

Establishing a Statutory Appropriate Adult Service in Scotland

Consultation Analysis

October 2018

Contents

About this report	2
Background	2
Overview of respondents	3
Overview of responses	4
Analysis	7
Delivery	7
Question 1 – Definition of a vulnerable person	7
Question 2 – Definition of Appropriate Adult support	13
Question 3 – Duty for delivering the service	18
Question 4 – Details in legislation	22
Training	24
Question 5 – Duty for delivering training	24
Quality Assessment	27
Question 6 – Duty for quality of assessment	27
Question 7 – Engagement and feedback	30
Oversight	32
Question 8 – Duty for oversight	32
Question 9 – Oversight functions	35
Additional Comments	39
Question 10 – Additional comments	39
Annex A – List of organisations that responded	42

About this report

This report provides an analysis of responses to the Scottish Government's consultation on "Establishing a statutory Appropriate Adult service in Scotland" which ran from 3 April 2018 to 26 June 2018.

The consultation paper can be accessed here:

https://consult.gov.scot/criminal-justice/appropriate-adult-service/user_uploads/sct03182651241-01.pdf

Background

The role of an Appropriate Adult is primarily to facilitate communication during police procedures between the police and vulnerable adults aged 16 and over who have communication difficulties as a result of a mental disorder.

Existing Appropriate Adult services are delivered on a non-statutory basis and, as a consequence, the way in which services are delivered varies across the country.

The Scottish Government intends to use regulation-making powers in the Criminal Justice (Scotland) Act 2016 ("the 2016 Act")¹ to establish a statutory Appropriate Adult service to help ensure that vulnerable people who come into contact with the justice system receive the same level of high quality support across Scotland.

Section 105 of the 2016 Act requires Ministers to consult publically prior to laying such regulations.

The consultation sought views in relation to the following topics:

- The definition of who should get support from Appropriate Adults
- The definition of what Appropriate Adult support should be
- The proposal to place a duty on local authorities to deliver Appropriate Adult services
- The proposal to place a duty on local authorities to deliver Appropriate Adult training
- The proposal to place a duty on the Care Inspectorate to carry out a quality assessment role in relation to the provision of Appropriate Adult services
- The proposal to place a duty on the Mental Welfare Commission for Scotland for the oversight of Appropriate Adult services

¹ Criminal Justice (Scotland) Act 2016 <http://www.legislation.gov.uk/asp/2016/1/contents>

Overview of respondents

A total of 109 responses were received, including 107 written responses. The other two responses comprise of feedback given at workshop events which the Scottish Government held in conjunction with the SOLD Network (Supporting Offenders with Learning Disabilities) and Support in Mind Scotland.

Of the 109 total responses, 102 have been published on the Scottish Government website. The remaining seven were submitted by individuals who stated they did not want their response to be published.

All responses have been included in this analysis, irrespective of whether or not they have been published.

The published responses can be accessed here:

https://consult.gov.scot/criminal-justice/appropriate-adult-service/consultation/published_select_respondent

The following tables show the breakdown of respondent group and then organisation type:

Respondent group	No. of responses
Individual	52
Organisation	55
Workshop Event	2
Total	109

Organisation type	No. of responses
Involved in Appropriate Adult service delivery	23
Justice sector	9
Professional organisation	7
Third sector	16
Total	55

The category of “involved in Appropriate Adult service delivery” includes all respondents who have input into the delivery of Appropriate Adult services, whether that is providing Appropriate Adults or playing a part in the co-ordination or oversight of the service. This includes local authorities, health and social care partnerships, multi-agency partnerships and a community interest company.

The “justice sector” category includes Police Scotland and other agencies/bodies involved in the law and its enforcement. In addition to the Police Scotland corporate response, there were a further three respondents who indicated they were responding on behalf of Police Scotland.

The “professional organisation” category covers leadership and membership bodies, and those involved in regulation, improvement and policy development.

The “third sector” organisation category is comprised of advocacy groups and membership organisations and networks which support people with lived experience of learning disabilities, mental health issues and other conditions which may mean that they could require communication support when in contact with the police.

A full list of all respondents can be found at **Annex A**.

Overview of responses

General

- The majority of respondents agreed with the proposals in relation to the delivery, training, quality assessment and oversight of the statutory service.
- There was an emphasis on the need for the service to be centred on the requirements of those accessing the service and ensure that they are represented in terms of the development and oversight of the service.
- Insufficient funding was identified as a key risk for all aspects of the statutory service.
- A number of respondents called for further work to be undertaken to improve communication support for vulnerable people throughout the criminal justice system, not just in terms of contact with the police.

Delivery

- The majority of respondents agreed with the definition of who should get support from an Appropriate Adult and the definition of what that support should be.
- Some respondents were concerned that the definition of a “vulnerable person” as laid out in the 2016 Act could exclude people who require Appropriate Adult support from getting it, either through differing interpretations of the definition or through potential future changes to the definition of “mental disorder” in the Mental Health (Care and Treatment) Scotland Act 2003.
- There was comprehensive agreement that vulnerable victims and witnesses should get Appropriate Adult support as part of the statutory service, though two justice sector organisations felt there were some evidential and procedural issues which need to be considered in relation to this.

- Some respondents felt that further detail and clarification was required in relation to the definition of Appropriate Adult support to ensure that there is a consistent and unambiguous approach taken across the country.
- The majority of respondents agreed that the duty to deliver the service should be placed on local authorities, though a number of respondents highlighted the need for additional funding to ensure that the duty is met, and a number of respondents felt that this funding should be “ring-fenced”.
- The majority of respondents also agreed with the proposal to keep the legislation at high level with more detailed guidance sitting underneath in order to create a level of consistency but also to allow flexibility for different areas to develop services tailored to local requirements.

Training

- The majority of respondents agreed that the duty to deliver training to Appropriate Adults should be placed on local authorities, but that there should be input from the justice, health and third sectors, as well as those with lived experience.
- As with the duty for delivery, a number of respondents felt that a balance should be struck between consistency across the country and a level of flexibility that will allow each area to tailor training to local requirements.
- There was agreement that a training framework should be developed, and some respondents felt that formal assessments, accreditation and continuous professional development should form part of Appropriate Adult training.

Quality Assessment

- The majority of respondents agreed with the proposal to place a duty on the Care Inspectorate to carry out a quality assessment role.
- A number of respondents felt that Her Majesty’s Inspectorate for Constabulary (HMICS) should also be involved in quality assessment alongside the Care Inspectorate.
- Some respondents questioned if there should be a greater emphasis on inspections than suggested in the consultation document, while others cautioned against adding another type of inspection to those which are currently undertaken in respect of local authorities’ statutory duties.

- The importance of involving those with lived experience as part of the quality assessment function was highlighted and there was a consensus that a variety of methods in gathering feedback from those accessing the service will be required.
- Some respondents were concerned that identifying the most appropriate time to engage with individuals accessing the service, as well as data protection/confidentiality restrictions, could impact on the ability to obtain meaningful feedback.

Oversight

- Most respondents agreed with the proposal to place a duty on the Mental Welfare Commission to have oversight of Appropriate Adult services across the country.
- A number of respondents, including the Mental Welfare Commission, sought further clarification about this role, in terms of its functions, how it would sit alongside the quality assessment and training functions and about how the Scottish Appropriate Adult Network (SAAN) would tie in with it.
- The question of funding and resources was raised in relation to the Mental Welfare Commission's ability to undertake the role by some respondents.

Analysis

There were 10 questions in the consultation document which related to proposals for the delivery, training, quality assessment and oversight of the statutory service. The following analysis follows the layout of the consultation document.

All questions which asked for a “yes” or “no” answer have been broken down into the following categories for responses:

- Yes – the respondent selected “yes” when answering the question
- No – the respondent selected “no” when answering the question
- No definitive answer (NDA) – the respondent did not select “yes” or “no” but provided comments which highlighted issues or made suggestions about the proposal
- Not answered (NA) – the respondent did not answer the question and made no comments about the proposal

One individual responded in the negative to all questions which sought a “yes” or “no” response and provided the following comment to all questions: “This is yet another power grab which undoubtedly comes from the same stable as the named persons act”. To avoid repetition in the following analysis, this is highlighted here as a concern to all of the proposals.

Delivery

Question 1

We propose to use the definition of vulnerable person as set out at section 42 of the Criminal Justice (Scotland) Act 2016, but extended to cover victims and witnesses. Do you agree?

At section 42 of the 2016 Act, a vulnerable person is described as a person who, owing to mental disorder, appears to the police unable to (i) understand sufficiently what is happening, or (ii) communicate effectively with the police.

