



## **The Prison Reform Trust and The Children's Society response to revisions to PACE Code C January 2012**

*The Prison Reform Trust is an independent UK charity working to create a just, humane and effective prison system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform.*

*The Children's Society is a leading children's charity committed to making childhood better for all children in England. Our national networks of projects deliver specialist services for around 50,000 children who face danger or disadvantage in their daily lives. We support children in trouble with the law, young runaways at risk on the street, disabled children who face exclusion and young refugees rebuilding their lives in the UK.*

### **Summary:**

The Prison Reform Trust and The Children's Society are pleased to be able to respond to this consultation. Whilst we welcome the decision to review aspects of PACE Code C, we note the limited nature of amendments being considered by the police powers team. We would particularly like to draw the team's attention to the fact that this review makes no amends to the fact that, under PACE, 17 year olds are treated as adults, despite the UN Convention on the Rights of the Child and other UK law classifying a child as every person under the age of 18. We would urge the team to seek further amendments to the Code to address this legal anomaly as soon as possible.

### **C General 1.5:**

The UN Convention on the Rights of the Child (UNCRC), of which the UK is a signatory, states that every person under the age of 18 is a child. The historic treatment of 17 year olds as adults, rather than children, for police detention and bail purposes is in direct contravention of this. The Legal Aid, Sentencing and Punishment of Offenders Bill currently going through Parliament, seeks to address the legal anomaly for 17 year olds for remand purposes<sup>1</sup>. This would mean that all under-18s would be subject to the same legal framework before the court, but not in the police station. We urge the amendment of PACE Code C to give 17 year olds in the police station the same legal protections and access to appropriate adults as other children. We therefore suggest the following amendment:

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<sup>1</sup> [http://www.publications.parliament.uk/pa/bills/lbill/2010-2012/0109/lbill\\_2010-20120109\\_en\\_1.htm](http://www.publications.parliament.uk/pa/bills/lbill/2010-2012/0109/lbill_2010-20120109_en_1.htm)

*“If anyone appears to be under 18, they shall be treated as a juvenile for the purposes of this Code in the absence of clear evidence to the contrary.”*

### **C Notes for Guidance 1G:**

The definition of ‘mental disorder’ in the Mental Health Act 1983 was amended by the Mental Health Act 2007 and the amended definition should be reflected in the wording used in the Codes.

#### **C3.2:**

The written notice, and all other written information, should be made available in a format that is accessible to the detainee, for example in ‘easy read’, audio and audio/visual.

#### **C3.5:**

The custody officer should be able to delegate the determination of whether the detainee requires an Appropriate Adult only if custody staff have undertaken appropriate training in recognising when an individual might be ‘mentally disordered or otherwise mentally vulnerable’. Evidence suggests that mental vulnerability is significantly under-identified in many police forces<sup>2</sup>. Delegation of this responsibility may exacerbate this situation unless staff are appropriately trained and experienced in recognising vulnerability.

#### **C6.5A:**

The right for an Appropriate Adult to ask for legal advice on behalf of a mentally vulnerable child or adult detainee, as referenced at C 3.19, should be made explicit in this section. The following amendment is suggested:

*“In the case of a juvenile or adult detainee who is mentally disordered or otherwise mentally vulnerable, an appropriate adult should consider whether legal advice from a solicitor is required. If the juvenile or mentally vulnerable adult indicates that they do not want legal advice, the Appropriate Adult has the right to ask for a solicitor to attend if this would be in the best interests of the person. However, the detained person cannot be forced to see the solicitor if they are adamant that they do not wish to do so.”*

#### **C10.11, 10.12 and Annex C, paragraph 3:**

The term ‘ordinary language’ is problematic in that what is deemed as ‘ordinary language’ for qualified police personnel is likely to be quite different to what is ‘ordinary language’ used and understood by a juvenile or by a vulnerable adult detainee. We therefore suggest that after the words ‘ordinary language’, the following words are inserted:

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<sup>2</sup> See for example Talbot, J. (2008) *Prisoners Voices*. London: Prison Reform Trust, and <http://www.appropriateadult.org.uk/uploadedFiles/1294311851790-3470.pdf>

*'appropriate to the intellectual ability and understanding of the individual detainee.'*

**C13.9 and 13.10:**

Speech, language and communication difficulties may be a consequence of a learning disability or difficulty. In some instances, for example where the appropriate adult is a family member or a professional who knows the detainee and understands his or her communication needs, the appropriate adult could act as an interpreter. For such situations, consideration should be given to extending legal privilege to Appropriate Adults who attend legal interviews specifically to act as an interpreter and aid communication with the solicitor. Appropriate Adults acting in this way should not be confused with the role undertaken by an intermediary.

