



Standing Committee for Youth Justice

Standing Committee for Youth Justice response: Draft Revised Code C consultation November 2017

The Standing Committee for Youth Justice (SCYJ) is an alliance of almost 50 non-profit organisations working to improve the youth justice system in England and Wales. [We welcome the opportunity to respond to proposed revisions to PACE Code C.](#) Our thoughts and concerns around issues particularly pertinent to children (aged 10-17) are set out below. Throughout, we reference and support the [submission made to this consultation by the National Appropriate Adult Network \(NAAN\)](#), who are members of the SCYJ.

Definition of a vulnerable adult

Guidance on identifying a “vulnerable adult” is amended at Paragraph 1.4. Currently the paragraph reads: “a person of any age may be mentally disordered or otherwise mentally vulnerable”. This is amended to read, “a person is a vulnerable adult”. Whilst we appreciate the drive to redefine a “vulnerable adult”, and the fact that all children require an appropriate adult (AA) by virtue of their age, we are concerned by the proposals.

Many children detained by the police have numerous vulnerabilities, including speech, language and communication difficulties, special educational needs (SEN) and mental health problems. Research studies generally acknowledge that around 60% of children and young people in custody have a communication disability and, of this group, around half have poor or very poor communication skills (Department for Children Schools and Families 2008). Over a quarter of children in the youth justice system have a learning disability, while more than three-quarters have serious difficulties with literacy (Department of Health 2009). 15% of children in trouble have a statement of special educational needs, compared to 3% of the general population (Jacobson et al 2010).

By removing children from the guidance on identifying vulnerability, we are concerned that an important trigger for identifying their needs is removed. As it stands currently, the wording of the Code ensures that a child with additional vulnerabilities, such as mental health problems, is provided with protections. For instance, Annex E of Code C applies to children. If the proposed changes are to go ahead, it is important that it is made clear that the protections and procedures that apply to vulnerable adults, apply equally to children with vulnerabilities.

Role of an Appropriate Adult

In 2016, Charlie Taylor published his review of the youth justice system on behalf of the Ministry of Justice. He expressed concern about the role of the appropriate adult (AA) in relation to children, including that:

“In some areas there is inadequate coverage [of appropriate adult services] ... [as a result an appropriate] adult may lack the training, information or sufficient legal awareness to perform the role effectively, the result of which can be to legitimise an unfair interview. I am also concerned that in many cases parents do not fulfil this role well.” (Taylor 2016: 20)

He proposed, amongst other things, that national standards for AAs are established, covering: “the role of the appropriate adult, making clear that it should be for the duration of the custody process, not just the interview, and refocusing it on welfare and safeguarding of the child rather than adherence to legal process”.



We welcome the fact that the revised Code seeks to define the role of the AA. We support the amendments to paragraph 1.7A, 11.17 and 1.13, proposed by the National Appropriate Adult Network (NAAN), which, amongst other things, highlight the risks the AA is responsible for safeguarding against. In accordance with Charlie Taylor's recommendations, we would also advocate paragraph 1.7A explicitly stating that the role of the AA is for "the duration of the custody process not just the interview" and putting further emphasis on welfare and safeguarding. As above, Taylor raised concerns that AAs often do not understand or fulfil the role effectively. To contribute to tackling this problem, we support amendments to paragraph 3.15 proposed by NAAN which would see AAs informed of their role earlier in the process.

Many untrained AAs are unaware that they have responsibility for ensuring a suspect makes an informed decision about legal advice, or that they have the power to secure legal advice for the suspect. This is a fundamentally important issue, particularly since "research suggests that 43% of children who go on to be charged do not ask to see a solicitor, and that 10-13 year olds are the least likely to request and receive legal advice" (Taylor 2016: 21). We would like to see the role of the AA explicitly include their powers and responsibilities around the provision of legal advice. We support changes proposed by NAAN to paragraph 1.7A in this regard.

Live Link

Interviews

As set out above, children in the justice system, including the police station, have very high levels of communication difficulties. There is little research on the use of live links and its impact on justice. However, a recent report looking at the impact of appearing in court via video link found that it reduced "defendants' understanding of, and respect for, the process" and made it more likely that they will "shout or walk out", amongst other things (Transform Justice 2017). A forthcoming report from SCYJ shows that these problems are particularly pronounced among children. A survey of practitioners working with children in court found that live links make it difficult for children to: communicate; read body-language; understand proceedings; ask questions; or ask for clarification. It thus inhibits participation and engagement – children feel more detached from the process. Practitioners reported that "teenage behaviour" is more likely to be misinterpreted over live link and that children's vulnerabilities are less likely to be identified. What is more, children underestimate the seriousness of situations over live link, which makes poor behaviour more likely.

