



A Night in the Cells

Children in police custody and the provision of non-familial appropriate adults

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Background

While the numbers have fallen sharply in recent years, more than 83,000 children¹ aged 10 – 17 years continue to be arrested and held in detention at the police station in England each year.² Although ten is the legal minimum age at which an arrest can be made, latest figures indicate that in the year ending March 2016, 90 children below that age were subject to arrest before the police determined that they were too young to be held criminally liable.³

Children in police custody are extremely vulnerable for a range of reasons. The environment is one intended for adult offenders and is unsuited to meet the very different needs of children who come to police attention.⁴ Children experience time differently from adults, and the, sometimes lengthy, periods spent in a police cell will feel considerably longer for those who are younger.⁵ Importantly, there is considerable evidence that children who come to the attention of the youth justice system have disproportionate experiences of various forms of disadvantage and by this measure are more vulnerable than the general population.⁶ Finally, research confirms that children are more suggestible than adults, and more likely to admit to acts which they have not committed.⁷ The Code of Practice associated with the Police and Criminal Evidence Act 1984 (PACE), which governs the treatment of suspects in police detention, acknowledges that children may be '*particularly prone in certain circumstances to provide information that may be unreliable, misleading or self-incriminating*'.⁸

For such reasons, Her Majesty's Inspectorate of Probation has termed children in police detention as '*the most vulnerable of the vulnerable and least able to represent their own interests*'.⁹

Police stations rarely have dedicated provision that allows children to be held in a distinct environment from that for adults, but the legislative framework does recognise the particular vulnerabilities of young suspects. PACE requires that, wherever a child is arrested, the police should inform an 'appropriate adult' (AA) and request that they attend the police station to see the detainee. Until 2013, the requirement for the police to ensure the attendance of an AA applied to children aged 16 years or younger but, in that year, the duty was extended to encompass 17 year-olds. In the majority of cases, the child's parent or carer will act as the AA but, where such family members are unable or unwilling to attend, or are precluded from acting in that capacity, a range of other persons may act in this role.¹⁰ The Crime and Disorder Act 1998 places a duty on the local authority, in conjunction with a range of statutory partners, to ensure provision of persons to perform the role of a non-familial AA where this is required.

¹ Statistics on arrest actually denote episodes so some children may appear in the figures more than once

² Youth Justice Board (2017) *Youth Justice Statistics 2015/16 - England and Wales*. London: Ministry of Justice

³ Ibid. There is no published breakdown of the ages of children arrested between the ages of 10 and 17 years

⁴ Her Majesty's Inspectorate of Constabulary (2015) *The welfare of vulnerable people in police custody*. London: HMIC

⁵ Wittmann, M and Lehnhoff, S (2005) 'Age effects in perception of time' in *Psychological reports* 97(3):921-35

⁶ White, R and Cunneen, C (2015) 'Social class, youth crime and youth justice' in Goldson, B and Muncie, J (eds) *Youth crime and justice* 2nd edition. London: Sage

⁷ Redlich, A and Goodman, G (2003) 'Taking responsibility for an act not committed: the influence of and suggestibility' in *Law and Human Behaviour* 27 (2) 141 - 156

⁸ Home Office (2014) Revised Code of Practice for the detention, treatment and questioning of persons by police officers. Police and Criminal Evidence Act 1984 (PACE) – Code C. London: Home Office

⁹ Her Majesty's Inspectorate of Probation (2011) *Who's looking out for the children? A joint inspection of Appropriate Adult provision and children in detention after charge*. London: HMIP

¹⁰ Family members are disqualified from acting as an AA if they are suspected of involvement in the offence or are a victim of, or witness, to the offence. They are also precluded from the role if the child has admitted the offence to them prior to them attending the police station to act as AA.

Such provision may be delivered in a variety of ways including: a service provided in-house using either paid staff or volunteers; a commissioned out service either through the private sector or not-for-profit providers.

The legislation also recognises that wherever possible children should not remain in police cells overnight. Where children are refused bail after having been charged, there is a statutory requirement that, other than in exceptional circumstances, they are transferred to local authority accommodation pending their court appearance, rather than detained at the police station.

The role of the appropriate adult

The PACE Code of Practice C clarifies that when a child is in police detention, they can consult with the AA, in private, at any time. The Code details a number of points in the process where the presence of an AA is required, including:

- the giving of rights and the caution in relation to the right to silence;
- where the child is subject to a strip search;
- the interview;
- at reviews of detention;
- during fingerprinting or the taking of DNA samples; and wherever possible
- the point of charge or other police disposal.

