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Neurodiversity in the criminal justice system

In December 2020, the Lord Chancellor and Secretary of State for Justice commissioned HM Inspectorate of Prisons and HM Inspectorate of Probation, with support from Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS), to undertake an independent review of neurodiversity in the criminal justice system (CJS). On 15th July 2021, this review was published by HMICFRS.

The report notes that professionals who work in the CJS have, for many years, been concerned about the experiences of and outcomes for neurodivergent individuals. This concern has centred on (amongst other things) the low levels of knowledge and understanding amongst staff of neurodivergence.

The report concluded, for example, that on arrest neurodivergent individuals may be recognised and are more at risk of:

- Being arrested due to their behaviour not being recognised as a manifestation of their condition
- Becoming unsettled by the police custody process, leading them to exhibit behaviours which are interpreted as non-compliant meaning that they may not receive the support they need
- Not fully understanding the process, not being able to effectively engage with the investigation without support or to have someone advocate on their behalf

In the West Midlands, we recognise that these risks are particularly pertinent where the detainee is a child. We know that, for instance, children are being inappropriately detained in police stations because local authorities aren't able to offer emergency secure and non-secure accommodation. A national review looking into the scale of this problem is most definitely required. We also know that for children with neurodiversity challenges in contact with the criminal justice system (CJS) – many of whom have some experience of poverty, discrimination, violence, and trauma – the experience of custody can be particularly harrowing and re-traumatising, possibly exacerbating issues which led to their arrest in the first place. Criminal justice spaces (especially custody suites) need to recognise this. That is why in the West Midlands, we have been looking into possibilities regarding specialist police facilities more akin to 'home like' rooms – secure rooms but not at all like police cells – for children in custody, geared around the facilitation of integrated, intensive support (including for acquired brain injury, neurodiversity, and mental health – challenges which we know are coexisting, mutually reinforcing, and all too often not picked-up).

It should be noted that a history indicative of traumatic brain injury are also contributory to behaviour noted above and its interpretation by agencies within the Criminal Justice system. In a study on making the link between female offending and brain injury, it was highlighted that there is a need for a support pathway to help manage the health, cognitive and behavioural issues associated with brain injury, which may impact on likelihood of re-offending .

Whilst there is no specific screening tool aimed at identifying neurodivergent conditions within the West Midlands, there are several service provisions based in custody blocks, such as that provided by Mountain Healthcare, which involve a clinical assessment where there is some understanding of issues relating to neurodivergent conditions.

In addition to the service provisions in place some neurodivergent conditions, such as dyslexia and autism, are captured as part of the risk assessment completed by officers during the booking in process. Once a condition was identified, Custody Sergeants would then refer that individual on for additional support through Liaison and Diversion, who will screen the individual through the NHS database and tailor support to their needs if required.

A key recommendation in the report calls for the development of common screening tool, supported by an information sharing protocol specifying how information should be appropriately shared within and between agencies, to make sure that necessary adjustments and extra support are provided for. This would be welcomed, not only to promote consistency across police force but also for consistency through the criminal justice journey. As noted above, we would also call for the inclusion of traumatic brain injury within the screening tool such as is included in The Disabilities Trust 'Brain Injury Screening Index tool' At this point, we would recommend that this screening tool be jointly developed with the College of Policing for adoption by the National Police Chiefs Council.

Alongside the development of new screening tools for custody and other police environments, emphasis ought to be given the developing structures and partnerships which focus on upstream identification and diversion for individuals with neurodiversity challenges. Through Local Criminal Justice Boards – which have a powerful role in bringing key stakeholders together to discuss issues of joint concern which drive criminality and harm – statutory and third sector partners should give focus to the linkages between neurodiversity and school exclusions, or neurodiversity and access to employment and education, and the corresponding risk of the relationship with crime should we fail to provide the right support early. To this end, energy should be given to exploring whether it is possible to upstream screening for issues like acquired brain injuries in schools which would present a powerful opportunity to identify and treat these issues far earlier before crime occurs.