It is likely that these problems with participation, engagement, understanding and respect for the process will be pertinent in police interviews carried out via live link and we are very concerned about children being interviewed in this manner. Until we have good quality research on the effect on behaviour and outcomes of interviewing children on a video link, these changes should not be progressed and children should not be interviewed over live link.

If children are to be interviewed via live link, amendments are needed to the Code. Currently, it contains insufficient safeguards and will not ensure that children can participate effectively in a live link interview. Just because a child is "fit" to be interviewed via live link, it does not mean that they can effectively engage with the process, or that they will not be disadvantaged in other ways. We support the recommendation made by NAAN that an addition be made to paragraph 12.9A requiring the custody officer to be satisfied that a person can participate effectively in a live link interview before such an interview can take place. In addition, it should be clarified that it will be necessary to assess a child's individual needs, particularly their communication needs, before it can be determined: whether they are fit to be interviewed via live link; whether they can participate in a live link interview; and when having regard "to the detainee's ability to understand and take part in the interviewing process" (as per paragraph 12C).

Detention

The UN Convention on the Rights of the Child (Article 37) stipulates that children should be detained only as a measure of last resort and for the shortest possible time. To ensure



compliance with the Convention, reviews of children in detention should be of a high-standard rather than a tick-box exercise.

In principle, we are very concerned by reviews of detention taking place without the reviewing officer being physically present and believe reviews should take place in person. Without seeing a child in person an effective assessment of their wellbeing will be difficult, if not impossible, to conduct. We strongly believe that paragraph 15.3C of the Code must be amended, setting out a presumption that detained children will be reviewed in person. In addition, we strongly support NAAN's recommendation that, when deciding whether children should be reviewed via live link, the appropriate adult and solicitor should be consulted, and the review should take place in person if they raise any objections to it being conducted remotely.

Voluntary Interviews

SCYJ welcomes attempts to remove children from more formal criminal justice processes and to reduce the arrest rate. However, this cannot be at the expense of a fair process.

The police station is an intimidating environment that is generally inappropriate for children. Charlie Taylor, the Ministry of Justice's reviewer of the youth justice system, reported that, "children should only be arrested and detained in police custody where absolutely necessary, and for the shortest possible period of time. Alternatives such as home or school visits, [and] voluntary attendance interviews ... should always be considered before a child is arrested" (Taylor 2016: 20). He welcomed the increases in voluntary interviews.

However, SCYJ has serious concerns about the use of voluntary interviews in practice. The safeguards that apply to children in police custody are not being applied to voluntary or home interviews. This leads to the erosion of children's rights and the degradation of safeguards built up over many years. Many children and their parents are not aware of the seriousness or implications of voluntary interviews – which may be billed as "a chat" – and are surprised when they lead to further action or their comments are brought up later in proceedings (see for example Fouzder 2017). Children and their parents or guardians are often unaware of their right to legal advice when participating in a voluntary interview, or the wisdom of seeking such advice in this context. In his report on the youth justice system, Charlie Taylor said consideration needed to be given to how "health screening and other welfare and safeguarding checks can still be completed and inform diversion and charging decisions" in voluntary and home interviews (Taylor 2016: 19).

We welcome the addition of text concerning the information about rights and entitlements that must be provided to suspects in advance of a voluntary interview. We support NAAN's recommendation that this to be contained in a distinct Annex for ease of reference and clarity.

SCYJ agrees with NAAN that the status of interviews taking place at a person's home should be clarified in the Codes. Paragraph 1.10, and 1A Notes for Guidance, should clarify their application to voluntary interviews outside the police station. Currently, paragraph 3.21 gives the impression that the interview is legally required, and this should be rectified. We have concerns about voluntary interviews taking place quickly without the child or their AA having any real understanding of the process, their rights, or the responsibilities of the AA. We are not convinced the changes to the Code rectify this and believe that, where possible, the purpose, responsibilities and powers of the appropriate adult should be explained in advance to the person taking on the role. It is imperative that the key Code protections apply to home interviews if we are not to lose the significant gains made by the original introduction of PACE. We are particularly concerned that those being interviewed at home are aware of their right to legal advice and that interviews are recorded.

In police custody, the custody officer, who is independent of the investigation, is responsible for safeguarding the rights and welfare of the detained suspect. We are concerned by the direct transfer of this role to the interviewing officer for voluntary interviews – these officers are, in effect, being asked to police their own behaviour and prevent themselves abusing their power. We agree



with NAAN that serious “thought is required regarding how this important safeguard can be applied outside of custody.”

The contents of this document do not necessarily reflect the views of all member organisations of the SCYJ

References

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