**C15.2A:**

We note with concern the authorisation under Section 42(1) of PACE for the extension of the maximum period of detention permitted before charge for indictable offences from 24 to 36 hours for children under the age of 18 years. As the recent joint inspection report of Appropriate Adult provision and children in detention after charge stated:

*"children and young people who are processed through police custody are potentially the most vulnerable of the vulnerable, the least able to represent their own best interests, control their behaviour, and communicate their needs. For these children and young people, in police detention without the support of their family, the AA plays a crucial role."*<sup>3</sup>

We believe all children in police custody are vulnerable. To that end, we do not support any extension in the maximum number of hours that any child under the age of 18 can be detained before charge, irrespective of the nature of the offence they are alleged to have committed. We are particularly concerned about the plight of 17 year olds, who, under this authorisation, could be detained before charge for up to 36 hours without access to an Appropriate Adult. We would like to see this extension reversed. If this is not possible, 17 year olds must be given access to appropriate adults to prevent practice which is both discriminatory and in contravention of the UNCRC.

**C15.3:**

We would suggest the following amendment:

*(c) the Appropriate Adult if available at the time. If the Appropriate Adult is no longer available at the police station, reasonable attempts should be made to seek their views via the telephone.*

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<sup>3</sup> Criminal Justice Joint Inspection (2011) *Who's looking out for the children? A joint inspection of Appropriate Adult provision and children in detention after charge*

### **C16/16.1:**

This section makes it clear that the Appropriate Adult should be present for charging or other disposal. This is reinforced in 16.3, 16.4A and 16.6. However, Note for Guidance 16C says that action in this section cannot be delayed to await the arrival of the Appropriate Adult if they are not already present at the police station. This contradictory message can cause confusion and inconsistent practice, which in turn can lead to Appropriate Adults not being present to help ensure that the juvenile or vulnerable adult understands the charge or any requirements (such as bail conditions) set at that time. Juveniles and vulnerable adults need the support and guidance of an Appropriate Adult at the time of charging or other disposal and therefore Note 16C should be amended to allow a reasonable period of time to get an Appropriate Adult to the station before proceeding with the charge or other disposal.

The related Annex E11 should therefore NOT be amended as suggested as this would further reduce the likelihood of the appropriate adult being present at this time.

### **C16.7:**

Code C currently states that, where the decision is made to detain a child 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...”*

Concerns have been raised over the way in which this aspect of the Code is interpreted. We understand that the concept of ‘risk to the public of significant harm’ and the difference between secure and non-secure accommodation is little understood by custody staff, meaning that secure accommodation is often requested inappropriately, and children detained in the police station overnight when they should have been transferred to non-secure accommodation<sup>4</sup>.

We would like to take this opportunity to restate that the duty on the police to transfer a child detained after charge to local authority accommodation is reciprocal. According to Section 21, 2(b) of the Children Act 1989:

*“Every local authority shall receive and provide accommodation for children whom they are requested to receive under section 38(6) of the Police and Criminal Evidence Act 1984”.*

We are concerned that many custody officers are not aware of this reciprocal duty and that, in practice, requests to accommodate children detained after charge are rarely submitted to local authorities. Where they are, and the local authority refuses, we suspect this is not challenged in accordance with the Children Act 1989.

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<sup>4</sup> Ibid.

According to the Criminal Justice Joint Inspection report:

*“...Home Office guidance and a high court case in 2006 have made it clear that a child or young person should only be held overnight in a police station in exceptional circumstances.”<sup>5</sup>*

However, recent research from the Howard League found that at least 53,000 children under the age of 16 were detained overnight in 2008 and 2009<sup>6</sup>. Given that these figures relate to approximately half of police forces, they are likely to be a significant under-estimation, suggesting that overnight detention is being used in a way which is not compliant with Home Office guidance.

To that end, we call on the police powers team to clarify the legal position regarding overnight detention and amend Code C as appropriate. We would, for example, like to see an explicit presumption against detention of children in the police station after charge inserted into the Code and the reference to *“unless the custody officer certifies it is impracticable to do so”* removed. Every effort must be made to transfer children into the care of a local authority prior to court appearances. It is inappropriate for a child to appear in court directly from the police station where this has involved overnight detention.

In addition, the Home Office guidance referred to in the joint inspection report cited above should be re-circulated to police stations and custody staff to ensure all staff coming into contact with children and making decisions around detention are aware of the legal framework under which they are duty bound to operate, including the duty to transfer children to local authority accommodation.

#### **C16.10:**

As noted above, evidence suggests that children are rarely transferred from police custody to local authority accommodation, in contravention of c.38 (6) of the Police and Criminal Evidence Act 1984. However, data on this is not collected centrally or locally. To ascertain how widespread this practice is, we recommend a new duty be placed on police forces to monitor instances of overnight detention of children under the age of 18, to sit alongside existing duties to record the reasons why a child has not be transferred and complete a certificate for production in court. This information should be collected locally at police force level, and nationally. This would enable an accurate picture of police detention of children nationwide to be drawn together so as to ensure practice which is not compliant with the law is identified and addressed. In addition, we would ask that the phrase *“not practicable”* be clarified as this is likely to be interpreted differently by individual custody officers.

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<sup>5</sup> Criminal Justice Joint Inspection (2011) *Who's looking out for the children? A joint inspection of Appropriate Adult provision and children in detention after charge*

<sup>6</sup> <http://www.howardleague.org/childreninpolicecells/>

**Annex A2B and Annex K3:**

We welcome the clarification about 'appropriate consent'.

**Prison Reform Trust and The Children's Society  
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