



Inspection of  
Youth  
Offending

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Arolygiad ar y Cyd Cyfiawnder Troseddol

## Who's looking out for the children?

A joint inspection of Appropriate Adult provision and children in detention after charge

**An Inspection led by HMI Constabulary with HMI Prisons, HMI Probation, the Care Quality Commission, the Healthcare Inspectorate Wales and the Care and Social Services Inspectorate Wales**

December 2011

ISBN: 978-1-84986-617-9

## **Acknowledgements**

We are grateful to the Police and Youth Offending Teams and their partners in Portsmouth, Stockport, Cardiff, Lincolnshire, Northumberland and the London Borough of Ealing for their assistance with this inspection, as well as to a number of national bodies. Their willingness to engage with the inspection process ensured that we were able to gather the material we needed.

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Please note that all names in the case studies are fictitious.

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## Foreword

In this inspection we examined a child or young person's journey from the point they arrive at the police station through to charge (and sometimes beyond). We were looking at two aspects of this process: the role of the Appropriate Adult,<sup>1</sup> and whether children and young people who had been charged and were waiting to appear in court were being placed in suitable local authority accommodation.

The arrangements for Appropriate Adults were introduced under the same legislation that placed reasonable restrictions on the length of time any individual could be held by the police before being charged and taken to court, and thus provided protective measures important for us all. Under its terms, the presence of an Appropriate Adult is required before the police can interview and (where appropriate) charge any unaccompanied children or young person or vulnerable adult to ensure that their rights are met, in effect acting in the role of parent or concerned adult.

The need for such a role is self evident. Police station custody areas can be very frightening places for adults, and are all the more so for young people. Children brought into police custody may be traumatised or distressed, or under the influence of alcohol or drugs (or their after-effects). A significant number have communication, learning, language or health needs, and many do not understand what is happening to them or the terminology used.

Whatever the intentions behind the legislation, we found that the procedure didn't really consider the needs of the children and young people. It was apparent that the role of the Appropriate Adult had evolved over time to become increasingly focussed on process rather than safeguarding the interests of the child and promoting their welfare. Overall, the lack of clarity about both the role of the Appropriate Adult and the arrangements whereby a child or young person could be transferred to local authority accommodation meant that children and young people were spending longer in an unsuitable and potentially detrimental environment than was needed. The system put in place to protect their interests was not working.

Like many aspects of youth justice, this work requires an effective partnership between the police, the youth offending team, health and children's services to operate effectively. We saw little evidence of the Local Safeguarding Children Board overseeing this area of work. Strategic leaders need to provide greater leadership, direction and supervision to enable their staff to properly understand their duty to safeguard and promote the welfare of children and young people, wherever they are.

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December 2011

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<sup>1</sup> The Appropriate Adult will normally be the parent or guardian, but must be provided by the Local Authority if they are unwilling or unable to attend.

## Executive Summary

In 2009/10, 240,000 (17%) of the nearly 1.4 million people arrested for notifiable<sup>2</sup> offences were aged 10 – 17 years. Surprisingly, there is little research on the experiences of these children and young people held in police detention.

This joint thematic inspection of six Youth Offending Teams and police force areas examined the experiences of children and young people under 17 years while in police custody from two perspectives: first, by studying the quality of service provided by Appropriate Adults; and, second, by considering the extent to which they are being transferred to local authority accommodation rather than being detained in police cells after charge. In addition to interviews and observations, we conducted 117 case reviews (49 where bail was denied and 58 where bail was granted) from the period between 01 July and 31 December 2010.

This report considers 'juveniles'<sup>3</sup> (children and young people aged 10 to 16 years), because the special provisions of care under the Police and Criminal Evidence Act 1984 (PACE 1984) apply to that age group only. This makes 17 year olds an anomaly. Under all other United Kingdom law and United Nation conventions, a child or young person is considered to be up to 18 years old. However, in a police station, a 17 year old is treated as an adult.

### Appropriate Adults

The Appropriate Adult role was created under PACE 1984, and is required for the 'mentally vulnerable' and juveniles. The Appropriate Adult is required to be present at a number of points, for example: when the child or young person is told their rights and entitlements; when they are interviewed; and when they are charged.<sup>4</sup> In the case of juveniles, the Appropriate Adult will normally be the parent or guardian; when they are unwilling or unable to attend, an Appropriate Adult must be provided by the local authority. This report focuses primarily on Local Authority Appropriate Adults, although many of our conclusions and recommendations can apply equally to parents undertaking this role.

In 1998, Local Authority Youth Offending Teams (YOTs) were made responsible for arranging Appropriate Adult provision. Currently, this provision varies, with schemes using volunteers; YOT workers; a combination of both; or commercial providers. Research in 2004<sup>5</sup> remarked upon the ambiguous nature of the Appropriate Adult role and suggested that YOTs had largely been without guidance in making arrangements for Appropriate Adult services. Organisations like the Youth Justice Board for England and Wales (YJB) and the National Appropriate Adult Network (NAAN) have provided some guidance, but have no regulatory powers.

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<sup>2</sup> Recorded crime does not include non-notifiable offences such as arrests for breach of the peace, drunk and disorderly and arrests under S.136 Mental Health Act 1983. Source: *Police Powers and Procedures*, 2009/10.

<sup>3</sup> 'Juveniles' is the term used through PACE 1984 for this age group.

<sup>4</sup> PACE 1984, Code C para 16.6 requires an Appropriate Adult to be present for charge, but under the notes for guidance (16C) there is no power to detain and delay charge if an Appropriate Adult is not available.

<sup>5</sup> Pierpoint, H. (2004) 'A survey of Volunteer Appropriate Adult Services in England and Wales.' *Youth Justice* 4:32.

The police, Local Authorities, YOTs and Appropriate Adults (under the Children Act 2004) have a duty to safeguard and promote the welfare of children and young people and this applies equally when they are in police detention.

While the Children Act 2004 recognised the vulnerability of children, there is little explanation in the Police and Criminal Evidence Act as to how such vulnerability manifests itself. Academic research suggests that children in the youth justice system may have low educational attainment, communication and learning difficulties and mental health problems. The number of police officers and staff who interact with children and young people while they are in police custody has increased significantly since the introduction of the Police Reform Act 2002. This has increased the risk that vulnerability could be missed or, where it is identified, not be communicated between staff. The Appropriate Adult, therefore, plays an important part in providing a continuity of support to the child or young person in police detention.

### **Detention after charge**

Once a child or young person is charged with an offence, the custody officer may decide that it is necessary to deny them bail. There are specific reasons for this: for example, if the custody officer believes the person might commit further offences, it is necessary for his/her own protection, or it is in his/her best interests<sup>6</sup>.

If a custody officer does make the decision to deny the child or young person bail then they must be placed in the care of a local authority pending an appearance in court, unless it is impracticable *or* there is a risk to public of serious harm, and no secure accommodation is available.<sup>7</sup> There are no clear definitions in legislation for 'impracticable' or 'serious harm'; but subsequent Home Office guidance and a high court case in 2006<sup>8</sup> have made it clear that a child or young person should only be held overnight in the police station in exceptional circumstances. The Police and Criminal Evidence Act 1984 does state that 'serious harm' for a juvenile (charged with a violent or sexual offence) shall be construed as death or serious injury, either physical or psychological.<sup>9</sup>

The duty on the police to transfer a child or young person to Local Authority care is reciprocal in that, under Section 21 of the Children's Act 1989, the Local Authority *must* accept that child or young person when they receive a request from police. Whether the accommodation provided by the Local Authority is secure or non-secure is a matter for the Local Authority to decide and it is not something the custody officer is allowed to consider when deciding if the transfer is 'impracticable'.

### **Our findings**

We found that Appropriate Adult provision has evolved into being another part of the custody process, with a focus on complying with PACE 1984 rather than safeguarding and promoting the welfare of children and young people:

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<sup>6</sup> PACE 1984, para 38(1) (a). These are only examples and there are other reasons for which the custody officer might deny someone bail.

<sup>7</sup> PACE 1984, para 38(6)

<sup>8</sup> R vs Gateshead Council 2006.

<sup>9</sup> PACE 1984, para 38(6).

- Recruiting procedures for Appropriate Adults were generally sound, as were training programmes across the six areas we inspected. However, policies, procedures, and call out arrangements did not properly consider the needs of the child or young person. This resulted in children and young people being detained in police cells for longer than necessary.
- Other than Northumberland, information flow between YOTs and Appropriate Adults was found to be ineffective. Appropriate Adults often knew little about the child or young person they were sent to support, and the feedback Appropriate Adults provided to Youth Offending Teams focussed on process and not the best interests of the child or young person. As a result, Appropriate Adults were often ill prepared and did not take a proactive role in promoting the needs of children and young people.
- Police custody records, an important source of information for the Appropriate Adult, were inadequate, often found to be completed incorrectly and lacked detail in a number of key areas (for example why bail was denied, why there were delays in conducting interviews, or why the parent or guardian was unsuitable to act as an Appropriate Adult).
- The physical environment of the custody areas (for example, the lack of privacy, noise and physical barriers) did not encourage children or young people to disclose vulnerabilities or special needs. There was limited assessment of these needs while in police detention by healthcare professionals with knowledge of safeguarding issues.
- Investigating officers made little adjustment in interviews for difficulties in communication, and when vulnerabilities were raised these issues were not found to have been relayed back to custody staff. Age-appropriate literature was not available, and guidance for parents/guardians was legalistic in content and difficult to understand.
- There was a lack of any credible assessment of the quality of service provided by Appropriate Adults, who were found to be passive in interviews and unlikely to challenge the police. While there are forums at both local and national level to monitor Appropriate Adult provision, the quality of the service given was rarely raised, and the providers generally assessed this based on a lack of complaint from the police. Other than Lincolnshire, there was little effort made to obtain feedback from children and young people who had used the Appropriate Adult service.

We reviewed 49 cases of children and young people who had been charged with an offence and denied bail, and found that:

- Other than Lincolnshire, there was an overall lack of awareness at all levels of both the police and local authority regarding how many children and young people continued to be detained in police cells after charge, and for how long.
- There was a lack of understanding amongst custody staff about the meaning of 'risk to the public of significant harm', and the legislation itself is unclear and confusing. Further, we found a lack of understanding of the difference between secure and non-secure accommodation. As a result, custody officers normally only requested secure accommodation, without evidencing 'serious harm'; Local Authority staff failed to challenge the need for secure accommodation; non-secure accommodation was routinely unavailable; and therefore children and



young people were not being transferred to Local Authority accommodation after charge.

- In nearly two-thirds (33) of our case reviews no Local Authority accommodation was sought. Of these, we assessed that 67% would have been suitable for transfer to non-secure Local Authority accommodation but instead continued to be detained in police cells. In all areas non-secure accommodation was available (albeit to varying degrees). Requests for secure accommodation were only monitored in Lincolnshire.
- Only three of the 49 children and young people in our sample who were denied bail were transferred to Local Authority accommodation. Of the remainder who continued to be detained in police cells, 64% were granted conditional or unconditional bail at their first court hearing.
- We found that in practice the reciprocal duty 'on the police to transfer' (under the Police and Criminal Evidence Act) and 'on the local authority to receive' (under the Children Act) has been reduced to a short (or no) telephone call to Local Authority staff requesting secure accommodation, followed by the now standard response that 'none is available'. Under these circumstances, the Appropriate Adult is often precluded (by local policy) from making any representations at all about this.

## Recommendations

The Appropriate Adult plays an important part in providing continuity of support to a child or young person in police detention, and contributes to the safe and humane administration of justice. Likewise, the custody officer (who is responsible for the care and treatment of all people in police detention) has a key role to play. Whilst the various processes under the Police and Criminal Evidence Act need to be followed, their focus (with others such as health workers) on the individual needs of each child or young person in their care can provide an opportunity to 'effect change' rather than simply being a 'tick in the box'.

The established partnerships between the police, YOT, local authority, health service and local children safeguarding board must provide the leadership, direction and supervision to enable their staff to properly understand their duty to safeguard children and young people and work effectively together to improve outcomes for children and young people.

As a result, we make the following recommendations:

**Recommendation 1:** The **YOT/Appropriate Adult Provider** will ensure AA call-out arrangements are designed such that children and young people are detained in police cells for the minimum amount of time possible.

**Recommendation 2:** The **YOT/Appropriate Adult Provider** will ensure information flows, in both directions, between the YOT and AAs are effective and focus on the needs of the individual child or young person.

**Recommendation 3:** The **Police** will make better use of available physical resources (for example private or separate booking in facilities) within the custody environment to encourage children and young people to disclose their individual vulnerabilities and needs.

