

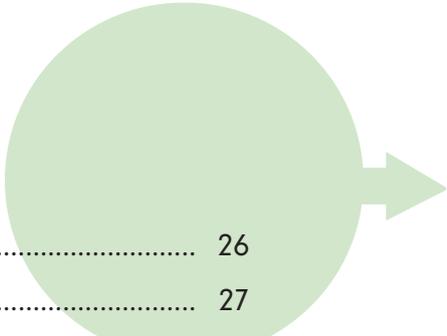
FAIRER JUSTICE FOR ALL

A REPORT ABOUT YOUNG PEOPLE WITH LEARNING DISABILITIES
AND AUTISM IN THE CRIMINAL JUSTICE SYSTEM

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KEYRING LIVING SUPPORT NETWORKS

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INTRODUCTION

KeyRing has been involved in work in the Criminal Justice System (CJS) for almost two decades. In this time it has worked on a number of projects relating to offenders with neurodiversities with a variety of third sector and statutory organisations including the Prison Reform Trust (PRT), Bemix (formerly the Skillnet Group), and the Department of Health and NHS England. It has also delivered a variety of projects, training and awareness workshops and research outputs by itself.

In 2005, KeyRing Members and others formed the service user group the Working for Justice group (WfJ); an award-winning group of ex-offenders with neurodiversities who were not given early help and wanted to change the situation for others. The group was established in partnership with the Prison Reform Trust as a reference group for their 'No-One Knows' programme. Through its work, Working for Justice advocates for early identification of neurodiversity and the provision of interventions that change lives. In addition, group members are supported to develop new and transferable skills, becoming involved in policy development, delivering training, public speaking and engaging in media opportunities. Working for Justice takes ownership of its own direction, through regular meetings with members during which new policy and opportunities are discussed. Members regularly speak at a variety of conferences and national events and represent the views of Working for Justice at other Criminal Justice System service user forums.

KeyRing and Working for Justice previously delivered a three-year project, funded by Comic Relief. The '**Equal and Fair**' project provided free Learning Disability and Autism awareness training to more than 1200 people working in the Criminal Justice System. The training has facilitated staff to ensure that people with a Learning Disability, Learning Difficulty, or Autistic Spectrum Condition in the Criminal Justice System are treated fairly, receive the appropriate support and are able to fully participate. More than 120 training sessions were delivered to a wide variety of Criminal Justice System audiences, including Prison staff, Youth Justice workers, Probation Officers, Police Custody Suite staff, Appropriate Adults, and Magistrates. Most recently KeyRing and Working for Justice provided input and case studies for the 2021 Criminal Justice Joint Inspectorate Report '*Neurodiversity in the Criminal Justice System*'.

Although there is an increasing interest in both Youth Justice and neurodiversity within the Criminal Justice System, there is a lack of information on neurodiversity amongst young people in the Justice System. This review aims to address that gap, by building on the recent literature on neurodiversity in the Criminal Justice System, interviews with young people and interviews and round table events with practitioners from the Criminal Justice System and Special Educational Needs Co-ordinators (SENCOs) from schools. As this project was undertaken to build on knowledge and evidence to add to that already gathered as part of the Barrow Cadbury 'Transitions to Adulthood' (T2A) project, it primarily focuses on the simultaneous transitions that young people often experience when they turn 18 across Criminal Justice and Social and Healthcare systems.

To paraphrase Archbishop Desmond Tutu, "*There comes a point where we need to stop just pulling people out of the river. We need to go upstream and find out why they're falling in.*" Part of this project sought to identify ways that young people, especially those with a neurodiversity, could be prevented from becoming involved in the Criminal Justice System in the first place.

KEY FINDINGS

Prevalence

The recent Criminal Justice Joint Inspectorate report '*Neurodiversity in the Criminal Justice System*' highlighted that the prevalence of neurodiversity is much higher than has previously been reported and that more needs to be done before the Ministry of Justice's own equality, diversity and inclusion objectives of 'Fair treatment, fair outcomes and equal access for all service users' can be achieved for neurodiverse people. Professionals who participated in this research felt that there was a steady increase in the incidence of neurodiversity in the people that they work with, but this was frequently attributed to increases and improvements in assessment and diagnosis.

Assessment

A lack of appropriate assessment for neurodiversity, or poor support provision following assessment can increase the potential that neurodiverse young people will become involved in the Criminal Justice System.

Transitions from Youth Justice to Adult Justice

A peak time for breaches of licence conditions was seen as following the transition aged 18 from Youth Justice to Adult Probation support. This was attributed in part to differences in support provided by Youth Offending Teams, that was seen as 'more handholding', and an assumption that young adults should be able to meet the expectations that the Probation Service had of older adults, especially in terms of attending the Probation office when they were supposed to.

Funding and Austerity

Cuts to funding and resources, especially outside the Criminal Justice System, such as to Speech and Language Therapy support, were seen as impacting on support for young people in the Criminal Justice System.

Knowledge and Attitudes

Youth Offending workers felt that they had a better knowledge and understanding of neurodiversity than their counterparts in Adult Probation, but that there was still a lot of room for further knowledge and skills development. Training in how to adapt communication with young people with speech and language needs was very highly valued.

Time and Resources

The frequency of meeting those they supported was reported as lower under Probation than under Youth Justice and the Probation service was described as 'perpetually firefighting' and frequently lacking the capacity to adequately support people with additional needs.

Risk versus Need

There was also a perception that Youth Justice is more needs-led, whereas Adult Justice is more risk-management-led and that this reduced the person-centred nature of support provided by Probation Services to neurodiverse individuals.

School Exclusion

A common theme throughout the research for this project was that young people in the Criminal Justice System had often experienced school exclusion for behavioural reasons and that undiagnosed neurodiversity frequently played a part in this.

Education, Health and Care Plans

It was recognised that Education, Health and Care Plans often contained useful information, especially relating to communication needs, but that these were not well understood by many professionals. As they are co-produced documents, young people should know what they contain if they have one and it was identified that asking young people if they had one might elicit useful information about how to support them best.

Training and Resources

It was widely reported, especially by Youth Offending Services, that they valued training in understanding neurodiversity and working with neurodiverse people, especially around communication skills training. They also felt they would like more information about where they could refer neurodiverse people to for support locally.

Good Practice

One of the Youth Offending Teams that participated in the research is piloting the use of 'Transitions Teams' that identify the most vulnerable young people who are due to transition to Adult Justice at 18 and spend 3-6 months before and after the transition between services providing additional help and support. Consensus was that Transitions Protocols such as this were very beneficial.

Vulnerability in Prisons

Several of the young people who took part in the research reported that in Young Offender's Institutions, vulnerable young people with additional needs were usually housed on small units that were designed to meet their needs. When they were transferred to adult prisons, they were sometimes put on Vulnerable Prisoner Wings, but these often housed prisoners who were charged with sexual offences and were vulnerable due to the nature of their crime. They felt that this often made them more, rather than less vulnerable.

DEFINING 'NEURODIVERSITY' AND THE IMPORTANCE OF TERMINOLOGY

Increasingly¹ the umbrella terms 'neurodifference', 'neurodivergence' and 'neurodiversity' are being used to describe a range of neurodevelopmental disorders (NDDs), particularly within the Criminal Justice System. As the 2021 Criminal Justice Joint Inspectorate Report '*Neurodiversity in the Criminal Justice System*'² describes, the Ministry of Justice are using the term neurodivergence as an umbrella term to refer to a group of conditions including: Learning Disabilities; Learning Difficulties (such as Dyslexia, Dyscalculia, and Dyspraxia); Attention Deficit Hyperactivity Disorder (ADHD, including ADD), Autism Spectrum Conditions (ASC), Developmental Language Disorder (including speech and language difficulties), tic disorders (including Tourette's syndrome and chronic tic disorder); and cognitive impairments due to acquired brain injury (ABI).

We believe that the increased use of terms such as neurodiversity is a good thing as this enables a better fit with person-centred approaches that underpin the Social Model of Disability. The Social Model looks at how we can better accommodate the needs of neurodiverse people in society and adopts the stance that 'disability' is caused by the way services are organised, as they are most often designed for the benefit of the majority of people, rather than to accommodate any impairment or difference. It suggests that 'dis-ability' happens when a person's surroundings or a particular environment doesn't adequately cater for, or accommodate, their individual needs and characteristics. For example, many Autistic people find that Prison wings are uncomfortable environments to be in as they are often bright and noisy. In response to this, some prisons are now making adaptations such as painting wings and landings different colours; allowing people to collect food or medication at the start or end of queues; and creating quieter environments within the prison to accommodate Autistic people's needs.

WHY LOOK AT NEURODIVERSITY IN THE CRIMINAL JUSTICE SYSTEM?

An Equality and Human Rights Commission report in June 2020³ warned that the Criminal Justice System in England, Scotland and Wales is failing those with a Learning Disability and Autistic people. It recommended that a Social Model of Disability be adopted by the Criminal Justice System so that barriers to full participation in the Justice System are removed to allow neurodiverse people to participate fully and effectively as the Justice System is currently not designed around their needs.

PREVALENCE

There is an increasing recognition that neurodiversity is more prevalent in the Criminal Justice System than in the general population, although differences in monitoring and recording make it hard to provide a definitive answer about the exact prevalence of neurodiversity in the Justice System.² There is also an increasing recognition that the availability and provision of suitably adapted rehabilitation programmes and options for people with neurodiverse conditions within the Criminal Justice System does not match the prevalence of people requiring such adapted support.² Sufficient reasonable adjustments are therefore not being made to ensure that the Ministry of Justice's own equality,

¹ Between March 2017 and March 2022 the number of searches in the UK on Google for the term 'neurodiversity' increased by a factor of over 15 (<https://trends.google.com/trends/explore?date=today%205-y&geo=GB&q=neurodiversity>).

² <https://www.justiceinspectors.gov.uk/hmicfrs/publications/neurodiversity-in-the-criminal-justice-system/>

³ <https://www.equalityhumanrights.com/en/our-work/news/criminal-justice-system-failing-disabled-people>

diversity and inclusion objectives of 'Fair treatment, fair outcomes and equal access for all our service users' is achieved for neurodiverse people.² There is also an increased appreciation of the influence of 'intersectionality' within the Criminal Justice System and that the effects of neurodiversity; age and maturity; being care-experienced; being female; and other characteristics 'intersect' to affect many people's experiences with and involvement in the Criminal Justice System.⁴

The 2021 Criminal Justice Joint Inspectorate Report '*Neurodiversity in the Criminal Justice System*'² reported that:

- Within prisons the prevalence of Autistic 'indicators' could be around 19%.
- Based on 2019 data held on NOMIS (the National Offender Management Information System) and OASys (the Offender Assessment System used for assessing the risks and needs of an offender), 29% of the people in the Criminal Justice System had a Learning Disability or challenge and in prisons these rates were 36% for men and 39% for women.
- Around half the prison population have suffered a traumatic brain injury (TBI).
- Studies on Dyslexia cited by contributors to the review suggest that the prevalence in the adult prison population could be over 50%.
- Speech and language professionals who contributed to the call for evidence cited an estimate that 80% of prisoners had speech, language or communication needs.

The report concluded that whilst there was no consistent monitoring, screening or reporting of neurodiversity in the Criminal Justice System, making accurate analysis of the prevalence of neurodiversity difficult, that

"given the prevalence estimate for dyslexia alone (50%), it would not seem unreasonable to suggest (as a conservative working assumption) that maybe half the adult prison population experiences some kind of neurodivergence challenge – that neurodivergence could therefore be as common as neurotypicality in the prison population."

