

## *Vulnerable Adults in Police Custody*

### *Abstract*

*Purpose* To discuss the recent National Appropriate Adult Network (NAAN) report on role of the appropriate adult

*Design* Literature based

*Findings* *There to Help 2* highlights that there are still significant gaps in the provision of appropriate adult schemes across England and Wales. These gaps potentially place vulnerable adults at increased risk

This viewpoint paper discusses the recent *There to Help 2* report (Bath, 2019) published by NAAN. The report is an update on the progress made in the provision of appropriate adults for vulnerable adults who are detained or interviewed by the police. NAAN works to ensure that every child and vulnerable adult detained by the police has their rights and welfare protected by the provision of an appropriate adult. Before examining the report's findings, the paper outlines briefly the development of the role of the appropriate adult under the Police and Criminal Evidence Act (2004). It then looks at the broader issues of mental health and policing. The NAAN report highlights that despite significant progress in this area, there are still worrying numbers of vulnerable adults who are interviewed without an appropriate adult present. These gaps clearly place individuals at potential risk but also have implications for the administration of justice.

### *PACE and the role of the appropriate adult*

Maxwell Confait was found murdered in his bed-sit in London in 1972. He had been strangled and the bed-sit set on fire. The case was to have profound implications for the wider administration of justice in England and Wales. In November 1972, three youths were convicted of arson with intent to endanger life. One was also found guilty of manslaughter and one was convicted of murder. The prosecution case was almost totally reliant on confession evidence that had been obtained under duress (Fisher 1977). An initial appeal was rejected in July 1973. In June 1975, the cases were referred

to the Court of Appeal. In October that year, the convictions were quashed. The appeals were followed by the establishment of a Royal Commission that reported in 1981. The changes that the Commission recommended were incorporated into PACE (1984). The case has never been solved.

The investigation into the murder of Maxwell Confait took place in a very different cultural, political and organisational climate to the one that now exists. Police interviews were governed the “*Judges’ Rules*”. The Criminal Justice System (CJS) had yet to experience the shocks caused by a series of miscarriages of justice such as the wrongful conviction of the Birmingham Six. The introduction of PACE led to wider protections for those being interviewed by the Police. The “*Judges Rules*” were abolished and a new framework developed, including the tape recording of interviews. However, three groups: *juveniles, adults with learning difficulties and adults with mental health problems* were afforded additional protections. It was felt that such individuals were at particular risk of self-incrimination. Overall, these measures have been widely accepted. They are generally regarded as legitimate and proportionate. The CJS is always the site of political debates and concerns. These often focus on the balance between the rights of individuals and the powers of the state. The need for the additional protections and for the role of the appropriate adult is rarely, if ever, questioned in these debates. The main concerns focus, as in the NAAN report, on gaps in service provision.

### *Policing and Vulnerable Adults*

It is important to state that adults with mental health problems or a learning disability are much more likely to be victims of crime, particularly and increasingly hate crime, than perpetrators. Just like any other citizen, they may come into contact with the police in a number of ways. There has been an increased focus on the police involvement in response to people experiencing some form of mental health crisis. This is not a new issue but the recent retrenchment in mental health and wider public services means that the police face increasing demands in this area (Cummins and Edmondson, 2016). Police involvement in mental health work must be viewed as part of their role in wider community safety and the protection of vulnerable people. Wolff (2005) argues that the

police have always had what might be termed a “*quasi social work*” role. Punch (1979) went so far as to describe the police as the “*secret social service*”. Mental health work is an area that creates challenges for police services (Carey, 2001, Lurigio and Watson 2010). These challenges are both individual and organisational. Wood et al’s (2011) review of trends in the UK, Canada and the USA concludes that the same issues arise across the countries: a combination of reduced psychiatric provision and poorly funded community services has led to increased pressure on police officers who often receive little or no specific mental health training. Lord Adebawale (2013) concluded mental health is core police business. This should be taken to mean that dealing with individuals experiencing mental distress is a key feature of the work of police officers.

One of the key themes, in the discussion of the increased demands that the police face in mental health work, is the impact of the cuts in other services. There are two elements to this. There is a strong feeling amongst police officers that they are “*picking up the pieces*” - this was the subtitle of a Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) (2018) report- for the failing of community mental health services. This can be seen in social media posts about whether it is appropriate or “*the police’s job*” to respond in certain situations. Another element to this is the feeling that mental health demand for the police increases when specialist community mental health services are unavailable or provide a skeleton service. The HMICFRS (2018) report that the peak period for mental health related calls to the police is Monday to Friday 15:00-18:00 (HMICFRS, 2018). This is the period when other agencies are finishing or switching to limited out of hours office cover. There is a further spike in demand in late afternoon/ early evenings at the weekends.