**Recommendation 4:** The **Police** will effectively address the safeguarding needs of children by:

- Ensuring healthcare professionals undertake a full assessment of the vulnerability of children and young people (including physical and mental health, substance misuse and other vulnerabilities).
- Ensuring that the police assess, accurately record, communicate and take appropriate action so that these needs are addressed.

**Recommendation 5:** The **Police** will ensure that all information relating to the detention of children and young people is accurately recorded and shared with relevant partners in a timely fashion.

**Recommendation 6:** The **Police** will provide age-appropriate documents, adjust interview techniques to improve the gathering and giving of evidence by detained children and young people, and improve the communication of safeguarding issues identified in interviews or at any other time during police detention.

**Recommendation 7:** The **Home Office** will enable parents and guardians to participate fully in the police custody process of their children by providing suitable guidance.

**Recommendation 8:** The **YOT/Appropriate Adult Provider** will provide a quality service to children and young people in police detention including:

- Ensuring Appropriate Adults have sufficient knowledge of the background of the child or young person to understand their needs and promote their interests.
- Ensuring Appropriate Adults are able to identify safeguarding and welfare issues and effectively communicate these needs to police and relevant agencies so that appropriate action can be taken.
- Ensuring Appropriate Adults are independent, focussed on the needs of the child or young person rather than the process, and actively support them through the custody journey.

**Recommendation 9:** The **Home Office** will adopt within PACE 1984 the definition of a child as outlined in the Children Act 2004.

**Recommendation 10:** The **Police** will work with others to improve decision making in order to minimise the time children and young people are detained in police cells after charge.

**Recommendation 11:** The **Home Office** will clarify the section of PACE 1984 relating to secure and non-secure accommodation and include this in PACE codes of practice. Any associated guidance notes will be clarified by the relevant government agencies.

**Recommendation 12:** The **LSCB** will monitor the above recommendations (which are directed to their board partners) to ensure that children and young people are treated as individuals and their needs are recognised and addressed to enable them to understand and participate in the arrest-to-charge process.

## 1. The focus for joint inspection

1.1 This joint thematic inspection was commissioned by the Criminal Justice Chief Inspectors Group (CJCIG) and forms part of the joint programme of the CJ Inspectorates, as published in our joint business plan for 2010–12.<sup>10</sup>

1.2 The objectives of the inspection were to:

- Assess the effectiveness of **partnership arrangements** in place for the provision of Appropriate Adults (AAs) by local authorities and of local authority accommodation for those who meet the criteria under the Police and Criminal Evidence Act 1984 (PACE 1984).
- Assess the effectiveness of **policies and procedures** in respect of AA provision.
- Check that AAs are **available** to respond when required and assess that they undertake their responsibilities in an **efficient, effective and professional** manner.
- Identify good practice.
- Check that **risk** of harm, likelihood of offending and safeguarding is effectively **managed** and **communicated** between partners.
- Identify **enablers/barriers** to appropriate transfer to local authority accommodation after the child or young person is charged and they are denied bail.

1.3 The evidence collected for this inspection was gathered in various ways: document review, case reviews, interviews, observations within police custody suites and shadowing of some AAs. Further detail on the methodology used in this inspection is attached at Annex B.

1.4 Six police force/youth offending team (YOT) areas were selected to provide a cross-section of sites, taking into consideration urban/rural areas and current models of AA provider (as outlined in para 2.8). These areas were:

- Portsmouth;
- Stockport;
- Cardiff;
- Lincolnshire;
- Northumberland; and
- London Borough of Ealing.

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<sup>10</sup> Joint business plan available from [www.hmic.gov.uk](http://www.hmic.gov.uk)

## 2. Introduction

2.1 In 2009/10 nearly 1.4 million people were arrested for notifiable offences.<sup>11</sup> Over 240,000 of these arrests were children and young people aged 10 – 17 years, 17% of all arrests. The National Audit Office estimated the cost of youth crime in 2009/10 at between £8.5 and £11 billion.<sup>12</sup> Clearly, there is a moral and economic imperative for reducing youth offending, and this is the accepted role of all public servants working within youth criminal justice.

2.2 Consequently, it is surprising that there is such little research on the experiences of children or young people in police custody. National use of the term 'custody' refers to prison and not police detention.

*'I was surprised to discover that the police stage is currently the least developed in the offender pathway in terms of engagement with health and social services, as intervention generally occurs further along the pathway at the court and sentence stages.'*

*Therefore, as indicated, this point in the offender pathway provides the greatest opportunity to effect change. This includes improving access to services for offenders and potential offenders, improving safety for individuals and the public, supporting the police to fulfil their responsibilities and providing valuable information to agencies at the later stages of the criminal justice system.'*

*Lord Bradley, Bradley Report 2009<sup>13</sup>*

2.3 Key objectives for the police, Youth Offending Teams (YOTs)<sup>14</sup> and the Youth Justice Board for England and Wales (YJB) are to reduce the number of first-time entrants to the criminal justice system and to reduce youth re-offending. As Lord Bradley reflected, activity to achieve these objectives is often focussed on intervention before arrest or after sentence.

When an arrested child or young person finds themselves in police custody, the only independent person solely there for their welfare, with an 'opportunity to effect change' is the AA. That role, therefore, is crucial.

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<sup>11</sup> Recorded crime does not include non-notifiable offences such as arrests for breach of the peace, drunk and disorderly and arrests under S.136 Mental Health Act 1983. Source: Police Powers and Procedures, 2009/10.

<sup>12</sup> National Audit Office (2010) *The Youth Justice System in England & Wales: Reducing Offending by Young People*.

<sup>13</sup> Bradley Report (2009) p.24.

<sup>14</sup> 'YOT' is used throughout this report as a generic term relating to all teams working with children and young people who offend or who are likely to offend, as set up by the Crime and Disorder Act 1998.

## Legislative context for Appropriate Adults

- 2.4 PACE 1984 specifies that a person who is mentally disordered or otherwise mentally vulnerable or *under 17 years* of age (known as a 'juvenile') and in police detention requires an Appropriate Adult. 'The Appropriate Adult' means, in the case of a juvenile:<sup>15</sup>
- (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.<sup>16</sup>
- 2.5 YOTs, created by the Crime and Disorder Act 1998 (CDA 1998), were given the statutory obligation to co-ordinate AA provision. Before this Act, social services were not statutorily obliged to provide AAs.
- 2.6 Home Office Guidance issued in 1998 expected from the outset that the AA provision would generally be achieved using volunteers. The Audit Commission's 1996 report, *Misspent Youth*, supported this, and suggested that social workers were spending approximately 10% of their time acting as AAs, and that much of this was travelling and waiting time. The report estimated that social services could save £2 million per year by introducing volunteer schemes. What the report did not examine, however, was what the advantages (other than monetary savings) or disadvantages of this change would be.
- 2.7 Despite these expectations that AA provision would be chiefly achieved through the use of volunteers, in preparation for this inspection we identified that a variety of provision (other than the parent or guardian) is being used:
- Out-sourced volunteer AA provision (third sector);
  - Out-sourced AA provision (commercial);
  - In-house AA scheme (YOT/Local Authority Staff);
  - In-house AA scheme (volunteers); and
  - In-house AA scheme (combination of YOT/local authority staff and volunteers)
- 2.8 For the purposes of this report, we use the term AA to apply only to provision beyond a parent or guardian. Many of our conclusions and recommendations, however, can apply equally to parents or guardians undertaking this role.
- 2.9 It should be noted that there is currently an ongoing review of PACE, with the consultation deadline of 24th January 2012. More details can be found at the Home Office website ([www.homeoffice.gsi.gov.uk](http://www.homeoffice.gsi.gov.uk), search for 'Revisions to PACE codes consultation').

## The anomaly of being 17

- 2.10 Legislation dating back to 1933<sup>17</sup> defines a child or young person as being under the age of 18, and subsequent legislation has been consistent with this position. The

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<sup>15</sup> For the purposes of this report references children and young people are persons aged 10–16 years inclusive.

<sup>16</sup> PACE 1984, para 1.7.

United Nations Convention 1989 on the rights of the child defines children as those under 18 years. The Criminal Justice Act 1991 (CJA 1991) extended the jurisdiction of the youth court to include 17 year olds. The cross-Government strategy, *Healthy Children, Safer Communities*,<sup>18</sup> aimed at promoting the health and well-being of children in contact with the criminal justice system, also adheres to this definition of a child.

- 2.11 Most recently, the Coroners and Justice Act 2009 (which came into effect in June 2011) extended automatic eligibility for special measures to witnesses under the age of 18 (as opposed to 17). Therefore children under the age of 18 years old are now classed as 'vulnerable' and can be considered for special measures.<sup>19</sup> In June 2011, the Government confirmed in their response to the Justice Green Paper<sup>20</sup> consultation that all children under 18 will be treated in the same way for remand purposes, rather than treating 17 year olds as adults.
- 2.12 Under the Children Act 2004, a child is anyone under the age of 18 years. The Act further specifies that the fact that a child has reached 16 years of age, is living independently or is in further education, is a member of the armed forces, is in hospital or in custody in the secure estate for children and young people, does not change his or her status or entitlement to services or protection under the Children Act 1989. Obligations, therefore, in relation to safeguarding and welfare as outlined at para 2.26 also apply to 17 year olds.
- 2.13 PACE, however, uses the term 'juvenile' rather than using child, young person or young adult, creating an inconsistency in both terminology and treatment. Following their arrest and detention, 17 year olds are not offered AAs, their parents/guardian do not need to be notified that they are in police detention, and they may decline legal representation without recourse to anyone else. Seventeen year olds who are denied bail are not required to be transferred to local authority accommodation and therefore are detained in police cells until the next available court.
- 2.14 Curiously, the YJB *National Standards* require the police to advise the YOT within 24 hours of all children and young people who are charged with an offence, and this requirement includes 17 year olds.
- 2.15 As a result, within the criminal justice system, the only place that a 17 year old is treated as an adult is in a police station.

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<sup>17</sup> Children and Young Persons Act 1933.

<sup>18</sup> Department of Health, Department for Children, Schools and Families, Ministry of Justice and Home Office (2009) *Healthy Children, Safer Communities*.

<sup>19</sup> Special measures introduced under the Youth Justice and Criminal Evidence Act (YJCEA) 1999 can include: use of screens; use of live TV link; giving evidence in private; the removal of wigs and gowns; the use of video-recorded interviews as evidence-in-chief; communication through intermediaries; and the use of special communication aids.

<sup>20</sup> The Justice Green Paper 'Breaking the Cycle: Effective punishment, rehabilitation and sentencing of offenders' was published by the Ministry of Justice in December 2010 and included the proposal to remove the anomaly whereby in terms of remand arrangements 17 year olds are treated as adults. There was wide support for this idea.

## The Appropriate Adult role

2.16 PACE codes of practice<sup>21</sup> specify information that the police must make available to an AA and occasions when the AA must be present. For example, an AA must:

- be allowed to review the custody record<sup>22</sup> as soon as practicable after their arrival, and on request be given a copy of that custody record;
- be consulted by an inspector at reviews of detention;<sup>23</sup>
- be present when the custody officer explains to the child or young person their rights and entitlements while in police custody; and
- be present when a child or young person is cautioned or charged.<sup>24</sup>

2.17 What is not clear from the codes, however, is what is expected of the AA when they are present or consulted as described.

2.18 The guidance that is provided in the codes of practice relates solely to the AA role in *interview* and explains that if the AA in the interview<sup>25</sup> they must be *informed* that:

- 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.<sup>26</sup>

2.19 But how exactly the AA is supposed to 'advise' the child or young person and facilitate communication is less clear. Research in 2004<sup>27</sup> remarked upon the ambiguous nature of the AA role and suggested that YOTs had largely been without guidance in making arrangements for AA services.

2.20 The CDA 1998 also established the Youth Justice Board for England and Wales (YJB), which partially funds YOTs. The YJB *National Standards* (2000) included some broad principles relating to the AA role, but no clear guidance. In any case, the challenge for the YJB has been that while their remit is to 'oversee' the youth

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<sup>21</sup> Available from [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

<sup>22</sup> A custody record is a chronological record of a person's detention in police custody. All information required to be noted under the codes of practice must be included on the custody record.

<sup>23</sup> A review of detention is conducted by a police inspector at specified intervals (after the first 6 hours and at subsequent 9-hour intervals). The review is to ensure there are continued grounds for detention and that the investigation is being conducted expeditiously.

<sup>24</sup> PACE 1984, Code C. Notes for guidance 1L, paras 2.4, 2.5, 3.15, 3.17, 10.12, 15.4c, 16.1. PACE 1984, Code C para 16.6 requires an Appropriate Adult to be present for charge, but under the notes for guidance (16C) there is no power to detain and delay charge if an Appropriate Adult is not available.