CONSEQUENCES OF NOT LOOKING AT NEURODIVERSITY

The potential consequences of not adequately responding to neurodiversity and meeting the needs of neurodiverse people in the Criminal Justice System are seen at every stage from arrest and detention in Police Custody, through Crown Prosecution Service (CPS) decision making about disposals and prosecutions, to court, prison and community supervision.

- A failure to understand and consider the influence of neurodiverse conditions on the individual's behaviour and the commissioning of crimes can mean that opportunities to divert young people from the Criminal Justice System are missed, and that the most appropriate disposal (the end result of the Criminal Justice process e.g. No Further Action, Caution, Conditional Caution, Court) may not be utilised.
- Neurodiversity can affect the person's understanding and responses in police interviews,⁵ for instance they may not understand the questions they are asked, but not admit to this; they may become more compliant than normal and agree to things that they did not do; they may

⁴ Asher, H. (2018) 'The effects of intersectionality: Women with learning disabilities and autism in the Criminal Justice System' in Cooper, P. and Hunting, L. (2018) Access to Justice for Vulnerable People'.

⁵ [https://usir.salford.ac.uk/id/eprint/38698/1/Allely%20\(2015\)..pdf](https://usir.salford.ac.uk/id/eprint/38698/1/Allely%20(2015)..pdf)

feel scared and admit to things they didn't do to bring about an early end to the police interview; or they may not be able to explain mitigating factors, such as their neurodiversity.

- In young people 18 and over, a failure to recognise vulnerability due to neurodiversity might mean that the individual does not get the support from an Appropriate Adult that they are entitled to under the Police and Criminal Evidence Act (1984).
- Information provided to the Crown Prosecution Service upon which they base their prosecution decisions does not always include important and pertinent information about vulnerabilities related to neurodiversity, and so decisions may not be in the best interest of those involved or in the Public Interest. A Criminal Justice Joint Chief Inspection Report⁶ found that *"In two-thirds of the cases inspected we found that the Crown Prosecution Service was not provided with information regarding the offender's Learning Disability at either the charging stage or on receipt of the file in police charged cases. In the majority of the cases this information was recorded on the police system but was not made available to the Crown Prosecution Service. This was a matter for concern as it meant that people with Learning Disabilities were disadvantaged in that the full details of their background were not always taken into account at a crucial point in the criminal justice process."*
- Neurodiverse individuals may find court a more frightening and anxiety-provoking place than neurotypical people; they may have a more difficult time understanding what happens in court or in submitting pleas; they may exhibit compliant behaviour and the appropriateness of sentencing decisions may not reflect the role that neurodiversity played in the crime if it is not identified, and this can affect punishment and rehabilitation. However, where neurodiversity is identified, 60% of Judges have said that they would see this as a mitigating factor.⁷
- Neurodiversity can also affect an individual's ability to understand and to comply with licence conditions.
- People with additional needs such as neurodiverse conditions may require adapted Offender Behaviour Programmes, both in prison and when on community sentences. However, the number of such programmes and their capacity does not match the estimated prevalence of people in the Criminal Justice System who have a neurodiversity and who may require such adapted programmes in order to reduce their potential for further offending.
- In the adult male prison estate in particular, housing neurodiverse people on 'Vulnerable Prisoner Units' with prisoners who are vulnerable due to their crimes can lead to added vulnerability for those with a neurodiversity.

⁶ www.justice.gov.uk/downloads/publications/inspectorate-reports/hmiprobation/learning-disabilities-thematic-report.pdf

⁷ <https://onlinelibrary.wiley.com/doi/10.1002/aur.2690>

DATA COLLECTION

Fifty-one people took part in individual interviews or Round Table discussions including professionals from across the Criminal Justice and Education systems. Eight 'experts by experience' also contributed to the research.

NEURODIVERSE YOUNG PEOPLE WITH EXPERIENCE OF THE CRIMINAL JUSTICE SYSTEM

We had envisaged interviewing five to ten young people as part of this project and found that Youth Offending Teams initially appeared supportive in offering to arrange these for us, with young people who were transitioning or had recently transitioned from Youth Offending Services to Adult Probation services. However, the impact of Covid on workloads and working practices meant that many of these young people were either never identified, or it proved too difficult to arrange interviews with them and consequently we were only able to interview three young people, although five older members of our Working for Justice group also contributed their recollections of this period of their lives.

INTERVIEWS WITH YOUTH JUSTICE AND PROBATION PRACTITIONERS

Two in-depth interviews were held with Youth Justice Workers and one with a Probation Officer exploring neurodiversity in the Criminal Justice System and the transition process from Youth Justice services to Adult Justice services. These all worked in 'Transitions Teams' specifically piloted to explore ways to ensure young people are adequately supported as they transition from Youth Justice to Adult Justice services.

ROUND TABLE EVENTS

Two online Round Table Events were held in November 2021 and April 2022. The first event involved professionals in the Criminal Justice System working in Youth Justice and the Adult Probation Service. A total of 32 people attended. As experiences in education and subsequent marginalisation were a frequent topic of discussion in the first Round Table event, a second Round Table event was held for Special Education Needs Co-ordinators (SENCOs) from Special Educational Needs (SEN) schools and 8 people attended this. An email was sent to every Probation team, Youth Offending Team and SEN school that we could identify in England and Wales, and an open invitation for people to join the Round Table events was offered. Notes were taken from recordings of each event and analysed for common themes.

OTHER PROFESSIONALS

An interview was also held with a former Appropriate Adult with several years' experience of providing support in Police Custody to children and young people under the age of 18, and young adults who had been identified in Police Custody as having additional vulnerabilities, such as neurodiversities.

CRIMINAL JUSTICE SYSTEM PRACTITIONER FEEDBACK ON THE PREVALENCE OF NEURODIVERSITY

Staff from the Youth Offending Service who were interviewed for this report described the prevalence of neurodiversity within their caseloads as 'very high' with one Youth Justice Manager saying, "it feels like nearly all of them". Increases in the identified incidence of both Attention Deficit Hyperactivity Disorder (ADHD) and Autism Spectrum Conditions (ASCs or 'Autism') during their careers were reported. A Youth Justice Worker in the Round Table event felt that Autism diagnoses in their caseloads had increased dramatically in recent years, but they were unsure about whether this represented a spike or a 'tsunami' of Autism diagnoses.

Despite this, it was reported at the Round Table event by Youth Justice Services that they were still under-recording or under-reporting the incidence of neurodiversity because of inadequate assessment before or at entry into the Criminal Justice System. In other words that the number of young people with a neurodivergence diagnosis was increasing, but there were still a lot of undiagnosed people. This view is supported by evidence presented in the Criminal Justice Joint Inspection Report into 'Neurodiversity in the Criminal Justice System'.² It was felt that early diagnosis was key, as better support for diagnosed need would reduce the potential for neurodiverse young people becoming involved in the Criminal Justice System in the first place, and they could be better supported within the Criminal Justice System if they did become involved.

A Probation Officer described how they felt that Personality Disorder was more prevalent in older adults and Neurodiversity (especially ADHD) was more prevalent in young people in the Criminal Justice System. A Youth Justice Worker reflected that:

"There is more [diagnosed] neurodiversity in the younger people coming through, but this may be due to more assessment of neurodiversity generally these days and particularly in people diagnosed whilst under the Youth Offending Team or who have been in social care, as they have been supported in getting a diagnosis that has been put through already, rather than those that have gone under the radar until adulthood and not received assessment or diagnosis until adulthood. Things like ADHD and Autism are very much diagnosed in the early years, so if they've hit those points with social care and the Criminal Justice System at a younger age then they have got that diagnosis. So that's why more [young people] have got that diagnosis."

An issue that we have noted with Working for Justice group members is that the younger members (those under 30) with Autism received their diagnosis when they were quite young (6 or 7 years old), whereas those who are now in their forties only received their diagnosis relatively recently (in the last 10 years) or have never been diagnosed, despite demonstrating numerous Autistic traits or indicators.

It should also be noted that Autistic traits can sometimes manifest themselves differently in males and females, for example, Autistic females may be quieter, may hide their feelings and may appear to cope better with social situations, meaning that Autism can be harder to spot in females.⁸ More men and boys are currently diagnosed as Autistic than women and girls as well. This is most pronounced in relation to Autism diagnosis in people with higher IQs (and a lack of co-existing Learning Disability)

⁸ <https://www.nhs.uk/conditions/autism/signs/adults/>

where females are less likely than males to receive an Autism diagnosis. This could be because females with higher intelligence are better able than males to develop coping strategies and to learn ways to 'camouflage' their symptoms and to mask communication and social difficulties. There is also a suggestion that the Autism diagnosis process more accurately identifies the Autism traits that are more common in males than in females and so is biased towards Autism diagnoses in males. There is also evidence that Autistic females are commonly initially misdiagnosed as having a Borderline Personality Disorder, Obsessive Compulsive Disorder, or Attention Deficit Hyperactivity Disorder.⁹

ASSESSMENT OF NEURODIVERSITY AND THE JUSTICE SYSTEM

Feedback at the November Round Table event suggested a recognition that early identification of neurodiversity is important but highlighted that there are long waiting lists for assessment and where interim support is inadequate, this increases the risk of involvement in the Criminal Justice System. There is a mechanism in place, the Liaison and Diversion Services that now operate in all Police Custody Suites in England and Wales to ensure that all people, including young people, with a neurodiversity are identified as soon as possible within the Criminal Justice System and provided with the right support to ensure just outcomes. Under this scheme, people who screen positive for a possible Learning Disability, Autism or both should be referred for a diagnostic assessment. Where there is not a qualified psychologist or psychiatrist able to perform these assessments within the Liaison and Diversion team, the individual should be referred for an assessment within the community. However, NHS England note that these services often have long waiting lists (the national target is for a 3 month waiting list for Autism assessments but currently assessment can take up to 6 months or more) which can mean the outcome of the assessment is not available beforehand for a court hearing.¹⁰ NHS England advise that in this instance, all existing Liaison and Diversion assessment information and recommendations, plus the fact a person is awaiting a diagnostic assessment, should be passed on to the court in advance. It has been noted that the key factors that can reduce the number of Autistic people who get into trouble with the Criminal Justice System include early diagnosis giving access to appropriate support services.¹¹

NEURODIVERSITY, OFFENDING AND REHABILITATION

There was a significant amount of discussion during both the in-depth interviews and the Round Table events about the link between neurodiversity, offending and rehabilitation, and how these should inform Criminal Justice responses and interventions. There was also widespread acknowledgment that the line between offender and victim can often be blurred and that the exploitation of people with neurodivergence resulting in criminalisation is common and that this can add to injustice.

A common component of Autism is struggling with 'Theory of Mind', involving the ability to attribute mental states to oneself and others, such as understanding other people's actions, feelings, and intentions, or understanding the effect that your action have on others.¹² One practitioner discussed the consequences in the Justice System for neurodiverse young people, especially those with Autism, who found understanding other people and perspective taking difficult. Understanding the

⁹ https://www.rcpsych.ac.uk/docs/default-source/events/open-events/forensic-asd/verity-chester—autistic-females-in-forensic-settings.pdf?sfvrsn=b17c553e_2

¹⁰ <https://www.england.nhs.uk/wp-content/uploads/2020/01/Learning-disability-and-autism.pdf>

¹¹ https://www.birmingham.gov.uk/download/downloads/id/557/adults_with_autism_and_the_criminal_justice_system_november_2012.pdf

¹² <https://www.sciencedirect.com/topics/neuroscience/theory-of-mind>



perspective of other people is required to show remorse and “the issue about showing remorse when you are Autistic is a big problem to lots of people in the Criminal Justice System.” Punishments handed down tend to be more severe when it is perceived that remorse is not shown. This was seen by participants to underline the need for both adequate assessment and diagnosis, and a greater appreciation on the part of staff in the Criminal Justice System about how people with Autism and other neurodiversities presented, and how to then alter the way they interacted with neurodiverse individuals to ensure that they were not disadvantaged.

