

No One Knows:

OFFENDERS WITH LEARNING DISABILITIES AND DIFFICULTIES



Wales Briefing paper

Wales launch event:

Final report and recommendations: *No One Knows: offenders with learning disabilities and learning difficulties*

Date and time: Tuesday 6 October; 6 – 8pm

Venue: the Oriel, the Senedd, National Assembly for Wales, Cardiff

SUMMARY

The particular needs of people with learning disabilities and difficulties are frequently not recognised let alone met. *No One Knows* research shows that when a person with learning disabilities or difficulties moves through the criminal justice system they need support from health and social care agencies as much as from the police, probation or prison staff. From the point of arrest to the end of a sentence, if the person does not get the help and support they need, they are likely to understand less about, and receive worse treatment from, the justice system than other people who offend. Further, without the active engagement of health and social care, the factors that are linked to their offending are not likely to be met and consequently the risk of re-offending will remain high.

At worst, people with learning disabilities and difficulties are not adequately identified as they enter the criminal justice system; they do not receive the support of an appropriate adult and don't fully understand what is happening to them. Some reported being maltreated by the police. They may also incriminate themselves during police questioning. Once in court, their lack of understanding grows as their lives are taken over by opaque court procedures and legalistic terminology. In prison, although most understand why they are there, the process by which they arrived frequently remains a mystery. Typically, their situation in prison goes from bad to worse. Their inability to read and write very well, or at all, and poor verbal comprehension skills relegate them to a shadowy world of not quite knowing what is going on around them or what is expected of them. They spend more time alone than their peers and have fewer things to do. They will have less contact with family and friends. They experience high levels of depression and anxiety and often do not know what to do if they feel unwell. They are isolated and more vulnerable to ridicule and exploitation.

Many will be excluded from programmes to address their offending behaviour, which may mean longer in prison as a result.

In preparing for their release prisoners with learning disabilities were more likely than their peers to say they had worries about leaving prison and that they thought they might come back. They were also less likely to say there was somebody to help them make plans for when they left prison. Many had high expectations of the kinds and extent of help they could expect from probation staff, to the point of being unrealistic.

The discrimination experienced by prisoners with learning disabilities and learning difficulties across the criminal justice system is personal, systemic and routine.

UK criminal justice agencies are failing in their legal duty to promote disability equality and to eliminate discrimination. In consequence the sense, if not the fact, of injustice prevails.

Introduction

No One Knows is a UK-wide programme run by the Prison Reform Trust (PRT) that aims to effect change by exploring and publicising the experiences of people with learning disabilities and learning difficulties¹ who come into contact with the police and subsequently enter the criminal justice system.

The programme was chaired by Baroness Joyce Quin, former minister of prisons for England and Wales and supported by The Diana, Princess of Wales Memorial Fund. Dr Glyn Jones, Consultant Psychiatrist at the Abertawe Bro Morgannwg University NHS Trust was a member of the advisory group. A group of people with learning disabilities who had an offending history, The Working for Justice Group, informed the programme. Membership of this group comprised network members from the KeyRing living support network from England and Wales.

Research has involved prison staff from each of the four UK nations and has been presented in a way that is co-terminus with the three UK prison services. The final report, *Prisoners' Voices*, involved interviews with prisoners from England, Wales and Scotland.

The main findings and recommendations contained in this report concern the UK government and devolved administrations.

Main findings and recommendations¹

A number of the main findings and recommendations are summarized below.

Main findings:

- ▶ 20 – 30% of offenders have learning disabilities or difficulties that interfere with their ability to cope within the criminal justice system; around 7% of this group will have very low IQs of less than 70.
- ▶ There are no routine or systematic procedures for identifying people with learning disabilities or difficulties as they enter and travel through the criminal justice system. Consequently their particular support needs are unlikely to be met: for example less than a third of prisoners interviewed said they received support from an appropriate adult at the police station, and most prison staff (80%) said the information they receive when a person enters prison was unlikely, or likely for only a minority of people, to identify the presence of learning disabilities or difficulties. Once in prison, although some adaptations to regimes are made to take into account prisoners' support needs, these are the exception rather than the rule. Further, prison staff are not always aware of what support is available at their prison from, for example, healthcare or education and procedures for referring prisoners to specialist provision are often unclear.
- ▶ Although most prisoners said they received help in court, over a fifth said they didn't understand what was going on or what was happening to them.²
- ▶ Prisoners experience problems with verbal comprehension skills, including understanding certain words and in expressing themselves; with written information, and filling in forms.

