

Institution: Cardiff University		
Unit of Assessment: Law (18)		
Title of case study: Improved protection of vulnerable adult suspects in police custody		
Period when the underpinning research was undertaken: September 2017-2020		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s): Roxanna Dehaghani	Role(s) (e.g. job title): Senior Lecturer	Period(s) employed by submitting HEI: 01/09/2017-current
Period when the claimed impact occurred: 01/09/2017-31/07/2020		
Is this case study continued from a case study submitted in 2014? No		
1. Summary of the impact (indicative maximum 100 words) Out of an estimated 850,000 adult suspects detained in police custody each year, 39% have a mental disorder, including mental health and learning disabilities. Although the Police and Criminal Evidence Act 1984 (PACE) Code C provides that vulnerable adult suspects and children are to be accompanied by an Appropriate Adult, in 2015, the Appropriate Adult safeguard was only implemented in 3% of eligible cases. Cardiff research confirmed limitations of the PACE Code C, including the definition, and identification of, vulnerability and a lack of incentives for implementation. The research led to an improvement in the quality and accessibility of the Appropriate Adult service, through changes to PACE Code C, and influenced national standards of the National Appropriate Adult Network (NAAN) across England, Wales, Northern Ireland and the Isle of Man.		
2. Underpinning research (indicative maximum 500 words) The Police and Criminal Evidence Act 1984 (PACE) Code C sets out the rights of adult suspects detained in police custody. It requires police custody officers to obtain an Appropriate Adult for all vulnerable suspects, including those who have a mental illness, learning disability, brain injury or autism spectrum condition. Without the support of an Appropriate Adult, these suspects may have difficulty understanding their rights, become confused, provide unreliable information, or be suggestible or acquiescent. In 2015, however, out of 297,000 detained police interviews with vulnerable adults, the safeguard was only implemented in 3% of cases. This means around 288,000 detained interviews took place without the appropriate safeguards. There are currently just over 2,500 Appropriate Adults in England, Wales and Northern Ireland; each police force area should have a scheme for provision of Appropriate Adults, but this varies between different tendered service providers. For example, some schemes are run by either the Police and Crime Commissioner or the local authority, whereas others are unfunded.		
2.1 Identifying vulnerable suspects Dehaghani's research from 2017 onwards involved observation of, and interviews with, police custody officers over a six-month period within two police forces in England. It was the first systematic examination on why the Appropriate Adult safeguard was often not implemented during interviews. She identified the following limitations to the safeguard: <ul style="list-style-type: none"> • PACE Code C does not clearly define in what way, or why, a suspect may be vulnerable. This makes it difficult for officers to identify cases of vulnerability, particularly where there is no evidence of an obvious condition (such as poor mental health) [3.1]. • The definition of vulnerability does not take account of the wider circumstances of detention in police custody and processes of criminalisation; consequently, it should not be focused solely on diagnosis [3.2]. • Most custody officers tend to rely on a 'hunch' to detect vulnerability and are not always certain of their judgments [3.1, 3.3]. 		

Dehaghani recommended three main changes designed to improve implementation of the PACE Code C based on these findings:

1. Include a reference to the Mental Health Act Code of Practice to help custody officers define and identify vulnerability, as well as provide information on what conditions are included under the term 'mental disorder' [3.1].
2. Remove the standard of 'reason to believe' from the proposed Code C. This standard, suggested by the Home Office in their consultation document for Code C, would not account for the difficulties with identifying vulnerability, or that officers often rely on a 'hunch' to detect vulnerability [3.1, 3.3].
3. Regardless of whether there is evidence of an innate condition or the suspect has, or is known to have, a mental disorder or mental health condition, the functional test (to determine whether the suspect understands what is being said, whether the suspect is or is not acquiescent) should be adopted to determine vulnerability [3.2].

