

*The AA should be aware that the police are entitled to question any one whom theythink might be able to provide information about the offence:*

*“….all citizens have a duty to help police officers to prevent crime and discover offenders. This is a civic rather than a legal duty; but when a police officer is trying to discover whether, or by whom, an offence has been committed he is entitled to question any person from whom he thinks useful information can be obtained…”* PACE Code C Note 1K

This can include the AA, however the AA is also entitled not to answer the police questions.

**Advice from the scheme co-ordinator should always be sought in these situations.**

**Avoiding issues with confidentiality**

* When meeting the detained person in private, ensure that you give a very clear message that you do not need to know whether he/she committed the offence or not. Be direct and explain that you do not have full confidentiality and could be made to pass on information from your discussion. Be sure to use an assertive tone and support this with gestures and body language.
* You will need to make sure that the detained person understands the reason for their arrest and whether legal advice should be sought. To avoid an admission, you can ask the DP “what do the police think you’ve done?” or “Do you understand why you are here?”. Asking the detained person the direct question “What have you done?” will most likely result in an admission.
* Advise the detained person that they are able to talk to a legal representative in complete confidence as they are covered by legal privilege. Reassure them that they can talk to someone about the details of the offence.
* If the detained person still makes an admission to you and then denies the offence in police interview, you should consider the reasons for this:
* The DP may want to tell the police, but may feel nervous and uncertain now that the interview has begun. The DP may need reassurance that whatever the outcome, someone will support them through the processes that follow.
* The DP may initially deny the offence, but may admit it as the interview progresses. Allow the interview to play out a little to see what happens.
* The DP may have a problem with the interviewing officer, perhaps because of a past experience. A change in officer may make a difference to their willingness to cooperate.
* Is the conduct of the officer putting the DP off by saying or doing something? You may need to talk to the police officer about their manner or conduct.
* The DP may be following legal advice by replying “no comment” to the police officer’s questions. This is ok, but you need to check that the DP understands the implications (where police can draw adverse inferences as a result of the DP’s silence – see p. 46) and is still happy to continue.
* The DP may have been lying or been mistaken when they made their initial admission to you and may now be telling the police the truth. You will need to consider factors such as the person’s age, learning disability and mental health.
* You may need to ask for a break in the interview to discuss the situation with the DP.

If the situation cannot be resolved, you should contact the scheme coordinator for advice on whether you should inform the police and if so, how this should be done.

**Rights[[7]](#footnote-7) of the Detained Person (DP) and Guidelines for Detention**

You will also need to be aware of the rights of the detained person as you will need to ensure that these are being exercised.

**Rights**

###### The DP has the following rights:

###### The right to have someone informed of their arrest (if a juvenile, this is in addition to their parents being informed).

* The right to free independent legal advice.
* The right to consult the Codes of Practice setting out the powers, responsibilities and procedures of the police.

The Home Office states that, “These are continuing rights which may be exercised at any stage during the person’s period in custody. However, there are some special times when some or all of these rights may be delayed.”

**Entitlements**

According to Home Office Guidelines, in addition to giving the DP a written notice of their basic rights, the custody officer must give “An additional notice of their other entitlements such as reasonable standards of physical comfort, adequate food and drink, access to toilet and washing facilities, clothing, medical attention, and exercise where practicable. That notice of entitlements should also mention the circumstances in which an appropriate adult should be available to the detained person.”

###### **Limit of detention**

The custody officer should ensure that police inquiries are conducted as quickly as possible and that detained persons are released as soon as the need for detention has ceased to apply. A person may be detained in police custody for up to 24 hours without charge. This is known as the ‘limit of detention’. This period begins from the time that the detainee arrives at the custody centre. A DP’s period of detention may be extended beyond 24 hours, but only where the offence for which the person has been arrested is an indictable offence2. Firstly, an officer of the rank of Superintendent or above may extend it for a maximum of a further 12 hours, taking it up to 36 hours. Secondly, a Magistrates’ Court may extend it further, initially for an additional 36 hours and subsequently by another 24 hours if necessary and justified. This means that the absolute maximum period of time a person may be detained at a police station after arrest is 96 hours.

If the police suggest that they wish to keep a person for longer than 24 hours, then the DP should take legal advice from a solicitor/legal representative.

# Review Time

The ‘review time’ is taken from the time that detention is authorised by the custody sergeant. This time will vary from the ‘limit of detention’ which is taken from the time of arrival at the police station.

The review time dictates when detention must be re-authorised. This occurs after the person has been in detention for no more than 6 hours, again 9 hours after the first review and again 9 hours after the second review (which may coincide with the ‘limit of detention’). The review of detention must be carried out by an Inspector or above who must ensure:

* That there is a need for the DP to remain in custody i.e. that the circumstances have not changed.
* That the investigation is being carried out expeditiously.
* That the DP is aware of their rights and whether or not they wish to exercise any of those rights.
* Whether or not the DP, their solicitor/legal representative or the AA (if present) wishes to make any representations.

# Rest Periods

PACE states that in any period of 24 hours detention a person is entitled to an uninterrupted rest period of 8 hours, usually at night.

Unless there is a specific reason which justifies extending an interview it should not continue for more than 2 hours without allowing a refreshment break.

# Meals and Refreshments

The guidelines on meals and refreshments are as follows:

* At least two light meals and one main meal must be offered in any 24 hour period.
* Meals should be provided at recognised meal times or taking account of when the detainee last had a meal.
* Meals provided should take account of dietary, cultural or religious requirements.
* Drinks should be provided at meal times and where practicable, upon request.

Some police forces may allow food and drink to be brought in by friends and/or relatives but it will always be at the custody officer’s discretion.