“Mental disorder” is defined in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 as covering any mental illness, personality disorder; or learning disability².

² Mental Health (Care and Treatment) (Scotland) Act 2003, Section 328
<https://www.legislation.gov.uk/asp/2003/13/section/328>

The majority of respondents agreed with the above proposal:

Answer	No.	%
Yes	86	78.9
No	16	14.7
No definitive answer	6	5.5
Not answered	1	0.9
Total	109	100

Of the 86 respondents who agreed, 73 (66.9% of total respondents) fully agreed with the proposal and raised no concerns about it.

All respondents who are currently involved in Appropriate Adult service provision agreed with the proposal, while third sector organisations were the most divided respondent group.

Respondent group	Yes	No	NDA	NA	Totals
Individual	44	8			52
Involved in Appropriate Adult service delivery	23				23
Justice sector	5	1	2	1	9
Professional organisation	6	1			7
Third sector	8	6	2		16
Workshop event			2		2
Totals	86	16	6	1	109

The remaining 13 of the 86 respondents who agreed with the proposal highlighted potential issues that may need to be considered. The same concerns were also reflected in the answers from respondents who said they did not agree with the proposal or did not provide a definitive yes or no answer.

The concerns which were raised relate to the definition of “mental disorder” rather than the proposal to extend the definition of “vulnerable person” to victims and witnesses.

The following concerns about using the definition of “mental disorder” were raised:

- **Is the definition wide enough?**

Of the 23 respondents who did not agree with the definition or gave no definitive answer 14 said they were concerned that that the definition was not wide enough. A further four respondents who said they agreed with the definition also raised concerns along these lines.

A number of respondents questioned if this definition would cover neurodevelopmental disorders such as autism spectrum disorder, acquired brain injuries and foetal alcohol syndrome, all of which may cause a person to experience communication difficulties.

Academic Roxanna Dehaghani highlighted research which identified three additional types of vulnerability in suspects in addition to “mental disorder”, namely “mental states”, “intellectual functioning” and “personality”.³

Some respondents took the view that the definition would not cover these conditions, others were unsure and some of those who said they believed that these conditions were covered questioned if those making the assessment of a person’s vulnerability would know this.

- **People with no formal diagnosis**

A total of 15 respondents raised a concern about the definition of “mental disorder” potentially excluding people with communication difficulties with no formal diagnosis or those who are unwilling or unable to disclose any diagnosis. Of this group, 12 respondents did not agree with or give a definitive answer about the proposed definition, while three said they did agree but wanted further consideration to be given to those who fell into the above category.

A number of respondents who raised this issue felt that people could be vulnerable and unable to communicate effectively for a variety of reasons, not just due to a “mental disorder”. Many of these respondents felt that vulnerability is often contextual and cannot be defined in such fixed terms.

The Faculty of Advocates highlighted comments made by Lord Bonomy in his 2015 Post-Corroboration Safeguards Review where he suggested that the real issue is the inability of a person to understand or communicate at the time rather than the underlying reason for their communication problems.⁴

Both the Mental Welfare Commission and the Law Society of Scotland questioned if using such a definition could be problematic in terms of the UN Convention of Rights for Persons with Disabilities (UNCPRD).⁵ They both highlighted that there is currently a debate about whether it is “compatible with UNCPRD for specific rights or duties to be framed around a diagnostic label rather than the need for support” and made reference to amendments to the Social Security Bill where the right to advocacy was extended to all disabled people, not just those with a mental disorder.⁶

³ Gudjonsson (2006)

⁴ The Post-corroboration Safeguards Review (April 2015), paragraph 15.19
<https://www.gov.scot/resource/0047/00475400.pdf>

⁵ UN Convention of Rights for Persons with Disabilities (UNCPRD)
<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

⁶ <https://news.gov.scot/news/right-to-advocacy-extended>

- **Learning Disabilities and Autism Review**

There were 11 respondents who highlighted the fact that the Learning Disabilities and Autism Review is currently considering whether the provisions of the 2003 Act fulfil the needs of people with learning disabilities and autism.⁷ Respondents were concerned that this review may lead to a change in the definition of “mental disorder” which would in turn mean that those with learning disabilities and autism would no longer be eligible for Appropriate Adult support.

- **Issues faced by the police**

There were 11 respondents who felt that using such a definition could be problematic for police officers. Some respondents were doubtful that officers would be able to make an accurate assessment of when Appropriate Adult support was required for a variety of reasons: a lack of training or awareness about Appropriate Adults and the legislation; a lack of clarity about to whom the term “mental disorder” should be applied; and the simple fact that officers are not experts in health or communication needs.

The Scottish Commission for Learning Disability highlighted that, when considering the use of the term “mental disorder” in relation to support for vulnerable adults when in contact with the police, Lord Bonomy argued that it “imposes on a police officer the responsibility of making a diagnosis that he is not qualified to make”.⁸

All of the above issues were particular concerns for third sector respondents and featured in many of the discussions at the two workshop events which involved those with lived experience of learning disabilities and mental health issues.

In terms of ways to help address the issues which were raised, it was suggested by some respondents that it would be useful for guidance to include explicit examples of conditions that could be covered by the term “mental disorder” to assist police officers, while others suggested that the wording of the definition could be expanded, for example to cover people who suffer seizures or to include the phrase “pervasive developmental disorder”.

Two respondents – the Faculty of Advocates and an individual - argued that it would be better to simply state who should be excluded from receiving Appropriate Adult support, i.e. those who have a temporary condition affecting their communication abilities due to drugs or alcohol.

⁷ <https://www.gov.scot/Topics/Health/Services/Mental-Health/Law/officialreviews/autismreview>

⁸ The Post-corroboration Safeguards Review (April 2015), paragraph 15.19
<https://www.gov.scot/resource/0047/00475400.pdf>

The SOLD Network suggested that alternative definitions for people entitled to Appropriate Adult may be found at Section 3 of the Adult Support and Protection (Scotland) Act 2007⁹ or by using the definition of disability in the Equality Act 2010.¹⁰

In relation to the police making assessments, some respondents felt that it would be useful to have experts in the police station to advise officers, or to ensure there is a comprehensive training package in relation to Appropriate Adults for all officers. North Lanarkshire Council highlighted a police custody assessment tool which had been developed by Dr Iain McKinnon from Newcastle University as something which could aid officers when making assessments about the requirement for an Appropriate Adult.¹¹

The National Autistic Society and Headway respectively highlighted Autism Alert Cards and Brain Injury Identity Cards, which can be carried by individuals who are affected by these conditions, as a way for officers to identify if an Appropriate Adult is required. Some participants at the two workshop events suggested that “personal passports” similar to those used in health care settings could be adopted so that an individual’s communication needs travel with them. It was acknowledged, however, that not everyone with lived experience of a condition which means they may require an Appropriate Adult may be willing or able to participate in these schemes.

The proposal to extend the definition to victims and witnesses

As outlined in the consultation document, victims and witnesses are currently entitled to Appropriate Adult support and it is the Scottish Government’s intention to extend the definition in Section 42 of the 2016 Act to ensure that the legislation also applies to them.

None of the 23 respondents who said they did not agree with the proposal in Question 1 disagreed with the proposal to extend the definition to victims and witnesses.

As can be seen in the next table, the group who appear most concerned about this specific part of the proposal are justice sector organisations

⁹ Adult Support and Protection (Scotland) Act 2007, Section 3
<https://www.legislation.gov.uk/asp/2007/10/section/3>

¹⁰ Equality Act 2010, Section 6 <https://www.legislation.gov.uk/ukpga/2010/15/section/6>

¹¹ Dr Iain McKinnon, keynote speaker at SOLD conference, 27 March 2017
<https://soldnetwork.org.uk/videos/improving-support-for-the-accused-person-with-a-learning-disability-in-police-custody-dr-iain-mckinnon-2/>

Respondent group	Yes	No	NDA	NA	Totals
Individual	7			1	8
Involved in Appropriate Adult service delivery					0
Justice sector	1		2	1	4
Professional organisation	1				1
Third sector	8				8
Workshop event	2				2
Totals	19	0	2	2	23

The Faculty of Advocates and the Crown Office and Procurator Fiscal Service (COPFS) did not give a definitive yes or no answer to Question 1 and, although they agreed with the proposal to extend the definition to victims and witnesses, they highlighted concerns about this.

COPFS said that careful consideration will need to be given to the role of the Appropriate Adult in relation to witnesses because

“intervention during the course of an evidential interview of a witness risks contaminating the evidence of the witness, will be subject to scrutiny, may impact on the admissibility of the witness statement, may be subject to testing and legal challenge during the judicial process and may impact on the credibility and reliability of the witness”.