Many practitioners felt that there was a greater need for people in the Criminal Justice System to better understand and identify times where the drivers of offending lie primarily in poor social skills, difficulties with interpretation of social situations and a lack of understanding of social norms. Also, they highlighted that ensuring that steps are taken to meet these needs is more appropriate than criminalisation or punishment, and more likely to reduce the likelihood of such behaviours happening again. The potential for poor social skills to result in harmful sexual offending was also highlighted by several practitioners. One practitioner described how:

“young adults with neurodiversities often lack support in forming appropriate relationships and this can lead to offending”

and another described how:

“Kids with [Autism] are often at more risk of displaying harmful sexualised behaviours and not understanding social context and what is socially normal and what normal boundaries are.”

It was reported that Youth Offending Services are increasingly using the Good Lives Model with under-18s in response to this. The Good Lives Model is a strengths-based approach to offender rehabilitation that aims to promote the individuals’ aspirations and create plans for more meaningful and personally fulfilling lives.¹³ One practitioner said that this approach was *“inclusive rather than punitive [and] making people feel valued can be one of the most effective ways of reducing risk of harm to others.”*

COMPLYING WITH LICENCE CONDITIONS

In relation to the effects of neurodiversities on young people’s understanding of licence conditions and subsequent compliance with them, a Youth Justice worker felt that:

“ADHD feels like the harder one to deal with and can bring a lot of chaos, whereas Autism can have advantages as once they understand it, especially if it’s about rules, they get it and don’t need it repeating. With ADHD they can be all over the place and forget what they have been told.”

Masking is a term used to describe behaviours and techniques that people with neurodiversities might use to disguise the extent to which they struggle with activities or communication. However,

¹³ <https://www.cycj.org.uk/resource/the-good-lives-model/>

because they have learned to communicate in ways that 'mask' their difficulties, they often appear more able than they really are.¹⁴

Criminal Justice Practitioners from both Youth Justice and Adult Justice who were interviewed reported a high incidence of people with neurodiversities saying that they understood what they were told, or were asked to do, when in fact they did not. A Probation Officer described how:

"I've got somebody who is 24 now but he had committed quite a serious offence and he was given this great long list of 15 odd licence conditions. I asked him "Do you understand this one?" and he said "Yep, Yep I understand" but he's got an IQ of 62 and there is no way that he was ever going to understand those licence conditions. He ended up back in prison on a recall before he'd even been out for two months because he just had such little understanding. But also, he was never in a position to say he didn't understand. I think that is something that I come across quite often, they say that they understand but they don't. They can also be quite good at reciting back words and phrases that they have heard or learned that they know are 'trigger' words to say. So, I see that a lot, they feign understanding for fear or for whatever reason. And that can be quite problematic."

A Speech and Language Therapist featured in a KeyRing DVD on Communication in the Criminal Justice System makes the suggestion in this situation not to ask "Do you understand?" as the other person will often automatically say "Yes", but to say "I don't think that I explained that very well, what do you understand by what I said?" as this shifts the responsibility from the listener to the speaker and reduces the stigma of not understanding. There is also an increased risk that people with communication difficulties might not see that they have misunderstood what was said.

DIFFERENCES IN APPROACH BETWEEN YOUTH JUSTICE AND PROBATION SERVICES

Differences between the Youth Offending approach to working with young people under 18 years old and the Probation Service's approach once they had transitioned to adult services, were a common discussion point. Several key themes emerged.

KNOWLEDGE

The Youth Justice staff felt that they had better training in understanding neurodiversity and responding to need, rather than responding to risk. As a Youth Justice worker described:

"My friend in Probation was seconded to the YOT and could not get over how differently we worked to the way that they worked. Probation sometimes do training with the YOT teams, but its few and far between. Some of the YOT training is done by the Safeguarding boards, but we also get CAMHs (Child and Adolescent Mental Health Service) training on neurodiversity and the drug service provide training. Probation can access some of that training, but I think that we get much better training on neurodiversity than Probation."

¹⁴ <https://www.gov.uk/government/publications/positive-practice-positive-outcomes-a-handbook-for-professionals-in-the-criminal-justice-system-working-with-offenders-with-a-learning-disability>

They also felt that this kind of secondment was really useful as:

“The more that Probation see how the YOT work, the better they will understand how YPs (young people) who transition between services can be best supported.”

SERVICE CAPACITY

The Youth Offending Service workers interviewed felt that the service that they offered to young people, especially those with a neurodiversity, was of a higher quality than in Probation, as they have the capacity to deliver this type of more person-centred and supportive kind of work in Youth Justice.

The picture from the Probation Service was one of perpetual firefighting and of being in crisis in terms of case load levels. Probation staff reported a recognition that they need to work in a better way with people with neurodiversities, but stated that they just don't have the capacity to dedicate the time needed. The implications of this are that even if you have a Transitions Team to create a supportive pathway from Youth Offending Services to the Probation Service, the advantages and benefits of this are reduced if the receiving service doesn't have the capacity to provide the level of support required to meet the individual's needs.

'HAND HOLDING'

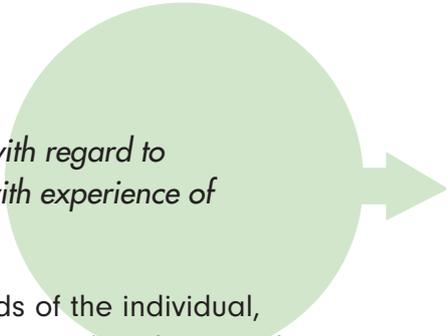
The phrase 'hand holding' was regularly used to describe the Youth Offending Service's approach, such as where they would text or ring young people in advance to remind them that they had an appointment and chase them up if they didn't attend. The change in what is expected of them and the support provided once young people had transitioned to Adult Justice is substantially different in contrast:

“You go the YOT team when you're under 18 and it's mainly hand holding, and then you turn 18 and go to Probation and it's much more about punishment and the punishment is much more severe as an adult as well... with Probation all the expectation is on the service user to take responsibility for getting to appointments and remember their appointments and some [young people] are just not equipped to do that because they have never had to before. You can't expect the young person to alter to fit the needs of the system. This is the difference between Youth Justice and Adult Justice. Youth Justice adapts to fit the needs of the person, Adult Justice expects the person to adapt too much.”

It was highlighted that the period just after the transition from Youth Justice to Adult Probation was a peak time for breaches of licence conditions and subsequent recalls, but that good practice such as the use of Transitions Teams (discussed later) had the potential to counter this.

PERSON-CENTRED SUPPORT

Youth Justice workers felt that their approach was more person-centred and that this was also the most suitable way to adequately support neurodiverse young people once they have transitioned to the Adult Justice System:



“Support needs to meet need rather than being one-size-fits-all especially with regard to neurodiversity – [people with a neurodiversity] need support from people with experience of meeting their needs.”

The perception was that Youth Justice approaches adapted more to the needs of the individual, whereas Adult Justice approaches expected the individual to adapt their systems of working much more. It is widely appreciated that people with neurodiversities often feel stigmatised and consequently are reluctant to disclose that they experience difficulties or have additional needs. Data gathered during previous KeyRing research projects suggests that people with neurodiversities are more likely to disclose this where there are clear advantages to doing so. Taking a person-centred approach to working with people that clearly demonstrates an interest in adapting to meet their needs is more likely to elicit self-disclosure than an approach in which the individual is expected to adjust to the system and where there are fewer or less obvious advantages to self-disclosure.

DIFFERENCES IN ATTITUDES TO YOUNG PEOPLE AND NEURODIVERSITY

During the interviews and the Round Table discussions, it was identified that people who work in Youth Justice and Adult Justice often have different attitudes towards both young people and towards some of the behaviours related to neurodiversity.

ATTITUDES TOWARDS YOUNG PEOPLE IN CRIMINAL JUSTICE

There was a perception from Youth Justice workers that many Probation Officers have little experience of working with 18-year-olds or those who have transitioned from Youth Justice to Adult Justice and that some do not like working with young offenders and see them as a nuisance:

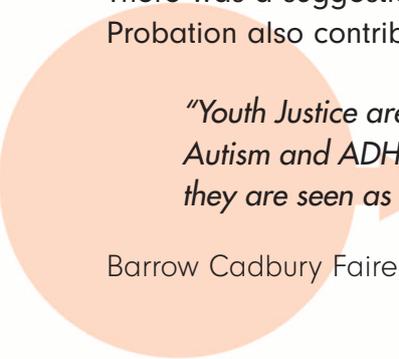
“When you add in complex needs that have been identified in Youth Justice this is just not the cohort that they want to be working with and they are not as invested in providing support.”

However, another Youth Justice Worker felt that Probation Officers also lacked the experience of working with young people and the knowledge of the methods and techniques required to produce optimum outcomes. Not only does this fail to maximise the potential that support could have on the outcome of Probation supervision, but it also reduces the job satisfaction that many Probation Officers could get from this type of work:

“Lots of Probation staff do not understand why anyone would want to work with YPs (young people) as they see them all as little sods! Given the right environment and these YPs would thrive. Two different worlds youth and adult [justice] and I don’t know how you rectify it. The more that Probation see how the YOT work, the better they will understand how YPs who transition between services can be best supported.”

ATTITUDES TO NEURODIVERSITY

There was a suggestion that differences in attitudes to neurodiversity between Youth Justice and Probation also contributed to the type of support that was provided:



“Youth Justice are much better trained [in neurodiversity] and are more nurturing in relation to Autism and ADHD ... whereas when they go to probation at 18 it is viewed as a maturity issue, they are seen as ‘hard to work with and chaotic’ and don’t turn up to appointments.”

It was suggested that:

"In an ideal world you would have a couple of Officers in each Probation team who would take on the young people with a neurodiversity who had the requisite knowledge and experience and were able to respond differently and better meet the young person's needs. However, [Probation] are not currently in a position to funnel all those under 24s to one or two people with caseloads the way that they are."

Although referring to a person experiencing mental health problems rather than a neurodiversity, a Probation Officer interviewed for the project echoed the 'hard to work with' sentiment reporting that:

"I think about this chap I used to work with ... and I just used to think "Oh you're dead hard to work with" and the way that he spoke was strange and I just used to come out of the appointment from speaking to him and I'd feel like my mind was blown. Fast forward a few years and he has been sectioned with schizophrenia."

They then reflected that as a Probation Officer you are expected to have the skills to understand and work with all different kinds of client groups, but that the necessary knowledge and training are not always provided to enable you to do that. They felt that Youth Justice workers received more training in neurodiversity, whilst their training was much more 'risk-focused and process-focused':

"... the training that we complete isn't based on diversity and responding to people's needs. I did my training in 2017-2018 but there wasn't really much on how to be responsive and the different types of people that you might come across. You look at the different types of offences, and different types of offending behaviours but not about delivering structured work to different types of people – when I did my training we had no training on how to deliver work to people on Probation. It was very much 'this is how you behave with people and this is how you treat people, and this is how you do that' but it was never about how to deliver work or interventions, and I know I'm not delivering programmes but obviously we are still expected to do offence focused work with people and that is a massive thing that is missing from training and this is reflected in what is said by everyone else that I have spoken to."