**Contact with others**

Whilst in detention a DP may speak to the following:

* Solicitor/legal representative
* AA
* Interpreter
* One person of their choice (unless right withdrawn by police)
* Staff from their High Commission, Embassy or Consulate
* Doctor or nurse
* Independent Custody Visitor

**Fingerprints, Photographs and DNA**

**Fingerprints**

PACE Codes of Practice Section D4

Consent for fingerprints is NOT needed if the person has been charged with, or is going to be reported for, a recordable offence (see additional notes on non-recordable offences) and fingerprints have not previously been taken for that offence.

Fingerprints may also be taken without consent to establish identity or if it is likely to prove or disprove a person’s involvement in an offence. This is a speculative search and must be authorised by an inspector or higher rank.

The police will, however, ask the detained person if he/she consents or not and the AA may be asked to sign to verify that this has been done. If the detained person does not consent, the fingerprints may be taken by force.

The grounds for taking the prints and the purposes for which they may be used must be explained.

**Photographs**

PACE Codes of Practice Section D5

Photographs may be taken with consent or without consent if the consent is withheld or it is not practical to obtain consent.

Photographs may be taken covertly or produced from video or CCTV footage.

The police may remove any item which covers or obscures the face – by using reasonable force if necessary.

**Body samples - DNA testing**

PACE Codes of Practice Section D6 the same principles apply as for fingerprints.

**IN MOST CASES FINGERPRINTS, PHOTOGRAPHS AND NON-INTIMATE SAMPLES CAN BE TAKEN WITHOUT CONSENT.**

As appropriate adult you need to explain this, support, comfort and reassure the detained person as necessary. You may be able to observe whether any force used is reasonable.

**A note on consent:** The AA may be asked to sign for fingerprints, photos, DNA, charge or bail. You are signing as a witness that the procedure was done; you are not giving consent on behalf of the detained person for the procedure.

**The Interview Procedure**

One of the main reasons for detaining a person at a police station is to ask them questions. The police should only ask the DP questions in the presence of an AA, subject to very limited exceptions.

**The Caution**

Before questioning begins the DP should be **cautioned** in the following terms:

**“You do not have to say anything but it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence. ”**PACE Code C section 10

The AA should ensure the caution is read slowly and clearly to the DP and check that he or she understands it. Further explanations from the police, solicitor or the AA will usually be necessary as the caution is complicated.

**“You do not have to say anything”**

This is the detained persons right to silence, meaning they don’t have to answer any questions at all. This is a “no comment” interview. Choosing to remain silent might be in the DP’s best interests (as decided by the legal representative), but DO NOT advise it yourself.

You can use the following questions to determine that the right to silence caution has been understood:

1. Do you have to answer the police questions?
2. How will the police or a court know what has been said?
3. What might happen if you say something different in court from what you say now?

**“But it may harm your defence if you do not mention when questioned something which you later rely on in court”**

If during interview the DP does not answer some or all of the questions put to them by the officer, or does not volunteer crucial information (such as an alibi), but then chooses to share this information in court, the court may decide that the person has just made it up. The reasoning behind this is that a reasonable, innocent person would be willing to give the police any information which would clear their name. Failure to give this information to the police may lead the court to draw an “adverse inference” from the accused’s silence.

**“Anything you do say may be given in evidence”**

People who are vulnerable, easily stressed, frightened, confused or upset may say things during the interview which they don’t really mean. The risk of this is that the things they say may be read out in court and could be taken out of context. The AA can work with the DP to try and offer opportunities to retract inappropriate statements or abusive language, making sure that they understand that everything they say could be mentioned in court.

During the interview the AA should pay particular attention to this latter part of the caution. The AA should not prevent the detainee from saying things but should try to make sure they understand the effect and implications of what they are saying. Be particularly careful when:

* A detainee is being flippant or boastful about their behaviour
* The offence involved planning
* There was a weapon
* There was a targeted, vulnerable or repeat victim
* There was an intent to cause harm

**The interview**

The main role of the AA during the interview is to make sure that the DP understands the questions which are being asked and that the police do not ask questions in a way which is confusing, overly repetitive or oppressive. To facilitate communication the AA needs to ensure that the police also understand and do not misinterpret the DP’s answers.

PACE Code C 11.15:

*“A juvenile or person who is mentally disordered or otherwise mentally vulnerable must not be interviewed regarding their involvement or suspected involvement in a criminal offence or offences, or asked to provide or sign a written statement under caution or record of interview, in the absence of the appropriate adult unless paragraphs 11.1,11.18 to 11.20 apply. See Note 11C”*

*PACE Code C Note 11C:*

*“Although juveniles or people who are mentally disordered or otherwise mentally vulnerable are often capable of providing reliable evidence, they may, without knowing or wishing to do so, be particularly prone in certain circumstances to provide information that may be unreliable, misleading or self-incriminating. Special care should always be taken when questioning such a person, and the appropriate adult should be involved if there is any doubt about a person’s age, mental state or capacity. Because of the risk of unreliable evidence it is also important to obtain corroboration of any facts admitted whenever possible”*

Almost all interviews are recorded on audio equipment but an increasing number are videoed. The AA should be aware that audio will not record gestures, or other body language, and a video recording will not pick up on an atmosphere. The AA may need to make any relevant comments about what is happening.

The police will follow a set procedure for starting and stopping the recordings. The AA should introduce him or herself and is entitled to intervene during the interview whenever he or she thinks it is necessary to fulfil the AA role.

The AA is entitled to ask for the interview to be stopped to ask for legal advice to be obtained or to speak to the DP in private at any point.

Any queries or complaints should be made to the custody officer in the first instance or, if necessary, to the duty inspector. The AA is also entitled to telephone his or her AA scheme or manager for advice or information – the AA should not feel isolated from their scheme or workplace while at the police station.

The PACE Codes state that:

The role of an AA is to:

* advise the DP (but not to give legal advice);
* observe that the interview is carried out properly and fairly;
* facilitate communication with the DP;
* safeguard the DP’s rights and to minimise the risk of interviews producing unreliable evidence.