2.2 The role of the Appropriate Adult safeguard

The National Appropriate Adult Network (NAAN) is a voluntary national infrastructure for the coordination and provision of Appropriate Adults across England, Wales, Northern Ireland, Jersey and Isle of Man. Membership currently includes just under 100 organisations, providing support in around 175 local authorities. In 2017, NAAN invited Dehaghani to compile the first evidence base to conceptualise the Appropriate Adult safeguard and the Network's role in developing effective support across the UK. The findings of her technical report [3.4] were advanced in her 2020 publication [3.5] which maps out the role of the Appropriate Adult in law and practice, including the following key themes and aspects of the role:

- **Need and purpose:** The Appropriate Adult is to act independently and to ensure that the vulnerable suspect remains resilient, is treated fairly, and understands the process and what is being asked [3.4, 3.5].
- **Acting independently:** An Appropriate Adult should act independently of the suspect and be mindful of any positive or negative perceptions of the police [3.4, 3.5].
- **Legal advice:** An Appropriate Adult should not give legal advice but can request a representative if required [3.4, 3.5].
- **Professional assessments:** An Appropriate Adult may suggest that the suspect be assessed by a Forensic Medical Examiner (where this has not been conducted) or that an interview is not conducted (even where a Forensic Medical Examiner has deemed the suspect fit for interview) [3.4].
- **Availability:** The Appropriate Adult should be available to attend in a timely fashion when requested [3.4].
- **Knowledge and qualities:** The Appropriate Adult should be well-prepared with knowledge of the custody process. Their qualities and motivations should align with the Appropriate Adult's safeguarding role [3.4, 3.5].

Dehaghani's research, therefore, provided new findings and insights on how vulnerability could be better identified in critical safeguarding legislation, and what the key functions of an Appropriate Adult in law and practice should be.

3. References to the research (indicative maximum of six references)

[3.1] Dehaghani R., *Vulnerability in police custody: police decision-making and the appropriate adult safeguard* (Routledge, 2019) - Deemed 'a major contribution to the field' by Prof Emeritus Gisli H Gudjonsson CBE (a leading legal psychologist whose work has been crucial to the protection of vulnerable suspects). Available from HEI on request.

[3.2] Dehaghani R., 'Interrogating vulnerability: Reframing the Vulnerable Suspect in Police Custody' (2020), *Social and Legal Studies* DOI:10.1177%2F0964663920921921

[3.3] Dehaghani R. and Bath C., 'Vulnerability and the appropriate adult safeguard: examining the definitional and threshold changes within Code of Practice C to the Police and Criminal Evidence Act 1984' (2019), *Criminal Law Review*, pp.213-232

https://www.appropriateadult.org.uk/phocadownload/PACE/2019_criminal_law_review%20CodeC_changes.pdf

[3.4] Dehaghani R., 'Evidence base for the National Appropriate Adult Network's Review of National Standards' (December 2017), National Appropriate Adult Network. Review and evidence base commissioned by NAAN. <https://www.appropriateadult.org.uk/downloads/national-standards?download=54:evidence-review-2018>

[3.5] Dehaghani, R., 'Defining the Appropriate in Appropriate Adult: Restrictions and Opportunities for Reform' (2020), *Criminal Law Review*, pp.1137-1155. Available from HEI on request.

4. Details of the impact (indicative maximum 750 words)

Dehaghani's research influenced legislation in England and Wales by improving identification of vulnerable suspects under PACE Code C. It also improved the standards of Appropriate Adult professional services and enhanced professional practice through the National Appropriate Adult Network (NAAN). Chris Bath, CEO of NAAN states that *"these changes are of great importance to vulnerable adults who are arrested"* in England, Wales, Northern Ireland and the Isle of Man **[5.1]**.

4.1 Identifying vulnerable suspects: Changes to UK Home Office policy

In 2017, Dehaghani was the only legal academic to sit on the Home Office Working Group on Vulnerable Adults, tasked with reforming the Police and Criminal Evidence Act 1984 Code C. The Home Office used the Group's contributions to produce a new proposed version of PACE Code C for public consultation in October 2017.