<sup>25</sup> PACE 1984 specifies that an AA must always be present in an interview with a juvenile except under exceptional circumstances, as outlined in paras 11.1 and 11.18–20.

<sup>26</sup> PACE 1984, para 11.17.

<sup>27</sup> Pierpoint, H. (2004) 'A survey of Volunteer Appropriate Adult Services in England and Wales.' *Youth Justice* 4:32.



justice system, they have no statutory power to compel YOTs to adhere to a particular way of undertaking a task. This approach was designed to enable local solutions for local needs but, in the absence of other guidance relating to the AA role, resulted in the development of different services across England and Wales, few of which, we suggest, are providing the quality that might be expected.

- 2.21 The National Appropriate Adult Network<sup>28</sup> (NAAN) has been in existence for some 10 years and works with the Home Office to develop guidance for AA provision. In March 2011, NAAN had 67 full members who directly provided AA services<sup>29</sup> – although there are 158 YOTs across England and Wales. NAAN proactively seeks to increase its membership numbers but growth has been slow.
- 2.22 NAAN national standards were produced in 2005 and adopted by the Home Office in 2010. Members are expected to self-assess against these standards<sup>30</sup> but this is not monitored and NAAN, like the YJB, has no regulatory powers.

### **Safeguarding and welfare**

- 2.23 Section 11 of the Children Act 2004 places a duty on key people and bodies to make arrangements to ensure their functions are discharged with regard to the need to safeguard and promote the welfare of children.<sup>31</sup> This duty is much wider than protecting children and young people from abuse and includes 'enabling children to have optimum life chances'.<sup>32</sup>
- 2.24 For the purposes of this inspection, the key people and bodies that are covered by the duty include:
- the police;
  - NHS bodies;
  - local authorities (LAs); and
  - YOTs.
- 2.25 The duty imposed by the Children's Act 2004 on all key bodies to safeguard and promote the well being of children also applies to AAs, as they are discharging the role under the auspices of the YOT – whether they are volunteers or YOT workers.
- 2.26 The term "safeguarding and promoting the welfare of children" is well understood within the context of the Children Act 1989, which provides a statutory framework for safeguarding and promoting the welfare of children 'in need'. In this guidance (to Section 11 of the Children Act 2004), welfare is defined, as in the Children Act 1989, in terms of children's health and development, where health means 'physical or mental health' and development means 'physical, emotional, social or behavioural development'.

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<sup>28</sup> NAAN is a national membership body for organisations running Appropriate Adult services. NAAN is a registered charity and a company limited by guarantee.

<sup>29</sup> NAAN (2010) *Annual Report 2009/10*.

<sup>30</sup> NAAN National Standards were adopted in 2005 and approved by the Home Office and the Department of Health in 2011.

<sup>31</sup> Children here are classed as persons under the age of 18: Section 65(1), Children Act 2004.

<sup>32</sup> Department for Children, Schools and Families (2006, updated 2010). *Working Together To Safeguard Children*.

2.27 Safeguarding and promoting the welfare of children is also defined in the 2006 interagency guidance document, *Working Together to Safeguard Children*,<sup>33</sup> as:

- *'protecting children from maltreatment;*
- *preventing impairment of children's health or development;*
- *ensuring that children are growing up in circumstances consistent with the provision of safe and effective care; and*
- *undertaking that role so as to enable those children to have optimum life chances and to enter adulthood successfully.'*

2.28 The above definitions make it clear that agency responsibilities go beyond protecting children from abuse. As the title of the 2006 guidance implies, there is a shared responsibility between all those agencies identified to work effectively together to safeguard and promote the welfare of the child or young person in their care. These obligations are as applicable to a child or young person while in police detention as at any other time and during any other interaction.

### **Police custody**

2.29 In the past it would not have been unusual for one police officer to deal with an individual from arrest through to release from police custody. However, in recent years, concerns were raised that police officers were being removed from their frontline duties for too long while dealing with interviews, detainees and paperwork.

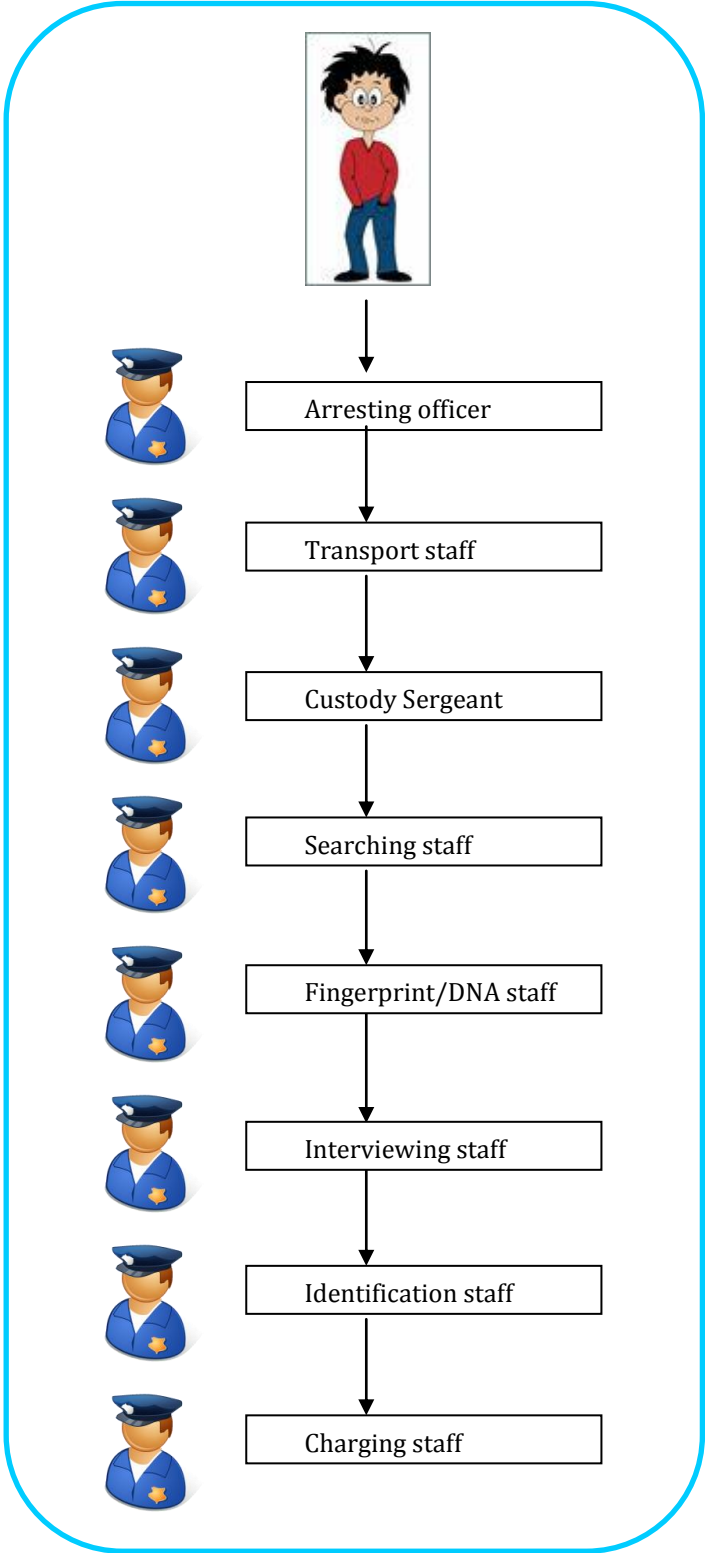
2.30 The introduction of the Police Reform Act (PRA) 2002 allowed for police staff (including employees of an outside contractor not directly employed by the police) to assist police officers in a number of frontline duties, including acting as custody detention officers. In 2004, Her Majesty's Inspectorate of Constabulary's report on modernising policing stated that 32 out of 43 forces were using civilian detention officers (CDO).

2.31 Today, the use of CDOs is well established, and many forces are now either utilising or moving to 'prisoner processing teams', which also include civilian investigating staff. This has significantly increased the number of people who deal with a detainee while they are in police custody. A child or young person is now faced with a series of individuals, each undertaking a particular task or concerned with a specific process. This is demonstrated in Figure 1.

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<sup>33</sup> Department for Children, Schools and Families (2006, updated 2010). *Working Together To Safeguard Children*.

**Figure 1: Officers/staff involved in the custody process**



2.32 Each interaction provides the opportunity that vulnerabilities may be disclosed to staff – but also the risk that such disclosures may go unnoticed if staff are focussed on getting their own job done and not on their wider obligations relating to the welfare, health and development of the child or young person.

2.33 In 2004, Nacro<sup>34</sup> made the point that as the custody journey becomes more process driven, the role of the AA would become all the more important:

*"Having this one particular relationship to support the detainee through what may be a somewhat puzzling, confusing and threatening experience should not be underestimated."*<sup>35</sup>

### **What is 'vulnerable by age'?**

2.34 PACE notes for guidance (contained within the codes of practice) provide a definition for 'mentally vulnerable' and requires that health needs are assessed;<sup>36</sup> Annex E to Code C provides a summary of provision relating to the 'mentally vulnerable'. There is no such definition in the codes relating to an individual who is vulnerable by virtue of their age, and no health assessment is prescribed.

2.35 Research suggests that children and young people coming to the attention of the youth justice system may have low educational attainment, communication difficulties, mental health problems, learning disabilities and learning difficulties.<sup>37</sup>

2.36 The YJB 2005 report, *Risk and Protective Factors*, made the link between risk (of offending) factors and youth re-offending, and identifies similar issues. Thinking and behavioural problems rank high on the list of risk factors. Research by Bryan and Mackenzie (2008)<sup>38</sup> identified that at least 60% of young people in the youth justice system had communication needs.

2.37 It is clear that the reasons for children and young people offending are complex and often individualised –one person's protective factor may be another's risk factor. Careful assessment of individuals is therefore important in the preventing future offending by that young person.

2.38 Research from 2003 by Redlich and Goodman<sup>39</sup> showed that younger and more suggestible participants were more likely than older and less suggestible participants to falsely take responsibility for acts they did not commit. Similarly, Gudjonsson<sup>40</sup> found that children were particularly suggestible and that police needed to be aware of this during interviews. PACE notes for guidance also

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<sup>34</sup> Nacro is a crime reduction charity who work with people before, during and after they are in trouble.

<sup>35</sup> Nacro (2004) Youth Crime Briefing.

<sup>36</sup> PACE 1984, Code C para 3.16.

<sup>37</sup> YJB (2009) *National Standards*.

<sup>38</sup> Bryan, K. and MacKenzie, J. (2008) Meeting the Speech, Language and Communication Needs of Vulnerable Young People. R

<sup>39</sup> Redlich A and Goodman G (2003) Taking responsibility for an act not committed: the influence of and suggestibility. *Law and Human Behaviour* 27 (2) 141 - 156

<sup>40</sup> Gudjonsson G et al (2009) False confessions among 15 and 16 year olds in compulsory education and the relationship with adverse life events, *The Journal of Forensic Psychiatry and Psychology* 20 (6) 950 - 996

acknowledges this issue, stating that juveniles may be 'particularly prone in certain circumstances to provide information that may be unreliable, misleading or self-incriminating'.<sup>41</sup>

2.39 All this information suggests that the children and young people who are processed through police custody are potentially the most vulnerable of the vulnerable, and the least able to represent their own best interests, control their behaviour, and communicate their needs. For these children and young people, in policed detention without the support of their family, the AA plays a critical role.

### **Accommodation after charge**

2.40 When the police decide they have sufficient evidence to charge a detainee with an offence, they have a number of options (depending on the circumstances): to take no further or informal action (for example, restorative justice disposals); to use out of court disposals; or to charge the detainee with an offence which requires an appearance in court.

2.41 If the police charge a child or young person with an offence, the custody officer must then take the decision whether to grant or deny bail (with or without conditions). Although there is a general presumption under the Bail Act 1976 that bail will be granted without conditions, there are exceptions,<sup>42</sup> and these apply to children and young people as well as adults.

2.42 PACE specifies that a person may continue to be detained following charge if the custody officer believes:

- the person would fail to appear in court;
- the person would commit further offences;
- it is necessary for their own protection;
- it is necessary to prevent harm to others;
- it is necessary to prevent interference with justice/investigation; or
- there is doubt about their identity/name & address.<sup>43</sup>

2.43 There is an additional reason for a child or young person: if the custody officer believes 'that he ought to be detained in his own interests'.<sup>44</sup>

2.44 Once the custody officer decides that continued detention after charge for a juvenile is necessary, the codes of practice state (emphasis added):<sup>45</sup>

*"When a juvenile is charged with an offence and the custody officer authorises their continued detention after charge, the custody officer must try to make arrangements for the juvenile to be taken into the **care of a local authority** to be detained pending appearance in court unless:*

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<sup>41</sup> PACE 1984, Notes for guidance 11C.