The Probation Service website notes that Probation work involves supporting people with complex needs and describes the components of the Professional Qualification in Probation¹⁵ (PQiP) as covering:

- The Criminal Justice System
- Understanding Crime and Criminal Behaviour
- Penal Policy and the Punishment of Offenders
- Rehabilitation of Offenders

¹⁵ <https://www.traintobeaprobationofficer.com/becoming-a-probation-officer/>

Whilst some of the Universities that provide the PQiP describe “masterclasses in subjects such as Diversity and Equality” within the curriculum¹⁶ and describe the broader curriculum¹⁷ as including:

- Learning about the Criminal Justice System
- Criminology, risk assessment and risk management
- Probation law
- Values
- Ethics and professional practice
- Offender management and interventions

This suggests that there is potential for a greater focus on topics such as neurodiversity, especially given that the most recent reports have highlighted that the prevalence of neurodiversity across the Justice System is so high.

One Probation Officer reflected that Probation Staff can often find it easier to complete assessments and risk assessments where a young person has a diagnosis of a neurodiversity, rather than having to draw their own conclusions about risk factors from the presenting behaviours of the person. However, as another Probation Officer described, their caseloads contain a lot of complex needs other than just neurodiversity:

“The problem with Probation is that there are so many groups of people that they need to be focused on – women, young adults, people who commit sexual offences – so many individual groups of people that need specific support or a specific intervention that it’s hard to get a focus from one to the other.”

DIFFERENCES IN SERVICE PROVISION

A number of other key differences between Youth Justice and Adult Justice services were highlighted and discussed.

NEEDS-LED VERSUS RISK-LED

Youth Offending Service practitioners viewed their service provision as more supportive, person-centred and needs-led, whereas they viewed the Probation Service as more punitive and risk-led. One Youth Justice Worker described how:

“There is (an unspoken) hierarchy in Justice and the YOT [Youth Offending Team] are seen as namby pamby and that we don’t really ‘manage risk’. It isn’t that we don’t manage risk, it’s just that we manage it differently, with more carrot and less stick”.

However, this difference between Youth Justice and Adult Justice has been recognised for a long time, and the Youth Justice approach is seen as most appropriate, certainly in the case of young people under 18. Concerns have historically been raised about risk-led approaches in Youth Justice

¹⁶ <https://www.port.ac.uk/study/studying-while-working/probation-officer-training>

¹⁷ <https://www.dmu.ac.uk/study/courses/undergraduate-courses/probation/probation.aspx>

and that sometimes “minimising risk has led to risk assessments displacing needs assessments in youth justice.”¹⁸

MEETING LOCATIONS

As was the case with most Youth Justice workers interviewed for this report, Youth Offending Services are less likely than Probation to be office-based, and this has two main implications. The first is that Youth Offending Services are more able to arrange to meet young people where they feel most comfortable, such as at home, or in a café or other public space. Their corresponding Probation colleagues often expect the young people who have transitioned from Youth Justice to Adult Justice to attend the Probation office and it was reported that navigating their way there can be a challenge to some of the young people. However, lacking a fixed space to run groupwork, and because there is a perception that a tailored one-to-one approach is more appropriate than groupwork when working with young people, many young people do not have experience of group-based approaches when they move to receiving Probation support, which is more commonly groupwork-based. It was reported that neurodiverse young people can really struggle with groupwork approaches after the transition to adult services.

A Probation Officer interviewed also felt that the option to see people in the community, rather than in the Probation office, might be beneficial:

“because we can go and do home visits, but home isn’t always a safe space, so being able to work in the same way that YOS works, being able to go out for a coffee or MacDonalds or whatever would help. When you come into a Probation office it’s quite an intimidating environment and it can be busy, loud, shouting drunk people there – and that’s an environment that people are not always used to or want to put themselves in. I think that it’s a similar thing to when we have female service users coming in when it can be quite intimidating to have loud shouting angry men there. So, a similar kind of thing being able to see people in an environment that they feel comfortable in [would help]. Our [meetings] are very structured, it’s an office with two chairs and a table with a screen in the middle and it’s not very welcoming and inviting.”

ONE-TO-ONE VERSUS GROUPWORK AND PROGRAMMES

The appropriateness of groupwork programmes designed for adults when working with young people who have only just moved over to the Probation Service was questioned by many Youth Justice workers. They felt that many young people lacked the maturity to engage with and participate in groupwork such as Thinking Skills programmes, although there are nationally delivered programmes such as ‘Choices and Change’ that can be used as a stepping-stone to Thinking Skills programmes for young people who are deemed too immature. As the report by the Greater Manchester Health and Justice Steering Group (Learning Disability and Autism) ‘People with a learning disability and autism in the Criminal Justice System’ notes:

“Initiatives such as group work helping people look at the habits and root causes of their behaviour are helpful in addition to one-to-one intensive work. Probation services also are

¹⁸ Stephenson, M., Giller, H. and Brown, S., 2010. Effective practice in youth justice. Routledge.

improving and will do individual work with people, however some group programmes are too much for people on the Autistic spectrum and so different approaches may be required.”¹⁹

However, it was also commented on by a Youth Offending worker that offering one-to-one work, rather than ‘non-adapted’ groupwork, can be a great advantage in meeting young people’s needs, but that this can also set them up to fail as they cannot go all through life just having one-to-one communication with people and so they need appropriately adapted groupwork programmes.

MULTI-DISCIPLINARY APPROACHES

Youth Offending Teams were seen as having a much wider breadth of skills that enabled them to respond to need better than the Probation Service.

“YOT are more multiagency than probation – they have social workers, they have a psychologist in their team, although they are a case manager, but is really good if the team have really difficult cases, they have a nurse, a Police Officer, they did have a SALT and a psychologist, but the funding has ended for those, but they were really good. The MDT (Multi-disciplinary Team) is a much better approach.”

WHAT WOULD HELP?

During the Round Table event, staff from both Youth Justice and the Adult Probation Service felt that there was scope for them to develop a better understanding of neurodivergence, the role that it plays in offending and how to support and rehabilitate people with needs relating to their neurodiversity more effectively. It was suggested that Youth Justice workers are overall better trained and more knowledgeable about neurodiversity. It was identified that in Adult Justice services, there was often a lack of understanding about neurodiversity, and that the indicators and traits of neurodiversity were often seen as bad behaviour rather than the result of additional needs.

However, one of the young people interviewed who became involved in the Criminal Justice System at 14, and had been diagnosed by a forensic psychiatrist as having a mental age of 8, said that whilst he was under his local Youth Offending Team, he felt some of the workers there didn’t really understand his needs in terms of the effect of his condition on his behaviour; he just felt that they thought that he was ‘bad’. This suggests that there is scope for improvement in services to all age groups.

A widespread awareness of the adjustments needed and of how to respond effectively to supporting neurodiverse peoples’ rehabilitation was seen as lacking within the Justice System. This was seen as especially prevalent with cases where neurodivergence is part of the offending or a barrier to rehabilitation and especially of concern regarding responding to and preventing sexual offending. The rhetorical question was asked *“where do young adults with autism or a neurodivergence learn about appropriate relationships?”*. Discussing this project with one of the younger members of the Working for Justice group who has an Asperger’s diagnosis, he suggested that:

¹⁹ <https://www.local.gov.uk/publications/people-learning-disability-and-autism-criminal-justice-system>

“Autistic young people need an environment like an IT ‘sand box’ where they can learn new or basic social skills and take risks that will help learning about social skills and social interaction without the full consequences.”²⁰

Another member of the Working for Justice group reflected that the best and most effective support that he feels he could have benefitted from when he was younger was to get more support to make friends and maintain appropriate friendships.

Criminal Justice workers also felt it would be beneficial to have more information and advice about supporting people with Autism, and more knowledge about local services where they could refer people with neurodiversity. This lack of detailed service directories that could aid signposting and multi-agency working was frequently identified and described in training and research that KeyRing has previously conducted across the Criminal Justice System. This seemed especially common where young people with a neurodiversity, or other additional needs, were too young for adult services, but too old for children’s services.

These suggestions are similar to previous research²¹ that has identified that key factors that can reduce the number of Autistic people who get into trouble with the Criminal Justice System, in addition to early diagnosis and support services are:

- training frontline staff in Autism awareness
- fixed activity routines – wherever possible, paid employment - that could fill much of the Autistic adult’s day and that they will feel safe doing, to minimise the risk of other people exploiting their vulnerabilities
- enabling them to know where and how to obtain advice and support services when needed, particularly around the various transitions in their lives
- developing a social care advice, guidance and coaching pathway to which courts could divert Autistic offenders as an alternative to giving them criminal convictions.

TRANSITIONS BETWEEN NON-CRIMINAL JUSTICE SYSTEM SERVICES

It has been identified that co-existing mental health needs are higher in people with a neurodiversity than in the neurotypical population, especially in the Criminal Justice System.²² However, adequate mental health support for young people once they were too old for Child and Adolescent Mental Health Services was also identified as a problem. It was reported that a young person could have had a lot of input from Forensic CAMHS and then they turn 18 and there is no adult equivalent to support them if they don’t meet the threshold for adult mental health services. Where they do meet the threshold, as with adult Criminal Justice service expectations, the majority of the responsibility to attend is often placed on the young person:

²⁰ A sandbox is a type of software testing environment that enables the isolated execution of software or programs for independent evaluation, monitoring or testing, and in which potentially unsafe software code can execute without affecting network resources or local applications.

²¹ https://www.birmingham.gov.uk/download/downloads/id/557/adults_with_autism_and_the_criminal_justice_system_november_2012.pdf

²² <https://www.england.nhs.uk/wp-content/uploads/2021/09/B0707-meeting-the-healthcare-needs-of-adults-with-a-learning-disability-and-autistic-adults-in-prison.pdf>



“CAMHS workers will usually make ongoing referrals into adult mental health services, but as with many such services, if the young people don’t go and attend, they just close the case [rather than chasing them up] and particularly where you have a young person with additional needs, it’s really difficult to manage this.”

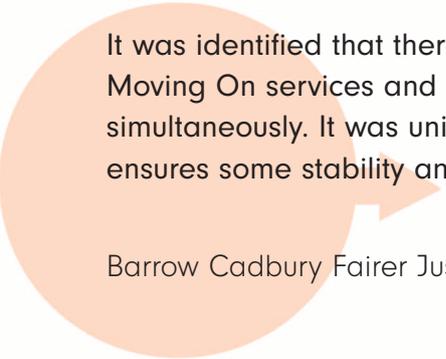
According to the Youth Justice Workers who took part in this research, the majority of the young people under the Youth Offending Service have CAMHS involvement (which is in itself a point to note) that stops when they reach 18 years old. This was the case with one of the young people who was interviewed, who had CAMHS support until he was 18 years old, but then mental health support stopped with no provision for support from adult mental health services. In the Round Table events and the interviews, the question was often asked *“if the needs remain the same, why does the provision change?”*. In other words, if the young person needed support up to 18, what changed when they reached 18 to suggest that such mental health support was no longer necessary?

Historically 17-year-olds have sometimes found themselves in a ‘limbo world’ in the Criminal Justice System. Until 2013 the Police and Criminal Evidence Act (1984) did not give them an automatic right to be supported by an Appropriate Adult. Similarly, Youth Offending Service workers described how there is sometimes a gap in services for 17-year-olds outside the Criminal Justice System – they are too old for Youth Services but not old enough for Adult Services.