**What SHOULD happen in an interview:**

At the start of the interview, the DP should:

* Be reminded of their right to free legal advice;
* Be made aware of the reasons for their arrest;
* Be made aware of the purpose of the interview;
* Hear the caution repeated and should understand this;
* Be clear that they have the right to breaks every 2 hours and at recognised meal times;
* Be told that they can consult their AA at any time – in private if necessary.

**What SHOULD NOT happen in an interview:**

The following should not happen in an interview and might be a reason for an AA to interrupt an interview:

* Inappropriate familiarity by interviewing officer;
* Interviewer repeatedly interrupting DP’s answers;
* Interviewer raising voice, shouting or using foul language;
* Interviewer standing during interview;
* Excessive repetitive questions;
* Inappropriate questioning e.g. about unrelated matters;
* Leading or negative questions;\*
* DP unable to understand questions;
* DP upset, confused or very agitated.

\*A leading question is asked in a way that anticipates a specific answer, e.g., ‘The car was red wasn’t it?’ This should be replaced by an open question e.g. ‘What colour was the car?’

\*A negative question could be, ‘So, you don’t know his name?’, rather than asking ‘Do you know his name?

**Types of questioning**

When questioning a detainee, police officers should avoid using leading and negative questions. A leading question is asked in a way that anticipates a specific answer, eg “The car was red wasn’t it?”. This should be replaced by an open question e.g. “what colour was the car?”. A negative question could be “So, you don’t know his name?”, rather than asking “Do you know his name?”.

**What are the meaning and implications of the right to silence, significant statements and inferences?**

AAs need to understand, and be able to explain to DPs, that there are occasions when they may make significant statements, or maintain a silence, which could appear capable of being used in evidence against that person. These may include a:

1. direct admission of guilt;
2. failure or refusal to answer a question;
3. failure to answer a question satisfactorily.

(PACE C 11.FA & Note 11E)

Where a **significant statement** takes place prior to arrival at the police station for example, a DP may have said at the time of arrest: “I only did it because he told me to”, this statement must be put to the DP immediately after the caution is given at the beginning of the interview.

If recorded in the officer’s police notebook (PNB), then if the DP agrees to read that record and sign it as correct, he/she should endorse the PNB with the words: “I agree that this is a correct record of what has been said.”

Any disagreement should include written details, read and signed by the DP in the PNB. Refusal should be similarly recorded. This process should be referred to at the start of the interview.

**What should the AA do during the interview?**

*PACE Code C 11.17:*

If an appropriate adult is present at an interview, they shall be informed:

• they are not expected to act simply as an observer; and

• the purpose of their presence is to:

– advise the person being interviewed;

– observe whether the interview is being conducted properly and fairly;

– facilitate communication with the person being interviewed.

* Be aware of seating arrangements, Can you see the detained person’s face? You MUST be part of the interview.
* Introduce yourself on the audio recording “I am…(name).from…..(agency), acting as an appropriate adult.
* Ensure that the DP has been cautioned and that s/he understands
* The DP must not be required to stand (PACE Code C 12.6)
* The police are allowed to stand, but this is not good practice and should be avoided. Be aware of police officers body language – leaning, pacing, pen-tapping, pointing etc which could come across as oppressive.
* If the recording captures sound only, you may need to describe what is happening – nods, shrugs, gestures etc. Videos do not interpret actions or records atmospheres so you will still need to comment.
* Take notes only on the AA scheme form. You don’t need to record everything that’s said but you should record your actions, any significant events, disputes or concerns. These forms are submitted to the coordinator and will be kept as they could be called on in court (although this is rare).

**Interjecting during the interview**

You will need to interject if:

* There is a change in the questioning such as new offences for which the person has not been arrested
* The questions are being asked too quickly
* The detained person is obviously confused or not understanding the questions
* The police are confused or not understanding the replies
* You are confused!
* The detainee becomes upset, angry or abusive etc
* You want to talk to the detainee in private
* You or the detained person want legal advice
* **Anything** happens which causes you concern

**Choice phrases:**

Comments on what effect the questions are having, suggestions and requests are unlikely to cause offence BUT do not be afraid to insist on something if a gentle request is ignored.

Personal challenges, criticising the person rather than the question, direct challenges, confrontations and contradictions are likely to cause offence and make the police officer feel angry or defensive. A hostile atmosphere is not helpful to your client.

|  |  |
| --- | --- |
| **What works** | **What doesn’t work** |
| “I think it would be best to re-arrest him if there is a new offence”  “Do you want some time to think?”  “Could you slow down a bit, I’m finding it hard to follow this?”  “Could you slow down a bit, I think your questions are a bit fast for John to follow?”  “Are you sure about the size/time/distance John?”  “Was it darker than my hair / curlier than the police officers hair / further than from here to the door?”  “Jane has said no to that question three times, perhaps it would help if we move on?”  “Please would you lean back a bit, I’m feeling a bit crowded in?”  “I’d like to take a moment to talk to James on my own, could we pause the interview for a minute please?”  (I really do need to speak to James in private and so I must insist we take a break now) | “You’re intimidating”  “That’s oppressive”  “Don’t answer that”  “You can’t ask that”  “Stop lying – tell the truth”  “Surely it was more like 2 minutes”  “Oh no it wasn’t”  “Right, stop the interview” |

**Investigative Interviewing** - An Extract from the Metropolitan Police Guide to Investigative Interviewing 1996

Challenging:

“There is no place for confrontational, sarcastic, aggressive remarks or attitude on the part of an interviewer.”

Right to silence:

“The police interviewer is not bound to accept the first answer given. Questioning is not unfair merely because it is persistent.”

“Even when the right to silence is exercised by a suspect the police still have the right to put questions.”