<sup>42</sup> Serious offences such as murder, manslaughter, rape and certain serious sexual offences.

<sup>43</sup> PACE 1984, para 38(1) (a)

<sup>44</sup> PACE 1984, para 38(1) (b) (ii)

<sup>45</sup> PACE 1984, para 16.7, Code C.

- *the custody officer certifies it is **impracticable** to do so or,*
- *in the case of a juvenile of at least 12 years old, no secure accommodation is available **AND** there is a **risk to the public of serious harm from that juvenile**, in accordance with PACE, section 38(6)."*

2.45 While PACE does not define "impracticable", the notes for guidance state that it is *not*: a juvenile's behaviour, the nature of the offence, nor the lack of availability of secure accommodation. Additionally, Home Office guidance from 1992 states that the type of accommodation in which the local authority propose to accommodate the child or young person is *not* a factor which the custody officer may take into account in considering whether the transfer is impracticable.<sup>46</sup>

2.46 PACE further states that: 'in relation to an arrested juvenile charged with a violent or sexual offence, protecting the public from *serious harm* from him shall be construed as a reference to protecting members of the public from death or serious personal injury, whether physical or psychological, occasioned by further such offences committed by him.'<sup>47</sup>

2.47 When a Local Authority receives a request from the police to accommodate a child or young person they have an absolute duty, under the Children Act 1989, to do so. The type of accommodation is, however, a matter for the Local Authority, although specific criteria have to be met should *secure* accommodation be sought:

*"A LA [local authority] may only place a child in a secure children's home where it appears that any other form of accommodation would be inappropriate because he or she:*

- *Is likely to abscond from such other accommodation; or*
- *Is likely to injure himself or other if kept in any other form of accommodation."*<sup>48</sup>

2.48 In accordance with these requirements, continued detention of a child or young person in a police station after they have been charged should be *rare*. This is supported by a High Court judgement in 2006, which stated: "a young person should not, other than in exceptional circumstances, be held in the police station overnight."<sup>49</sup>

2.49 There is a lack of current data on the number of children and young people who continue to be detained in police cells when they are denied bail following charge. However, an analysis of YJB data from 2000 indicated that between July and September of that year, 1022 10 – 16 year olds were denied bail by the police, and

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<sup>46</sup> Home office circular 78/1992

<sup>47</sup> PACE 1984, para 38 (6A)

<sup>48</sup> Regulation 6, The Children (Secure Accommodation) Regulations 1991

<sup>49</sup> R vs Gateshead Council (2006)

only 15.4% of these were transferred to Local Authority accommodation.<sup>50</sup> The same analysis stated that only 27% of children aged 10 – 11 years old were transferred. The YJB no longer collates this data.

2.50 In June 2011, following Freedom of Information requests to police forces, the Howard League for Penal Reform suggested that up to 53,000 children and young people were held overnight in police cells in 2008/09.<sup>51</sup> Although the full research relating to this claim has yet to be published, it clearly raises concern as to whether the police, YOTs and local authorities are properly following their statutory duties.

### **Where are we in 2011?**

2.51 As this inspection is published (December 2011), significant changes are taking place in health services. Custody suites will be serviced by the NHS, and the role of new Health and Wellbeing Boards is at an early stage of development.

2.52 As referred to previously, academic research and what data there is, combined with professional concerns, indicate that children and young people coming into police custody are likely to have learning, speech, mental health, substance misuse and other health difficulties. In addition, the role of AAs is vague, too many children and young people are routinely detained overnight in police cells, and the legal status of a 17 year old in police detention is at odds with all other UK legislation.

2.53 The implementation of PACE has encouraged, a process-driven environment, and this may have been the intention of the legislation; but it has not paid sufficient regard to the needs of children and young people within the system.

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<sup>50</sup> An analysis of second quarterly returns provided by YOTs, Youth Justice Board (2001), as quoted in Nacro briefing 2005

<sup>51</sup> *Guardian* (2011) 'Thousands of children held in police cells overnight.' Published on [www.guardian.co.uk](http://www.guardian.co.uk), 13 June 2011.

## 3. Our Findings – Appropriate Adults

### Recruitment, selection, training and support

- 3.1 Recruitment processes for AAs were in our view generally sound. Providers were conscious of the need for AAs to reflect the diversity of local communities in their recruitment campaigns. Some areas were proactive in their recruitment from local minority groups, including Traveller and Somalian communities. Criminal Record Bureau<sup>52</sup> (CRB) checks were standard.
- 3.2 However, the actual selection processes were less robust; and, with the demand for AAs exceeding the supply, many providers lacked the proactive systems necessary to filter out unsuitable candidates, with many providers so desperate to appoint volunteers that it was more an issue of the applicant de-selecting themselves (e.g. they realised that they did not like being in a police custody suite) than any proactive system to filter out unsuitable candidates.
- 3.3 Although evidence suggested that attendance was variable, all sites had training programmes for AA with similar elements:
- Shadowing experienced AA;
  - Mentoring;
  - Presentations from police and other partners, such as health;
  - Visits to police custody units;
  - Refresher training; and,
  - Support meetings.
- 3.4 Shadowing an experienced AA was generally part of the AA training programme. The experienced AA was then expected to give feedback to the provider on the suitability of the new AA. However, we found that for the more experienced AAs it had been a number of years since they themselves had been trained, with no ongoing check on their own working practices. As a result, it was difficult to assess if this approach to shadowing was an effective training method.

### Policies and procedures

- 3.5 Policies and procedures were focussed on compliance with the custody process. Details regarding the function of an AA were specified, to varying degrees (e.g. be present for charge, and not to be used for reprimands/final warning). In all areas, there was confusion amongst some of the AAs as to whether or not they should

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<sup>52</sup> Criminal record bureau checks are required for some types of jobs and the results check individual details against criminal records and other sources including the Police National Computer and may reveal criminal convictions, cautions, reprimands and warnings.



always insist on the services of a legal representative<sup>53</sup> and (when necessary) overrule the decision of a child or young person who had decided against having a solicitor.

- 3.6 Except for Northumberland, the written procedures were not clear in identifying and communicating welfare issues for the child or young person.
- 3.7 PACE codes of practice require an AA to be present at the time of charge.<sup>54</sup> While the codes do not specifically state that the AA should be present when the custody officer decides if they intend to authorise continued detention after charge, in practice the decision is made very soon after charge, when the AA is therefore likely to be present. We found that YOT workers undertaking the AA role were more likely to make representations to custody officers regarding denying bail to the child or young person. In each of the areas where non-YOT staff acted as AAs, their guidelines stated that they are not to involve themselves with this debate.
- 3.8 Two of the volunteer schemes had full time co-ordinators for the AAs and these were generally effective at providing support, arranging training and refresher training, and maintaining links with partners.
- 3.9 However, in one area, the co-ordination of the AA scheme was just one of many responsibilities and competing demands on the YOT worker designated with that role. As a result, AA training was haphazard and attendance not monitored; and there was a lack of regular contact with and ongoing support for the AAs.

## **Provision**

- 3.10 In one area, the volunteer AA provision had originally been designed as supplementary to the primary response from the YOT. Over a number of years this had evolved so that the volunteer AA had become the main source of provision. Policies and procedures, however, had not been reviewed to keep up with this change. YOT workers were expected to deal with the more serious offences, but as the volunteer provision had become the standard, YOT workers indicated that they felt de-skilled in the AA role.
- 3.11 In all areas, AA provision was based on a 'call-out' system. This normally involved the police telephoning a request for an AA to a nominated person, who would identify and contact the AA to arrange their attendance at the police station as required.
- 3.12 Arrangements invariably involved the use of rotas, but their efficacy was variable. The rota used in one area was in fact a list of AAs rather than a rota. This meant that custody staff were ringing through the list hoping that someone was available. The delay and inconvenience this caused had resulted in custody staff tending to call the same AA directly. Our evidence showed that this had increased the familiarity between police and AA, and inspectors were concerned that this had impacted on their independence.

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<sup>53</sup> Para 6.5A of PACE 1984 Code C states that, in the case of a juvenile, the Appropriate Adult has the right to ask for a solicitor to attend if this would be in the best interests of the person.

<sup>54</sup> Para 16.6 of PACE 1984 Code C requires an Appropriate Adult to be present for charge, but under the notes for guidance (16C) there is no power to detain and delay charge if an Appropriate Adult is not available.

- 3.13 All areas had AA provision arranged from around 08:00 until 23:00 seven days a week. Interviews with custody staff indicated that they generally considered this to be sufficient for their needs through the week. Actual attendance on weekends and bank holidays was more problematic, and issues fed back by custody staff to police management generally related to this issue.
- 3.14 However, it was clear that call-out arrangements were based on what the police indicated was needed to process PACE, rather than on the best interests of the child or young person.
- 3.15 For example, PACE codes of practice allow for a detainee to have eight hours' uninterrupted rest in any 24-hour period, normally at night.<sup>55</sup> We found evidence that in practice this meant children and young people arrested near or after the end of the arranged AA call-out times were routinely put into rest periods overnight to be dealt with in the morning.
- 3.16 While this ensured custody staff were compliant with obligations under PACE, it also significantly extended the period of time some children or young people were detained in police cells.
- 3.17 In our view cases should be looked at on their individual merits, and the timing of interviews, whether immediately or following a rest period, should be determined by consideration of the child's best interests.

**Recommendation 1:** The **YOT/AA Provider** will ensure AA call-out arrangements are designed such that children and young people are detained in police cells for the minimum amount of time possible.

### Information flows

- 3.18 By the nature of their role, an AA who is not a child's parent or guardian is less familiar with the circumstances of the child or young person. Adequate knowledge about the child or young person, therefore, is critical to an AA being able to carry out their role effectively.
- 3.19 Sources of information include:
- Previous knowledge and contact with the child or young person;
  - Information from the YOT information database (YOIS or Careworks);
  - Information from children's services, health and education;
  - Information from custody staff; and
  - Custody records.
- 3.20 PACE codes of practice require custody sergeants to make entries in the custody record detailing a variety of actions<sup>56</sup> relating to that detainee as they occur. This is therefore an important record of events.

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<sup>55</sup> PACE 1984, para 12.2

<sup>56</sup> For example: reasons for arrest and detention, details of any property seized, time/date when the person is taken for fingerprints, DNA, to be seen by medical practitioner, consultation with solicitors, interviews, etc.

3.21 However, we found AAs were normally only provided with the front page of the custody record, which included limited details such as name, address, and date of birth. Key information contained in the detention log (the chronological record of events during the person's detention) and the risk assessment<sup>57</sup> were not normally reviewed. In the absence of information from the YOT team to help prepare the AA, essential information was potentially being missed.

*"We don't know much about the young person until we get to custody."*

*Volunteer AA*

3.22 At all sites, police custody records were less than adequate. Some common examples were:

- Risk assessments<sup>58</sup> and other types of custody record entries being cut and pasted from one section to another without amendment (for example, one custody record detailed that upon arrival the detainee was drunk and uncooperative, and the pre-release risk assessment repeated the same entry);
- No explanation or reasons for delays on arrival at the police station, booking in, or interviews;
- Medical history issues (e.g. self-harm) disclosed at the time detention was authorised were not considered as part of initial and pre-release risk assessments, which might prompt actions by other partners/agencies;
- Names of AA were included on the custody record, but details of their role in relation to that child or young person were not (e.g. parent, volunteer AA, YOT worker, or local authority Emergency Duty Team);
- No explanation was given as to why the AA had changed through the course of the child or young person's detention;
- Inspector reviews did not include explanations as to why the AA was not consulted;
- No details were recorded as to why the parent/guardian was unsuitable to act as AA;
- Insufficient detail as to why bail was denied and why continued detention in police cells was necessary, or why it was impracticable to transfer to Local Authority accommodation; and,
- No explanation of how the child or young person constituted 'serious harm' (as required in PACE in order to justify continued detention in police cells rather than transfer to local authority accommodation).

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<sup>57</sup> Risk assessment means assessing the risk and potential risk that each detainee presents to themselves or others in the custody suite. This is an ongoing assessment.

<sup>58</sup> Risk assessments are formally conducted and recorded in the custody record at the time of arrival at the police station and prior to release.