The Faculty of Advocates highlighted that because a legal representative is not present during the interview of a witness there will be no one to check if the Appropriate Adult’s actions have affected the admissibility of the interview. The Faculty suggested that it may be wise to consider a staged process where the definition is not extended to victims and witnesses until it is clear that the statutory service is working for those in police custody and that the issue of the inadmissibility of evidence is carefully considered.

In relation to other issues for victims and witnesses, Central Advocacy Partners felt that the definition could be extended even further and consideration should be given to Appropriate Adults being provided to assist people who are making complaints against the police or Appropriate Adult procedures.

Renfrewshire Adult Protection Committee stated that it needs to be made clear if the support will also be extended to vulnerable victims and witnesses who are subject to police procedures under the Adult Support and Protection (Scotland) Act 2007 procedures.

Question 2

We propose to use the definition of the type of support to be made available as set out at section 42 of the Criminal Justice (Scotland) Act 2016, Do you agree?

The definition of communication support to be provided by Appropriate Adults in section 42 is as follows:

- to help the person in custody to understand what is happening, and
- to facilitate effective communication between the person and the police.

The majority of respondents agreed with the above proposal:

Answer	No.	%
Yes	87	79.8
No	12	11.0
No definitive answer	8	7.4
Not answered	2	1.8
Total	109	100

Of the 87 respondents who agreed, 76 (69.7% of total respondents) fully agreed with the proposal and raised no concerns about it.

As with Question 1, all respondents who are currently involved in Appropriate Adult service provision agreed with the proposal, while third sector organisations were the most divided respondent group and the only group where more respondents disagreed with the proposal than agreed with it.

Respondent group	Yes	No	NDA	NA	Totals
Individual	49	2		1	52
Involved in Appropriate Adult service delivery	23				23
Justice sector	5	1	3		9
Professional organisation	5	1	1		7
Third sector	5	8	2	1	16
Workshop event			2		2
Totals	87	12	8	2	109

The concerns/suggestions in relation to this question can be broken down into two categories: where respondents have identified the key issues in relation to the specific role of the Appropriate Adult; and where respondents have identified gaps in support for vulnerable people in the criminal justice system.

The main concerns/suggestions relating to the former are:

- **More detail required**

Five respondents felt that further clarification and additional details were required in relation to the definition.

Support in Mind Scotland and the Forensic Network felt that more emphasis should be placed on ensuring that the individual understands their rights. The latter was concerned about the interpretation of “facilitating communication” and how this may lead to vulnerable people choosing to speak rather than make “no comment” interviews, which could be contrary to legal advice they receive. They suggested the following as an alternative definition:

- “To help the person in custody understand what is happening, and;
- To provide communication support for vulnerable individuals when interacting with the Police (including to ensure the Police caution is understood, and that legal advice is understood and retained)”

The SOLD Network and the Law Society of Scotland both said they felt that the type of support should be set out more clearly as it could open to misinterpretation. SOLD suggested the following as being essential components of “effective communication”:

“For instance an adequate amount of time for the appropriate adult to prepare with the person prior to the interview, to develop an understanding of the person’s communication ability and to build trust; the involvement of other professional expertise such as a speech and language therapy communication assessment; the use of communication aids such as talking mats, etc. The standards that are expected for effective communication to be facilitated need to be explicitly stated.”

The Law Society suggested that the following functions of the role should be specified:

- “The role is active and is to ensure the individual is fairly treated
- There needs to be an emphasis on independence from the police and solicitor
- There is a need to ensure that procedures are being complied with, that medical assistance is provided and reasonable adjustments are made”

They summed up the role as being to observe, advise (not legal advice), support, assist, inform and intervene if required. They also said they felt the Appropriate Adult had a “holistic role” to offer reassurance, which they feel goes beyond what is outlined in the legislation.

In their corporate response Police Scotland suggested that it may be useful to add the following under subsection 3 of Section 42 of the Act:

- “to advise police if at any time the person does not appear to understand”.

Roxanna Dehaghani felt that a broader definition of support is required, to include the following which is taken from Police and Criminal Evidence Act (PACE) Practice Code C in England and Wales (revised version which came into effect from 31 July 2018)¹²:

“1.7A The role of the appropriate adult is to safeguard the rights, entitlements and welfare of juveniles and vulnerable adults (see paragraphs 1.4 and 1.5 to whom the provisions of this and any other Code of Practice apply.

For this reason, the appropriate adult is expected, amongst other things, to:

- support, advise and assist juveniles and vulnerable adults when, in accordance with this Code or any other Code of Practice, any such person is given or asked to provide information or participates in any procedure;
- observe whether the police are acting properly to respect the rights of juveniles and vulnerable adults, and inform an officer of the rank of inspector or above if they consider that they are not;
- assist with communication between juveniles and vulnerable adults and the police;
- help juveniles and vulnerable adults to understand their rights and ensure that those rights are protected and respected (see paragraphs 3.15, 3.17, 6.5A and 11.17).”

(Note – in Scotland communication support for children (those aged under 16 and some categories of 16 and 17 year olds) is provided by a Responsible Person, not an Appropriate Adult, so the references to juveniles in the above would not apply to the proposed statutory service)

- **Reassurance and trust**

As mentioned above, the Law Society of Scotland said they felt that part of the Appropriate Adult’s role is offer reassurance to vulnerable individuals. This is something which was raised by another eight respondents and most of them felt that getting sufficient time with the Appropriate Adult was key to establishing trust and reassurance.

The Faculty of Advocates said they believed that both time and privacy was vital in this respect, saying “it is also important that time is given for Appropriate Adults to advise vulnerable persons, in private, of their role in the

¹² PACE Code C 2018 <https://www.gov.uk/government/publications/pace-code-c-2018>

process and also to enable the development of trust and rapport between them". A lot of participants at the workshop event held with the SOLD Network also felt strongly about the importance of being able to have time alone with the Appropriate Adult to build up trust with them.

Some of the People First groups, Edinburgh Advocating Together and participants at the two consultation workshops also touched on the issues of confidentiality and trust and said that it would be preferable if the Appropriate Adult was someone you know or from an organisation with which you were familiar. It was acknowledged that this may not be possible by some of the respondents, so many also highlighted the need for time and privacy with the Appropriate Adult as being important. Fife People First Group said that this should continue after the contact with the police as "you need support afterwards to debrief, calm down and go over any questions and understand what is happening next".

One individual highlighted the need for investment to develop a range of communication tools and accessible information as part of a "National Appropriate Adult Toolkit" in order to ensure that communication needs are identified and that individuals understand procedures, processes and the roles of people they encounter.

- **Police training and awareness**

As with the responses to Question 1, the importance of the police understanding the role of the Appropriate Adult was raised. Some respondents said that more clarity and greater support in terms of training and guidance is required for the police. South Lanarkshire Council Social Work Resources and North Lanarkshire Council highlighted that this was important to ensure that requests for Appropriate Adults are proportionate.

The main concerns relating to gaps in support for vulnerable people are:

- **Provision throughout the criminal justice process**

The fact that the statutory service will only apply when individuals are in contact with the police was an issue for nearly a quarter of all respondents (26 of the 109). Both this question and Question 10 (any other comments) included suggestions and concerns about this issue (responses to all questions which raised this topic are outlined here).

While many respondents acknowledged the reasons why the proposals are focusing on one part of the criminal justice process, they felt that consideration must be given to extending it to other parts of the system and that the Scottish Government should clarify how it intends to address this issue.

The lack of in-court support was highlighted by the majority of these respondents as being a concern, while some respondents also highlighted the

need for Appropriate Adults to be present when victims and witnesses meet with COPFS staff.

It was highlighted by some respondents that only a few areas provide Appropriate Adult support for individuals in court and until there is legislation about in-court support, they felt that this provision will continue to be inconsistent across the country, impacting on the rights of vulnerable people in the criminal justice system.

ENABLE Scotland also highlighted a gap in support for people nearing the end of custodial sentences. They acknowledged that this does not fall within the scope of the consultation but said they wished to raise awareness of this issue and asked the Scottish Government to address it “in light of its important role in reducing recidivism”.

- **Intermediaries**

The subject of intermediaries was also raised in response to this question (and also in response to the request for any other comments in Question 10 – all responses are again considered here).

Intermediaries are currently used in England, Wales and Northern Ireland and their role is defined in the Youth Justice and Criminal Evidence Act 1999¹³ and the Criminal Evidence (NI) Order 1999.¹⁴ The legislation in England and Wales relates only to victims and witnesses, while in Northern Ireland it covers defendants as well.