Role of solicitors:

Solicitor may intervene during an interview:

To seek clarification

To challenge an improper question or the manner in which it is put to their client

To advise their client not to reply to particular questions

To give their client further legal advice

**Oppression**

“The police, of course, are not prohibited from putting questions to a suspect merely because he chooses not to answer them. They are not required to accept any answer or answers a suspect chooses to give. Nor are they prohibited from being persistent, searching and robust in their questions. If they do not believe what they are being told they are entitled to say so. Persistence must not, however, develop into bullying; robustness must not develop into insulting or gratuitously demeaning questions, nor must robustness be regarded as an acceptable label for what, in truth, is a repetitive verbal pounding alleging the certainty of a suspect’s guilt. Furthermore, questioning, though persistent, searching and robust, must remain fair.”

**Options at the end of the interview**

PACE Code C section 16

**Disposal**

**The following options are available to the custody officer:**

1. No further action and released
2. Informal warning and released
3. Simple caution and released (adult only)
4. Conditional caution (adults only, being piloted for youths)
5. Reprimand (youth only) – ages 10-17 years old
6. Final warning (youth only) – ages 10-17 years old
7. Police bail and released to return to the station at a specified time and date for further enquiries with or without conditions
8. Police bail and released to return to the station at a specified time and date for Crown Prosecution Service (CPS) decision
9. Fixed penalty notice (16 and over)
10. Report for summons and released pending a decision
11. Charged and released on bail (with or without conditions)
12. Charged and bail refused (held to appear before the next available court)

**Examples when DP may be released:**

1. No further action and released

* Where the original information provided was sufficient to justify an arrest on the grounds of necessity, the subsequent written evidence in the form of a statement may not support a charge. If this is the only information known to be available (otherwise Police Bail may apply) then the DP would have to be released with no further action (NFA).

1. Informal warning and released

* A first time drunk and incapable (D&I) may well be given an informal warning.
* Cannabis warning and released (similar status to informal warning)
* Simple caution and released (adult only)
* A first time shoplifter of a small value item may be given a simple caution dependent on the circumstances.

**If you are concerned about the outcome you can:**

* **Telephone the scheme coordinator, or in an emergency social care, emergency duty service or probation**
* **Speak to duty inspector**
* **Seek legal advice, which is still free under PACE**

**Detention or Release?**

There is a general presumption that any person charged with an offence will be granted bail. There are several exceptions to this general presumption:

* Where the person is charged with a very serious offence and they have a previous conviction for that offence (i.e. murder, attempted murder, manslaughter, rape and other serious sexual offences involving children or mentally vulnerable persons). In these cases the granting of bail would be exceptional.
* In all cases the custody officer may withhold bail if he/she has reasonable grounds to believe any of the following:
  + - The DP’s name and/or address has not been verified;
    - The person will fail to appear at court if bailed;
    - The person will commit further offences if bailed;
    - Detention of the person is necessary to prevent him/her causing physical injury to another or causing loss or damage to property;
    - Detention is necessary to prevent the person from interfering with witnesses or with the investigation of any offence;
    - Detention is necessary for the person’s own protection, or if a juvenile, in his/her own interests.

In cases where bail is refused by the custody officer the DP’s solicitor will be responsible for representing him/her.

The custody officer has the power to place conditions on bail granted to a DP. This includes bail granted after charge and most bail granted prior to charge. Any conditions imposed must be considered by the custody officer to be necessary to ensure:

* The DP surrenders to custody;
* To prevent the person committing offences whilst on bail;
* The person does not interfere with witnesses or obstruct the course of justice; or
* The protection of or welfare of the person.

**What Conditions might a Custody Officer attach to a DP’s Bail?**

Examples of conditions that a custody officer may attach to bail would include:

* Curfews
* Conditions of residence
* Reporting to a police station
* Surrender of passport
* Non association
* Not to enter certain areas or buildings

Any condition imposed must be necessary, relevant and should correspond to concerns specific to the release of the DP (i.e. non association with a victim of a domestic violence incident or a co-defendant). The police cannot apply arbitrary or blanket conditions.

If the custody officer does not believe that imposing one or more bail conditions will satisfy his/her concerns over the release of the DP, or it is deemed to be in the best interests of the DP (i.e. for their protection), bail can be refused and the DP held in custody to appear before the next available court.

In cases where a DP is a juvenile and the custody officer refuses to grant bail after charge, where possible, the custody officer will make arrangements for the juvenile to be transferred to local authority accommodation. Please note this is a complex issue and any issues or concerns should be raised with your manager.

**What might the ramifications be if a DP fails to answer any form of bail or breaches a bail condition?**

If a person bailed fails to answer to their bail at the agreed time and date they commit a criminal offence and are liable to arrest and an additional charge and may be held in custody until the next available court.

Where a person breaches a condition of their bail they are liable to arrest and in some cases will be held in custody until the next available court.

In all cases where a person fails to answer to their bail or they breach any of their bail conditions this will form part of their ‘record’ and will be taken into account when considering whether to grant bail in any future cases.

**More Information on Disposal Options**

1. **No further action – released**

This is used when there is no evidence, or not enough evidence, to prosecute. No further action can also be used when it is not in the public interest to prosecute. It may be appropriate to make a voluntary referral to Social Care, or the YOT for some (short-term) intervention.

1. **Police reprimand (youths) – released**
2. **Police final warning (youths) – released**

Reprimands and final warnings replaced cautions for youths and were brought in by the Crime and Disorder Act 1998.

A reprimand can be given only once, and is used for minor first offences.

A reprimand cannot be given if the person has ever had a final warning or a conviction.

A final warning can be given a second time only in exceptional circumstances and usually where there is at least two years since the last matter.

Warnings and Reprimands cannot be given unless the offence is admitted. A ‘no comment’ interview will mean that the young person cannot get a warning or reprimand. Uphold the young person’s right to remain silent but make sure this is a well informed decision based on sound legal advice.

A parent or guardian must be present. AAs should not be involved in reprimands or warnings. The case should be bailed until the parent/guardian can attend.

Reprimands and final warnings are not convictions, so do not usually have to be declared when applying for jobs. Under the Rehabilitation of Offenders Act, reprimands, final warnings and simple cautions are “spent” immediately. However, the reprimand, final warning or simple caution are admissions of guilt; they will be kept on record by the police, they may be cited in court and will show on any enhanced CRB disclosure.