3.23 The following case study demonstrates some of the above issues:

*Liam (15 years) was arrested just before midnight after been forensically linked to a burglary from four days earlier. He asked for his mother to be notified, but there was no record that this was done. Liam's detention was reviewed at 03:22 hours, with no record that his mother or other AA had been consulted. There was no record of other attempts to contact his mother. Liam's second review of detention was at midday; again, his mother and solicitor were not mentioned. The first entry relating to the solicitor was at 12:09 hours. The first entry relating to the YOT was at 14:20 hours when they attended as AA. A house search was then authorised. Liam was taken for a 20-minute interview at 18:11 hours and released with no further action at 18:32 hours. He spent a total of 18 hours, 16 minutes in police custody.*

3.24 The flow of information back to the YOT is also important and provides the YOT with up-to-date information on that child or young person. At all sites, AAs were asked to document their observations in relation to that child or young person on specified AA Forms after their 'call out'.

3.25 We found that these completed forms lacked detail and were mainly a 'checklist'. Recorded observations by AAs on safeguarding or welfare issues were rare, and the layout of the AA forms themselves related to the 'process' and not to the needs of the child or young person. In one area the form used by the AA for payment, which had to be signed off by the custody sergeant, was the same one used for recording details of their visit.

3.26 In one area the completed AA visit forms were sent to administrative staff rather than being reviewed by a YOT worker or AA co-ordinator, creating a clear risk that important information about the child or young person may be overlooked. In another area, the completed forms were filed away without review, but could not be located when requested by the inspection team.

3.27 In another area, the AA co-ordinator personally reviewed each AA form on a daily basis and followed up any issues identified by the AA. While we considered this to be a proactive approach, the contact was reliant on the quality of the completed AA form, which we found contained more detail about the process than the child.

**Recommendation 2:** The **YOT/AA Provider** will ensure information flows, in both directions, between the YOT and AAs are effective and focus on the needs of the individual child or young person.

### The police custody journey

3.28 Lord Bradley<sup>59</sup> identified that the physical environment of a custody unit does not encourage people to disclose mental health problems. Similarly, we observed that the custody environment does not encourage children and young people to disclose their vulnerabilities or special needs.

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<sup>59</sup> The Bradley Report, April 2009.

3.29 While custody units varied somewhat across the sites visited, they shared some common features:

- Custody officers based behind computers positioned on high custody desks, some with Perspex glass, creating a physical barrier between the officer and the child or young person;
- Multiple custody desks increasing the noise levels, resulting in custody officers having to shout their questions at the child or young person in order to be heard; and
- Little provision for any private consultation in the custody area.

3.30 Despite one area having private and separate facilities available, we saw no evidence of this being used by custody staff to speak privately with children or young people.

3.31 HMIC and HMI Prisons joint inspections of police custody suites have similarly found that little adjustment is made for juveniles; that they were regularly treated the same as other detainees; that booking in took place with little privacy; and that record-keeping was poor.<sup>60</sup>

**Recommendation 3:** The **Police** will make better use of available physical resources (for example private or separate booking in facilities) within the custody environment to encourage children and young people to disclose their individual vulnerabilities and needs.

3.32 Across all sites, our observations and interviews with custody staff demonstrated that both sergeants and police staff knew that 'juveniles' were deemed vulnerable under PACE, and some made efforts to ensure children and young people understood the custody process. However, we found little evidence of any understanding about how vulnerability (e.g. learning and communication difficulties, behavioural problems, or special needs such as health issues) might manifest itself and what action should be taken to better support the needs of the child or young person.

*"I suffer from ADHD<sup>61</sup> and claustrophobia. I didn't feel confident about telling police staff about this because they don't like me."*

*Female young person*

3.33 Across all sites we found that while custody staff had received some training in child protection issues, few had an awareness of safeguarding<sup>62</sup> and its wider implications for dealing with children or young people. In the absence of any such training civilian custody detention officers in two areas had taken it upon themselves, through research and self-study, to improve their understanding of vulnerabilities

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<sup>60</sup> Cambridgeshire Nov 2008 (para 2.8 & 2.10); Hertfordshire, Jan 2009 (para 2.7 & 2.9); Lincolnshire (para 4.1); Ealing Jan 2009 (para 2.11).

<sup>61</sup> Attention Deficit Hyperactivity Disorder

<sup>62</sup> The ability to demonstrate that all reasonable action has been taken to keep to a minimum the risk of a child or young person coming to harm.

related to young age. Their approach to children and young people was more rounded and the service had clearly benefited from that increased awareness.

- 3.34 These findings were also reflected in our case reviews. For example, in one a 12-year-old male had disclosed to the custody sergeant that he had in the past self-harmed; this was recorded in the custody record, but this was not considered an immediate risk. While not contravening current codes of practices inspectors felt that it may have been beneficial for the child if he had been referred to a healthcare professional for a more detailed assessment.
- 3.35 Case reviews and interviews with custody staff demonstrated that children and young people are not routinely assessed by healthcare professionals unless there was an obvious injury or condition upon arrival at the police station. We consider this to be a missed opportunity. We found only one area where the healthcare professional had a good understanding of safeguarding issues and was able to advise custody staff on the care of the child or young person while in custody. In all other areas, healthcare professionals lacked knowledge and practical experience to share with custody staff in assessing, referring and providing interventions for children and young people. Health professionals' assessments were restricted to fitness to detain or fitness to interview, and were not seen to be considering the wider health and safeguarding needs of the child or young person. Full assessments of healthcare issues (including physical, mental health and substance misuse) were underdeveloped.
- 3.36 Although in one custody unit the healthcare professional used a limited assessment tool, the rest had no assessment screening tools, lacked age appropriate literature and had limited or no understanding of the broader health and children's services landscape.

**Recommendation 4:** The **Police** will effectively address the safeguarding needs of children by:

- Ensuring healthcare professionals undertake a full assessment of the vulnerability of children and young people (including physical and mental health, substance misuse and other vulnerabilities).
- Ensuring that the police assess, accurately record, communicate and take appropriate action so that these needs are addressed.

- 3.37 When a child or young person is arrested and brought to the police station, it is the responsibility of the police to contact an AA.<sup>63</sup> This should, in the first instance, be the parent or guardian. In 75% of our case reviews we assessed that reasonable attempts were made to contact parents or guardians, and in 65% of cases we considered that reasonable attempts were made to facilitate their attendance.
- 3.38 In some areas, however, where the AA service was used instead of the parent or guardian, we found that the police only contacted them when an interview had already been scheduled, normally giving the AA two hours' notice of the time. Interviews indicate that this had evolved due to the police having increased confidence that an AA would be available when required and in order to avoid the AA 'hanging' around the station.

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<sup>63</sup> PACE 1984, para 13.13

- 3.39 The issue that has been overlooked, however, in the evolution of this practice is two-fold. First, when the AA is a YOT worker, they are more likely to have first-hand knowledge of the child or young person and immediate access to relevant social or child services record systems. However, when the AA is more remote (e.g. a volunteer or sessional worker) these arrangements may not allow sufficient time or access to information relating to the child or young person in order to properly prepare themselves for their role. As stated at para 3.18, obtaining such knowledge and information about the child or young person is key to the AA being able to conduct themselves effectively in their role.
- 3.40 Second, such a practice is contrary to PACE, which requires the custody officer, *as soon as practicable*, to inform the AA of the arrest, the reasons for the arrest and where the child or young person is detained.<sup>64</sup>

*"The police only ring when the officer is ready for interview. I dealt with a young person who was in the cells for nearly 24 hours before we were advised that he was in custody."*

*YOT Worker*

- 3.41 In addition to the requirement for the custody officer to notify the YOT/AA as soon as practicable, a police inspector should consult the AA, if available (this includes contact by telephone), when conducting detainee reviews at 6, 15 and 24-hour points after detention is authorised.<sup>65</sup> An inspector's review of detention is conducted to ensure the reasons for the detention continue to exist. We found, however, in 31 out of 37 case reviews where an inspector review was conducted, the AA was not consulted.

**Recommendation 5:** The **Police** will ensure that all information relating to the detention of children and young people is accurately recorded and shared with relevant partners in a timely fashion.

## Police interviews

- 3.42 The principle that vulnerable children and young people have difficulty communicating, which becomes even more of a problem when they are stressed or in fear, is the basis for the 'special measures' introduced under the Youth Justice and Criminal Evidence Act 1999 (YJCEA). The measures are intended to be used to facilitate the gathering and giving of evidence by vulnerable and intimidated *witnesses*, but the measures themselves are confined to the court experience. In our view, this principle can apply to an arrested child or young person as much as it does to a young witness.
- 3.43 In most areas, from the interview tapes/DVDs we reviewed, we found that investigating officers generally took a lot of time at the beginning of the interview to explain and break down the caution and ensure that the child or young person could themselves explain their understanding of its meaning, and this was positive to note.

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<sup>64</sup> Ibid.

<sup>65</sup> PACE 1984, Code C para 15.3 (c)

- 3.44 However, beyond the introductions and caution, investigating officers reverted to standard police interviewing techniques. Some officers did speak more slowly, but the officers' clear focus in interview was their 'points to prove'. There was no evidence of adjustment made by police in interview for the vulnerabilities of age or special needs, such as the use of pictures and diagrams to aid communication. The use of legal terms (e.g. allegation, mitigation, disclosure) and quoting sections of legislation (e.g. Section 5, GBH, Affray<sup>66</sup>) rather than explaining the offence for which they were arrested were common in the interviews we examined.
- 3.45 There was evidence from case reviews that vulnerabilities identified and discussed in police interviews were not recorded on the custody record, indicating that custody staff were either not made aware or had not recorded it.
- 3.46 The following case study demonstrates this point:

*James (12 years old) was arrested at around 16:30 for assaulting his mother and threatening her with a screwdriver following an argument. He disclosed to the custody officer that he had had heart problems in the past, but as he 'cannot be more specific and has had no treatment in the last year', he was assessed as fit and well by the custody officer. James said that recently he had tried to run out in front of traffic but his friend stopped him. He did not see a healthcare professional.*

*James was interviewed with his grandmother and a solicitor at 23:45 for nearly 45 minutes. During the interview, James said that his mother hit him. He said that they live in a two-bedroom flat. His mother and boyfriend shared one room; the boyfriend's son and James' sister share the other. James said that he slept on the floor. He said that the argument started because he was asking for food. The interviewing officer made no comment regarding James' circumstances.*

*There was no record that any of this information was passed onto custody staff. James was bailed pending further enquiries at 04:22, after nearly 12 hours in custody. There was no record of where he was released to or of any record of contact with social services.*

- 3.47 Where written information was provided to parents/guardians about their role as an AA, it was not simple or easy to read. Original Home Office guidance issued in 2003 was seven pages long. The most recent guidance (issued in April 2011) is two pages long but is not written in plain English and uses legal terminology. Four of the police forces visited provided no written guidance at all.

*"I had a call from a parent who said they hadn't requested a solicitor because their child hadn't done anything wrong and thought it would make their child appear guilty to police; when they accepted a caution they didn't realise that meant the child couldn't get a visa to go to the US."*

*National Appropriate Adult Network*

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<sup>66</sup> 'Disorderly Conduct' is commonly referred to by police as a 'Section 5' offence under the Public Order Act 1996; GBH is the abbreviation for Grievous Bodily Harm under the Offences against the Person Act 1871; and, Affray is an offence under the Public Order Act 1996.



- 3.48 PACE requires the custody officer to verbally explain to a detainee their rights (e.g. to a solicitor) and entitlements (e.g. to visits or food and water) while they are in police detention. In addition, people are also provided with a written notice explaining these rights and entitlements.<sup>67</sup>
- 3.49 At all sites, the same notice was used for both adults and children or young people and (similar to guidance documents) used complex words and legal terminology. In one police force visited, the notice ran to four sides of A4. Two pages of it were dedicated to encouraging the detainee to admit to further offences.<sup>68</sup> It contained pictures of prison cells and explained to detainees the consequences of not admitting offences (such as having your house searched). Inspectors considered that this document was not appropriate to provide to children and young people.

**Recommendation 6:** The **Police** will provide age-appropriate documents, adjust interview techniques to improve the gathering and giving of evidence by detained children and young people, and improve the communication of safeguarding issues identified in interviews or at any other time during police detention.

**Recommendation 7:** The **Home Office** will enable parents and guardians to participate fully in the police custody process of their children by providing suitable guidance.