The role of an intermediary is more specialised than that of an Appropriate Adult. An intermediary assesses an individual’s communication skills in detail, facilitates communication during the investigation and prosecution stages and assists in the planning of police interviews and pre-trial preparation – including advising lawyers on communication methods when taking evidence.

Seven respondents - the majority of which were fell under the professional organisation category - called for the Scottish Government to consider setting up an intermediary scheme similar to those in the rest of the UK. One individual cautioned against assumptions about intermediaries being the answer to in-court facilitation because only individuals with more serious communication needs would get such support, leaving many vulnerable adults without any support.

¹³ Youth Justice and Criminal Evidence Act 1999, Section 29
<http://www.legislation.gov.uk/ukpga/1999/23/section/29>

¹⁴ Criminal Evidence (NI) Order 1999, Sections 17 and 21
<https://www.legislation.gov.uk/nisi/1999/2789/contents>

- **Solicitor consultation**

The suggestion that Appropriate Adults should be present during a solicitor consultation was made by nine respondents, with third sector organisations making up the majority of respondents calling for this.

All respondents making this suggestion acknowledged that consideration would have to be given to extending legal privilege to Appropriate Adults, or creating a duty of confidentiality for them.

The SOLD Network highlighted that because not all solicitors are “trained, familiar or experienced with dealing with clients who have learning disabilities, this is a stage where a number of people who have learning disabilities have stated they were unclear or confused about the process ahead”.

Question 3

We propose to place the duty on local authorities for ensuring that people are available to provide Appropriate Adult support, do you agree?

The majority of respondents agreed with this proposal:

Answer	No.	%
Yes	85	78.0
No	15	13.8
No definitive answer	7	6.4
Not answered	2	1.8
Total	109	100

Of the 85 respondents who agreed, 63 (57.8% of total respondents) fully agreed with the proposal and raised no concerns or specified reservations.

The majority of organisations currently involved in Appropriate Adult service delivery were in favour of the duty being placed on local authorities.

Respondent group	Yes	No	NDA	NA	Totals
Individual	46	6			52
Involved in Appropriate Adult service delivery	20	2	1		23
Justice sector	6		2	1	9
Professional organisation	6		1		7
Third sector	7	6	2	1	16
Workshop event		1	1		2
Totals	85	15	7	2	109

The two organisations currently involved in Appropriate Adult service delivery who disagreed were Glasgow Health and Social Care Partnership and South Lanarkshire Council Social Work Resources. The former stated that the duty should be placed on

the police, while the latter did not suggest an alternative but highlighted concerns about funding, resources and conflicts of interest relating to the role. Appropriate Adults Tayside did not provide a “yes” or “no” answer but suggested that consideration could be given to the duty being placed on Community Justice Partnerships rather than the local authority.

The following suggestions were made as alternatives to placing the duty on local authorities:

- **A single national body**

This was the most popular suggestion as an alternative to the proposal in the consultation document. Nine respondents stated that it would be a preferred option, with third sector organisations and the two workshop events making up most of this number. The main reason for this suggestion was to ensure consistency in service provision, but respondents also cited concerns about funding being diverted to other local authority services or the role not being resourced properly by local authorities.

Some respondents who said they agreed with the proposal also touched on the idea of a national body. Both Epilepsy Scotland and Social Work Scotland said they felt that creating a new national body would be too expensive, while the Faculty of Advocates and North Lanarkshire Council both found the idea of a national body attractive as it would be more streamlined and promote consistency, but after consideration agreed it would be preferable to place the duty on local authorities.

- **Police/Scottish Police Authority**

Glasgow Health and Social Care Partnership said that having one agency responsible for delivery rather than 32 local authorities would result in a more affordable, consistent and better quality service. They felt that the duty should be placed on the police because the proposed statutory service would only be utilised by Police Scotland and there would be no conflict of interest, which there could be for local authorities.

COSLA – who said that local authorities could provide the Appropriate Adult service, subject to funding and as long as there are no conflicts of interest – also highlighted that it had been suggested that Police Scotland or the Scottish Police Authority could deliver the service.

In contrast to this view, some third sector respondents said that they felt the duty should definitely not be placed on the police as this could impact on the impartiality of the Appropriate Adult service.

- **Partnership model**

Some respondents suggested that the duty should be placed on partnerships involving local authorities, rather than solely on local authorities:

- Community Justice Partnerships – this was suggested by Appropriate Adults Tayside who currently operate a partnership model (local authority, police and health) for the delivery of Appropriate Adult services in the Perth and Kinross, Angus and Dundee local authority areas
- Local authority to provide the service but the funding should be borne jointly between the local authority, health authority and the police – this was suggested by an individual
- Joint partnership between the local authority, the police and solicitor – this was suggested by an individual.

- **Geographical model**

One individual suggested that a “geographical model” would be preferable to placing the duty on local authorities. They suggested such a model would work by:

”conjoining several LA areas with similar needs...(which) would streamline administration, help to standardise training and its delivery, reduce cost, increase efficiency and effectiveness of response, enabling leaner governance, standardization and oversight”.

- **Third Sector**

The idea that Appropriate Adults could come from the third sector was popular with participants at the workshop held with Support in Mind Scotland where it was suggested that the Mental Welfare Commission could oversee a bank of Appropriate Adults drawn from this sector, though it was acknowledged that this would have to be subject to increased funding and appropriate training.

The following concerns were raised by respondents who either did not agree with the proposal or who agreed with it but had some reservations:

- **Funding/Resources**

Ensuring adequate funding and resourcing of a statutory service was the biggest concern for respondents.

A number of respondents said that they agreed with the proposal to place the duty on local authorities but made it clear that an increase in funding would be required. This view was particularly strong from those involved in Appropriate Adult service delivery. Others were concerned that, if funding was not “ring-fenced” it may be diverted from its intended use, and that if there was not adequate funding or resources for the service this would lead to inconsistencies in provision across the country.

- **Flexibility**

A number of respondents agreed with the proposal to place the duty on local authorities but highlighted that the authorities should be allowed flexibility to tailor the services to suit local needs, for example by contracting out provision. Again, this view was taken by a number of organisations involved in Appropriate Adult service delivery.

Some respondents felt that it would be beneficial for local authorities to involve third sector organisations in the delivery of Appropriate Adult services as this would allow them to tap into expertise of networks already supporting vulnerable people and not place an additional burden on local authority staff.

Four respondents brought up the issue of Integration Joint Boards (IJB) in relation to the issue of flexibility. Renfrewshire Adult Protection Committee, Renfrewshire Health and Social Care Partnership and the Care Inspectorate all looked for clarification on whether or not the function will be delegated to IJBs or if it will remain solely with the local authorities, while Highland Appropriate Adult Service agreed with the proposal but highlighted that NHS Highland has the responsibility for delivery of Adult Social Care Services through the lead agency IJB model in their area.

- **Conflicts of interest**

As mentioned above, some respondents were concerned that if the duty was placed on local authorities this would result in conflicts of interest. COSLA, South Lanarkshire Council Social Work Resources and Glasgow Health and Care Social Partnership highlighted that many existing Appropriate Adult services which are provided by local authorities use social workers and this could result in conflicts because the role has to be completely separate from a social worker's other duties. They both felt that this could result in questions about Appropriate Adults' impartiality, with Glasgow saying:

“A lack of clarity surrounding Appropriate Adult function and expectations of the service users, could result in blurred lines between social services statutory obligation and the Appropriate Adult function. Leading to service users having a lack of confidence and trust in Social Work Services due in part to their interaction with the Appropriate Adult Service and Criminal Justice System.”

This was a view that was echoed by many of the participants at the workshop held in conjunction with the SOLD Network, and potential conflicts of interest for social workers who carry out the role of Appropriate Adult was also raised by SOLD in its official response. A number of respondents also said they felt that the role of Appropriate Adult should not be an “add-on” to the duties of existing local authority staff because of the danger of conflicts of interest, and also because they felt that it would result in those taking on the role being unable to dedicate the requisite time to it.

City of Edinburgh – Appropriate Adult Service, who agreed with the proposal to place the duty on local authorities, acknowledged that there could be

conflicts of interest if social workers perform the role of Appropriate Adults but said they believed that placing the service on a statutory footing would “prevent the blurring of boundaries where some staff and support workers believe they can act as an Appropriate Adult for their clients which is contrary to all guidance”.

Question 4

We propose to keep details of the statutory duty at a high level but develop more detailed guidance to sit below this and to which those responsible for delivery must have regard, do you agree with this approach?