The Code also describes the AA's role during the interview as being not simply to observe but to advise the child, to facilitate communication and to ensure that the interview '*is being conducted properly and fairly*'. Outside of the interview, the AA's duties include the giving of advice and assistance to the child.¹¹

The Crime and Disorder Act defines the role of the appropriate adult as being to '*safeguard the interests of children and young persons detained or questioned by police officers*'. Her Majesty's Inspectorate of Constabulary describes the AA as: '*an individual whose role is to safeguard the welfare and rights of children ... detained or interviewed by the police*'.¹² The National Appropriate Adult Network National Standards, which although not mandatory are approved by the Home Office and the Department of Health, explain that '*the AA role is to support children ... during their detention not just during the interview*'.¹³

It is clear then that the AA function is intended to provide an important protection for children throughout the time they are in police custody. The role takes on an additional importance where children are provided with a non-familial AA since vulnerability is likely to be exacerbated in cases where the child does not have the benefit of support from a family member or someone else close to them.¹⁴ One of the expectations against which police custody is inspected is that '*there are no delays in securing an appropriate adult and they are available 24 hours a day*'.¹⁵

¹¹ Home Office (2014) *op cit*

¹² HMI Constabulary (2015) *op cit*

¹³ National Appropriate Adult Network (2013) *National Standards*. London: NAAN

¹⁴ Nacro (2003) *Acting as an appropriate adult: a good practice guide*. London: Nacro

¹⁵ <https://www.justiceinspectorates.gov.uk/hmic/our-work/joint-inspections/joint-inspection-of-police-custody-facilities/>

Reasons for concern

Little is known about the experiences of children in police detention or the extent to which appropriate adult provision is effective in mitigating against vulnerability. The limited information that is available provides grounds for concern.

The recent Review of Youth Justice undertaken for the Ministry of Justice suggests that the AA role is '*ill understood and variably exercised*'.¹⁶ Research conducted in 2008, exploring the provision of volunteer AAs in one area concluded that just over half of AAs were contacted within two hours of the young suspect's arrest and that they tended to arrive within a further two hours of the referral.¹⁷ More recent studies have suggested that more extensive delays may not be uncommon. A thematic inspection conducted by Her Majesty's Inspectorate of Constabulary noted that: AAs were not always present for procedures as required; the provision was rarely available on a 24 hour basis; and children waited, on average, five and a half hours for the appropriate adult to arrive. The inspection raised the prospect that delays in the provision of AAs was one of the factors contributing to children being detained for unnecessarily long periods.¹⁸ This suggestion is consistent with research conducted three years after the implementation of PACE which found that delays associated with the obligation to secure the attendance of an AA had had the unintended consequence of increasing the duration of children's detention.¹⁹

The extent to which the provision of non-familial AAs adequately protects children in police custody was questioned by a thematic exploration of the provision of AAs by youth offending teams published in 2011. This concluded that the role had '*evolved into another part of the custody process*', with a focus on complying with the letter of the legislation rather than safeguarding and promoting children's welfare.²⁰

Although exact data are difficult to come by, there is also evidence that the legal requirement to transfer children who are refused bail after charge to local authority accommodation is rarely complied with. Of 636 cases examined by Her Majesty's Inspectorate of Constabulary involving such children, just one had resulted in a confirmed transfer.²¹

The focus of the study

In light of the above concerns, the Children's Commissioner for England has undertaken research on the provision of non-familial appropriate adults by local authorities, to ascertain:

¹⁶ Taylor, C (2016) *Review of the youth justice system in England and Wales*. London: Ministry of Justice

¹⁷ Pierpoint, H (2008) 'Quickening the PACE? The use of volunteers as appropriate adults in England and Wales' in *Policing and Society* 18(4): 397-410

¹⁸ HMI Constabulary (2015) *op cit*

¹⁹ Maguire, M (1998) 'Effects of the PACE provisions on detention and questioning' in *British Journal of Criminology* 28(1): 19-43

²⁰ HMI Probation (2011) *op cit*

²¹ HMI Constabulary (2015) *op cit*. See also Bateman, T (2013) *op cit*; Kemp, V and Hodgson, J (2016) 'England and Wales: Empirical findings' in M. Vanderhallen, M et al (eds) *Interrogating young suspects: procedural safeguards from an empirical perspective*. Intersentia: Cambridge, 45-46; Skynns, L (2011) *The overnight detention of children in police cells*. London: Howard League for Penal Reform).