It was also discussed in the Round Table meeting how the endings of mental health support also regularly coincide with planned endings to education, planned endings to care placements, and changes in Social Worker. It was felt that losing multiple consistent sources of support at the same time can further add to the trauma of transitions and make them all less likely to succeed. Two examples were provided to illustrate problems experienced:

“I had a young person who left a Special Educational Needs School at 16 and went on to the local college. All the transition arrangements were made including completing a leavers annual Education, Health and Care Plan, which is not mandatory but is seen as in the young person’s best interest, but nothing was said about the plan to move him from his placement in a children’s home to supported living at the same time. It all fell apart after about 6 weeks and he was excluded from college.”

“Young people often fall through the gaps as soon as they become 18 because of the lack of funding of adult services. Probation don’t have the same level of resources as the YOT teams, and the Leaving Care Teams don’t have the same level of resources as the Looked After Children Team or the Safeguarding Team. I had a looked after child in semi-independent accommodation, and when they turned 18 the Probation Transitions Team were promised that he would not be made homeless, and then suddenly they were told that he was going to be made homeless in two weeks. Their Leaving Care worker cannot spend as much time with them as their Social Worker could and now he has a baby on the way and there isn’t as much support for people once they transition from 17 to 18.”



It was identified that there is often poor planning of endings and transitions in Social Care and Moving On services and there is too little focus on the impact of changes, especially those occurring simultaneously. It was universally felt by the Criminal Justice professionals that careful planning that ensures some stability and continuity would be very beneficial.

THE TRANSITION FROM YOUTH OFFENDING TO ADULT PROBATION

"An assertive approach in which we chase people up and support them rather than punish them is what works in Youth Justice and then this suddenly changes at 18." - Youth Justice Worker

A 'CLIFF EDGE' OF TRANSITION

In our November 2021 Round Table, the period following the transition from Youth Offending Services to Probation was identified as the time at which breaches of licence conditions peaked. One participant felt that this was due in part to young people transitioning to adult services being *"thrown in at the deep end"*. Many practitioners described the transition as 'like a cliff edge' although some felt that it was a place that people 'fell off' whilst others felt that it was an obstacle that many young people found too hard to manage - *"it's a hard edge rather than a smooth transition"*. A Youth Offending Service worker reflected that:

"The gap between what we do and what Probation do is absolutely massive. If we have YPs who will be 18 halfway through their order we have a Transitions Team including a Probation Officer who is seconded who does all the transitions work. They work with the YP to get them ready to be moved on to Probation."

However, feedback from another Probation worker was that:

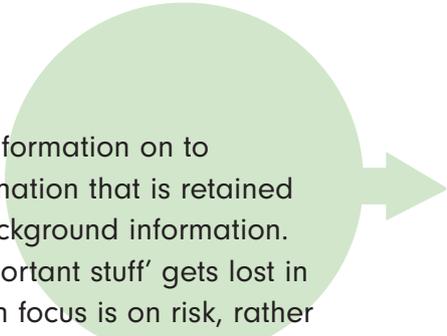
"Even with that it still falls down flat because it's such a massive difference between the two services. YOT do home visits, they will go and look for the young person, CAMHS will actively go and find the young person, whereas with Probation they have to attend the office. It's difficult for any young person to make the transition, but for a young person with a neurodiversity or additional needs, it's more so. It's the different ways of working."

Another Youth Offending Service worker commented that:

"Probation are more punitive than the YOT (Youth Offending Team). They [young people] need wrapping in bubble wrap more, and they have more speech and language needs. An analysis of the data a few years ago found that young people under the YOT are operating an average level of an 8-year-old. That's why we do what we do. If we didn't, they just wouldn't get through the order. Some of the young people do sometimes need breaching, but it isn't the first course of action, we look at ways to re-engage them first rather than just sending them back to court. We try to prepare young people who are moving to Probation about this, tell them that they won't get people going out of their way to ensure that they attend appointments, ringing them and reminding them about appointments, ensuring that they are not breached. It is a sudden move from a supportive service to a punitive service."

INFORMATION SHARING

Young People's services reported that they felt that they are often better at assessing and responding to neurodiverse needs, but that key information was not always being communicated effectively to adult services, especially where there is no formal diagnosis of neurodiversity, resulting in reasonable adjustments not being made. They felt that information is often either not shared or not received as it should be.



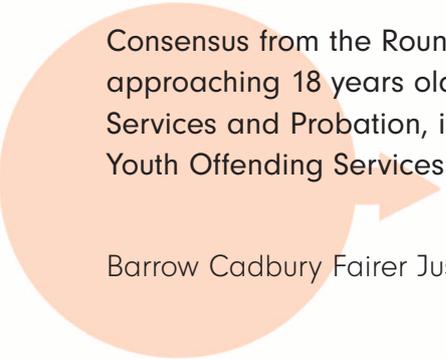
The perception was that Youth Offending Services pass a large quantity of information on to Probation, but that this then gets whittled down to a smaller amount of information that is retained and taken notice of, as they don't have the capacity to cope with a lot of background information. Consequently, some of what the Youth Offending Team perceives as 'the important stuff' gets lost in the transition, especially if it doesn't directly relate to risk as Probation's main focus is on risk, rather than on need. There were reports of this important information not being presented at key stages. An example given was at court where a young person had entered the Youth Justice System at the point of being charged with an offence, but had transitioned to the adult service before their case reached court, so they were being tried as an adult rather than a child (this anomaly is discussed in more detail in a later section). A Youth Offending worker described how she ended up supporting a young person who she had previously worked with when he was working with the Youth Offending Team, when his case reached Magistrate's court. She reported that his file described how he had emotional issues, a substantial amount of CAHMS (Child and Adolescent Mental Health Service) involvement, was a care leaver and had other issues that were relevant to the case, but she felt that the Probation Officer in charge of the case:

"didn't give the court the full facts, they just hadn't shared all the information, and they had had all the assessment, all the information, all the concerns and they hadn't passed them on and had not even looked at them".

It was also highlighted that exploitation, especially of young people under 18, can come under the Human Trafficking and Modern Slavery legislation. Recognition of young people as victims of criminal exploitation are reported through the National Referral Mechanism (NRM) but it was described in the Round Table meeting that this doesn't always get communicated adequately to adult Criminal Justice services. Once the young person is 18 the NRM doesn't apply anymore, and it was suggested that adult services often do not appear to consider criminal exploitation to the same degree as Young People's services. Added to this, many young people do not perceive themselves as exploited, even when they have been, and this can be a gap that vulnerable young people fall down. It is worth considering whether the legal guidelines that define certain activities as exploitative when applied to people under 18 make Youth Services more aware of exploitation more widely, such as with young adults with a neurodiversity who may have a chronological age over 18, but a mental age and maturity of a person under 18 years old.

A recurring theme was that the Probation Service was so overstretched that they didn't have time to conduct adequate assessments, regardless of whether the person had a neurodiversity, and that this was exacerbated where the person had additional communication needs or there **was** a neurodiversity. One of the key features of the Transitions Teams discussed in the next section is that Transitions Team Workers can ensure that all documentation follows the young person during the transition and that adult services understand what the contents of previous reports, assessments and documentation mean for that young person.

GOOD PRACTICE



Consensus from the Round Table event was that 'Transition Protocols' for young people who were approaching 18 years old were good practice where there was co-working between Youth Offending Services and Probation, ideally for around 6-months either side of the transition. Nottinghamshire Youth Offending Services and Nottinghamshire Probation are currently piloting a system with a



designated Transitions Team to enable such a transition protocol to work effectively. The Transitions Team prepare young people for the transition to Adult Justice services starting 3 to 6 months in advance and are then able to offer help and support for 3 to 6 months afterwards, bridging the gap and helping with practical things such as ensuring that the young person can attend their Probation appointments. Their work is dependent on the length of time the young person has left to serve under supervision (they need at least 6 months left), but the Transitions Team approach also means that those with less time to serve left who are quite vulnerable can be supported to complete their sentences without having to transition away from Youth Justice Services. The Adult Probation System was described as “too much signposting and too little hand holding” for many such young people. It was identified that young people usually get a significant amount of support in Youth Justice services; that this overnight transition to Adult Probation services can be very lonely; and that Probation offices can be quite an intimidating environment. Support in this transition that extends into attendance with the Adult Probation Service can help young people to understand the rules and the regimes better. It was noted that the hand-over process needs to be *“more than a 50-minute conversation”*, and that this kind of ‘hand holding’ that starts about 6 months before the transition and extends into Adult Probation provision is a necessary requirement for many young people to support them to continue complying with their licence requirements. This was seen as especially important with young people with neurodiversity issues.

An 18 year-old was interviewed who had recently transitioned from Youth Offending Services to the Probation Service with support from the Transitions Team. He described the first few weeks as quite challenging, but said that he had talked with the Transitions Team member about what to expect when he moved over to Probation, how things would be different, and what the different expectations of him were. Whilst he said that he was offered support for longer post-transition, he felt that the help that he received pre-transition meant that he didn’t require as much support post-transition as he was offered. He reflected that he saw his Probation Officer about once every three weeks, whereas he had seen his Youth Offending Team worker every two weeks, so the support was also not as intensive. He also felt that there was a greater focus on building relationships with him when he was under the Youth Offending Team than when he had moved to Probation.

THE TRANSITION FROM YOUTH COURT TO ADULT COURT

The transition from Youth Court to Adult Court has also been described as a ‘cliff edge’ for many young people, and especially those with a neurodiversity. Youth Courts were reported in the interviews and the Round Table meetings as being much more accommodating towards young people’s needs and that neurodiversity was more commonly taken into consideration as a mitigating factor. It is important to note that a young person who commits a crime aged 16 or 17 may not be seen in court until after they turn 18, and although they were viewed as a child when they committed the crime, they are viewed as adults, treated as adults and sentenced as adults if they first appear in court and enter a plea after their 18th birthday. They would also lose their right to anonymity in this instance too. This issue is being exacerbated by the increases in delays in the Criminal Justice System

as a consequence of Covid²³ and conflicts with the United Nations Committee on the Rights of the Child (the “UN Committee”) which states that:

“Child Justice Systems should also extend protection to children who were below the age of 18 at the time of the commission of the offence but who turn 18 during the trial or sentencing process.”

This delay between charging and any subsequent trial also affects the sentence that can be handed down, as Youth Cautions and Youth Conditional Cautions are only available to children aged between 10 and 17 and cannot be given to 18-year-olds regardless of their age when the offence was committed. This can also have longer term implications as ‘adult convictions’ stay on the person’s criminal record for longer.

CHANGES IN SENTENCING OPTIONS FOR YOUNG PEOPLE AND ADULTS

The Criminal Justice Joint Inspection Report *“Out-of-court disposal work in youth offending teams”*²⁴ published in 2018 highlighted how Youth Offending Teams and the Police have succeeded in diverting an increasing number of children and young people who have committed mainly low-level offences away from Court with ‘out-of-court disposals’. Prior to 2012 the statutory out-of-court disposals used with children were reprimands and final warnings, but they have been replaced with ‘Youth Cautions’ and ‘Youth Conditional Cautions’. For young people up to 17, there is now a presumption in favour of diverting them away from trial and prosecution by offering an out-of-court disposal (OOC). This is driven by the recognition that diverting children away from the formal Criminal Justice System is more likely to prevent further offending than criminalisation. As the name suggests, an out-of-court disposal does not involve a court trial. Instead, the aim is to divert the young person from future involvement in the Justice System and they are most suited to young people who are not regular offenders but have committed a low-level offence. It is rare for them to be used for more serious offences or with prolific offenders.