The majority of respondents agreed with this proposal:

Answer	No.	%
Yes	96	88.1
No	5	4.6
No definitive answer	2	1.8
Not answered	6	5.5
Total	109	100

There were four individuals and one third sector organisation (Scottish Independence Advocacy Alliance) who did not agree with this proposal:

Respondent group	Yes	No	NDA	NA	Totals
Individual	48	4			52
Involved in Appropriate Adult service delivery	22		1		23
Justice sector	6			3	9
Professional organisation	7				7
Third sector	13	1	1	1	16
Workshop event			1	1	2
Totals	96	5	3	5	109

Those who did not agree with the proposal or gave no definitive answer felt that minimum standards should be set or were concerned that guidance would not be enforceable or widely understood. Some respondents who agreed with the proposal to keep the legislation high level said that they felt that it would be important for principles and values to be made clear so that there is no uncertainty about what the service should be delivering.

The main issues which were raised in relation to this proposal were:

- **Flexibility**

Eight respondents, all of whom are currently involved in the delivery of Appropriate Adult services, agreed with the proposal but said they wanted the legislation and guidance to make it clear there was flexibility for areas to set

up service delivery tailored to local needs. All of these respondents already work in partnership with other agencies and they felt that it is important for the flexibility which allows for this to continue as part of the statutory service.

Some respondents were more cautious about too much flexibility being allowed, with Epilepsy Scotland reiterating concerns about consistency if funding for the service is not “ring-fenced”. One individual said that if “too much legislation is devolved locally this may result in diffusion of the impact of a statutory service returning to 32 modes of delivery” and they and two others felt that minimum standards could help to ensure that this does not happen.

- **Requirements to become an Appropriate Adult**

Five respondents felt that the legislation should contain information about who can become an Appropriate Adult and specify any training and accreditation which is required to take on the role.

- **Guidance**

In respect of the guidance, which is proposed to sit underneath the legislation, the Police Scotland corporate response suggested that the Scottish Appropriate Adult Network (SAAN) guidance could be progressed and used to help develop the guidance for the statutory scheme. The Law Society of Scotland, however, questioned if such an approach was appropriate because solicitors had no input in the SAAN guidance and that “it is important not to follow what may have existed previously but to consider carefully who is involved in developing such guidance and to whom it applies or needs to refer”.

In a similar vein to this, some respondents said they felt that it was important that there was a wide range of input into the guidance, including from people with lived experience and those who have accessed Appropriate Adult services. Some respondents also highlighted the need for the guidance to be reviewed on a regular basis and, again, this should involve a range of stakeholders.

Training

Question 5

We propose to place a duty on local authorities to deliver training to Appropriate Adults. Do you agree with this?

The majority of respondents agreed with this proposal:

Answer	No.	%
Yes	85	78.0
No	18	16.5
No definitive answer	5	4.6
Not answered	1	0.9
Total	109	100

Of the 85 respondents who agreed with the proposal, 58 (53.2% of the total respondents) fully agreed with it and raised no concerns or specified any reservations.

Respondent group	Yes	No	NDA	NA	Totals
Individual	46	6			52
Involved in Appropriate Adult service delivery	18	5			23
Justice sector	5	2	1	1	9
Professional organisation	7				7
Third sector	9	5	2		16
Workshop event			2		2
Totals	85	18	5	1	109

There was general agreement that it would be sensible for the duty for training to be placed on the same organisation who will be responsible for delivery.

The following suggestions were made in relation to organisations on whom the training duty could be placed and also about the training in general:

Alternative suggestions

- **A single national body/centralisation**

Seven respondents felt that the duty would be better placed on a single national body. All but one of these respondents were third sector organisations and most felt that it would be preferable for the duty for delivery to also be placed on a single national body. The Faculty of Advocates – who agreed that the duty for delivery should be placed on local authorities – felt that there was a “strong case” for centralising training to ensure consistency. Orkney Islands Council suggested that Mental Welfare Commission could

develop a national training programme, while the delivery of programme would be the responsibility of the provider.

- **Police or partnership involving the police**

Six respondents said that the duty for training should be placed on the police or on a partnership involving the police. Glasgow Health and Care Partnership said that while they saw local authorities or health and social care partnerships having a role to play to support the training, because they felt that the duty for delivery should be placed on the police, then the police (or alternatively the Scottish Government) should be responsible for delivering the training.

Most of the other six respondents also felt that the duties for delivery and training should be placed on the same organisation and they were in favour of this being a partnership approach involving local authorities and the police.

- **Scottish Government**

As mentioned above, Glasgow Health and Care Partnership said that the Scottish Government could deliver the training in a manner similar to “work currently underway within Criminal Justice whereby the Scottish Government are delivering training”.

Other concerns and suggestions

- **Flexibility**

A number of respondents felt that it was important that there was flexibility to allow whomever the duty is placed on to involve other agencies and professionals in the training, or contract it out if this is perceived to be the most appropriate way to deliver training. Argyll and Bute Health and Social Care Partnership, who commission CarrGomm to deliver their Appropriate Adult service, highlighted that this approach has allowed them to maintain a wide pool of Appropriate Adults and has alleviated pressure on statutory social work staff.

North Lanarkshire Council felt that “the statutory duty to deliver training must include the flexibility to commission services from independent providers”, and for this option to be included in the statutory guidance” and Angus Health and Social Care Partnership said that, while the duty should be placed on local authorities, there should be a stipulation that “other agencies should support this training, e.g. NHS, Police Scotland”.

Some respondents also felt that it was important for there to be a wide range of input in the delivery of the training as well as in the creation of the training framework and the training oversight group. A number of third sector organisations and Social Work Scotland were of the opinion that it is important to ensure that people with lived experience and those accessing the service are included in all aspects of the training. Social Work Scotland also

suggested linking with the National Trauma Training Framework developed by NHS Education for Scotland (NES).¹⁵

While it was agreed by many respondents that flexibility in respect of delivering the training was important, a number of respondents also highlighted the need for consistency to ensure that Appropriate Adults received the same level of training regardless of where they are based and felt it was vitally important to get the training framework and oversight right. The Mental Welfare Commission felt that one way of doing this could be to link in the oversight of training with the oversight role proposed in Question 8, rather than make it a “freestanding function with no clear ownership and accountability”.

- **Assessment and accreditation**

Seven respondents felt that it was important to have some kind of assessment or accreditation built into the training to ensure a consistent high standard of support for those accessing the service and also to provide a framework for Appropriate Adults to develop their skills on an ongoing basis. This was particularly important for the People First groups who responded and for participants at the workshop held with the SOLD Network.

Values into Action Scotland suggested that a national training programme could be included in the Scottish Credits and Qualifications Framework (SCQF) and validated by the Scottish Qualifications Authority (SQA).

The Law Society of Scotland highlighted training undertaken by Justices of the Peace and suggested a similar programme could be developed for Appropriate Adults.¹⁶

- **Funding and resources**

Some concerns were raised about funding and resourcing, but to a much lesser extent than in relation to the delivery of the service with eight respondents highlighting this as a potential issue.

¹⁵ <https://www.nes.scot.nhs.uk/education-and-training/by-discipline/psychology/multiprofessional-psychology/national-trauma-training-framework.aspx>

¹⁶ <https://www.gov.scot/Topics/Justice/law/justice-peace/d/IssuestoConsider/Training>

Quality Assessment

Question 6

We propose to place a duty on the Care Inspectorate to carry out a quality assessment role in relation to the provision of Appropriate Adult services, do you agree?

The majority of respondents agreed with this proposal:

Answer	No	%
Yes	87	79.8
No	11	10.1
No definitive answer	5	4.6
Not answered	6	5.5
Total	109	100

Of the 87 respondents who agreed, 68 (62.4% of the total respondents) fully agreed and raised no concerns or made further suggestions about the proposal.

The breakdown of response by respondent group is as follows:

Respondent group	Yes	No	NDA	NA	Totals
Individual	47	5			52
Involved in Appropriate Adult service delivery	20	3			23
Justice sector	4	2		3	9
Professional organisation	6	1			7
Third sector	10		3	3	16
Workshop event			2		2
Totals	87	11	5	6	109

The Care Inspectorate agreed with the proposal, subject to the availability of agreed resources and further discussion about the scope of the functions which would be conferred on them. They also suggested that Her Majesty's Inspectorate of Constabulary in Scotland (HMICS) could be involved.

The following suggestions were made by respondents who did not agree with the proposal, or who felt that alternative models involving the Care Inspectorate would be preferable:

- **The proposed role is not required**

Four respondents said they did not agree because they felt the proposed quality assessment role was unnecessary. Two of these respondents are organisations involved in Appropriate Adult service delivery: Orkney Islands Council, who felt that there were already sufficient quality assessment functions in place; and East Lothian Health and Social Care Partnership, who

argued that local authorities “need to become better at self-evaluation rather than introduce another thematic inspection” in addition to those which already exist.