### Quality of Appropriate Adult provision

- 3.50 The key element of AA independence was found to be variable. In one area inadequate rotas (as outlined at para 3.12) resulted in the same AA being repeatedly called by custody staff. In another area, custody officers were asked to comment on AA performance. In these areas, inspectors were concerned about the consequent impact on the ability of the AA to maintain their independence and focus on the needs of the child or young person rather than the needs of the police.
- 3.51 Focus groups of volunteer AAs indicated that they felt confident to challenge the police in interview if appropriate; however, this was not supported by evidence from case reviews.
- 3.52 These showed that AAs did not take the opportunity to explain the complex and legal language used by the police and were generally found to be passive throughout the interview. The role of the AA was normally explained by the interviewing officer and not the AA themselves. In one area we did find an AA who introduced themselves in the interview; however, such a proactive presence was unusual in the interviews we reviewed.
- 3.53 None of the AA providers had any robust arrangements in place to assess the quality of AA provision. Both providers and volunteer AAs judged their own quality of service on the basis of feedback from custody officers rather than from the child or young person. In practice this meant that if the police did not complain then there was an assumption that the service was working satisfactorily.

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<sup>67</sup> PACE 1984, para 3.1 and 3.2

<sup>68</sup> These are commonly referred to as TICs or offences 'taken into consideration'

- 3.54 In Lincolnshire, however, feedback was consistently and regularly sought from children and young people on the quality of service provided by their AAs. While inspectors acknowledge the challenge that this presents to AA providers, we found that none of the other sites made any credible efforts to establish the views of children and young people.
- 3.55 We found that the children and young people we spoke to in focus groups were ambivalent about the impact of the AA and consistently told us that their own parents/family played a greater role in interview.

*"They [AAs] are not allowed to say a word [in interview]."*

*Female young person*

*"I don't like the Appropriate Adults. Once one of them gave me a row in front of the police and this was embarrassing. They always stick up for the police and not for me. I wish they were more like the lawyers. When my mother was with me she really stuck up for me and they seemed to listen."*

*Male young person*

*"When I met the AA to begin with it was scary because he just came in to the cell and I didn't know what to expect. At first I don't think he explained his job properly to me. When I got to know him I started to trust him and now it helps that I always see the same person."*

*Male young person*

- 3.56 We examined a number of different models of AA provision, each with different features.
- 3.57 We saw good practice in **Northumberland**, a YOT area which has continued to use YOT workers and local authority Emergency Duty Team (EDT) staff as AAs. The following case study from **Northumberland** demonstrates this good practice.

*Danny (16 years old) was arrested for interfering with a motor vehicle. Diane from the local authority Emergency Duty Team was requested as the AA. Diane tried to contact Danny's mother five times before leaving for the police station to discuss the appropriateness of a return home or identify an alternate plan for him. His mother's telephone was switched off, so Diane arranged a foster placement to ensure, if required, that Danny had somewhere safe to stay after the interview. Diane identified a foster carer that Danny was familiar with and had had a positive experience with previously.*

*After the interview, Diane tried Danny's mother two more times but again was unsuccessful. Diane spent time with Danny discussing the plan for him and he agreed foster care was the best option.*

*Diane tried Danny's mother again and on this occasion she answered. Danny's mother clearly had problems providing positive parenting. Diane explained the plan of foster*

care to safeguard Danny until the situation could be further assessed. His mother agreed.

Diane and the solicitor transported Danny to the foster placement. The solicitor knew the young person well and had attended at his request. Diane was able to hand over to the foster carer information in relation to health, family, behaviour, risk etc whilst the solicitor was able to explain details in respect of bail dates, etc.

**Recommendation 8:** The **YOT/AA Provider** will provide a quality service to children and young people in police detention, including:

- Ensuring AAs have sufficient knowledge of the background of the child or young person to understand their needs and promote their interests.
- Ensuring AAs are able to identify safeguarding and welfare issues and effectively communicate these needs to police and relevant agencies so that appropriate action can be taken.
- Ensuring AAs are independent, focussed on the needs of the child or young person rather than the process, and actively support them through the custody journey.

## Governance

3.58 At a local level, relationships between YOTs and police were considered to be positive, and most areas held a quarterly meeting between a YOT representative (normally the YOT manager) and the police. However, our review of minutes of these meetings showed that issues relating to AAs were rarely mentioned. When the issue was raised, the discussion centred on police concerns about sufficient availability of AAs, normally at weekends and bank holidays. Subsequent actions indicate that these issues had been addressed but wider issues (such as quality and feedback from young people) were never raised.

3.59 At senior manager level, interviews with the Directors of Children's Services (DCS), who also chaired the Local Safeguarding Children Board (LSCB), found that they were not aware of any problems relating to AA provision and, in line with our other findings at local level, the subject had rarely been raised.

3.60 There was a clear absence of relevant safeguarding material within the guidance that was available for custody staff engaging with children and young people. The 2006 Association of Chief Police Officers (ACPO)/National Police Improvement Agency manual, *Safer detention and handling of persons in police custody*,<sup>69</sup> devotes four of its 197 pages to children and young people; the ACPO strategy for children and young people<sup>70</sup> does not mention young people in police detention; the 90 pages of most recent national curriculum on custody officer training uses the term 'safeguarding' once in its 90 pages; and the main ACPO guidance for 'safeguarding' is contained in the 2009 manual *Guidance on investigating child abuse and safeguarding children*<sup>71</sup> where the emphasis is on the child as a victim/witness and not as a detainee.

<sup>69</sup> Available from [www.homeoffice.gsi.gov.uk](http://www.homeoffice.gsi.gov.uk)

<sup>70</sup> ACPO (2010) *Children and Young People Strategy 2010–13*. Available from [www.acpo.police.uk](http://www.acpo.police.uk)

<sup>71</sup> Available from [www.npia.police.uk](http://www.npia.police.uk)

3.61 ACPO monitors issues relating to AAs through its National Custody Forum, and there is representation from the National Appropriate Adult Network on that board. While it is positive that there is a route for the police to monitor such issues, this approach demonstrates a lack of awareness of the differing needs of vulnerable adults and children or young people and consequently the differing roles of AA when acting for one or the other.

## **Conclusions**

3.62 Since the introduction of AAs in 1984, and in an atmosphere of broad principles and limited guidance, our findings show that AA provision has evolved over time without a clear understanding of its purpose or role. In practice, this evolution has supported the police need to comply with PACE rather than focussing on safeguarding and preventing re-offending. The result is that AA provision, like detention in police custody itself, has become almost entirely process driven.

3.63 In our view, the AA needs to be more than just one link in a chain of events. Our findings indicate that where the AA is focussed on the welfare of the child or young person; has sufficient knowledge of their needs and personal history; and, understands their own role in the criminal justice system, then they are able to take an active part through this custody journey and beyond.

## 4. Our Findings – Detention After Charge (PACE beds)

- 4.1 On a national level, it was difficult to establish how many children and young people were arrested and detained after charge in police cells. Because Home Office data reflects the total the number of 10–17 year olds arrested and charged for notifiable offences (and as previously discussed 17 year olds are treated as adults in a police station), it is not possible to extrapolate the number of ‘juveniles’ arrested and detained. As a result, there is no national data available solely in relation to the 10 – 16 year olds to whom the provisions of PACE apply.
- 4.2 Numbers of children and young people held overnight in police cells were supplied to the YJB by YOTs as part of the original quarterly data set in 2000; but this is no longer the case. It is unclear what use was made of this data.

**Recommendation 9:** The **Home Office** will adopt within PACE 1984 the definition of a child as outlined in the Children Act 2004.

- 4.3 Other than in Lincolnshire YOT, we were surprised at the overall lack of concern about how many children and young people were detained in police cells both before and after charge, and for how long. In one area, numbers were recorded, but any rise or fall was not challenged; in all other areas, the issue did not feature on the agenda of the police, YOT or LCSB.
- 4.4 In the six areas inspected, we examined available force data and established that a total of 1005 children and young people were charged with an offence in the six-month period from 01 July – 31 December 2010; of these 154 were denied bail. This equates to 15%, or nearly one in six children and young people.
- 4.5 Other than Lincolnshire, the YOTs did not routinely monitor the number of times local authority accommodation was sought by the police. But such information was unlikely to be accurate in any case, as we found the police often were not making the request in the first place. Therefore, of the 154 children and young people denied bail by the police, we are unable to say how many continued to be detained in police cells rather than being transferred to local authority accommodation. We have, however, drawn conclusions on the basis of the case reviews conducted as part of this inspection.
- 4.6 Charging 10 and 11 year olds with offences was rare, and in fact only one area charged any children of that age during our six-month review period. In that area, a total of seven 10 and 11 year olds were charged; two of these children (one 10 year old and one 11 year old co-accused) were denied bail. Following charge, the 10 year old was transferred to foster care and the 11 year old was taken to a relative’s address.

- 4.7 As outlined at para 2.43, there are specific reasons to enable the continued detention of a person following charge (e.g. if the custody officer believes the person would fail to appear in court, commit further offences,<sup>72</sup> etc.).
- 4.8 The additional reason for juveniles is 'that he ought to be detained in his own interests'.<sup>73</sup> While PACE does not define 'his own interests', we found some evidence to suggest that it was being loosely interpreted, as the following case study demonstrates.

*Layla (12 years old) was arrested at 16:30 for common assault. She was interviewed just after 21:30 and charged around 12:30am. She was on police bail for a robbery at the time of her arrest, but this was the first time she had been charged with any offence. She had attended all appointments and complied with bail conditions (curfew). The custody sergeant said he was concerned she would re-offend and denied bail with the following comments:*

*"The detained person is one of five children being cared for by a single dad. He is struggling to cope and her behaviour has markedly worsened over the last two months. I feel that for tonight at least it is in her interests that she be cared for elsewhere than at home. She is a frequent missing person, and though she has kept all her police appointments, now that she is charged I believe that she may well go missing again and fail to appear."*

*No 'suitable' local authority accommodation was available. Layla remained in police custody until court the next day, where she received unconditional bail. Layla spent over 15 hours in police cells.*

- 4.9 Unsurprisingly, the most common types of offences for which children and young people had bail denied were for charges of burglary, violence (mostly minor assaults), and robbery. For those children and young people who were denied bail for offences of theft, however, there were marked differences between areas.
- 4.10 Two of the areas visited (both city centres) had similar numbers of children and young people charged with offences during this period (232 and 268 respectively) and the same proportion of children and young people denied bail (nearly 14%). It is interesting to note, however, that in one of these areas children and young people were three times as likely to have their bail denied for theft than in the other area.
- 4.11 While, it is difficult to draw specific conclusions from this data alone, both our observations and the example from the above case study suggest some lack of understanding of the requirements of PACE. This may be affecting police decision-making.

**Recommendation 10:** The **Police** will work with others to improve decision making in order to minimise the time children and young people are detained in police cells after charge.

<sup>72</sup> PACE 1984, para 38(1) (a).

<sup>73</sup> PACE 1984, para 38(1) (b) (ii).

4.12 The case reviews were selected from custody records from the same period (01 July 2010 to 31 December 2010) for persons under 17 charged with an offence in the YOT area. In total, we conducted 117 case reviews, 49 where bail was denied and 68 where bail was granted.

4.13 In the case reviews, the most common reason given for denying bail was on the grounds of it being 'necessary to prevent from committing further offences' (26 out of 44 cases where a reason was given; 59%). The second most common reason for denying bail was on the grounds that 'the child or young person might fail to appear in court' (6 out of 44; 14%).

4.14 Once the custody officer decides that continued detention after charge for a juvenile is necessary, the Act states (emphasis added):

*"When a juvenile is charged with an offence and the custody officer authorises their continued detention after charge, the custody officer must try to make arrangements for the juvenile to be taken into the **care of a local authority** to be detained pending appearance in court unless:*

- *the custody officer certifies it is **impracticable** to do so **or**,*
- *in the case of a juvenile of at least 12 years old, no secure accommodation is available **AND** there is a **risk to the public of serious harm from that juvenile**, in accordance with PACE, section 38(6)."*

4.15 The requirements of PACE were written to ensure that children should only continue to be detained in police stations after charge when it is unavoidable; however, we consider that the wording of this section is unclear and confusing.

4.16 Further, the definition of 'serious harm,' as outlined previously in para 2.47, is contained in the full Act. While the term is used in the codes of practice<sup>74</sup> it is not defined and no reference is made to the explanation available in the full Act. It is therefore not surprising that we found very little awareness amongst custody officers of the definition of 'serious harm.'

4.17 As stated above, there must be a 'risk of serious harm' *and* 'no secure accommodation' before continued detention in a police station is allowed. However, we found little evidence amongst custody staff of an understanding of the difference between secure<sup>75</sup> and non-secure accommodation. In practice this meant that only local authority secure accommodation was deemed suitable by custody sergeants, rather than any real consideration of the requirements of PACE.

**Recommendation 11:** The **Home Office** will clarify the section of PACE 1984 relating to secure and non-secure accommodation and include this in PACE codes of practice. Any associated guidance notes will be clarified by the relevant government agencies.