The two Youth Offending Service workers interviewed both discussed how ‘out-of-court’ disposals had both positive and negative effects on the work that they delivered. Out-of-court disposals divert children and young people away from the formal Criminal Justice System and prevent them being ‘criminalised’. However, this increase in diversions can have positive and negative consequences. As one Youth Offending Practitioner said:

“If it doesn’t go to court the kids don’t get a record, so it is better for them in the long run, but the downside is that when they were on court orders you got more than three months to work with them and build up therapeutic relationships, [you] became trusted and there were really good outcomes. A maximum of three months for a kid on an out of court disposal – and especially young people with a neurodiversity, ADHD or Autism - it takes ages to build a relationship and by the time that you have achieved that you have to close it.”

²³ [https://justforkidslaw.org/sites/default/files/upload/YJLC%20Turning%2018%20briefing%20\(June%202020\).pdf](https://justforkidslaw.org/sites/default/files/upload/YJLC%20Turning%2018%20briefing%20(June%202020).pdf)

²⁴ <https://www.justiceinspectorates.gov.uk/cjji/inspections/out-of-court-disposal-work-in-youth-offending-teams/>

This transition period from being 17, viewed as a child and being supported by Youth Justice, and turning 18, being viewed as an adult and receiving adult support and punishments has consequences where the Police take a long time to come to charging decisions. A suspect who commits an offence aged 17 but is 18 when the decision to charge or divert is made, will no longer be eligible for any of the youth out-of-court disposals and an 'adult simple caution' would be offered instead, if the suspect is eligible for one.

YOUNG PEOPLE, PRISONS AND NEURODIVERSITY

There were concerns raised during the Round Table event that prison sentences were sometimes used with young adults with a neurodiversity as a consequence of a lack of appropriate community service provision and options such as adapted offender behaviour programmes, where a community sentence would be handed down to a neurotypical person. This was not 'fair justice'. There was also a feeling that prisons and prison staff sometimes did not have sufficient understanding of neurodiversity to either provide adequate help and support, or to provide reasonable adjustments:

"A young lad [in a Secure Training Centre] needed to have his weighted clothes to make him feel secure, but the prison wouldn't allow this saying that it was a security risk. The Youth Offending Team told them that they would have him kicking off all the time, that he at least needed a weighted blanket in his room, but the prison wouldn't do it, but then couldn't understand why he was kicking off all the time and didn't settle. They couldn't take on board that his sensory needs were not being met. Basic things are not done and they think that it's too much trouble to meet people's needs but the consequences are far greater than providing people with what they need." Youth Offending Team Worker

SAFETY, VULNERABILITY AND NEURODIVERSITY IN PRISONS

A common theme that 'experts by experience' raised regarded the safety of young people with a neurodiversity in prisons (particularly males as the female estate often works differently), especially once they had transferred from Young Offenders Institutions to the Adult Estate aged 21. Units supporting vulnerable young males in the Young Offenders Institutions are usually designed to hold people aged 15 to 18 or 18 to 21 who are vulnerable due to complex needs (see for example the Keppel Unit at HMYOI Wetherby²⁵) whereas Vulnerable Prisoner Units (VPUs) in the Adult Male Prison Estate predominantly house people who are vulnerable due to the nature of their crime, such as sexual offending or crimes perpetrated against children. As one young person reflected:

"Vulnerable people [due to Learning Disabilities or Neurodiversity] are often housed on the Vulnerable Prisoner wing, but this also houses people who are there as they have committed sex offences and some of these then prey on the prisoners who are on the wing due to mental health, cognitive, social, and emotional vulnerabilities."

²⁵ <https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2022/03/Wetherby-web-2021.pdf>

As another young interviewee put it:

“There needs to be a policy put in place that people who are vulnerable because of who they are or how they are born, are separated from those who are vulnerable because of the specific crime they have committed. These two groups need to be separated and that needs to be the policy.”

And continued:

“There are two groups of people in prison. Those who deserve to be there because they genuinely have something wrong with their behaviour but still deserve to get the help to stop, even if they are not leaving ever. They are still Human beings. The second group of people are people like me who end up there because of circumstances. And because of that we are left to rot? No! That is not fair. That is not right. That is not just. If the idea of prison is to take away your freedom, then they have succeeded at that. But if the idea of prison is to make us better, then they are woefully failing.”

In their defence, there is evidence of an increasing amount of good work occurring in prisons in relation to neurodiversity, some of which has been seen first-hand by the authors of this report. The Ministry of Justice (MoJ) note that *“Prisons can work with the National Autistic Society to achieve Autism Accreditation, which includes providing sensory rooms or separate wings for Autistic prisoners and the MoJ are committed to promoting Autism accreditation across the estate.”*²⁶ In 2018 HMP Parc, a Category B Men’s Prison and Young Offenders Institution in Bridgend Wales, became the first prison to achieve the National Autistic Society’s (NAS) Autism Accreditation and in 2021 was awarded the Advanced Autism Accreditation award. As the National Autistic Society describe, since establishing the Cynnwys Unit (meaning ‘inclusion’ in Welsh), a dedicated unit for people with a neurodiversity such as Autism, Learning Disabilities or significant brain injuries, the prison has experienced a significant reduction in violence, self-harm, rule breaking, and substance use. The privately-run G4S Prison reported²⁷ that:

“We have men who can’t tell the time, get confused by which landing they are on because everywhere looks the same and they can struggle to comply with complex prison rules and processes which can lead to confrontations and incidents with staff and other prisoners, so it’s paramount that reasonable adjustments are made.”

As part of a ‘whole prison approach’ to neurodiversity, HMP Parc takes a person-centred approach where prisoners are assessed during induction to identify any additional needs.²⁸ The prison then makes some simple changes to support neurodiverse people, including:

- providing a sensory room
- offering eye masks and ear plugs
- painting wings and landings different colours
- allowing people to collect food or medication at the start or end of queues
- putting up signs reminding visitors not to slam doors.

²⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1087204/MoJ_Neurodiversity_Action_Plan_30_06_2022__001_.pdf

²⁷ <https://www.g4s.com/news-and-insights/insights/2022/01/06/hmp-parc-accreditation>

²⁸ <https://www.autism.org.uk/what-we-do/news/prison-achieves-advanced-autism-accreditation>

YOUNG PEOPLE, POLICE CUSTODY AND NEURODIVERSITY

A former Appropriate Adult was interviewed as part of this project. The role of an Appropriate Adult is to oversee the welfare of young people aged 10 to 17 years old whilst that young person is being detained and questioned at the Police station. Appropriate Adults also oversee the welfare of adults in Police Custody who have been identified as vulnerable due to mental health issues or neurodiversity conditions such as Autism, acquired brain injury or a Learning Disability.

THE PREVALENCE OF NEURODIVERSITY AMONGST YOUNG PEOPLE IN POLICE CUSTODY

The Appropriate Adult interviewed estimated that about a third of the young people that he supported whilst they were in Police Custody said that they had ADHD, Autism, or a Learning Disability. This is consistent with the National Appropriate Adult Network suggestions²⁹ that 32% of under 18s interviewed in Police Custody have a Learning Disability (compared to about 4% of the general population); 15% of under 18s have an Autistic Spectrum Condition (compared to about 1% of the general population); and that 90% of under 18s in Police Custody have some sort of communication disorder (compared to about 7% of the general population), underpinning the reasons why Appropriate Adult support is so important.

IDENTIFICATION OR DISCLOSURE OF NEURODIVERSITY

It was reported that information about neurodiversity was commonly gained by the Appropriate Adult and then shared with the Police Custody staff, rather than the other way round. Very few young people were identified as having any kind of neurodiversity by Police Custody staff or healthcare staff working in Police Custody unless the young person volunteered this information themselves. Identification was reported as more prevalent where Liaison and Diversion Services were actively screening young people as they were brought into the Custody suite. Although this is less of an issue with young people in some ways, as those under 18 always get support from an Appropriate Adult, if neurodiversity is not identified, this also means that it is less likely to be taken into consideration as mitigation when the outcome or disposal is being considered if they are charged with an offence. Sometimes where a neurodiversity is taken into consideration this results in 'No Further Action' being taken, even where a crime has actually been committed. However, that can also mean that an opportunity is missed to refer the young person for support that might prevent them becoming involved in the Justice System again.

BARRIERS FACED BY YOUNG NEURODIVERSE PEOPLE IN POLICE CUSTODY

Police Custody can be a stressful, frightening and anxiety provoking environment for anyone, and especially young neurodiverse people.³⁰ Young people with ADHD or Autism, in particular, may find that it is hard to concentrate for the duration of the Police interview, and their neurodiversity can be interpreted as negative behaviour, especially if it is not accurately identified and acknowledged. A Youth Justice worker interviewed reported how:

²⁹ https://policeconduct.gov.uk/sites/default/files/Documents/Learningthelessons/37/LearningtheLessons_Issue37_January_2020.pdf#page=38

³⁰ https://dcdhub.org/wp-content/uploads/formidable/42/NAS_Police_Guide_2020_17092020-003.pdf

"In a recent case, a female young person with Autism and ADHD that she is on medication for, the Police report states "she shows no remorse, she isn't bothered". Her Mum and Dad told them that she was Autistic and the Police haven't factored her Autism into the commissioning of the offence, her response to the offence or how she can best be supported to prevent this happening again. The issue about showing remorse when you are Autistic is a big problem to lots of people in the Criminal Justice System."

A report³¹ from the University of Cambridge Autism Research Centre found that only half of Autistic people (52%) were considered by the Police to be vulnerable adults, even though the Police Codes of Practice recognises all Autistic people as vulnerable. Over a third (35%) of Autistic people aged over 18 in the study were not given an Appropriate Adult during Police investigations, even though their diagnosis was known to Police, and despite all Autistic people being entitled under the law to have an Appropriate Adult present when being interviewed by the Police. A further 18% did not have an Appropriate Adult present because their diagnosis was not known to the Police.

LEGAL REPRESENTATION

People do not have to have a solicitor present when they are interviewed by the Police, they can choose whether they wish to take legal representation or not, and this applies to young people under 18 years old. Asking for a solicitor to be present and seeking legal advice prior to Police interview can often increase the length of time that the young person is in Custody for, so sometimes they will refuse the offer of legal advice, especially when they would have to wait for a solicitor to arrive. It was questioned whether people under 18 (as well as vulnerable adults) always have the capacity to make this decision. Appropriate Adults can ask for a solicitor to attend the Police Custody suite on behalf of a young or vulnerable person that they are supporting, but they cannot make the person speak to the solicitor, meaning that solicitors are often very reticent to attend when a young person has categorically stated that they do not wish a solicitor to be present. A 10-year-old in Police Custody is allowed to make this decision for themselves.