The other two respondents who felt the role was unnecessary were individuals, one of whom argued that there was no requirement for inspections since a solicitor would be present at the police station when an Appropriate Adult is requested, while the other felt that data protection and confidentiality would limit what could be assessed. East Lothian Health and Social Care Partnership also highlighted that confidentiality could also make it “difficult to audit” some police procedures.

While not saying that the role is unnecessary, Social Work Scotland and another individual disagreed with the proposal and said that although the Care Inspectorate may ultimately be responsible for strategic inspections, quality assessment or assurance could be done by local authorities. In this respect, Social Work Scotland said it was “important to make a distinction between inspection and quality assessment or assurance”.

- **HMICS should be involved**

As mentioned above, the Care Inspectorate suggested that there may be a role for Her Majesty’s Inspectorate of Constabulary in Scotland (HMICS) as they “may be most likely to hear about and observe the provision of Appropriate Adult services for those being detained”. The Care Inspectorate highlighted that there is an existing mechanism for information sharing between them and HMICS.

HMICS having a role in quality assessment was also suggested by some other respondents. Social Work Scotland, who did not agree with the proposal, and three other respondents who did - Glasgow Health and Social Care Partnership and Highland Appropriate Adult Service and the SOLD Network – all suggested that HMICS could be involved alongside the Care Inspectorate.

- **Mental Welfare Commission for Scotland should carry out the role**

Three respondents – North Lanarkshire Council, an individual and participants at the workshop event held with the SOLD Network – felt that it would be more appropriate for this role to be carried out by the Mental Welfare Commission for Scotland as they have a greater expertise in relation to the rights of adults with mental disorders and more knowledge of the justice sector.

- **Independent body**

This was suggested by two justice sector respondents: the Faculty of Advocates and the Law Society of Scotland. They both felt that the quality assessment role would be best carried out by an independent body which consisted of representatives from a number of areas, such as local

authorities, health, the third sector and the legal sector. Both these respondents said they were concerned that the Care Inspectorate did not have the enough knowledge of or expertise in the justice sector to carry out the role effectively.

The following suggestions about how the quality assessment function should operate were made:

- **Involve those with lived experience**

Values into Action, the SOLD Network and participants at the two workshop events felt that it was important to ensure that people with lived experience of mental health issues, learning disabilities or any conditions that could mean they require assistance from Appropriate Adults and those who have accessed the service are involved in the quality assessment function. The SOLD Network highlighted that the Care Inspectorate used to involve service users in its work, but were no longer sure if this is still the case. They suggested it might be worth looking at the Quality Checker service provided by Values into Action Scotland as a possible model for involving people with lived experience as part of the quality assessment function. This was also suggested as a possible feedback mechanism in response to Question 7 (feedback from service users) by Values Into Action Scotland itself.¹⁷

- **Self-evaluation and inspections**

While some respondents felt that more emphasis should be placed on self-evaluation, others said that they believed that inspections should feature more heavily than is currently proposed or be made mandatory. This view was adopted by a number of third sector organisations, as well as the Police Scotland Corporate Response and the Equality and Human Rights Commission.

The Mental Welfare Commission said further clarity was required about how the self-evaluation framework would be used and highlighted that the Community Justice framework which is mentioned in the consultation document is part of a wider system including a national statutory body. One individual also touched on the workings of the framework and highlighted that a co-ordinated response will be required to obtain information from all partners and not just the local authority. They also queried how the information which is required to be evaluated will be recorded and stored.

A number of respondents felt that whatever quality assessment model was adopted it was important to take a holistic approach which, as COSLA suggested, captures the individual's journey through the legal/judicial process, and not just gauge whether or not the service is being delivered in isolation. These respondents argued that this meant that the quality assessment function should not be incorporated into or based on existing models but

¹⁷ <http://qualitycheckers.org.uk/site/asqc/templates/general.aspx?pageid=1084&cc=gb>

tailored to take specific recognition of the Appropriate Adult role. In contrast to this, some other respondents felt that the function could form part of existing self-evaluation and inspection processes.

Question 7

How might we best engage with service users to understand their experience?

There was no general consensus about the best way to engage with people accessing Appropriate Adult services, other than it should not be a “one size fits all” approach and a variety of feedback mechanisms would be required.

A number of respondents agreed that the Forensic Network and SOLD Network could provide support for individuals to provide feedback, and the main suggestions regarding further ways to do this were:

- Surveys and questionnaires
- Group events, such as workshops and focus groups
- Interviews, in person and over the telephone
- Involve others in support roles, e.g. family, carers, advocacy, other third sector organisations and health/adult support services
- Involve others who may come in contact with Appropriate Adults or have seen the role being carried out, e.g. police, solicitors and Independent Custody Visitors
- Involve people with experience of accessing the Appropriate Adult service in training events and conferences

The suggestion to involve advocacy and other third sector organisations was a popular one and many respondents felt that this would be vital to help address some of the main issues which were identified and are shown below:

- **Timing of feedback**

The question of when to get feedback was one of the main issues for respondents, with 28 respondents offering views on when would be the most appropriate time for this to happen.

Of the 28 respondents who gave views about this topic, 10 felt that feedback should be sought immediately after contact with the Appropriate Adult or, in the case of a suspect or accused person, immediately after they were released from custody. The most popular method suggested for feedback at this point in time was through a questionnaire. Some respondents suggested that this initial feedback could be followed up at a later stage through interviews and via support agencies.

A further 10 respondents felt that trying to get feedback at the time an individual is in contact with the police, or immediately afterwards, would not work. Fife Health and Social Care Partnership said that they had previously

tried to give individuals a simple questionnaire to complete following their involvement with the police but this was not successful.

Some respondents suggested that feedback should only be sought at the conclusion of any proceedings so as not to cause any further stress or anxiety to the individual while the case is ongoing. Waiting this long, however, was viewed as problematic by a number of respondents who said that there should not be a big gap between contact with the Appropriate Adult and feedback being sought as this may result in the individual not being able to remember everything that happened during the contact. This was a strong view amongst third sector respondents (Central Advocacy Partners and the People First groups) and participants at the workshop events.

The problems in identifying when would be the most appropriate time to ask for feedback were touched on by a number of respondents. Most agreed that asking for feedback immediately after contact with the Appropriate Adult could cause additional distress, but acknowledged that seeking feedback at a later date could be difficult as contact may have been lost with the individual or they may be unable or unwilling to revisit events from the past.

Some respondents felt that the best way of tackling this problem could be to signpost or refer individuals to resources that could assist them not only with the feedback but provide additional support if they required this. Support in Mind Scotland suggested that the Distress Brief Intervention pilot – where front line staff signpost/refer people in distress to third sector support agencies - may provide some learning for the proposed statutory service in the context of follow-up support.¹⁸

- **Appropriate Adult's role in feedback**

A number of respondents considered the role of the Appropriate Adult in obtaining feedback and there were diverse views in relation to this.

Some respondents felt that there may be issues if an Appropriate Adult was involved in this part of the process: North Lanarkshire Council, Appropriate Adults Tayside and an individual said that this could result in the person accessing the service questioning the Appropriate Adult's impartiality and may cause confusion about the role; Tayside also highlighted the risk of confrontation if the individual was not happy with their experience; and an individual respondent said that they did not think it would be appropriate to add more paperwork and questions into contact between the individual and the Appropriate Adult.

Other respondents, however, felt that the Appropriate Adult could play a role in gathering feedback. The Care Inspectorate, Support in Mind Scotland and some individuals said that the Appropriate Adult could signpost or refer individuals to resources for further support and to provide feedback. It was

¹⁸ <https://www.dbi.scot/general/distress-brief-intervention-programme-overview/>

acknowledged for this approach to work other agencies would need to be involved in the feedback process, whether that be the networks mentioned in the consultation document or other organisations such as advocacy, and one individual suggested that a national data sharing protocol should be developed similar to that in England and Wales.

- **Accessible format**

A number of respondents felt that it was important to ensure that the mechanisms for gathering feedback were in accessible formats so as not to exclude people from participating in the process.

Some respondents suggested using social media and online tools to help gather feedback, but it was highlighted that not everyone may have access to computers or smartphones.

- **Data protection and confidentiality**

The issue of individuals consenting to being contacted for feedback was raised by some respondents, with an individual and participants at the workshop held in conjunction with Support in Mind Scotland raising concerns about data protection.