<sup>74</sup> PACE 1984, para 16.7 and Notes for guidance, 16D.

<sup>75</sup> 'Secure accommodation' means accommodation provided by the Local Authority for the purpose of restricting the liberty of children to whom section 25 of the Children's Act 1989 applies.

4.18 Interviews with custody officers indicated that secure accommodation was generally not available. For example, we were advised that there was no secure accommodation available in the whole of London.

4.19 However, in all areas we visited, non-secure accommodation was available but was not being requested by police nor suggested by Local Authority staff.

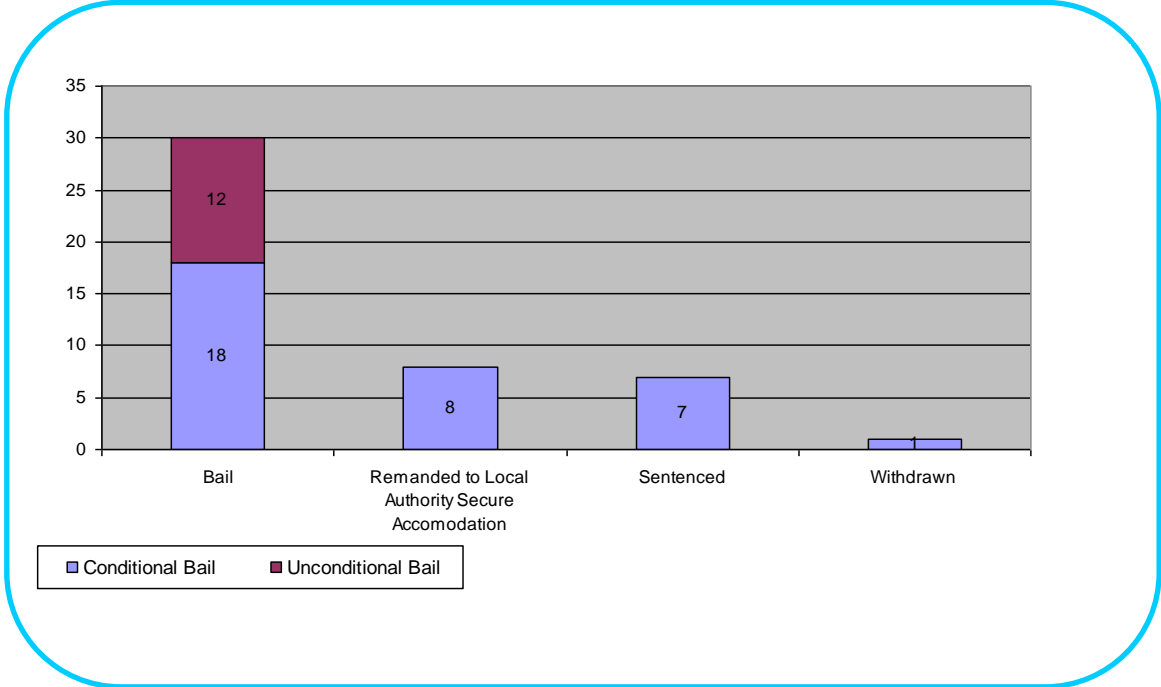
*"Eight out of 10 times I don't even bother to phone the local authority for accommodation because it's just not worth it, there is no accommodation available."*

*Custody Sergeant*

4.20 In nearly two-thirds (33) of the 49 cases we reviewed where bail was denied after charge, local authority accommodation was not sought. We also assessed that in 67% of these cases Local Authority non-secure accommodation would have been suitable.

4.21 Only three children and young people in our sample were actually transferred to Local Authority accommodation. For those who continued to be detained in police cells until the next available court, 65% were deemed suitable at their first court hearing to receive bail. The following chart demonstrates the outcome at first hearing.

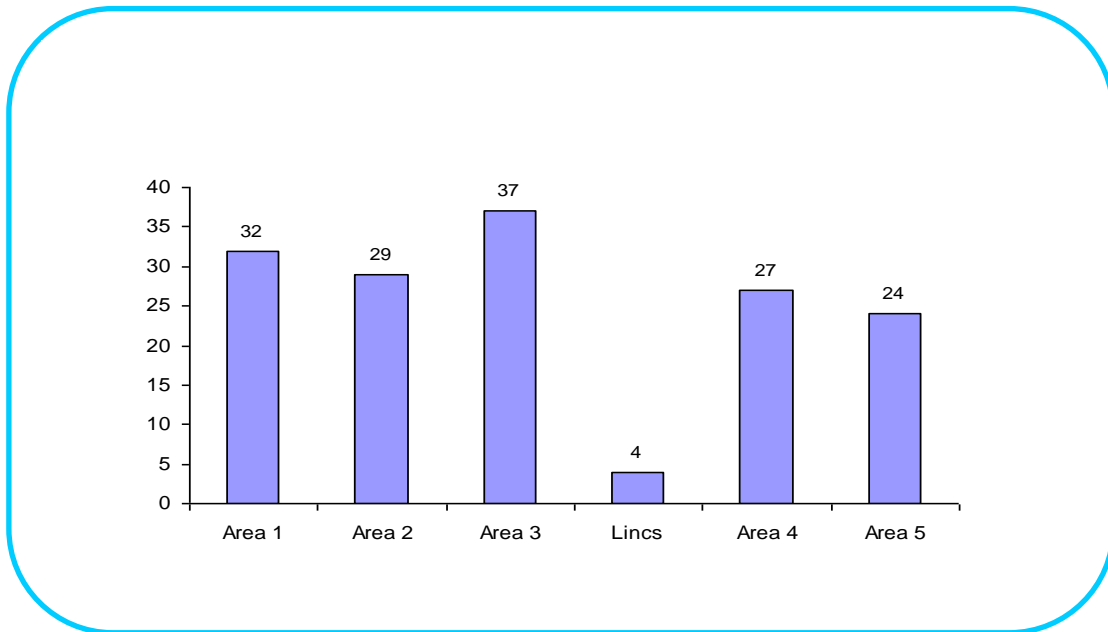
**Figure 2: Case reviews: Outcome at first hearing (10–16 year olds denied police bail after charge)**



4.22 There were, however, clear variations across the areas relating to the denial of bail to children and young people, as the following chart shows.



**Figure 3: Total 10–16 year olds denied police bail by YOT area (01 July – 31 Dec 2010)**



4.23 Some variation is to be expected as offence profiles differ across the areas concerned, and between urban and rural force areas, but these results suggest there may be more influencing the outcomes than simple geography.

4.24 We found good practice in **Lincolnshire**, where there has been a sustained emphasis from YOT staff on identifying how many young people are detained in police cells after charge and effectively challenging these numbers. It has raised the profile of the issue and impacted upon the police culture such that custody sergeants now proactively seek alternatives to denying bail, where appropriate, and continue to seek alternatives to continued detention after charge, even if bail is denied (as Figure 3 shows). This finding was supported by a police custody inspection in January 2009.<sup>76</sup>

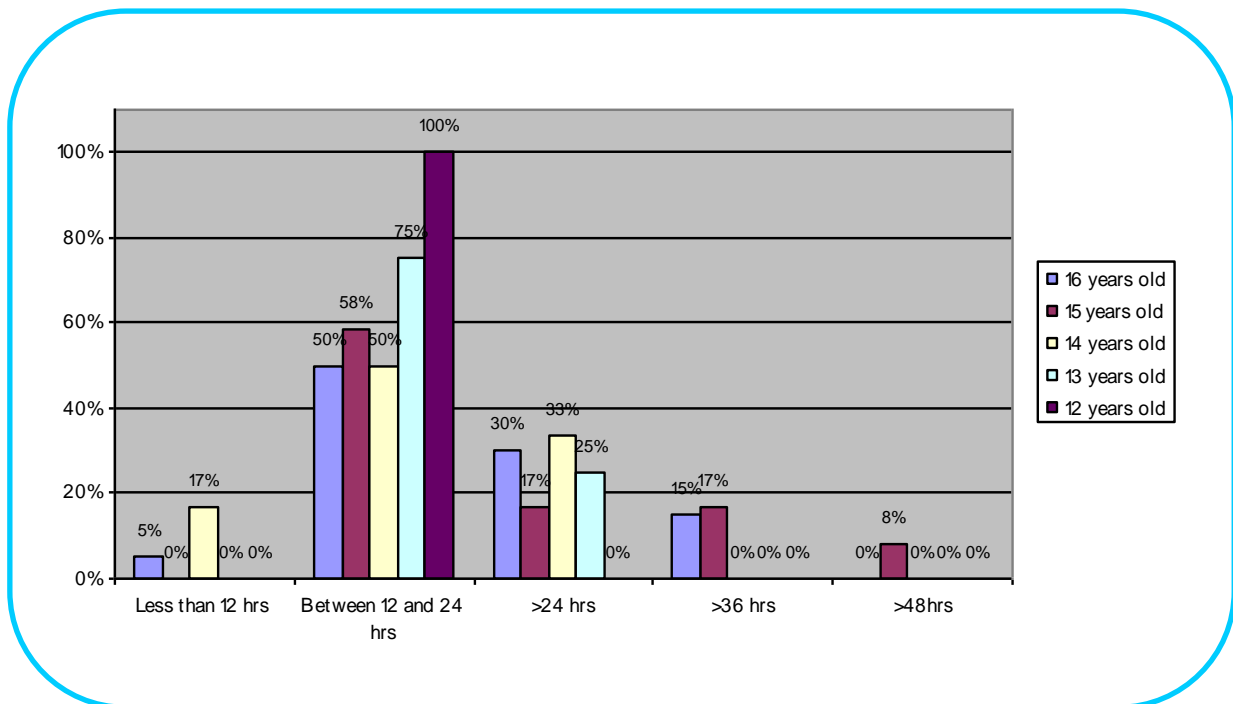
4.25 Our analysis of the case reviews indicate that children and young people charged with an offence and bailed from the police station were in police detention for on average less than nine hours. For those children and young persons who were charged and denied bail, however, the average time in police detention was nearly 24 hours.<sup>77</sup>

4.26 We found in our case reviews that there was a large variation in the amount of time a child or young person continued to be detained in police cells after charge. This is demonstrated by the figure below (we have discounted the time for the three children who were transferred to local authority accommodation).

<sup>76</sup> HMI Prisons and HMIC (2011) *Joint Inspection Report on an Unannounced Inspection Visit to Police Custody Suites in Lincolnshire*, para 5.9. Available from [www.hmic.gov.uk](http://www.hmic.gov.uk)

<sup>77</sup> Respective averages: 8 hours 47 minutes for those charged and bailed; 23 hours 15 minutes for those charged and denied bail.

**Figure 4: Case reviews: Number of hours 12–16 years old were detained in police cells after charge and bail denied. (01 July – 31 Dec 2010)**



### Conclusions

- 4.27 Failing to transfer a child or young person to Local Authority accommodation should only occur under *exceptional* circumstances, but that is not the case. We found that in practice, the reciprocal duty on the police to transfer (under PACE) and ‘on the local authority to receive’ (under the Children Act) has been reduced to a short (or no) call to local authority staff requesting secure accommodation followed by the now standard response that none is available; and that under these circumstances, the AA is often precluded (by local policy) from making any representations at all.
- 4.28 This lack of awareness of the suitability and availability of non-secure accommodation, combined with the lack of monitoring of the numbers of children and young people who continue to be detained in police cells after charge, has contributed to current situation. The fact that this often results in many children and young people spending extended periods in an unsuitable and confusing environment does not seem to be a cause for concern.

**Recommendation 12:** The **LSCB** will monitor the above recommendations (that are directed to their board partners) to ensure that children and young people are treated as individuals and their needs are recognised and addressed to enable them to understand and participate in the arrest to charge process.

- 4.29 The case study that follows clearly demonstrates that when agencies are so completely focussed on the ‘process’ and their own role within it, the young person just becomes part of that process. If we are to really ‘look out for the children’,

then all agencies must, at every opportunity, focus on achieving the best outcomes for that child or young person, which includes reducing the length of stay in police detention.

#### Thursday

Jay (16 years old) had an argument with his father at home and was arrested for criminal damage at the house after breaking a window. He arrived at the police station around 09:00.

At noon, the YOT contacted an AA (volunteer) to attend. The standard referral form for the AA did not explain that Jay was known to the YOT and children's social care services.

At 14:00, the custody officer spoke to a member of the Family Intervention Programme who said that they advised Jay's father not to have him back. They suggested that Jay should present to 'Homeless', (a section of the local housing department) when released.

Jay was interviewed at 14:30 and made a full admission. Custody staff contacted children's social care services who stated they knew Jay was in police detention but it was down to Jay's father to sort out accommodation for him.