- the nature of non-familial AA provision, including how the AA role is understood by the police and those providing the service;
- the extent of delay in referral for an AA, looking at AA response times and the reasons for delay;
- the implications for the level of support that children experience while in detention and how children experience their time in police custody; and
- other factors influencing the period that children spend at the police station.

Methodology

The project consisted of a number of distinct elements and adopted a mixed methods approach. This included: a survey of all youth offending teams (YOTs) in England; qualitative interviews with professionals and children; and casefile analysis of custody records. A full technical research report is available to accompany this report on request.

Key Findings and Recommendations

Children when they are in police custody are frequently at their most vulnerable. Languishing in cells for extended periods is distressing and damaging to their wellbeing. The statutory obligation on the police to secure the attendance of an AA is an important safeguard that in principle has the potential to:

- prevent mistreatment of the child by the police;
- provide independent adult support and advice during the period of detention;
- ensure that the child knows what is happening to them and understands what they are being told or asked; and
- reduce unnecessary detention to a minimum.

The requirement for youth offending teams to co-ordinate a non-familial AA service, for children whose parents cannot or are unwilling to attend (the focus of the current study), is a necessary safety net for children who lack family support.

The findings outlined in this report confirm that the provision of such services is formalised and embedded in most areas and that arrangements between the police and AA providers are well established. The research has however revealed a number of grounds for concern which raise questions as to how effectively the AA role protects children's welfare.

1. Monitoring children in police custody

The difficulties that some local areas clearly experienced in providing the information requested by the Children's Commissioner suggests that routine monitoring of the length of time that children spend in police custody and the outcomes for those detained is not currently embedded across youth offending services. This is likely to be, at least in part, a consequence of the fact that there is no requirement on YOTs to report on AA activity or the implications for children in police detention. As noted above, such information is not currently reported on at national level.

Recommendation

The experience of children in police custody, including access to an AA, should be adequately recorded so that it can be collated and published by the YJB, and monitored by Her Majesty's Inspectorate of Constabulary. This should include custody officers, who should ensure that the time of referral for an AA is always recorded, and providers of AA services, who should monitor the length of detention that children spend in police custody, and times of referral and arrival of the AA.

2. The custodial environment and the experience of children

The responses of the small number of children interviewed in this study confirm that the experience of police custody is at best uncomfortable and unpleasant and, in at least some cases, extremely distressing. We were told by the police officers we spoke to that some stations – but not all – have facilities that would allow children to be separated from adults. When interviewed, children expressed particular concerns over: the potential for mixing with adults, some of whom were intoxicated; the nature of the cell environment and the length of time that they spent alone in it; anxiety associated with the uncertainty of how long they would be detained; the lack of activities to occupy them; and the quality of food provided. In some instances, we were told by children that they had not eaten in 24 hours. As one said:

'I'll have the drinks but not the food. I had it once and had one spoonful and straightaway my belly started getting funny. So I didn't eat any more – and I've never touched it since.'

On arrival, and prior to being booked in, children were generally detained in a holding area waiting to be processed for up to an hour. During this period, children, including females, were often in the company of adult offenders. One young person described this as among the worst things about being at the police station:

'You are just there mixed with adults – and they are pissed and out of their heads on drugs. Not all of them – but quite a few. It's just not nice being a young person in that situation.'

Recommendation:

Children should be held separately from adults in holding areas prior to being booked in at the police station, and in child-appropriate settings that takes into account their needs eg adequate provision of food.

3. Delays in the provision of Appropriate Adults

The research found considerable delays in the police making a referral for an AA. Although responses to the questionnaire suggested YOTs support the principle that an AA should support the child throughout their period in detention, it was clear from case level data, custody record analysis and interviews with professionals and children that this was rarely fulfilled. The average delay between the child being arrested and the AA arriving at the police station shown in case level data (where information was known) was greater than nine hours.

Case study - Delay

One of the custody records we reviewed concerned a girl, aged 17, who had been reported missing to the police and was considered to be at risk of child sexual exploitation.