They may carry ‘schedule 1’ (risk to children) status or require registration with the police under the Sex Offenders Act 1997

1. **Police caution (adults) – released (simple or conditional cautions)**

Simple cautions are only available for adults.

There is no legal restriction on the number of simple cautions which may be given.

Simple cautions can be given even if the adult has previous convictions

Simple cautions for adults are citable in court for five years.

Simple cautions do not give rise to a criminal record but because they are admissions of guilt they do qualify for registration under the Sex Offenders Act 1997 and may also be included on other similar lists or registers.

S 22-27 of the CJA 2003 make provision for conditions to be attached to cautions. There are 5 requirements to be met:

1) there must be evidence that the person committed the offence

2) a prosecutor must decide that there is sufficient evidence to charge the

offender and that a conditional caution should be given

3) The offender has admitted the offence

4) The effect of the conditional caution and that failure to comply can

result in a prosecution must be explained to the offender

5) The offender must sign a document with details of offence, their admission

to it, their consent to the caution and its conditions (which must be listed).

1. **Report for summons (all options still open) – released**

This means the police are considering prosecution but haven’t made a final decision yet. There are no more investigations about the offence itself (or the person would have been bailed for further enquiries) but the police may wish to discuss the circumstances of the offender with social care etc to see if prosecution is necessary or appropriate. Where a DP is particularly vulnerable through age, health or learning ability, it is worth suggesting this course of action to the police as further information may mean a prosecution is not appropriate.

Please note that summonses are to be phased out and replaced by a *written charge* and a *requisition* CJA 2003 s29. It may still be possible to influence the decision as suggested above. You will need to discuss this with police when the changes take place.

1. **Charged – released on unconditional police bail**

Charging is the term used when a person is going to be prosecuted. It comes at the end of the process when the police say, “I am now charging you with the offence of…”. The actual charge is not decided until after the interview and all the evidence is gathered.

Unconditional police bail means that the DP is given a court date at which he/she must attend but until then he/she does not have to do anything. If he/she does not attend court it will be a *breach of bail*, which is an offence.

Under the Bail Act 1976 there is always a presumption in favour of bail.

In most cases now the police will discuss the charge with a lawyer from the CPS. This is meant to ensure that the right charge is put from the outset. It can cause some delays while at the police station.

1. **Charged – released on conditional police bail**

In this case the bail has conditions attached to it. They could be anything which will:

a. ensure the person attends court

1. prevent the commission of further offences
2. prevent the person interfering with prosecution witnesses
3. ensure the offender’s protection (adults) or welfare (youths)

These are usually the only grounds for police bail conditions. They must not be a punishment in themselves. E.g. a night-time curfew would be an inappropriate bail condition for a daytime shoplifter.

Usual conditions are curfews, reporting to the police, residence at a named address, stay away from certain people or places. The police decide the conditions. If the DP thinks they are unjust, they can appeal directly to the custody sergeant, but if this does not solve the problem, appeal is to a youth or magistrates court.

Legal advice can still be sought at this stage, and would usually be needed if there is an appeal against the conditions. Be aware of difficulties with requiring a person to live in named local authority accommodation – it is inappropriate to tie the hands of the LA in this way. “Reside as directed by the local authority” is what you would need sothat there is scope to move the person if necessary. Check for existing residence orders etc. Also check that any non-association clauses are workable – e.g. do not associate with someone in the same class or residential unit is probably unenforceable.

**8. Charged – held in custody to the next available court**

The police will refuse bail if it is thought that:

1. the person will not attend court;

or

1. further offences will be committed;

or

1. prosecution witnesses will be interfered with:

AND

conditional bail is insufficient to provide the necessary assurances.

When bail is refused for a youth he/she must be transferred to local authority accommodation. The only reasons for not doing this (and therefore keeping the young person in police custody until the next available court) are:

1. It is impracticable to do so.

b. The young person is at least 12 years old and only secure accommodation would be sufficient to protect the public from *serious harm*. Serious harm generally means risk of death or serious personal injury (physical or psychological) from which recovery will be slow, traumatic or incomplete. The nature of the offence (other than the risk of serious harm) and the young person’s behaviour or attitude are not reasons to rule that it is impracticable to transfer him/her. A young person aged ten or eleven must always be transferred to LA accommodation.

See Code C 16.7 and Notes for Guidance 16D

**9. Released on police bail (section 47) for further enquiries**

If the police need to make further enquiries, for example witness statements or forensic tests, the DP will be given police bail until a new date when it is expected the results of the further enquiries will be available and the process can be completed.

It is possible to get the police to bail in this way so that a parent or particular worker can be the appropriate adult, rather than have a long wait in custody. (This will be done only for relatively minor matters.)

**10. Detained for further enquiries**

If the police wish to interview co-defendants or speak to store detectives or do a house search etc, they may keep the DP in custody while they do this – as long as it is within the 24-hours custody period, unless that is officially extended.

**11. Application to court for an extension of custody time limits**

Where investigations are necessary and will exceed the 24-hour period, the police can authorise further detention up to 36 hours. They need the permission of a court to extend it beyond this.

**Part 4**

**Communication**

**Introduction**

People in organisations typically spend over 75% of their time in an interpersonal situation, therefore, it is no surprise that poor communication is at the root of a large number of organisational problems. Effective communication is an essential component of organisational success whether it is at the interpersonal, intra-group, organisational or external levels.

**The Process**

In some way, we have all been communicating with others since infancy. However, the process of transmitting information from an individual (or a group) to another is a very complex process, with many sources of potential error.

***A simple example:***

🢚**Jane:** “I don’t think I’ll be able to cover my rota shift on Wednesday, I keep feeling nauseous and my doctor says I must not be stressed.”

**🢚 Manager:** “Jane, this is the third time in a row this has happened – if you are unwell please let me know as we have to cover for you at short notice and this inconveniences everybody.”

