Information Paper for the Autism Programme Board: Adults with Autism and the Criminal Justice System

This paper is being circulated wider than the Autism Programme Board. If you have questions or comments about any aspect of the paper, please send these to Michael.swaffield@dh.gsi.gov.uk in the first instance.

Introduction

1. Staff in the Criminal Justice System (CJS) cannot be expected to be ‘subject experts’ in every disability they may encounter, but given the nature of autism, their chances of encountering someone who has autism is significant. This short paper outlines some of the issues involved with adults with autism and the CJS. Its aim is to describe current policies by Government Departments in this area so that questions relevant to autism can be raised and these policies can be reviewed during 2013 as part of the Review of the 2010 Adult Autism Strategy *Fulfilling and Rewarding Lives*.

Autism

2. Autism Spectrum Conditions (ASCs) is the collective term for Autism, Asperger Syndrome, Pervasive Developmental Disorder (not otherwise specified) and Atypical Autism. Autism is neurologically based and has been shown to be strongly genetically determined. One person in 100 is autistic although some limited studies have indicated that up to 7% of the prison population may be on the autistic spectrum.

3. ASCs affect how a person communicates with, and relates to, other people. It also affects how a person makes sense of the world around them. Although some people can live relatively independently, others will have high dependency needs requiring a lifetime of specialist care. People with autism often prefer to have a fixed routine and can be averse to change, and may also have a learning disability. Those who have Asperger Syndrome tend to have average or above average intelligence but still have difficulty making sense of the world. Autism is thought to affect four times as many males as females although the reason for this is unknown.

Awareness Training and Diversion

4. The 2010 Adult Autism Strategy *Fulfilling and Rewarding Lives* recommends training for all the public sector including the CJS and reflects the duty under the Equality Act 2010 to make reasonable adjustments for disabled adults including adults with autism.
5. Key points include:

- 2.8 – recommended training included in diversity training;
- 2.10 – focused training on behaviours and how to respond;
- 2.14 - essential that all CJS staff receive awareness training;
- 4.12 – Teams that work within criminal justice agencies, such as Criminal Justice Liaison Teams, should ensure that they have access to the expertise to support adults with autism.

6. The 2009 Independent Review of people with mental health problems or learning disabilities in the criminal justice system by the Right Honourable Lord Bradley made similar recommendations. The Coalition Government has accepted the direction of travel set out by Lord Bradley’s review and for the recommendations to be carried forward into the cross-departmental Health and Criminal Justice Transition Programme. The work of this programme is now focused around key coalition priorities across health and criminal justice, including the commitment to implement the overall goal of police and court liaison and diversion services.

**Liaison and Diversion**

7. In particular both the Autism Strategy and the Bradley Review recognised the need for staff to be able to identify the behavioural clues that may indicate someone with autism in order that appropriate measures can be taken to ensure they are treated as vulnerable persons by the system and that their support needs are both recognised and met. Although there is no Statutory requirement for CJS staff to have autism training as there is for Local Authority and NHS staff, the increased presence of liaison and diversion services in criminal justice settings will lead to improved identification and assessment through a number of routes:

- Liaison and diversion services will aim to identify and assess all those people with health problems, including learning disability and autism, at their point of entry into of the CJS;
- The presence of liaison and diversion teams will mean that there will be improved access to appropriately trained health staff;
- One of the responsibilities of liaison and diversion services will be to take a lead in training CJS staff in health awareness issues, including learning disabilities and autism. The Department of Health (DH) has issued (the most recent edition being in 2010) *Positive Practice – Positive Outcomes*,
a handbook for professionals working with offenders with learning disabilities which includes a section on autism.

8. Improved identification and assessment will help decision-makers in the CJS process to make better informed decisions about charging and sentencing, and also ensure that someone's needs are accounted for in the discharging of the criminal justice process, eg ensuring that they understand what is happening.

9. Work on implementing liaison and diversion services across the country is currently at the development phase; involving testing of different models and assessing the potential impact of these services. There are a number of test sites that are specifically considering an approach to offenders with learning disabilities. The recent Ministry of Justice (MoJ) White Paper regarding sentencing has a clear aim of diversion and prevention of offending or re-offending that links to groups such as people with autism.