The Faculty of Advocates and the Law Society of Scotland both highlighted that solicitors may be able to provide some sort of input regarding feedback but that this would be limited due to client confidentiality

Oversight

Question 8

We propose to place a duty on the Mental Welfare Commission to have oversight of how Appropriate Adults services are provided across Scotland, do you agree?

The majority of respondents agreed with this proposal:

Answer	No.	%
Yes	89	81.7
No	8	7.3
No definitive answer	7	6.4
Not answered	5	4.6
Total	109	100

Of the 89 respondents who agreed, 77 (70.6% of the total respondents) fully agreed and raised no concerns about the proposal.

Respondent group	Yes	No	NDA	NA	Totals
Individual	48	4			52
Involved in Appropriate Adult service delivery	20	1	2		23
Justice sector	4	3	1	1	9
Professional organisation	5		2		7
Third sector	12			4	16
Workshop event			2		2
Totals	89	8	7	5	109

The Mental Welfare Commission for Scotland answered yes to this question but said that this was insofar as they were willing to consider if they are best placed to take on the oversight role, subject to the functions and resourcing.

They also suggested another possible model for the oversight role:

- **A managed network**

The Commission said they felt that a managed network – like the Forensic Network – may be a more appropriate model for the oversight function and agencies such as Community Justice Scotland could provide a statutory home for the network. In response to Question 9 (the functions of the oversight role) they said:

“In earlier discussions, we proposed that the Commission could oversee the production of good practice guidance, and undertake monitoring of the operation of appropriate adult schemes, based on agreed and consistent data sets and a questionnaire periodically sent out to local authorities. On further reflection, we feel that the oversight role needs to be broader and different in approach, building on the work of the SAAN.”

For those respondents who disagreed with the proposal, the following alternatives to the Commission were suggested:

- **Care Inspectorate**

Glasgow City Health and Social Care Partnership, a respondent from Police Scotland and two individuals felt that the duty for oversight should be placed on the Care Inspectorate, though one of the individuals said that the Mental Welfare Commission “would have a role through their current remit if the need arose in particular cases”.

Glasgow City Health and Social Care Partnership said that the role is better suited to the Care Inspectorate because “it is not only people with mental health issues that access the Appropriate Adult function”. In relation to this point, the SOLD Network agreed with the proposal for oversight role but highlighted that there is the possibility that learning disabilities may be removed from the definition of “mental disorder” in the 2003 Act, so this may

mean that those with learning disabilities would no longer fall under the Commission's remit.

COSLA, who did not give a definitive answer to the proposal, said that further clarification is required about the oversight role. They suggested that the role could possibly be undertaken by the Care Inspectorate or national co-ordinator(s) alongside the regulatory functions of the Care Inspectorate.

- **Independent body**

The Faculty of Advocates and the Law Society of Scotland both felt that the duty should be placed on the same independent body which they would like to be responsible for the quality assessment function.

Some respondents did not give a definitive answer or raised concerns/made further suggestions about the role:

- **Interaction with quality assessment role**

As highlighted above some respondents felt that the same organisation that undertakes the quality assessment role should also be responsible for oversight, whether that be the Care Inspectorate or another standalone independent organisation.

A number of other respondents felt that further clarification about the oversight role and, specifically, how it works in relation to the quality assessment role needs to be clear. Some respondents felt that the two roles must be distinct, for example, Shetland Islands Council raised a concern that there could be areas for cross-over which could result in those involved in Appropriate Adult service delivery providing the same or similar information to the bodies responsible for quality assessment and oversight.

- **Scottish Appropriate Adult Network (SAAN)**

Seven respondents mentioned SAAN in their answers to this question. Most of them highlighted that there could be overlap between the oversight function and SAAN's role and said there needs to be clarity in respect of this.

As stated above, the Mental Welfare Commission felt that a managed network could be a possibility for the oversight role but acknowledged that it should not continue to be undertaken by "an informal network with no legal status", a view that was echoed by the Law Society.

North Lanarkshire Council and Roxanna Dehaghani said that the oversight role could be taken on by the Mental Welfare Commission, but the former questioned if the Commission has capacity to take on extra duties and, if not, the "role of SAAN could be bolstered through legislative frameworks or guidance and SAAN could provide or contribute to the oversight role"; while the latter said that SAAN could facilitate the oversight role.

City of Edinburgh – Appropriate Adult Service agreed that the Mental Welfare Commission should take on the oversight role but said there could be a conflict of interest as the Commission is currently “an equitable member of SAAN”. They have suggested that the Commission could chair SAAN, as did Fife Health and Social Care Partnership and one individual.

- **National co-ordinator**

As mentioned above, COSLA suggested that a national co-ordinator may have a role as part of the oversight function and this was also suggested by Social Work Scotland. They suggested that such a role, which would be similar to the national co-ordinator role in Adult Support and Protection, “could co-ordinate with all relevant stakeholders and users of services” as part of the oversight function.

- **Input from others**

Three respondents felt that it was important for the Commission to have input from people accessing the Appropriate Adult service. One individual felt that the Commission would need to rely on advocacy services and other similar organisations for this input, while Support in Mind Scotland suggested that the Community Justice Voluntary Forum could play a part by helping to gather feedback, contributing to guidance and other similar functions.

The Police Scotland Corporate Response highlighted that other agencies, particularly those in the criminal justice sector, would be required to support the Commission if the duty for oversight is placed on them.

- **Funding and resources**

The Mental Welfare Commission response highlighted that their willingness to take on the role was subject to funding and resources and this issue was also raised in some other responses. Highland Appropriate Adult Service questioned if the Commission has the resources to take on the oversight role, while the Equality and Human Rights Commission said it was vital that the Mental Welfare Commission be “provided with the relevant powers and resources to ensure this role is carried out effectively”.

Question 9

Do you agree with the proposed functions of oversight role?

As set out in the consultation document, the proposed functions of the oversight role are:

- providing a comprehensive definition of what Appropriate Adult services should be delivering
- providing a system-wide overview
- producing good practice guidance

- contributing to policy development in this area

The majority of respondents agreed with functions of the oversight role:

Answer	No.	%
Yes	92	84.4
No	5	4.6
No definitive answer	5	4.6
Not answered	7	6.4
Total	109	100

Of the 92 respondents who agreed with the proposed functions, 52 (47.7% of total respondents) had nothing further to add to what was suggested.

The breakdown of answers per respondent group is shown below:

Respondent group	Yes	No	NDA	NA	Totals
Individual	48	2	1	1	52
Involved in Appropriate Adult service delivery	20	2	1		23
Justice sector	6		1	2	9
Professional organisation	6	1			7
Third sector	12			4	16
Workshop event			2		2
Totals	92	5	5	7	109

There were two main reasons provided by those who did not agree with the proposed functions:

- **Definition of provision should not be made by oversight body**

Both COSLA and Glasgow Health and Care Social Partnership said the oversight role should have a wider context than what was proposed and that the Scottish Government should provide a definition of what Appropriate Adult service delivery should be. The latter also felt that the Scottish Government should be more involved in the oversight and guidance functions, and reiterated that they felt that one organisation should “take forward the administration, logistics, service delivery and training of Appropriate Adults”.

One individual who did not agree with the proposed functions said that the purpose of Appropriate Adult services should be defined in legislation, rather than in guidance.

- **Functions are fulfilled by SAAN**

Fife Health and Care Partnership said they did not agree because SAAN fulfils most of these functions. Just as some respondents who agreed with the proposal for the oversight role suggested in Question 8, Fife suggested that the Mental Welfare Commission could chair SAAN and produce a national annual report on the various functions of the statutory service.

The main suggestions for other functions that could be incorporated in the oversight role were:

- **Wide range of input**

Although not a specific function, ensuring that there is involvement from a wide range of stakeholders with the oversight body was the most popular suggestion with 10 respondents mentioning this.

Again some respondents highlighted the work already carried out by SAAN and the network of links that they have established but acknowledged the need for a statutory body.

As highlighted in Question 8, the Mental Welfare Commission suggested that a formal network could be set up to take on the oversight role and used the example of the Forensic Network to illustrate how this could work:

“It has an advisory board to provide national oversight, structures to support collaborative development of regional services, delivers training, has working groups to take forward policy and practice development, supports research and data gathering and analysis, and maintains a quality improvement framework.

All of these roles would be relevant here. The model should not be entirely dominated by those who provide Appropriate Adult services, but needs a robust governance framework which involves them as well as user interests, and adequate resourcing over a sustained period.”

This example ties in the suggestions made by a number of respondents in relation to the wide range of stakeholder input they would like to see as part of the oversight function.