It was reported that, even when legal advice is sought, the suggestion made by solicitors can often be to 'go no comment' and say nothing. This advice may be more prevalent with people with a neurodiversity who might reveal more than they were supposed to, or might become overly compliant and admit to things that they did not do. As described in this journal article by Gulati et al (2020):

*"In most circumstances, the person [with a Learning Disability] will be advised to answer "no comment" to all Police questions. However, people with Intellectual Disabilities highlighted that they found this advice difficult or impossible to adhere to."*³²

However, this can prevent the presentation of mitigating circumstances that may be relevant in the interview. When a solicitor suggests the young person give a 'Full No Comment Interview', in other words that they say nothing, it is a bit of a calculated gamble. On the one hand, saying nothing gives the Police less evidence to use against the young person, and can increase the possibility that they will be released without charge. On the other hand, it doesn't allow the introduction of mitigation, such as a neurodiversity and the role that this could have played in the alleged offence committed. It also relies

³¹ <https://onlinelibrary.wiley.com/doi/10.1002/aur.2690>

³² <https://www.sciencedirect.com/sdfe/reader/pii/S0160252720300686/pdf>

on the young person's ability to understand fully the Police caution, which is "You do not have to say anything. But, it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence." The negative inference clause in the middle (it may harm your defence if you do not mention what you later rely on in court) means that remaining silent can prejudice their case if it does go to court. As Transform Justice, a national charity campaigning for a fairer, more humane, more open and effective Justice System have noted:

*"Research shows that some defence lawyers/representatives are passive in the Police interview, with some routinely telling clients to say nothing in the interview ("no comment"), even though this may not be in their best interests."*³³

A recent review of Police referrals to the Crown Prosecution Service (CPS) also highlighted that Police Custody staff only mentioned that an Appropriate Adult was present in a third of cases where they were used, and where guidance on prosecution was sought from the CPS. This suggests that in two thirds of cases where vulnerability had been identified, that this was not mentioned in the submission, and consequently the CPS were making charging decisions based on information that lacked potential mitigation. It would probably be safe to assume that at least an equal amount of submissions from Police Custody to the CPS concerning young people also lack this description of additional needs and vulnerabilities.

EXAMPLES WHERE UNJUST TREATMENT MAY HAVE OCCURRED

Several cases were discussed as examples of where the Appropriate Adult felt that neurodiverse young people were not treated fairly. They had supported a young person who lived in a Children's Home, who had a diagnosis of Autism and whose care plan suggested a number of items and strategies to help to reduce the impact of her Autistic meltdowns, but these had not ever been provided or put in place. In this instance she had had an Autistic meltdown and had broken several cups and a small chest of drawers.

Her solicitor's advice was to plead guilty to the charge of criminal damage again, as this was not the first time she had been charged with this offence, and to agree to pay for the damage that she had caused. The Appropriate Adult interviewed felt that if there was pre-existing evidence that she could be destructive when she had an Autistic meltdown and a care-planned response to this had been formulated but not implemented in a timely fashion, that this incident was a failure of the care system more than it was a criminal act, and that it was neither just nor in the public interest to pursue this as criminal damage. It also went against the CPS and Youth Justice Board 10-point check list for Offences in Children's Homes³⁴ that seeks to minimise the over-representation of care experienced young people in Custody, who would probably not have ended up arrested and in Custody if they were not looked after children.

Several other cases were discussed where young people who had become involved in what we might now refer to as 'County Lines' drug dealing operations, had diagnoses of a neurodiversity but were charged with Possession with Intent to Supply rather than viewed as victims.

³³ http://www.transformjustice.org.uk/wp-content/uploads/2019/07/TJ_JULY2019_The-Good-Lawyer.pdf

³⁴ www.cps.gov.uk/legal-guidance/youth-offenders



This was the experience of one of the Working for Justice group who was interviewed for this project. He has been diagnosed as having a moderate Learning Disability and displays several Autistic-like traits but has never been offered an assessment for an Autism diagnosis. He finds making friends hard and struggles to read people and foresee their intentions. He first became involved in the Criminal Justice System aged 19, when he had moved into his own flat. He often speaks about 'buying friends' as a consequence of loneliness and social isolation, when he says that he would buy them things like coffees or sweets. He was befriended by a group of young men about the same age as him and they asked him to wait outside a house whilst they 'visited a friend'. He did not know that they were actually burgling the house and when the Police turned up his 'friends' fled the scene. When asked what he was doing, he said that he was waiting for some friends who had gone into the house and so he was arrested for aiding and abetting a burglary. Whilst in Police Custody the Police searched his flat and found two carrier bags of stolen goods that one of the group had asked him to 'look after whilst he moved house'. He was charged with aiding and abetting a burglary and handling stolen goods. In court he had little support and took legal advice to plead guilty to the lesser charge of aiding and abetting the burglary resulting in him getting a Criminal Record. A few years later he 'made friends' with a drug dealer who used his flat to sell drugs and coerced him into delivering drugs for him. He was arrested and charged with Possession of Class A Drugs with Intent to Supply. A few weeks later a neighbour tipped off the Police and they raided his flat and arrested everyone, including the young person who was made to lie face down and had his hands 'rip tied' behind his back. He often appears to still be traumatised by this experience. Once at the Police station he was told that they understood that he was being used and dropped the charges against him and then he was treated as a witness. He got support after this from his social worker who introduced him to KeyRing in an attempt to address his social isolation and stop him forming potentially exploitative relationships.

It was commented on in one of the Round Table events that young people who are Care Experienced or have a neurodiversity are often most vulnerable when they first move into their own accommodation or supported living and often get involved with other young people engaging in illegal or anti-social behaviour and then become involved in the Justice System. It was also suggested that a multi-disciplinary approach that increased, rather than decreased support at this point, and involved a wider group of professionals, might be an effective way to reduce both vulnerability and criminal behaviours at the point when people moved into their own accommodation. There are strong links between settled accommodation, thriving and staying out of trouble to support this proposition. ^{35, 36}

SPECIAL EDUCATIONAL NEEDS ROUND TABLE FEEDBACK

It was reported in the Round Table events that there isn't sufficient support for neurodiverse young people in the Education System, that there isn't enough funding and thresholds for what funding exists for additional support are getting higher and harder to reach. We were told that there is increasingly an expectation that schools will address issues that might be better met by support

³⁵ <https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2020/07/FINAL-Accommodation-Thematic-inspection-report-v1.0.pdf>

³⁶ <https://www.justiceinspectorates.gov.uk/hmiprobation/research/the-evidence-base-probation/specific-areas-of-delivery/accommodation/>

provision from outside the school. Schools said that they do not take such referrals lightly and only make them when there is a need, but these needs are often not then met.

The Special Educational Needs Co-ordinators (SENCOs) who took part in the Round Table discussions reported instances of pupils becoming involved in the Justice System both in relation to incidents that occurred outside of school, and also within the school environment, such as criminal damage and assaults on staff. It was highlighted that where young people were in Social Care, there was often a considerable amount of pressure from the Social Care System to press charges and criminalise the behaviours, such as where staff have been injured breaking up a fight. A former Appropriate Adult interviewed as part of this research reported that he had supported a significant number of young people who were in care, who were arrested for crimes such as criminal damage, often for something as insignificant as losing their temper and smashing a cup or breaking furniture. These were very often crimes that would almost certainly be dealt with within the family and without Police involvement if the young person was not in the Care System. The intersectionality between neurodiversity and being Care Experienced is discussed in more detail in a later section on 'Young People, Neurodiversity and Police Custody'.

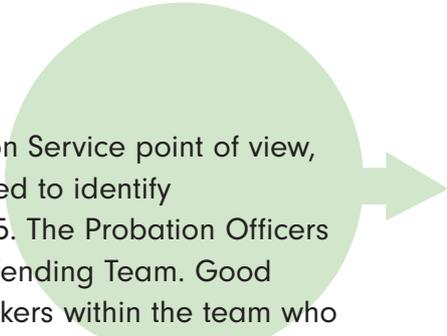
It had been reported earlier that school has been identified as an appropriate point to engage in preventative measures to reduce the potential for young people, especially those with a neurodiversity, from becoming involved in the Justice System. However, barriers identified during the Round Table discussion included that many children do not meet the criteria for multi-agency support when they need it most, and when multi-agency support is made available, it is *"not always wrapped around young people as effectively as it could be."*

EDUCATION, HEALTH AND CARE PLANS

An Education, Health and Care Plan (EHCP) is a legal document that describes a child or young person's special educational needs, their health and social support needs, and the outcomes that they would like to achieve. They are for children and young people aged up to 25 who need more support than is available through standard special educational needs support. A child or young person needs to have an Education, Health and Care needs assessment before an Education, Health and Care Plan can be issued, but any special provision described in an Education, Health and Care Plan must be provided by the child or young person's Local Authority.

The value of information contained in an Education, Health and Care Plan was discussed by Special Educational Needs Co-ordinators (SENCOs) during the Round Table event, particularly in relation to communication needs. However, it was felt that whilst they included information about wider health needs and could be used as the basis for informing holistic and health and care support, they are predominantly only used in relation to educational needs and that health and social care providers do not always commit to providing the support that the young people need and are entitled to. It was remarked that as a minimum, an Education, Health and Care Plan would enable professionals to understand what to say, what not to say, or how to say it better. It is often felt by parents the researchers have worked with, that there is little about moving into independent living or out of the family home in Education, Health and Care Plans either and that this is a real weakness.

There was no experience, either from the SENCOs or from the Youth Offending or Probation workers of Education, Health and Care Plans being taken into consideration in relation to offending behaviour.



The discussions during the Round Table event indicated that, from a Probation Service point of view, EHCPs are not well known about or understood, even though they can be used to identify educational, health and social support needs in young people aged up to 25. The Probation Officers who took part said that they do not routinely receive them from the Youth Offending Team. Good practice in Youth Offending Teams might therefore be to have education workers within the team who check each young person's history and identify those who do have Education, Health and Care Plans in place. This (and any other significant planning) could then be shared with Probation during the transition and incorporated into risk assessments.

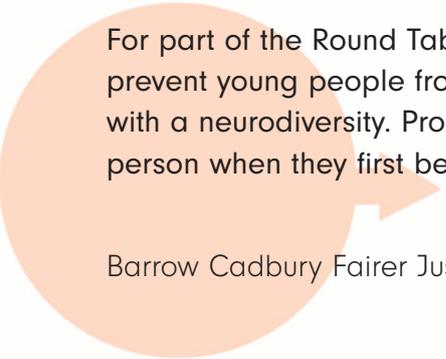
As Education, Health and Care Plans are co-produced with the young person, it was highlighted that this could be useful at several points in the Criminal Justice System, especially in Police Custody and when young people are working with the Youth Offending Team. If Appropriate Adults in Police Custody routinely asked all young people if they had, or had previously had, an Education, Health and Care Plan, then it might highlight otherwise potentially unidentified vulnerabilities such as communication needs. This proposal has been shared with the National Appropriate Adult Network who are going to look at suggesting that Appropriate Adults supporting young people ask them about EHCPs and highlight the benefits of disclosing that they have one. It has been suggested that it is important to ask specifically about EHCPs because many young people are embarrassed or feel shame about having an EHCP and so will often not disclose this information without being asked.

It was reported that EHCPs were only as good as the skills of the person that wrote them, and that highlighting communication difficulties and needs was one of the most valuable parts of an EHCP. It was felt that Speech and Language Therapist involvement in this part of the EHCP was essential:

“In terms of EHCPs they do need to be written by someone with a more specialist (SALT) background in order to inform other people who work with that YP, including in the Criminal Justice System, to say exactly what their communication needs are, rather than just “They regularly struggle to express themselves clearly” there should be a more specific description of the communication needs.”

Budgetary cuts have been reported as affecting SALT provision in all geographical areas and across both Education and the Criminal Justice System. In Youth Justice it was reported that many services had lost SALT provision within their immediate teams, whereas in the schools it was reported that many areas previously had a Service Level Agreement and could buy in a certain number of hours of SALT across an academic year. Now SALT provision has become a lower threshold service that is easier to refer to and free at the point of access, but this has made the waiting times much longer and the capacity for adequate support much more limited. This is a conundrum that many services face in times of austerity, whether to provide a low intensity provision to a wide number of people, or more intensive support to those with the greatest need.

PREVENTING OFFENDING IN THE FIRST PLACE



For part of the Round Table discussions and the in-depth interviews we focused on identifying ways to prevent young people from entering the Criminal Justice System in the first place, especially those with a neurodiversity. Probation staff estimated that half of their adult caseloads had been a young person when they first became involved in the Justice System, so targeting strategies at this point

could be a good use of resources. It was widely agreed that measures that reduced the likelihood of young people with a neurodiversity becoming involved in the Justice System would be better than improved support and responses to their needs once they were in the Justice System.