**Message to 🢚 decode 🢚 encoded by receiver 🢚 Message be sent**

*Some error likely Some error likely* **Received**

In any communication some of the ‘meaning’ is lost in the simple transmission of a message from the sender to the receiver.

In many situations a large amount of the true message is lost and the message that is heard is often far different than the one originally intended. This is most obvious in cross-cultural situations where language and idiom is an issue. However, it is also common among people of the same culture.

Jane felt that she had a simple message to convey – she didn’t feel very well and may not be able to fill a rota shift. She translates her thoughts into words, and this is the first potential source of error. Was she trying to say she might be unavailable? Was she trying to convey anything else? In fact, she was trying to say more than that she might be unavailable. Jane perceived her Manager and colleagues were not as sympathetic to the situation as she felt they should be – she had made herself available for several shifts and Wednesday afternoons were becoming difficult to fit in.

The team would have preferred Jane to say what was really wrong; Jane didn’t want to feel that she was letting the team down.

Thus, what appears to be a simple communication is, in reality, quite complex. Jane is communicating far more than that she would miss a shift, she is conveying a number of complex emotions, complicated by her complex feelings about not letting the team and others down, her personal situation and her reputation.

Jane sent a message – the message is more than words; it includes the tone, the timing of the call, and the way she expressed herself.

Similarly, the Manager goes through a complex communication process in ‘hearing’ the message. The message that Jane sent had to be decoded and given meaning. There are many ways to decode the simple message that Jane gave and the way the message is heard will influence the response to Jane.

In this instance the Manager ‘heard’ far more than a simple message that Jane wouldn’t be able to cover her shift on Wednesday. The Manager heard hostility from Jane, indifference, lack of consideration, among other emotions**.** Jane may not have meant any of this, she may have felt embarrassed and awkward at cancelling a rota shift, but this is not what the Manager heard.The message the Manager heard will be influenced by the Manager’s own feelings at the time; in this instance the Manager may already have been feeling stressed, tired, frustrated, etc.

Communication is so difficult, because at each step in the process there is a major potential for error. By the time a message gets from a sender to a receiver there are four basic places where transmission errors can take place and at each place, there is a multitude of potential sources of error. Therefore, it is no surprise that social psychologists estimate that there is usually 40-60% loss of meaning in the transmission of messages from sender to receiver.

In your role as an AA, it is critical to understand this process. To understand and be aware of the potential sources of errors and constantly counteract these tendencies by making a conscientious effort to make sure there is a minimal loss of meaning in your conversation, with the DP and with other colleagues in the detention process.

# Factors Affecting Communication

###### The Location

* The environment in which you are active will have an impact on your effectiveness.
* Noise, a variety of smells and the atmosphere can affect an individual and affect the success of the communication process.

###### You

* How **you** are feeling at that particular time can have a dramatic effect on any exchange of communication.
* Have you had difficulty making your way to the Police Station?
* Have you had problems waiting to be let into the custody centre, due to busy custody officers processing several people?
* Have you won the big prize on the lottery the night before and feel particularly happy to be in any place to share your good news? Remember, this may not be appropriate either.

*The other person/people*

* Who are you communicating with e.g. a DP, whether juvenile or vulnerable adult, custody staff, solicitor?
* How will you communicate effectively, depending upon the needs of the individual? Are they distressed? Do they understand why they are in a police cell, and even perhaps more importantly, do they know where they are?
* Is the staff in the custody centre overstretched and busy with numerous people all requesting information at the same time? Is your request imperative, or can it wait while another is given priority?
* Is the solicitor talking to the officer in the case? Is your question more important than the discussion they are having?

###### What YOU are communicating

* Your actions and feelings in the situations addressed above, will affect how you communicate and how you are perceived by others. Are your tone and manner appropriate?

# What Helps and Hinders Communication?

|  |  |
| --- | --- |
| **What helps?** | **What hinders?** |
| Eye contact  Genuine interest  Pleasant environment  Undivided attention  Being/feeling relaxed  Liking the person  Peace and quiet  Empathy  Privacy  Speaking the same language  No distractions  Good vibes  Time  Interesting content  Good memory | Inequality in seating  Desk  Interruptions  Noise  Feeling ill or tired  Hard of hearing  Boredom  Agitated state of mind  Irritating habits  Shortage of time  Anger  Too hot or cold  Gossiping  Rambling  Forgetting  Unpleasant smell |

|  |  |
| --- | --- |
| **When actively listening** | **When speaking** |
| * Being aware of personal space * Giving your complete attention * Remaining neutral * Paraphrasing what you have heard * Clarifying when necessary * Asking questions if you do not understand | * Speak for yourself * Be aware of your non-verbal language * Speak in a way that the listener will understand * Be clear, specific and precise * Be descriptive rather than judgemental * Check that the listener is hearing * Do not speak too quickly or too quietly |

**Non-verbal Communication**

A major part of communication is non-verbal. This means that when we attribute meaning to what someone else is saying, the verbal part of the message actually means less than the non-verbal part. The non-verbal part includes such things as body language and tone.

**“It’s not what you say**

**but**

**the way that you say it”**

**Tone of voice - 38% of communication**

**Body language - 55% of communication**

**What we say - 7% of communication**

To have an effective communication process – all of the above must send the same message.

**Building Rapport and Improving Communication**

The concept of rapport is based on the fact that, in general, people like people who are like themselves. Notice friends when they are together, they often look like one person, each matching and mirroring the other’s gestures, language and body language.