- ▶ They are excluded from certain activities including programmes to address their offending behaviour.³
- ▶ Almost half said they had been bullied while in prison and over half said they had been scared.
- ▶ Prisoners with learning disabilities were the least likely to know when their parole or release date was, to ask if they didn't understand what was happening or know what to do if they felt unwell.
- ▶ Prisoners with learning disabilities or difficulties were almost three times as likely as prisoners without such impairments to have clinically significant depression and three times as likely to have clinically significant anxiety; although most prisons have mental health in-reach teams very few include learning disability expertise.
- ▶ Prisoners with learning disabilities or difficulties were five times as likely to be subject to control and restraint techniques as prisoners without such impairments and three times as likely to have spent time in segregation.
- ▶ They were generally uncertain about where they would go for particular help as they prepared to leave prison, especially people with learning disabilities, and had high expectations of the kinds and extent of help they might expect from probation, to the point that many had expectations that were unrealistic.
- ▶ Few prisons take advantage of specific disability awareness training for learning disabilities or difficulties.
- ▶ Most prison staff are not confident that the skills and expertise necessary to support prisoners with learning disabilities or difficulties are available at their prison;

further they believe that the overall quality of available support is low.

- ▶ Prison staff would like greater strategic and operational direction to assist their work with prisoners with learning disabilities and difficulties

Recommendations:

Disability discrimination and human rights:

- ▶ UK criminal justice agencies should comply with disability and human rights legislation.

Knowing who has learning disabilities or difficulties:

- ▶ People with learning disabilities and learning difficulties should be identified at the point of arrest in order that appropriate support may be put into place.
- ▶ Where appropriate, the option to divert people with learning disabilities away from the criminal justice system should be considered; clear guidance and national standards for appropriate support and diversion at every stage of the criminal justice process are required.
- ▶ The sharing of information between staff from criminal justice agencies, health, social services and education should be reciprocal, timely and effective, this is especially important with regard to criminal justice liaison and diversion and resettlement; information sharing protocols and standards should be agreed, and information sharing monitored.

A needs-led approach: collaborative multi-agency working:

Local multi-agency 'forums, co-terminus with local authority areas, should fulfill the role of criminal justice liaison and diversion and

develop local strategies for preventing offending and re-offending by people with learning disabilities and learning difficulties. Agencies involved in the forum should include: health (including specialist learning disability services), adult social services, children's services, housing, education and criminal justice. Forums should collaborate at a strategic level with other public authorities and service providers as necessary; information about the work of the forum should be published; participation in the forum should be mandatory for public authorities and an identified lead organization should be made accountable. The forum should be responsible for ensuring:

- clear procedures for the early referral of people considered vulnerable by criminal justice staff, for specialist attention and assessment
- appropriate support of people with learning disabilities and learning difficulties as they enter and travel through the criminal justice system; support should include advocacy
- the development of a matrix of sentencing options and interventions, in particular community alternatives to custody and, for people with learning disabilities, alternatives to arrest; agencies should work together to develop interventions to maximize the range of options available; interventions should include person centered approaches to meeting support needs; the progress of individual offenders should be monitored
- effective resettlement of people with learning disabilities on release from prison, including appropriate care packages such as support for independent living
- regular multi-agency, multi-disciplinary training for forum members.