- **Develop National Standards/Code of Conduct**

A number of respondents reiterated that they agreed that the oversight role should provide a definition of what the statutory service should deliver and that centrally produced good practice guidance would be vital for consistency across the country. Some respondents felt that a formal structured document would be a good way of ensuring quality and consistency: Roxanna Dehaghani said that the oversight body could produce National Standards and suggested that those produced by the National Appropriate Adult Network

(NAAN)¹⁹ could be used as a model; while the Faculty of Advocates said that consideration should be given to a Code of Conduct. Clackmannanshire Health and Social Care Partnership and the Forth Valley Appropriate Adult Steering Group also both suggested that there should be a Code of Conduct in their answer to Question 10 (“Additional comments”).

Appropriate Adults Tayside took a different view and queried if the proposed good practice guidance should be approved by the oversight body rather than produced by it. This was partially echoed in the responses from the two Renfrewshire organisations involved in Appropriate Adult service delivery who said that the good practice guidance should clarify the functions of the oversight role.

- **Training**

As well as setting standards in the form of guidance and codes, a number of respondents felt that there should be a link between the oversight function and training, with suggestions that the oversight body could have a role in the development of the framework and then be responsible for monitoring, reviewing and updating the framework.

- **Recruitment and retention strategies**

Three respondents said that the oversight function should incorporate the recruitment, retention and development of Appropriate Adults. ENABLE Scotland felt that the oversight body should include ongoing assessment of individuals who apply to take on the role and Central Advocacy Partners said that more supervision and support should be given to Appropriate Adults.

An individual said that protocols and strategies in relation to recruitment and retention strategies should be part of the oversight role, but that the role should be carried out by the Care Inspectorate.

- **Complaints and feedback**

Four respondents suggested that the oversight role should incorporate functions relating to complaints and feedback. Deafscotland said that the role should be customer focussed and take suggestions/be a point of contact for complaints. Argyll and Bute Health and Care Social Partnership highlighted that the Mental Welfare Commission, as the oversight body, could undertake investigations into complaints and allegations of poor practice. One individual felt that it was important for the oversight role to confirm that Appropriate Adult services are independent and transparent when interacting with people accessing and using the service.

The Forensic Network did not think that the oversight body should undertake such work itself, but said that it could highlight cases to the Care Inspectorate

¹⁹ <http://www.appropriateadult.org.uk/index.php/national-standards>

(if it is the quality assessment body) where there have been issues in court proceedings due to individuals not understanding their rights despite the presence of an Appropriate Adult.

- **Police oversight**

Three respondents felt that there should be a specific function relating to oversight of the police and their procedures in relation to Appropriate Adults. The Care Inspectorate reiterated the role that Her Majesty's Inspectorate of Constabulary in Scotland (HMICS) could play in relation to this.

Two individuals felt that the oversight role should also make sure that paperwork is fit for purpose in relation to vulnerable adults. They both highlighted sections in the "Police Interview – Rights of Suspects" (PIRoS) form that they had experience of causing issues because of the format and content.

- **Research and awareness raising**

North Lanarkshire Council said that there is limited Scottish research in relation to Appropriate Adults and surrounding issues and suggested this is something that could become a function of the oversight role, and such research could then be used to develop policy and contribute to good practice guidance.

One individual and participants at the consultation workshops highlighted that there is not always clear information about the role of the Appropriate Adult and the oversight body could play a part in relation to raising awareness of the service.

Additional Comments

Question 10

Additional comments

Some respondents used this part of the document to highlight concerns they have about current provision and the features they feel it is important the statutory service to incorporate. The main themes which were raised are:

- **Other types of communication support**

A number of respondents discussed the need for communication support at other stages in the criminal justice process - including the use of intermediaries - and suggested that Appropriate Adults should be allowed to be present during solicitor consultations. These responses are included in the analysis of Question 2 as a number of respondents also raised these issues when answering that question.

The Centre for Youth and Criminal Justice highlighted that they would welcome further attention as to how best to provide communication support for those aged under 16.

- **Consistency & flexibility**

There was agreement that a statutory service is a positive development in terms of creating and maintaining consistency. There was also a general consensus that if the duty for delivery is to be placed on local authorities it will be important to ensure that any guidance and frameworks are clear and are developed with input from all relevant stakeholders.

Some respondents acknowledged the need for consistency, but also stressed the importance of flexibility for areas to tailor services to suit the needs of the local population and take into account geographical factors. The issue of cross-border requests was raised by some respondents and sought clarification on this as they said it could have a disproportionate effect on areas where there are more custody centres.

- **Funding & resources**

The importance of the right level of funding was raised, with many respondents stating that additional funding would be required. A number of respondents highlighted issues they have experienced or of which they are aware in relation to resources and the availability of Appropriate Adults, in terms of providing the service and also in terms of training provision.

Some respondents also highlighted that they felt that there was a current ongoing issue in relation to resources as long periods of time could be spent waiting on solicitors to arrive at the police station.

- **Training and awareness**

A number of respondents said that raising awareness of the service was vital. It was suggested that this could be done by ensuring that there is specific training for police officers, that third sector organisations could play a part in raising awareness and that there should be a wide input from organisations representing a variety of sectors in relation to service delivery. Many respondents felt that it would be important for people with lived experience and those who had accessed the service to be involved in the setting up and oversight of the service.

Some respondents who currently carry out the role of an Appropriate Adult said they felt that not enough had been done to engage with Appropriate Adults themselves in developing the models for the statutory service and wanted steps to be taken to increase their involvement in taking things forward.

- **Terminology**

Some respondents said that they had issues with some of the language used in relation to the service. This was raised in response to Question 10 and also to Questions 1 and 2.

ENABLE Scotland and participants at the workshop held in conjunction with Support in Mind felt strongly about the name “Appropriate Adult” was not suitable for the service, with the former describing it as “patronising and anachronistic” and a number of participants at the workshop calling the name “offensive...patronising...condescending... disgusting”.

The SOLD Network highlighted an incident of which they were made aware when an individual with autism spectrum disorder refusing Appropriate Adult support because he felt “patronised by it” and this resulted in difficulties during the police interview.

Roxanna Dehaghani said that she felt the term “vulnerable adult” should not be used because it is “disempowering, outdated and offensive”.

Annex A - List of organisations that responded

Organisations currently involved in the delivery of Appropriate Adult services

AA Steering Group, Forth Valley
Aberdeen City Council
Angus Health and Social Care Partnership
Appropriate Adults Tayside
Argyll and Bute Health and Social Care Partnership
City of Edinburgh Council – Appropriate Adult Service
Clackmannanshire and Stirling Health and Social Care Partnership
Clarity in Communication (Appropriate Adult Service in Ayrshire)
Fife Health and Social Care Partnership
Glasgow City Health and Social Care Partnership
Highland Appropriate Adult Service
Moray Council
North Ayrshire Health and Social Care Partnership
North Lanarkshire Council
Orkney Islands Council
Renfrewshire Adult Protection Committee
Renfrewshire Health and Social Care Partnership
Shetland Islands Council
South Lanarkshire Council Social Work Resources
West Lothian Council

Note: Three responses were submitted from Aberdeen City Council

Justice Sector Organisations

British Transport Police
Crown Office and Procurator Fiscal Service (COPFS)
The Faculty of Advocates
The Law Society of Scotland
The Police Service of Scotland
The Scottish Courts and Tribunals Service (SCTS)

Note: As well as the Police Scotland Corporate Response, an additional three respondents stated they were submitting an organisational response on behalf of Police Scotland.

Professional Organisations

Care Inspectorate
Convention of Scottish Local Authorities (COSLA)
Equality and Human Rights Commission
Forensic Network
Mental Welfare Commission for Scotland
Social Work Scotland
The Centre for Youth and Criminal Justice

Third Sector

Central Advocacy Partners
Dalkeith People First Group
Deafscotland (previously Scottish Council on Deafness)
Edinburgh Advocating Together
ENABLE Scotland
Epilepsy Scotland
Fife People First Group
Headway
Musselburgh People First Group
National Autistic Society
Scottish Commission for Learning Disability
Scottish Independent Advocacy Alliance
SOLD Network (Support Offenders with Learning Disabilities)
Support in Mind Scotland
Values into Action Scotland
Victim Support Scotland

Consultation Events

Workshop held in association with SOLD Network
Workshop held in association with Support in Mind Scotland



Scottish Government
Riaghaltas na h-Alba
gov.scot

© Crown copyright 2018

OGL

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-78781-318-2 (web only)

Published by The Scottish Government, October 2018

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS476926 (10/18)

W W W . G O V . S C O T