Rapport can be

**Non-Verbal Verbal**

Voice tone Language used

Tone Actual words being used

Tempo

Movement

Postures

Gestures

Eye contact

**Assertiveness, Aggression and Passivity**

**Assertive behaviour**

Assertive behaviour helps us to communicate clearly and confidently our needs, wants and feelings. It is an alternative to passive, aggressive and manipulative behaviour. A major part of being assertive is having confidence.

|  |  |
| --- | --- |
| **Be assertive** | **Be confident** |
| * Deciding what you want * Deciding if it is fair * Asking for it clearly * Not being afraid of taking risks * Being calm and relaxed * Expressing feelings openly * Giving and taking compliments easily * Giving and taking fair criticism | **C**ompromise - be realistic  **O**pen - honest, sincere  **N**egotiate - tact and forethought helps!  **F**air - basic rights - yours and others  **I**nnovate - initiate change when needed  **D**irect - say what you mean, clearly  **E**xpressive - show appropriate emotions  **N**on-verbal - body language  **C**hance - try something different  **E**mpower - yourself and others |

**Aggressive behaviour**

* Putting forward your own needs, ideas and feelings
* Ignoring or putting down the needs, ideas and feelings of other people
* Blaming others for problems and mistakes
* Using sarcasm
* Adopting a patronising attitude
* Being verbally hostile
* Using racist or sexist remarks

**Indicators of aggressive behaviour:**

**Body language**

* Alteration of facial expression
* Shifting position, maybe to the edge of the chair or twisting the body away
* Movement towards you that involves invading your personal space (if you move back the intimidation may be pressed further)
* Threatening gestures, finger wagging, table thumping gestures

**Looks**

* Staring, glaring, grimacing, smiling inappropriately, jaw set firmly

**Voice**

* Alters in some way, shouts usually but may get quiet and more intense or is shaky, deeper, shrill, stiff-lipped
* Rapid speech

**Language**

* Becomes aggressive, swearing, depersonalising by using sexist, racist demeaning tones or content, makes direct threats.

**Passive behaviour**

* Ignoring or suppressing your own needs, ideas and feelings including sulking
* Going along with other people’s ideas even if they are not right for you
* Blaming yourself for problems and mistakes
* Using hints rather than saying what you really think, feel or want
* Expecting other people to guess or to know what you want or what you feel
* Being martyred or making other people feel guilty
* Being a ‘doormat’

**Indicators of passive behaviour:**

**Body language**

* Looking down, looking away, avoiding eye contact
* Hiding – behind hair, cap, ‘hoody’
* Retreating – sitting back in chair, defeated posture
* Fidgeting, nail biting, hair twiddling and other ways of managing feelings without expressing them openly
* Tutting, sighing, sulking

**Looks**

* Blank, impassive,
* Faking compliance or enjoyment

**Voice**

* Quiet, “yeah, whatever” – agreeing to things not putting own views forward
* May not talk much at all

**Language**

* Putting self down
* May huff and puff and sigh but will say nothing is wrong (when clearly it is!)
* “It doesn’t matter”; “It’s not important”; “It’s up to you”

**The Assertive Option**

|  |  |  |
| --- | --- | --- |
| honesty | rather than | deceit |
| clarity | rather than | vagueness |
| acceptance | rather than | denial |
| compromise | rather than | victory |
| sharing feelings | rather than | hiding feelings |
| setting limits | rather than | being imposed upon |
| taking responsibility | rather than | blaming self or others |
| taking the initiative | rather than | waiting to be rescued |
| believing in ourselves | rather than | depending on approval |

**Examples of behaviours**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Situation** | **Response** | **Type of behaviour** | **Examples of assertive statements** |
| **1** | You are called to attend the police station as an AA. It is nearly the end of your working day or rota’s shift and you don’t really want to go | In a sarcastic tone: “Just what I need; I’ve had nothing all day and now this, just as I should be finishing.” | **Passive**  The AA is hinting at his/her feelings and needs and expecting the other person to guess them. It is meant to invoke guilt in the other person | Either:  “Unfortunately I have only 10 minutes of my work time left so I will be unable to take this piece of work on this time.”  Or:  “Yes, you have just caught me in time. I will be with you shortly.” |
| **2** | When you arrive at the police station the custody officer gives you the wrong custody record | “What’s this supposed to be? That’s not who I’m here for – get your act together mate.” | **Aggressive**  The AA is abrupt, rude and unprofessional | “Excuse me Sgt, you seem to have given me someone else’s record. Do you have Joe Bloggs’ custody record there for me to see?”  This is clear and polite. It acknowledges the error as a simple mistake. |
| **3** | The detained person is obviously upset about something but says he doesn’t want to discuss it | “Well something’s wrong with you, sitting there scowling at me all evening.” | **Aggressive**  This is very ‘in your face’. It focuses more on the AA’s own feelings than the DP’s | “If you want to talk to me about it later I can be a good listener. Is there anything I can do now to help?”  This response respects the DP’s rights while making sure the DP knows that practical or emotional support is still available. |
| **4** | The detained person says she does not want a solicitor | “Well I’m the AA and I can overrule you – so you’re going to have one.” | **Aggressive**  This is rude and bullying – it is abusing the power the AA has and is likely to be met with a hostile or resentful response | First, try to find out the real reason the DP doesn’t want a solicitor and then address their particular concern.  Persuade, negotiate, compromise  “I really want to make sure you get all the advice you need so I am going to speak to a solicitor on the phone and see what they think, is that ok with you?” |
| **5** | The police tell you that there are no interview rooms free so you will have to see the detained person in his cell | “Well, I’m not really meant to but I don’t suppose it will really matter.” | **Passive**  The AA has given a mixed message, saying on the one hand that they shouldn’t do it, but then doing it anyway. | “I can see the difficulty you have with lack of rooms but I really do need to speak to the DP in private and in a safe place. How quickly can a suitable room be made available?” |
| **6** | In interview the police officer says to the young female detained person: “No wonder they don’t want you back in the children’s home – look at the state of you – look at your hair.” | The AA remains silent | **Passive**  By saying nothing the AA is giving a message to both the police and the DP that this behaviour / way of talking is OK | “I think it would be best if we stick to questions about the alleged offence. I don’t think XX’s appearance is really relevant.”  This would be recorded and the DP would also feel supported. If this polite request does not work you may need to say  “XX’s appearance is really not relevant to this interview so I must insist that personal remarks are left out.” |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **7** | During interview the police officer says: “So, what else have you done?” | “Back off plod – that’s out of order!” | **Aggressive**  This is rude and unprofessional | “Excuse me, but please could we stick to the offence he/she has been arrested for?”  (The solicitor should be encouraged to participate at this stage!) |
| **8** | The solicitor has spoken to the detained person in private and says they are ready for interview and that you don’t need to speak to his client again | “Oh, OK, if you don’t think I need to.” | **Passive**  The AA has allowed him/herself to be intimidated by the solicitor | “Actually, I do need to speak to XX again briefly before the interview to check that he has understood the advice you have given and is happy to follow it.”  Perhaps follow with: “You can stay too if you like.”  This shows that you have nothing to hide and are not seeking to undermine the solicitor. You will also want to ask: “Are you able to give me some idea as to what to expect during the interview? Is XX planning to answer questions or go ‘no comment’?” |