Workforce development:

- ▶ Awareness training on learning disabilities and learning difficulties should be undertaken by all staff who come into contact with people as they enter and travel through the criminal justice system; people with learning disabilities and learning difficulties should be involved as co-trainers; a set of core materials and learning outcomes should be developed and particular emphasis should be placed on effective communication.
- ▶ Regular multi-agency, multi-disciplinary training should be undertaken, which should be the responsibility of local multi-agency forums (see above).
- ▶ Criminal justice staff should be encouraged to refer people they are concerned about to specialist services and be supported in their work with vulnerable people; clear referral procedures should be in place.
- ▶ Prison healthcare should have ready access to learning disability expertise and speech and language therapy.
- ▶ Mental health teams working within offender health should include learning disability expertise, including access to specialist learning disability services.
- ▶ Education for prisoners, and offenders in the community, should include special education needs provision and learning support provided by appropriately qualified staff; provision should reflect the profile of the prisoner/offender population; there should be ready access to a dyslexia specialist.
- ▶ Commissioners of health and social care services should work closely with local multi-agency forums to plan specialist services and provisions.

Alternatives to custody:

Community sentences, as an alternative to custody, should be used for offenders with learning disabilities in particular, and for offenders with learning difficulties wherever possible, for example for low level crimes and where there is no risk to the public.

National Standards:

There should be national standards for health and social care provision, including clear guidance and accountability for transition arrangements between children's and adult services; eligibility criteria for support should be flexible and inclusive, and should not be used to exclude people and to ration services; people who offend should not be denied access to services on the basis of their offending behaviour or because they have previously been an offender.

Clarification:

- ▶ There should be national guidelines on methods and criteria for the assessment of fitness for police interview by healthcare professionals. (Jacobson, 2008).
- ▶ The concept of criminal responsibility appears unclear when applied to people with learning disabilities. Guidance is required on the circumstances that should prompt learning disability services and specialist care services to bring an incident to the attention of the police and, regarding factors which make it appropriate for an individual to be diverted from the criminal justice system to specialist health services (Jacobson, 2008).

Terminology:

Greater precision in terminology is required to avoid confusion and to ensure people receive appropriate support. Current terminology tends to conflate learning disability with mental

illness – in referring, for example to suspects who are 'mentally disordered or otherwise mentally vulnerable' (Jacobson, 2008), while 'vulnerable' has a very different meaning in prison to that used by the police. In prison, 'vulnerable' is routinely used to describe the threats posed to certain prisoners, rendering them 'vulnerable', due to the nature of their offending, for example prisoners who are sex offenders; at the police station the term 'vulnerable' is used to describe people less able to cope with the rigors of police caution and interview and who are in need of support.

The full report, *Prisoners'Voices*, on which this briefing paper is largely based, can be found at www.prisonreformtrust.org.uk/nok

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References

1. Definitions of learning difficulties and learning disabilities for research with offenders vary widely. *No One Knows* has purposely included in its scope people with learning or intellectual disabilities as defined by the World Health Organisation and people with specific learning difficulties, for example dyslexia and ADHD – all of which are included within the scope of the Disability Discrimination Act (2005). Thus *No One Knows* has included people who:
 - experience difficulties in communicating and expressing themselves and understanding ordinary social cues
 - have unseen or hidden disabilities such as dyslexia
 - experience difficulties with learning and/or have had disrupted learning experiences that have led them to function at a significantly lower level than the majority of their peers
 - are on the autistic spectrum, including people with Asperger syndrome.
2. In 2007 *No One Knows* submitted evidence to an enquiry being undertaken by the UK Joint Committee on Human Rights on the human rights of adults with learning disabilities. The evidence submitted included defendants being unaware of what was happening during their trial and an inability to understand decisions of the court. In their subsequent report, *A Life Like Any Other? Human Rights of Adults with Learning Disabilities* the Committee said:

We are concerned that the problems highlighted by this evidence could have potentially very serious implications for the rights of people with learning disabilities to a fair hearing, as protected by the common law and by Article 6 ECHR. Some of this evidence also suggests that there are serious failings in the criminal justice system, which gives rise to the discriminatory treatment of people with learning disabilities.

(Paragraph 212, March 2008)
3. A recent thematic review by HM Chief Inspectors of Prisons and Probation, *The indeterminate sentence for public protection*, described this predicament - prisoners being unable to access the interventions they needed to secure release, as 'Kafka-esque' and recommended that 'interventions to reduce risk are adapted to be suitable for those with learning disability or difficulty.' (HM Chief Inspectors of Prisons and Probation, 2008)