Working with NAAN, as well as via her own submission to the consultation **[5.2, 5.3]**, Dehaghani proposed further amendments to PACE Code C based on her research findings **[3.1, 3.2, 3.3]**. Chris Bath, NAAN CEO *"worked closely with Dr Dehaghani during this process and it is clear that she had specific and significant influence on the final changes to the Act...She also influenced NAAN's 61-page submission in December 2017...Of particular value was her legal insight, given that the submission required interpretation of both the current law and the potential impact of proposed wordings"* **[5.1]**.

Dehaghani's research recommendations **[3.1, 3.2, 3.3]** are reflected in three changes made to the final PACE Code C published in 2018 **[5.1, 5.4]**:

1. The introduction of a reference to the Mental Health Act Code of Practice: "The Mental Health Act 1983 Code of Practice at page 26 describes the range of clinically recognised conditions which can fall with[in] the meaning of mental disorder for the purpose of paragraph 1.13(d)" **[5.4, p.12]**;
2. Removal of the proposed standard of 'reason to believe'. The lower threshold of 'reasonable suspicion' was included in its place: "If at any time an officer has any reason to suspect that a person of any age may be vulnerable (see paragraph 1.13(d)), in the absence of clear evidence to dispel that suspicion, that person shall be treated as such for the purposes of this Code..." **[5.4, p.6]**;
3. A caveat which means suspects should be tested for vulnerability, regardless of whether or not they have or are known to have a mental disorder or mental health condition was added into the Notes for Guidance of Code C **[5.4, p.11 paragraph 1G]**.

Bath attests to the importance of Dehaghani's research on the updated Code: *"The final version as commenced was very different indeed from the Home Office's original proposals for consultation. Had the Code been revised in line with the Home Office's original proposals, the impact would have been a clear downgrading of procedural safeguards for mentally vulnerable adults"* **[5.1]**.

Bath notes that the data collected by NAAN for the year 2018-2019 *"indicates an increase in police recording the need for an AA in aggregate on previous years. This is an improvement for vulnerable suspects because it means the police are more likely to apply the procedural safeguard of the AA. We know from other research that this in turn increases the chance of take up of free legal advice at the police station"* **[5.1]**. Independent research has shown that vulnerable adults

who received the safeguard *“felt supported emotionally, and more protected against mockery, intimidation, fear, dehumanising, bullying and isolation”* [5.5]. The safeguard also leads to greater integrity, a better quality of evidence, and a decreased risk of miscarriages of justice [5.5].

4.2 Improved standards to enhance professional practice of Appropriate Adults

Dehaghani’s research [3.4, 3.5] also underpinned the revision of NAAN’s National Standards. These standards provide clear guidance and are used as best practice to support every organisation and person with a role in ensuring effective Appropriate Adult supervision [5.1]. For example, the Ministry of Justice’s National Standards for Youth Justice Services requires youth offending teams to ensure provision of Appropriate Adults in line with the NAAN standards.

The revised 79 standards were published in 2018 [5.6] and contain guidance on key themes identified by Dehaghani’s research [3.4, 3.5], for example:

- **Need and purpose:** Appropriate Adults understand the need for and the overall purpose of the role [p.39].
- **Acting independently:** Appropriate Adults demonstrate their independence from police through their interactions with children and vulnerable persons, police and other professionals [p.75].
- **Legal advice:** Appropriate Adults ensure that a legal representative is requested for the person they are supporting (in custody or voluntary interview) whenever it is in that person’s best interests [p.77].
- **Professional assessments:** Where appropriate, the person is assessed by appropriate professionals according to their needs [p.90].
- **Availability:** Children and vulnerable persons receive Appropriate Adult support with the shortest possible delay [p.59].
- **Knowledge and Qualities:** Appropriate Adults’ motivations are aligned with the purpose of the role to safeguard the interests (rights, entitlements and welfare) of children and/or vulnerable persons [p.29]; Appropriate Adults are aware of the practical, cultural and emotional realities of police detention and questioning [p.36].