When the police found her, she tried to escape and in the process kicked and punched an officer. This led to her arrest for assaulting the police at 19.34. It took almost two hours for this young person to be processed and placed in a cell. At 23:05 the police contacted a cousin who confirmed that that her family would provide an appropriate adult. However telephone calls from the police at midnight, at 8.25 the next morning and at 9.30 were not answered and at that point the police decided to request a non-familial AA.

The AA arrived at 10.44 and a consultation between the girl and her solicitor was recorded at 11.03. The interview took place at 11.31 and the young person was released on bail at 12:05 to return to the police station at a later date.

Her bail was subsequently cancelled because the girl complied with all the conditions of an (informal) community resolution and so was not required to return to the police station. The total time she spent in police custody was 16 hours and 31 minutes.

As the table shows, three quarters of respondents reported that, during the day time, the police generally requested an AA as soon as they had established that parents/ carers would not be attending. A further 14% suggested that referral occurred at a later stage when there was an estimated time for the arrival of the solicitor or for the interview to occur. Once the referral was made, the time it took for the AA to arrive was considerably shorter, but overall the waiting time was considerable.

YOT descriptions of the point at which the police make a referral for a non-familial AA and the point at which the AA arrives at the police station (questionnaire responses)

When is the referral for an AA usually made?	At the point of arrest		When the police establish that a familial AA will not attend		When the police have an ETA for the solicitor		When the police have an ETA for the interview		Other		No Response	
During the 'day time' on weekdays	3	3%	77	75%	6	6%	8	8%	5	5%	3	3%
During 'out of hours' on weekdays	3	3%	67	66%	8	8%	7	7%	5	5%	12	12%
On weekends and holidays	2	2%	68	67%	9	9%	6	6%	6	6%	11	11%

The research showed that in practice, there was no expectation that AAs would arrive at the police station as soon as possible, but often at a point where legal representation had been obtained and the police were ready to proceed to interview. Children’s experiences were consistent with this picture. As one put it:

‘They only come when you are ready to be interviewed. They wouldn’t be there before the interview. They don’t meet with the solicitor – they just sit in another room when you are talking to the solicitor. And when you’ve done that you just go straight into the interview.’

When asked how quickly the AA arrived at the police station, one child responded that he was not able to give an accurate time *‘but it’s not fast’*. Other estimates were *‘five to six hours’* and *‘four to eight hours’*; but all young people were clear that they would be unlikely to have any adult support until shortly before they were interviewed.

Case study – waiting for interview

One of the cases we looked at involved a boy aged 17 years who was arrested in the early afternoon for burglary and possessing a firearm. Once arrested, it took 35 minutes for him to arrive at the police station and be processed, after which he was placed in a cell.

There was then a delay of 22 hours and 24 minutes before the interview took place the following day, with both the AA and the solicitor arriving prior to the interview commencing. While waiting for interview, the boy was offered two meals, one of which he turned down.

He was then charged, bailed and released almost 12 hours later at 23:32 by which time he had been in police custody for 1 day, 10 hours and 21 minutes.

Nor was there necessarily an expectation that AAs would remain at the police station once the interview was completed. As a consequence, children were left alone in the cells for extensive periods.

AA providers and children who were interviewed shared a view that children's welfare would be better served by AAs being available to provide support over a longer period in accordance with much of the guidance described earlier in the report. Police interviewees also considered that, subject to risk assessment, this would be beneficial.

Recommendation:

The police should make a referral for a non-familial AA as soon as they establish that parents or carers cannot / will not attend, where they have been unable to contact family members after an hour or there is a delay in the arrival of a familial AA. Efforts should be made to facilitate quick access to the station for the AA, such as providing ID cards.

Recommendation:

Appropriate adult services should seek to ensure attendance of the AA at the earliest opportunity following referral to support the child and ensure that their welfare is safeguarded, rather than arriving in time for the interview. National standards should be regarded as providing an absolute maximum response time rather than an indicator of good practice.

4. The role of the Appropriate Adult

Different models: The majority of areas responding to the questionnaire indicated that provision of AAs was delivered 'in house'. Most commonly, paid staff were deployed to attend the police station but there is also a considerable use of volunteers. The focus of the study was not on the quality of AA provision, but interviews with children and professionals suggested that this was variable. In particular, some respondents noted that some volunteers might lack the confidence or knowledge to intervene effectively on children's behalf.