**Communication aids**

**Cue Cards**

For new/inexperienced AAs a cue card might be helpful.

**Example of an AA Cue Card**

The cue card can be used as a guide, at least for the initial visits, and will remind you of your role and what you need to communicate to the DP.

**“Hello I’m from the Appropriate Adult Service which is not part of the police. I’m not here to discuss the reason you are here”**

**“I can go through what is likely to happen while you’re here if you like?”**

**“Have you had something to eat and drink?” “Do you want anything?”**

**(based on an initial view of the custody record and how long the DP has been in custody)**

**“Have you asked for a solicitor/legal representative?” (If not – “I think it would be a good idea for you to get some advice from a solicitor/legal representative”)**

**“I’ll be with you for the interview, and then we’ll see what will happen after that.”**

“Don’t forget you can ask to see me at any time while you’re here”

**Appendix A**

**Searches at the Police Station under PACE**

**Body Search**

This search will usually have taken place before the arrival of the AA as there is no requirement for them to be present. If the AA has arrived before the searches have been conducted, then they have the right to present when they are.

A routine body search is carried out when the detainee is booked into the police station. It will involve:

* Removal of outer clothing, including shoes
* Checking pockets
* A same sex officer will search the detainee by feeling over the clothing and patting up and down legs and arms.

Any property being carried by the detainee will be taken and logged. This includes items that may harm the detainee or others, such as shoes, belts etc.

**Strip search**

The grounds for a strip search are that the officer reasonably considers the detainee to have concealed an article which he would not be allowed to keep. This might be stolen property, drugs, a weapon or other evidence of an offence. The strip search must be necessary in order to remove the item – there is no need to strip search someone who hands over the item he is suspected of having.

A strip search must not be done routinely where there is no reason to believe anything has been concealed – it mustn’t be done on the “off-chance‟.

During a strip search the detainee should not usually have to be totally naked – they should be allowed to remove their top clothing, and then replace that before removing their trousers/pants etc. The police officer may make a visual inspection of the detainee’s mouth and may also ask the detainee to squat to give a better view underneath. Anything seen or detected that has been inserted into the body would have to be handed over voluntarily, or removed during an intimate search – see below.

An AA must be present unless:

* There is some urgency – someone may be at risk if the article is not found and recovered immediately
* The detainee says, in the AA‟s presence, that he/she is happy to go ahead without them being there

The AA may be of the opposite sex to the detainee. This is generally to allow a parent or partner to be the AA, but in other cases where it is not practical to get a same sex AA, the justice process may be better served by having an opposite sex AA rather than none at all – but the detainee must agree to this.

**Intimate search**

An intimate search is a search of a person’s body orifices, other than the mouth. The grounds for an intimate search are very strict.

An intimate search can only be carried out where:

* It has been authorised by an inspector or officer of higher rank
* There are reasonable grounds to believe the person has concealed
* Anything which they could, and might, use to cause physical injury to themselves or others while at the police station; or
* Class A drugs intended for supply or export (this usually, but not always, means a larger quantity than personal use)
* The police believe the only way to remove such items is by an intimate search
* An intimate search to remove a potential weapon does not require consent
* An intimate search to remove class A drugs does require consent in writing

The search must be carried out by a registered medical practitioner or registered nurse, unless an inspector or higher rank officer says this is not practicable – this would usually meant there was some danger/urgency and it must be a last resort

An AA must be present.

As with the strip search, the AA should be of the same sex where possible but can be of the opposite sex if the detainee agrees.

**X ray and ultrasound**

This type of search can be done when the police (rank of inspector or above) have reasonable grounds to believe the detainee may have swallowed a class A drug and that he was in possession of the drug with intent to supply or export it.

The detainee must give written consent in the AA’s presence.

PACE code C Annex K does not say that an AA must be present during the x-ray or ultra sound itself. It may be possible to be present to support a vulnerable or young detainee – discuss this with the police.

The police officer conducting the search must be of the same sex as the detainee.

The AA should be an independent witness to the search. Their job is to make sure the detainee is not unduly frightened by the process, to assist with communication and understanding where necessary, and to ensure the police act properly and appropriately.

1. No reference available. [↑](#footnote-ref-1)
2. PACE Code C (paragraphs 1.4, 1.5 and 1.6) [↑](#footnote-ref-2)
3. PACE 1984, Code C, paragraph 1.7 and Note 1D [↑](#footnote-ref-3)
4. PACE 1984, Code C Note 1B and 1F [↑](#footnote-ref-4)
5. *No One Knows: Prisoners’ Voices,* Prison Reform Trust 2008 [↑](#footnote-ref-5)
6. # Dr C Dawson, reference unknown

   [↑](#footnote-ref-6)
7. See Appendix A. Copies of the Rights and Entitlements are also available from the local custody suite. They can also be obtained from the Home Office website: http://police.homeoffice.gov.uk/operational-policing/powers-pace-codes/rights-entitlements-foreign-lang [↑](#footnote-ref-7)