Prevention

10. It is said that people with autism are less likely to become offenders or victims if their needs are identified early and they are properly supported. It is social isolation that increases vulnerability and may lead to people being exploited and either being led to commit crime themselves or becoming a victim of crime. Here Local Authorities and the NHS can help with a range of low level services, for example specialist leisure programmes, mentoring and life coaching, education such as social skills training, anti-victimisation classes, vocational training and counselling.

11. These and other more intensive programmes such as assertive outreach programmes will have significant impact in preventing people entering the CJS. These services are seen as cost effective, as they also help prevent the development of mental health problems and can help ensure people can find and hold down employment. Women’s Community Services are another source of support for women at risk of offending (and those convicted of an offence), many of whom have complex needs. In all of this appropriate training in awareness and responding is essential. Autism West Midlands are in talks with Walsall LA to implement a befriending service. Such a simple scheme using suitably trained and vetted volunteers could be, not only valuable in preventing offending behaviour or individuals becoming victims of crime, it could have wider health and practical benefits. It could also be a method of identifying individuals who may need referral/signposting to more specialised interventions.

Local Authority Area self evaluation exercise 2012

12. This DH and Learning Disability Public Health Observatory led exercise asked the 152 Local Authority areas in England about progress they were making to assist people with autism under the Autism Strategy. Two questions
were asked about the CJS and the responses were the weakest overall in the exercise. The exercise will be repeated for 2013 and good practice from the 2012 exercise will be highlighted.

<table>
<thead>
<tr>
<th>Question</th>
<th>Are you engaging the CJS as a key partner in your planning for adults with autism?</th>
<th>Adults with autism are no longer managed appropriately in the CJS?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total responses</td>
<td>133</td>
<td>93</td>
</tr>
<tr>
<td>Green</td>
<td>9 (7%)</td>
<td>5 (5%)</td>
</tr>
<tr>
<td>Amber</td>
<td>79 (59%)</td>
<td>49 (53%)</td>
</tr>
<tr>
<td>Red</td>
<td>44 (34%)</td>
<td>39 (42%)</td>
</tr>
</tbody>
</table>

**Offending**

13. An individual’s culpability for an offence *Mens rea* will be decided on a case by case basis. Usually those with severe intellectual disability will be deemed not to have mens rea and their behaviour may be defined as “challenging” requiring purely a health or social care response. Often an individual with autism within the normal intelligence range may not have the mens rea to be guilty of the alleged crime due to severe cognitive impairment relating to the core deficits of autism, leading to:

- Insufficient understanding of what’s happening;
- Doing a wrong act without having wrong reasons;
- Lack of capacity for deception.
- Failure to understand the social context of own behaviour;
- Failure to see the impact of own behaviour on others
- Failure to see how one’s own behaviour may be seen by others
- Literal interpretation of language leading to misunderstanding the intentions of others.

14. An individual with autism may have the *mens rea* to be guilty of the alleged crime.

**CJS Responses**

15. When responding to an incident that involves a person with autism the police may perceive it to be a ‘run of the mill’ incident and respond in a manner they have developed or been trained in to ensure their own safety and that of others. A person with autism may not understand the implications of their behaviour or the consequences of their actions especially if their actions appear aggressive. In particular they will not understand how their behaviour may be
seen by others. They may fail to respond to an order to stop, or drop to the floor and begin rocking back and forth, or avoid eye contact with the police. The police may misinterpret these actions as a reason for increased use of force. Court and Crown Prosecution Service (CPS) staff may incorrectly perceive the person as obstructive and lacking in empathy or remorse.

16. Staff in the CJS first must be aware of the condition, then, learn to apply certain techniques in their dealings with people with autism which may increase the probability of appropriate responses and lead to a successful outcome for the person and the system. In some parts of the country the police (including West Midlands, Warwickshire, Staffordshire and Merseyside) have issued Alert cards for people with autism to carry and to show to police officers if they are involved in a situation that involves the police.