24 hour/out of office hours provision: It was clear from the research evidence that the provision of non-familial AAs outside office hours was often less well developed – just over a half responded that they had 24 hour cover. Several of the professional interviewees confirmed that the provision of AAs became less reliable once the daytime service handed over to the out of hours provision. In one area, there was a one-hour time lag before the Emergency Duty Team would take referrals. One police officer confirmed that it was 'very unlikely' that a non-familial AA would attend after 5pm when the Duty Team took over, and that a lack of provision in the late evening contributed to children remaining at the police station overnight, in some cases unnecessarily. There was a perception among some interviewees that enhancing the availability of AAs outside office hours was one of the most important improvements that could be made to the service.

Post-interview role: Children frequently spend extensive periods on their own in police cells during which time their wellbeing may be compromised. Although data was limited in this regard, it seems clear that this included significant periods detained at the police after their interview was concluded. In most cases, they were returned to the cells during this time and it was common practice for AAs to leave the police station before children were released. As a consequence, there was considerable potential for a lack of independent adult support at this stage of the process.

Faster access to Bail: Where bail is used, it is evident that children are processed quite speedily when they return to the police station, reducing the overall time spent in detention significantly as demonstrated in the case study evidence below. Fast tracking the processing of children in police custody and releasing them on bail whenever possible would ensure that children spend considerably less time unsupported in police cells, and AAs could be present for a greater proportion of the child's detention.

Case studies – access to Bail

- A young person who was intoxicated on arrival at the police station was held for 18 hours and 14 minutes before being granted bail. He was subsequently charged when he returned to the police station.
- A 14 year old was arrested at 10.00 and bailed at 00:12 after being in custody for 14 hours and 12 minutes. He too was later charged.
- Positively, a 17 year old boy had previously been bailed to return to the police station at a specified time for interview. This ensured that the AA and the solicitor were available immediately. When the child arrived at the station, it just took 17 minutes to arrest him and book him in. He subsequently waited 23 minutes before the interview commenced. The interview took 20 minutes, and 27minutes after it was completed, he was bailed again. The whole process from arrest to release took 1 hour and 10minutes.

Facilitating transfer: Where a child is refused bail after they have been charged, there is a statutory obligation on the police to transfer them to local authority accommodation; there is a reciprocal obligation on the local authority to accept the transfer and to provide accommodation. This research adds to the body of evidence that this requirement is frequently not met. Where case level data were available, transfer occurred in just five percent of such cases, as shown in the table below.

Bail outcomes for children charged (n=2,122)

Outcome	Number	Percentage
Granted bail	1,290	60.8%
Bail refused	379	17.9%
Not known	453	21.3%

Of those known to have bail refused:	Number	Percentage
Recorded as transferred to LA accommodation	18	5%
Of which recorded as transfer to secure accommodation	5	

This issue has recently received considerable attention at the national level and we were told by professional interviewees that there was a heightened awareness of the statutory requirement to transfer children to local authority provision and increased pressures locally to comply with them. Despite some progress, however, it was acknowledged that, in practice, children were more likely to remain in police custody than to be transferred to local authority accommodation even though this practice is unlawful.

In many areas, YOTs did not consider that the AA had a role in facilitating transfer, as might be expected where the services deploy volunteers. Even where paid staff fulfil the role, decision making as to

placements frequently requires referral through children's social care rather than youth justice services. Nonetheless, there is clear potential for AAs to be informed of, and to remind police of, the statutory provisions and alert the local authority to the potential need to identify a placement.

Recommendation:

All AA providers, in particular those that make use of volunteers, should ensure that the AAs are effective and independent through regular training and supervision. This should be monitored by Her Majesty's Inspectorate of Probation.

Recommendation:

AA schemes should operate until late in the evening when children's rest periods kick in and there should be capacity to provide an AA after that time to accommodate exceptional circumstances. Reliance on Emergency Duty Teams to provide AAs should be discontinued.

Recommendation:

Remaining with the child after the interview and for release at the earliest opportunity should be regarded as a central function of the AA role. This should be reflected in National Standards on the provision of AAs.

Recommendation:

AA schemes should ensure that, where AAs do not have a role in representing the local authority in relation to negotiations about PACE transfer, they are nonetheless trained to understand the nature of the requirement and to remind the police that where bail is refused following charge, it is their statutory duty to arrange a transfer and to relay information to the local authority that a placement will be required.



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