Jay was charged at 17:18 and denied bail as he was classed as No Fixed Abode (NFA). Local Authority accommodation was not sought. Jay was taken to court at 09:-00 on Friday, some 24 hours later.

#### Friday

After his court appearance on Friday morning, Jay went to the 'Homeless' office as instructed (it was unclear if a YOT worker who knew him was with him at court or afterwards). When the staff there told him he could not go home, another argument erupted. Jay threatened to burn his house down if he was not allowed home. Jay was arrested at 12:30pm for threats to commit criminal damage, barely three hours after being released. Jay asked for his father to come as an AA, but his father refused.

The AA referral again had no details regarding Jay's history and the new custody record made no link to the previous day's arrest and detention.

By 18:00, Jay had been in a police cell for over six hours, for the second time in two days. He covered his cell with blood. A doctor was called who examined Jay and stated he had no injuries. Jay said he had banged his nose on the cell wall because he thought that it would get him out of custody quicker. It did not; he was arrested for criminal damage to the cell.

At 19:00 the Emergency Duty Team (Children's Services) was contacted for an AA. The one EDT member on duty was busy with something else. By 23:00 there was still no AA available and no Local Authority accommodation was sought. Jay was bedded down to be dealt with in the morning.

#### Saturday

At 09:30am the AA attended and Jay was interviewed shortly thereafter. He was charged with criminal damage by 'impairing the cell with bodily fluids'. In the interview, the AA was unaware of the incident with the blood in the cell, but allowed

*the interview to continue. He was charged just before 13:00 for the damage to the cell, bail denied again, and again no Local Authority accommodation sought. None of this information was on the AA visit form sent back to the YOT.*

## Annex A: Expectations

**AIM 1:** To review the quality and effectiveness of AA provision for persons under 17 in police custody and identify good practice.

General Expectation	Specific expectation
<b>1.1. The area has effective partnership arrangements in place for the provision of Appropriate Adults.</b>	<p>1.1.1 Effective governance and funding arrangements are in place to ensure impartial delivery of AA services.</p> <p>1.1.2 Area has effective joint arrangements that cover the provision of appropriate adults for young people in police custody.</p>
<b>1.2 The area has effective policies and procedures in place in respect of Appropriate Adult provision.</b>	<p>1.2.1. Recruitment, vetting, and access arrangements for Appropriate Adults are adequate and consistent, and managed with integrity.</p> <p>1.2.2 There are arrangements during all hours for providing an Appropriate Adult service that meets requirements and is fit for purpose.</p>
<b>1.3. Appropriate Adults are available to respond when required and undertake their responsibilities in an efficient, effective and professional manner.</b>	<p>1.3.1 There are sufficiently qualified Appropriate Adults to meet demand.</p> <p>1.3.2 The quality of work is of an acceptable standard and is undertaken with integrity.</p> <p>1.3.3 Appropriate Adults recognise vulnerability and special needs identify safeguarding issues and, where necessary, take action.</p> <p>1.3.4 All staff that come into contact with young persons under 17 are trained in safeguarding to a suitable level.</p>

**AIM 2:** To assess the extent to which persons under 17 held in police custody after charge are being transferred to local authority accommodation. Identify enablers or barriers to appropriate transfer.

General Expectation	Specific expectation
<b>2.1. The area has effective partnership arrangements to provide local authority accommodation for those who meet the criteria for transfer under PACE.</b>	<p>2.1.1 Area has effective joint arrangements (including funding) that cover the provision of both secure and non-secure accommodation for young persons under 17 who are charged and refused bail.</p>

<b>2.2. The risk of harm, likelihood of offending and safeguarding is effectively managed.</b>	<p>2.2.1 There are effective policies/procedures in place to record the risks/vulnerability associated with young persons under 17, and associated control measures.</p> <p>2.2.2 Risks/vulnerability associated with young persons under 17 are effectively communicated between the police, local authority and courts and any issues are dealt with appropriately.</p> <p>2.2.3 All relevant staff are aware of the legal requirements for young persons under 17 who have been charged with an offence and bail refused.</p>
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## Annex B: Methodology

This joint thematic inspection was commissioned by the Criminal Justice Chief Inspectors Group (CJCIG) and forms part of the joint programme of the CJ Inspectorates, as published in our joint business plan for 2010-12<sup>78</sup>.

The objectives of the inspection were to:

- Assess the effectiveness of **partnership arrangements** in place for the provision of AA (by local authorities) and local authority accommodation for those who meet the criteria under PACE.
- Assess the effectiveness of **policies and procedures** in respect of AA provision.
- Check that AA are **available** to respond when required and assess that they undertake their responsibilities in an **efficient, effective and professional** manner.
- Identify good practice.
- Check that **risk** of harm, likelihood of offending and safeguarding is effectively **managed** and **communicated** with partners.
- Identify **enablers/barriers** to appropriate transfer to suitable Local Authority accommodation.

The information collected for the inspection was gathered in various ways: **document review, case reviews, interviews, observations** within police custody suites and **shadowing** of some AAs.

The **document review** included: policies, procedures, training packages and other documentation relating to provision of AAs for young people and Local Authority accommodation for those young people transferred from police custody under PACE were examined.

The **case review** element of the inspection consisted of an examination of custody records, interview tapes or Digital Video Discs (DVDs) where available, and associated AA, YOT and police documentation generated both before and after detention. This enabled us to follow the journey of the child or young person from arrest to charge. Twenty case reviews were randomly selected at each of the six sites (for the period 01 July 2010 to 31 December 2010) including all children and young persons under 17 years, who were charged<sup>79</sup> within these dates. The intention was to select ten of the case reviews where the child or young person was granted bail, and another ten where bail had been denied after charge, in each of the areas. In total, we conducted 117 case reviews, 49 where bail was denied and 68 where bail was granted.

During the inspection, we **interviewed** the following people:

- Directors of Children's Services;
- Police Strategic leads for Appropriate Adults;

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<sup>78</sup> Joint business plan available from [www.hmic.gov.uk](http://www.hmic.gov.uk)

<sup>79</sup> The number of children and young people arrested and held in police custody for a period would be higher due to disposals other than a charge to court, such as reprimands, final warnings, restorative justice options, etc.

- Youth Offending Team managers;
- Appropriate Adult providers;
- Healthcare professionals;
- Police Custody officers;
- Detention officers;
- Custody managers;
- Children’s Service’s Emergency Duty Team staff;
- Focus groups of Appropriate Adults; and
- Focus groups of young people under 17 (where available).

**Observations** within police custody suites were also conducted and were intended to enable inspectors to assess custody staff interacting with young people under 17 and their AA (including parents/guardians). Inspectors also conducted **shadowing** of AAs performing their role in the custody suite and interacting with children and young people.

Six police force/YOT areas were selected to provide a cross section of sites taking into consideration urban/rural areas and current models of AA provider (as outlined in para 2.8). These areas were:

- Portsmouth;
- Stockport;
- Cardiff;
- Lincolnshire;
- Northumberland; and
- London Borough of Ealing.

We also conducted interviews with staff from a range of national bodies including the Department of Health, Home Office, National Appropriate Adult Network, National Association for the Care and Resettlement of Offenders, Association of Chief Police Officers, and the Youth Justice Board for England and Wales.



## Annex C: Glossary

AA	Appropriate Adult
ACPO	Association of Chief Police Officers
CDA 1998	Crime and Disorder Act 1998
CDO	Civilian Detention Officer
CJIG	Criminal Justice Chief Inspectors Group
CQC	Care Quality Commission
DNA	Deoxyribonucleic Acid
EDT	Emergency Duty Team
HMIC	Her Majesty's Inspectorate of Constabulary
LA	Local Authority
LSCB	Local Safeguarding Children's Board
NAAN	National Appropriate Adult Network
NACRO	National Association for the Care and Rehabilitation of Offenders
NPIA	National Police Improvements Agency
PACE 1984	Police and Criminal Evidence Act 1984
PRA 2002	Police Reform Act 2002
YJB	Youth Justice Board for England and Wales
YJCEA 1999	Youth Justice and Criminal Evidence Act 1999
YOIS	Youth Offender Information System

## Appendix D: Further Reading

ACPO (2010) *Children and Young People Strategy 2010–2013*.

ACPO (2006) *Safer Detention and Handling of Persons in Police Custody*.

ACPO (2005, updated 2009) *Investigating Child Abuse and Safeguarding Children*.

Audit Commission (1996) *Misspent Youth*.

Lord Bradley (2009) *Review of People with Mental Health Problems or Learning Disabilities in the Criminal Justice System*. Available from [www.dh.gov.uk](http://www.dh.gov.uk)

Bryan, K. and MacKenzie, J. (2008) *Meeting the Speech, Language and Communication Needs of Vulnerable Young People*. London: RCSLT.

Department for Children, Schools and Families (2006, updated 2010) *Working Together To Safeguard Children*.

Department of Health, Department for Children, Schools and Families, Ministry of Justice and Home Office (2009) *Healthy Children, Safer Communities*.

Gudjonsson, G. et al. (2009) 'False confessions among 15 and 16 year olds in compulsory education and the relationship with adverse life events.' *Journal of Forensic Psychiatry and Psychology* 20 (6) 950–96.

HMIC (2004) *Modernising the Police Service*.

NACRO (2004) *Changes to the Codes of Practice under PACE 1984*.

NACRO (2008) *Police Bail, Detention after Charge and the Duty To Transfer to Local Authority Accommodation*.

National Audit Office (2010) *Youth Justice System in England & Wales: Reducing Offending by Young People*.

Pierpoint, H, (2004) 'A survey of Volunteer Appropriate Adult Services in England and Wales.' *Youth Justice* 4:32.

Police and Criminal Evidence Act (1984)

Redlich, A. and Goodman, G. (2003) 'Taking responsibility for an act not committed: The influence of and suggestibility.' *Law and Human Behaviour* 27 (2) 141–56.

YJB (2005) *Risk and Protective Factors*.

YJB (2009) *National Standards*.

## Appendix E: Role of the Inspectorates

### HMI Constabulary

Information on the Role of HMI Constabulary can be found on our website:

**[www.hmic.gov.uk](http://www.hmic.gov.uk)**

The Inspectorate is a public body. Anyone wishing to comment on an inspection, a report or any other matter falling within its remit should write to:

*HM Chief Inspector of Constabulary  
HM Inspectorate of Constabulary,  
6th Floor, Globe House,  
89 Eccleston Square,  
London SW1V 1PN*

### HMI Prisons

Information on the Role of HMI Prisons and Code of Practice can be found on our website:

**[www.justice.gov.uk/inspectorates/hmi-prisons](http://www.justice.gov.uk/inspectorates/hmi-prisons)**

The Inspectorate is a public body. Anyone wishing to comment on an inspection, a report or any other matter falling within its remit should write to:

*HM Chief Inspector of Prisons  
1st Floor, Ashley House, 2 Monck Street  
London, SW1P 2BQ*

### HMI Probation

Information on the Role of HMI Probation and Code of Practice can be found on our website:

**[www.justice.gov.uk/inspectorates/hmi-probation](http://www.justice.gov.uk/inspectorates/hmi-probation)**

The Inspectorate is a public body. Anyone wishing to comment on an inspection, a report or any other matter falling within its remit should write to:

*HM Chief Inspector of Probation  
2nd Floor, Ashley House, 2 Monck Street  
London, SW1P 2BQ*

### Care and Social Services Inspectorate Wales (CSSIW)

Information on the Role of CSSIW can be found on our website:

**[www.cssiw.org.uk](http://www.cssiw.org.uk)**

CSSIW is a public body. Anyone wishing to comment on an inspection, a report or any other matter falling within its remit should write to:

*Chief Inspector  
Care and Social Services Inspectorate Wales (CSSIW)  
Government Buildings  
Rhydycar  
CF48 1UZ*

## **Care Quality Commission**

Information on the Role of the Care Quality Commission can be found on our website:

**[www.cqc.org.uk](http://www.cqc.org.uk)**

The Commission is a public body. Anyone wishing to comment on an inspection, a report or any other matter falling within its remit should write to:

*Chief Executive  
Finsbury Tower, 103-105 Bunhill Row  
London, EC1Y 8TG*

## **Healthcare Inspectorate Wales**

Information on the Role of HIW and the Code of Practice can be found on our website:

**[www.hiw.org.uk](http://www.hiw.org.uk)**

The Inspectorate is a public body. Anyone wishing to comment on an inspection, a report or any other matter falling within its remit should write to:

*Chief Executive  
Bevan House, Caerphilly Business Park, Van Road  
Caerphilly, CF83 3ED*