Beyond that, there is an urgent need for all partners in every region to come together to promote and develop innovative new structures necessary to tackle the myriad of interrelated issues individuals commonly in contact with the CJS face – including challenges around neurodiversity, addiction, access to education and employment, access to housing, poverty, social isolation, maltreatment and discrimination, experience of violence (particularly in the home during childhood), and associated trauma – in an integrated and holistic way. That is why – alongside Assistant PCC Tom McNeil and in collaboration with HM Courts & Tribunals Service (HMCTS), the Probation Service, and a range of community treatment providers – I am driving work to establish new Problem Solving Courts (PSC) in the West Midlands. PSCs seek to address reoffending by better integrating services and shaping the justice system around the package of support needed to desist from harm behaviour. They put judges at the centre of diversion and recovery, yoking together the authority of the court and the services necessary to improve outcomes for offenders, victims, and the whole of society. The success of the Family Drug and Alcohol Courts (FDACs) in the UK, including the award winning Coventry FDAC, has been immensely encouraging. They are proving that formal court proceedings can benefit hugely from taking a holistic and compassionate approach which – in contrast with adversarial processes which can exacerbate anxieties and social problems, particularly for individuals with neurodiversity challenges – seeks to address the underlying causes of family breakdown. The new Birmingham & Solihull and the Black Country FDACs are equally exciting developments, and we congratulate the Local Authorities, HMCTS, and all partners involved for embracing this innovative approach. There are now

opportunities to expand the problem solving approach exemplified in the FDACs (most notably an opportunity presented by central government, through the Ministry of Justice, to establish a PSC pilot for female offenders, in partnership with HMCTS and the Probation Service) into the West Midlands' criminal courts. I am working closely with partners to capitalise on these opportunities and so establish our region as a centre of problem solving excellence where individuals are offered possibility of accessing the genuinely integrated support necessary to address the issues they face. These new courts will need to be equipped to tackle issues related to acquired brain injury, neurodiversity, and mental health support if they are to be effective tools for reducing harm and the proposal we are putting forward with partners will reflect that.

The appropriate adult scheme plays an important part in supporting vulnerable adults who are suspected of a criminal offence by safeguarding their interests, rights, entitlements and also in helping them to understand the custody process. A common screening tool would also help to ensure that neurodivergent individuals are consistently referred to this service.

However, the duties on PCCs to ensure that local authorities are providing an efficient and effective Appropriate Adults service for children should be strengthened. The law remains unclear as to who should provide Appropriate Adults for vulnerable adults, and there is variation across the country. In the West Midlands, the OPCC maintains this, but this is not the case elsewhere. A national review should be recommended.

As noted above, some screening data is already be collected as part of the booking in process. This is following the implementation of the a new Connect system, a single integrated 'Connect' operational policing system which replaces eleven front line policing systems, and further work is ongoing to explore how this information can be reportable and insightful. The appropriate adult scheme also is noting the different types of vulnerabilities that are identified/suspected when an appropriate adult is requested. Aggregated service data on the vulnerabilities and needs of users is used to inform future service provision and volunteer training.

There is an ongoing project currently between the OPCC, WMP Custody Services, the Violence Reduction Unit and Barnados to increase awareness of the impact of trauma in Police Custody. The project is in three phases. The first is to learn from the experiences of people who have been in custody, discussions with officers, observations of the environment and academic research. The second phase is to use this learning to develop a training programme for officers around trauma and recommend some changes to the physical environment and the processes used by officers. This trauma informed work is geared towards making the custody experience 'better' for young people and vulnerable adults.

In West Midlands Police, an Autism and Neurodiversity group (sitting under the governance of EnAble Disability and Carers Community Staff Association) has recently been established. The group have been working closely with Autism West Midlands to develop a new 'Alert Card' which is now recognised across West Midlands, West Mercia, Warwickshire, Staffordshire and British Transport Police. The card will alert security services and other people in authority that the individual is autistic and may have communication difficulties, become anxious and need additional support.

Whilst this approach is useful locally, we would recommend that a similar system be implemented nationally across the public sector as a whole.

The Autism and Neurodiversity group is also currently considering how it can expand its offer of support to police officers and staff. Working with the OPCC, the group is on what challenges are met

by those who are Autistic/Neurodiverse in order to improve its offer to colleagues and to disseminate knowledge. These challenges include (but are not limited to):

- Reasonable adjustments for day to day role
- Raising awareness of neurodiversity across the organisation
- Support and advice for those staff who are Autistic or have a Neurodiverse condition, this includes support for Staff who are carers of a family member with an Autistic or Neurodiverse condition i.e. child/sibling/partner etc.
- Well-Being support through a dedicated forum
- Lateral Development, Recruitment & Selection alongside interviews and attracting talent.
- Promotions
- Fast Track
- Interviews