Prison

17. For those convicted and imprisoned, the prison environment be a problematic one for people with autism and there are real challenges in making the adjustments necessary to meet their needs. Restorative Justice Measures may also not be effective for people with autism as they may find it difficult to have empathy towards victims or an understanding of their crime. This then presents a dilemma on what is the most appropriate method of sentence for those guilty of offences. In fact cases may end up being resolved via the Criminal Procedures Insanity Act 1964 resulting in a perception of injustice for victims. In some cases, autism that is associated with abnormally aggressive or seriously irresponsible conduct, can fall within the definitions of "mental disorder" in the Mental Health Act 1983. Therefore, some offenders with autism may be diverted from the CJS at the point of sentence, by means of a hospital order. Also, some prisoners with autism who need treatment in hospital may need to be transferred to hospital under the Mental Health Act 1983.

18. In prison screening tools can be used to support the identification of prisoners with autism. Where autism is suspected adjustments can be made so the person can be accommodated on the standard prison wing or managed in alternative locations such as in healthcare, Vulnerable Persons Units, quieter accommodation areas or smaller units. Effective communication techniques, using simple and clear language, addressing by name, avoiding giving too many instructions at once and avoiding sarcasm or irony, will all help avoid misunderstanding. Other suitable actions include identifying activities to support the prisoner to engage in work and education to reduce their risk of re-offending, and ensuring local violence reduction strategies and incentive and earned privilege schemes take into account the needs of prisoners with autism and learning difficulties.
People with autism who are victims

19. The incidence of disability hate crime against persons with autism may well be severely under-reported due to their communication difficulties and failure to understand what and what isn’t the social norm. Those that do enter the system as victims are often deemed as not being a credible witness, leading to failures to prosecute. Even if they make it to a prosecution stage, without ‘special measures’ being implemented they have little possibility of successfully giving evidence. With support victims can be reliable witnesses. The adversarial nature of court proceedings can be unsuitable to individuals who may be more comfortable with visual rather than aural communication.

20. The MoJ is working with the police, CPS, judges and magistrates to ensure that people with disabilities, including autism, are fully supported throughout the criminal justice process and able to give their best evidence in court. There are a number of Special Measures (Youth Justice and Criminal Evidence Act 1999) to assist in this process including video recorded evidence-in-chief, evidence by live-link, communication aids and assistance from an intermediary. The Ministry of Justice Witness Intermediary Scheme provides over 200 accredited communication specialists to help disabled witnesses to communicate their evidence effectively at the police interview and at the trial itself. They may also assist in pre-trial preparation such as court familiarisation visits by the witness.

21. The Witness Intermediary Scheme is available in all police force areas and to date has assisted in over 2000 cases involving witnesses with disabilities. Many of these cases would not have otherwise gone to trial. Raising awareness of the benefits of this and other Special Measures in achieving best evidence is an on-going and enduring objective of the Ministry of Justice. Every year the Ministry runs a training seminar for CJS practitioners to share knowledge and skills in this area and promote good practice. The agenda is developed in consultation with CJS practitioners and third sector organisations including Voice UK.

22. Judges and magistrates have a duty to ensure that all witnesses are enabled to give their best evidence in court and they are expected to take an active role in the management of cases involving disabled and other vulnerable witnesses. Courts can help to ensure that arrangements and reasonable adjustments are in place for disabled witnesses in advance of the trial to alleviate some of the stress of giving evidence. A pre-trial visit to the court building is an opportunity to identify and address any potential difficulties for the witness in respect of the courtroom layout, entering and leaving the building and the waiting area.

23. In addition to this, all members of the judiciary should consider the implications for achieving best evidence in any trial involving witnesses with
disabilities. Where appropriate, they should use their powers to compensate for any resulting disadvantages without causing prejudice to the other parties. This can include measures such as ensuring there are frequent breaks when the witness is giving evidence, considering the order that the evidence is heard so that witnesses are not kept waiting any longer than necessary and being aware of their powers to stop inappropriate questioning.

**Future Action**

24. DH, Home Office and MoJ to report back to the Autism Programme Board in spring 2013 on progress on their policies involving people with autism and the CJS.

25. Questions about policies covered in the paper will be raised with government departments and help shape the report back.

Secretariat
Adult Autism Programme Board
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