### *There to Help 2*

The role of the police in mental health work has moved up the policy agenda. These debates have focused on the police involvement in crisis or emergency situations. This is clearly a vitally important issue. It is likely that the police will have some role in such situations. Under current MHA legislation, the police have powers under section 136 MHA that other professionals do not. There have been changes to section 136 MHA, for

example, reducing the period of potential detention to 24 hours. In addition, there has been a series of policy developments to reduce the use of police cells when people are detained under section 136 MHA. These are welcome moves. It is perhaps not too surprising that the focus has been on police involvement in emergency mental health work. These are probably the most high-profile events. In addition, they can be viewed as something of a barometer for wider concerns in this area. This focus can obscure other areas of police mental health work.

The HMICFRS (2018) report makes clear the other demands on the police are increasing when resources have been significantly reduced. The response to people in crisis is but one aspect of police work. One of the difficulties in the area of police and mental health work is the measurement of demand. There are not robust data collection systems in place. At the time of the report, there was no agreed definition of a mental-health related incident that was used across police forces. In April 2019, the National Police Chiefs Council introduced a new definition of a mental health related incident:

*Any police incident thought to relate someone's mental health where their vulnerability is at the centre of the incident or where the police have had to do something additionally or differently because of it.*

This will be starting point for obtaining a clearer picture. There are plans for forces to carry out a snap-shot exercise later in the year to assess mental health demand using the NPCC definition.

The protection of vulnerable people with mental health problems in custody clearly falls within the NPCC definition of a "*mental health incident*". In many, but not necessarily all cases, these require an assessment by a Forensic Physician and then the involvement of an appropriate adult. It is worth emphasising here that the pressurised nature of the custody environment. It is a physically and mentally demanding environment. Despite improvements, there is still limited access to medical and other forms of support. The

custody environment is also one that can have a negative impact on an individual's mental health.

The problems with the collection of data that apply generally across the field of policing and mental health are also apparent in the area of PACE and the role of the appropriate adult. The decision as to whether an appropriate adult is required ultimately has to be made by custody sergeants. Custody sergeants are experienced police officers, but they are not mental health professionals. Mental health problems are complex, fluctuating and difficult to assess. They can be both obscured and exacerbated by drug and or alcohol use. The nature of the custody environment adds a further barrier. Given the well documented extent of mental health problems amongst offenders, very few adults in custody are interviewed with an appropriate adult present. In 2014, the then Home Sec., Theresa May expressed concerns that there were not enough AAs available to support vulnerable adults in police custody. *There to Help* (NAAN, 2015) highlighted inadequacies in the exercise of the PACE safeguards. The report concluded that the police often struggled to find a AA and that there were gaps in the identification and recording of the needs of vulnerable adults.

*There to Help 2* was published in 2019 (NAAN 2019). The report is based on information from 43 police forces as well as the British Transport Police. 39 forces responded to the request. 31 forces were able to provide data. There was only one force where this information was not recorded. The report indicated that a need had been identified and recorded in 5.9% of cases of detentions in 2017/18. This represented a significant increase from the 2013/14 figure, which was 3.1%. However, as the authors note, wider research suggests that between 11-22% of adult detentions involve a person who would be regarded as vulnerable. There is, therefore, a significant gap and many vulnerable people are not being identified in the custody process. This means that they are being denied the additional protections that PACE (2004) should provide.

Only 15 forces recorded AA need in voluntary interviews. AA need was recorded in 6.9% of voluntary interviews. NAAN (2019) notes that this might indicate higher levels of vulnerability amongst suspects who are interviewed on this basis. The report also highlights the huge variation between forces of the number of interviews with an

appropriate adult present - 0.2% -15.7% for interviews in custody and 0%-24% for voluntary interviews. One of the most positive findings from NAAN (2019) is that there has been a significant increase in organised provision of appropriate adult services(?). 143 (83%) out of 174 Local authorities have an appropriate adult scheme for adults. This represents an increase from 53% recorded in *There to Help*. 45% of schemes provided cover 24 hours a day, 7 days a week. This, of course, means that in many areas there are still significant gaps in service provision. This will result in delays and vulnerable people spending longer periods in custody, potentially putting them at greater risk. The report concludes that in 2017/18 at least 111,445 detentions and voluntary interviews of vulnerable adults took place without an appropriate adult present.

### *Conclusion*

It is now thirty-five years since the introduction of PACE (1984). *There to Help 2* highlights that there are still significant gaps in the provision of appropriate adult schemes across England and Wales. This is an area where there are concerns about the risks involved. These risks include the impact on the vulnerable adult such as a deterioration in their mental health or possible self-harm and suicide. Alongside these risks, there are others such as a potential impact of a false confession. *There to Help 2* recommends that a fundamental change is required to address these issues. As it stands, there is no statutory duty on local authorities to ensure that independent appropriate adult provision exists. This is contrasted with the situation with children. The Crime and Disorder Act (1998) created a duty on local authorities to provide such services for children. It is difficult to see, apart from perhaps cost, what the arguments would/might be against extending these duties to vulnerable adults.

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