In addition to these specific points, as recognised in the NAAN Annual Report 2018, Dehaghani advised on development of the whole Standards document [5.7]. Bath stated that *“As we developed draft standards, she continued to help us to identify areas of risk indicated by her own original research and these additional reviews, and integrate the evidence into the relevant standards and indicators”* [5.1].

The standards have been used extensively by Appropriate Adults in England, Wales, Northern Ireland and the Isle of Man. 48 service providers (over half the NAAN membership) responded to a survey in January 2019 [5.8, p.2]. 91% of these respondents had used the standards [5.8, p.4] and 90% found them effective [5.8, p.5]. 1,102 copies of the standards have been downloaded since 2018 [5.1], and they are considered the *“most effective” of NAAN’s products and services by those who had been a member for under 12 months* [5.1, 5.8, p.23]. They provide an important reference point for Appropriate Adults as *“local coordinators often value the ability to point to nationally agreed standards when negotiating with other stakeholders (e.g. police) about how local practice should or should not be”* [5.1]. Appropriate Adults report that *“the national standards are a benchmark for all”* and that they *“help improve standards across the country”* [5.9, p.20].

4.3 Application of the national standards to create new tools and commissioning guidance

The revised NAAN standards, enhanced by inclusion of key aspects of Dehaghani’s research [3.4, 3.5], have also underpinned the creation of further materials to improve practice in the sector. For example, they have been used to:

- Build a self-assessment tool for commissioners and providers of Appropriate Adult services. The tool allows these organisations to rate themselves against each of the standards, identify areas for improvement and plan actions accordingly. 62% of respondents to NAAN’s 2019 member survey had used the tool, and 96% reported that it was effective [5.8, p4-5];

- Form “*the foundation for the development of the first national commissioning guidance*” and strengthen Appropriate Adult tender specifications [5.1]. The national commissioning guidance states what should be included when a service provider is tendering for or designing an Appropriate Adult scheme [5.1]. This guidance was released in 2018 and had been accessed 2,000 times by March 2019 [5.9, p.18]. It was rated a 4.4 out of 5 by members for its importance [5.9, p.18]. Further, there has been a “*notable increase in tender specifications including a requirement for providers to meet the NAAN standards*”, which Bath notes is “*a key driver for improved services (and therefore outcomes for vulnerable suspects)*” [5.1];
- Develop consensus in the sector. Bath notes the standards have had their “*credibility and impact...further strengthened*” by formal approval from bodies representing and influencing commissioners: the Youth Justice Board, the Association of Directors of Adult Social Services, and the Association of Police and Crime Commissioners [5.1].

Bath additionally stated: “*As the first evidence-based AA standards, the national standards are an important resource for the sector. They have since formed the foundation for NAAN’s work on informing policy developments and national partnership working, commissioning decisions, scheme management, and practitioner training*” [5.1]. For example, users of the Standards state they are “*a useful reference point/resource for developing the highest standard of provision...to ensure provision is effective and of the appropriate quality*” [5.7, p.16].

5. Sources to corroborate the impact (indicative maximum of 10 references)

[5.1] Testimonial: Chris Bath, CEO of the National Appropriate Adult Network

The National Appropriate Adult Network (NAAN) is the key national infrastructure for the coordination and provision Appropriate Adults across England, Wales, Northern Ireland, Jersey and Isle of Man. NAAN supported collaborative research with Cardiff and have also provided a testimonial evidencing the reach and significance of Cardiff impact in this area.

[5.2] Email correspondence with the Home Office (UK Government) (1) and (2)

[5.3] Response to the Home Office PACE Consultation, 5 December 2017

[5.4] PACE Code C: Revised (2018): Code of Practice for the detention, treatment and questioning of person by Police Officers.

[5.5] ‘What difference to Appropriate Adults make?’ National Appropriate Adult Network website

[5.6] National Appropriate Adult Network National Standards: National standards for the development and provision of appropriate adult schemes in England and Wales, Revised October 2018.

[5.7] National Appropriate Adult Network Annual Report 2018

[5.8] National Appropriate Adult Network Member Survey 2019: Report on Results

[5.9] National Appropriate Adult Network Annual Report 2019