SCHOOL AND SCHOOL EXCLUSION

School exclusion and the ways this was responded to were highlighted as a 'red flag' event that should be a trigger for more effective interventions than are currently in place. One Youth Offending Service Worker described how:

"A common pattern in a couple of recent Serious Case Reviews, is that children have been excluded from school at Primary age, and being excluded at that age from a very nurturing environment is not good and it is not your average kid that this happens to ... The schools often have no idea how to work with kids who are Autistic or have ADHD, they just shove them in alternative provision³⁷ because they don't know how to work with them ... It might be good to stop and think at this point ... Primary age exclusion should be responded to with a more proactive response."

One of the young people interviewed during this project is an example of this. He was excluded from school in Year 6, the last year of Primary School when he was 11, and began to offend quite prolifically at 13 or 14 years old, a pattern that had continued. As previously described, he was later diagnosed by a forensic psychiatrist as having a mental age of 8 and was under CAMHS until he turned 18. Another Youth Offending Worker described how:

"Something needs to happen to stop these kids falling through the gaps. I've just finished working with a girl with Autism and it was clear that she had Autism and her sister has a diagnosis of Autism and she had been in her last year in school, labelled as a naughty kid and she has been shoved into her own alternative provision and she is doing much better there, but there is clearly an unmet diagnosis that needed to be sorted and it wasn't until the YOT team got involved and started pushing for it that she was put on the waiting list. But her Mum has been asking for help from the school for years and they would just say that she was naughty, and it wasn't until she became involved in the Criminal Justice System that the underlying cause was identified. Girls present differently to boys. So, if a YOT worker can identify what is happening, why can the schools not? This is quite frustrating."

This is acknowledged at local government level, where guidance on reducing offending in children under 14 states that:³⁸

"It is not appropriate for a criminal justice response to be required before young children receive the support they need. Needs should be assessed, and high-quality intervention considered at the earliest signs of aggressive, antisocial or disruptive behaviour."

³⁷ Alternative Provision is "education arranged by local authorities for pupils who, because of exclusion, illness or other reasons, would not otherwise receive suitable education; education arranged by schools for pupils on a fixed period exclusion; and pupils being directed by schools to off-site provision to improve their behaviour." Department for Education - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/942014/alternative_provision_statutory_guidance_accessible.pdf

³⁸ <https://www.local.gov.uk/publications/supporting-youngest-children-youth-justice-system-what-works-reduce-offending-and#3-what-works-for-children-under-the-age-of-14-in-contact-with-the-criminal-justice-system>

SPEECH AND LANGUAGE THERAPY

The importance of Speech and Language Therapists (SALTs) in identifying need and reducing the potential for offending was highlighted by several Criminal Justice practitioners in both the interviews and the Round Table event. Speech, language and communication difficulties affect the majority of young people in the Criminal Justice System^{15, 16} but it was noted that within mainstream education:

“Screening for speech and language needs [in Primary schools] stops at about age 8 so therefore you have a big proportion of children in Secondary School who are contending with issues that have never been identified.”

One Youth Offending Service described how they had previously had a SALT seconded into their service who had screened all the young people, but budget cuts meant that post was no longer funded and community routes to SALT were harder to refer into. For example, the local Child and Adolescent Mental Health Service (CAMHS) team has a SALT but only in their dual diagnosis service, so it is not available to most of the young people working with the Youth Offending Service, even though many of them were under a different part of CAMHS. Youth Justice workers noted that most young people within their services had speech and language needs, and so Speech and Language Therapy and support was viewed as critical. It was identified that a lack of Speech and Language Therapy support both reduced the potential for Youth Justice services to adequately address one of the common features of those involved in the Criminal Justice System, but also reduced the potential for neurodiversity to be recognised and appropriate referrals to be made. This is the same conclusion described in the recent report by HM Inspectorate of Probation, Estyn and Ofsted published in June 2022³⁹ which reported that:

“In one YOT, the SALT provided evidence that 70 per cent of the caseload had a speech and language problem, and that, of that group, 70 per cent had not previously been recognised as having these limitations. Throughout the inspection, we came across children with previously unidentified neurological conditions ... [and] frequently, we saw referral to specialist assessment for Autism spectrum disorder or attention-deficit hyperactivity disorder (ADHD) being initiated for the first time in the child’s life.”

As one Youth Offending Service worker described:

“Speech and language needs and neurodiversity can affect the practical tasks such as their ability to get to locations where they are supposed to meet workers and understand what they are expected to do, but it also affects their understanding of the Criminal Justice System itself as a whole – no matter how many times you say something or give people information, you find yourself back at the start, especially in respect of licence conditions.”

Youth Offending Service workers did report though, that previous speech and language training has enabled them to better recognise speech and language needs, without the need for a diagnosis and to adapt their communication and improve the ways that they work with young people.

³⁹ <https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2022/06/ETE-thematic-report-FINAL-English.pdf>

Similarly, the Special Educational Needs Co-ordinators (SENCOs) that took part in the Round Table discussion felt that within a school setting, teachers do not always understand speech and language issues and how to adapt their daily practice. They felt that their current Speech and Language Therapist (SALT) provision is very useful, but that more would be welcomed as currently *“they only really hit the top of the pyramid”*. However, the question was also raised that in the current times of budgetary cuts, whether SALTs be better used by delivering basic training in speech and language needs to enable a more universal approach by teachers and support staff, that was more communication friendly and supported more learners than just doing one-to-one work themselves.

AWARENESS TRAINING

A recommendation in the 2021 Criminal Justice Joint Inspectorate Report ‘*Neurodiversity in the Criminal Justice System*’⁴⁰ was that:

“A programme of awareness-raising and specialist training should be developed and delivered to staff working within criminal justice services. For frontline staff this learning should be broad-based, mandatory, raise awareness of neurodivergent conditions and how they impact on communication and be supported by practical strategies for working with neurodivergent people. More specialised training should be provided for staff whose roles require it. The programme should be developed and delivered in consultation with people who have personal experience of neurodivergence.”

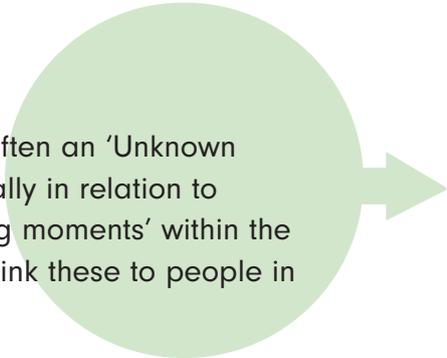
KeyRing and the Working for Justice group have previously delivered Learning Disability and Autism Awareness training to front-line staff across the Criminal Justice System as part of our ‘Equal and Fair’ Project. Our approach followed a model in which training was delivered by a lead trainer and an expert by experience from the Working for Justice group who had a neurodiversity and experience of the Criminal Justice System. Training was delivered over one day and covered: what is meant by neurodiversity?; prevalence of neurodiversity in the general population and the offender population; the implication of neurodiversity in the Criminal Justice System; adapting communication with people with a neurodiversity; and adaptations practitioners could make to ways of working within their area of the Criminal Justice System.

WHAT WE LEARNED

Feedback from participants was that this type of training was valued by participants and most agreed that it should be provided more widely across all areas of the Justice System.

Mandatory training would be an advantage as our training was usually delivered to a small cross section of staff, and those who attended disproportionately had a specific job role that included neurodiversity, such as Equalities Leads, or had personal experience of neurodiversity within their families.

⁴⁰ <https://www.justiceinspectors.gov.uk/hmicfrs/publications/neurodiversity-in-the-criminal-justice-system/>



We identified that knowledge and understanding about neurodiversity was often an 'Unknown Unknown' in that many people did not know what they did not know, especially in relation to indicators of neurodiversity. Consequently, many people had 'penny dropping moments' within the training when certain actions or behaviours were discussed, and they could link these to people in the Justice System that they had previously worked with or supported.

Learning about signs that people have difficulties with communication and strategies to overcome these were especially valued, with over 80% of participants reporting that the communication skills and strategies discussed on the course were very useful and relevant and practical to their role. It was identified that adapted communication strategies, such as taking a longer pause between spoken sentences, would benefit all people within the Criminal Justice System. However, given the recent suggestion in the Criminal Justice Joint Chief Inspectorate report by speech and language professionals that 80% of prisoners had speech, language or communication needs, this should not come as a surprise.

CONCLUSIONS AND RECOMMENDATIONS



TRANSITIONS FROM YOUTH JUSTICE TO ADULT JUSTICE

The primary focus of this research was to explore the period of transition from Youth Justice to Adult Justice services. There was little evidence that this was commonly a smooth or easy transition for many young people to make aged 18, particularly making the transition within Community Justice Services from working with the Youth Offending Team to working with the Probation Service. As identified in previous Barrow Cadbury Transitions to Adulthood reports, the maturity level that you can expect in an 18-year-old young person is not the same as older adults and can result in a mismatch between what is expected of young people and their actual ability. The present research found that this is seen as contributing to an increase in breaches of licence conditions at this point.

RECOMMENDATIONS

Some pilots of 'Transitions Teams' who support young people who are identified as requiring additional support during this period are currently underway. Separate evaluation of these pilots is taking place, but the feedback during this research from both the professionals and young offenders taking part was that this approach was effective in smoothing the transition. The national provision of such Transitions Teams to bridge the gap between Youth and Adult Justice should be considered if these initial pilot projects are successful.

PERSON-CENTRED APPROACHES

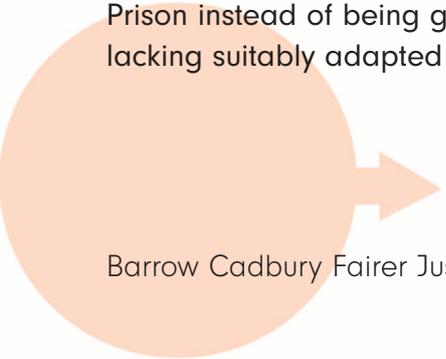
It was identified that Youth Justice approaches were more person-centred and they adapted to the needs of the individual more than Adult Probation approaches where the expectation was that the individual would adapt to meet the demands of the system.

RECOMMENDATIONS

The Social Model of Disability should be adopted across the Criminal Justice System so that barriers to full participation in the Justice System are removed to allow neurodiverse people to participate fully and effectively. Adult Justice Services, in particular Prisons and Probation should be supported and encouraged to undertake actions such as the National Autistic Society's 'Autism Accreditation' that encourage them to make the reasonable adjustments required to meet the needs of the neurodiverse people who they support.

ADAPTED GROUPWORK PROGRAMMES

It was highlighted that both young adults and those with a neurodiversity can struggle to participate in group work programmes in the community designed for older neurotypical adults. The consequences of this were that some young or neurodiverse people found it hard to comply with targets set by Probation and there was a suggestion that some neurodiverse people were sent to Prison instead of being given a community sentence as a consequence of this, despite Prisons also lacking suitably adapted group work programmes.



RECOMMENDATIONS

A recommendation made in the 2021 Criminal Justice Joint Inspectorate Report '*Neurodiversity in the Criminal Justice System*' is to improve the provision of screening and assessment tools across the Criminal Justice System to enable a better understanding of the prevalence of neurodiversity than is currently available. Once prevalence and the consequent extent of need for adapted group work programmes is established, sufficient programmes should be provided to meet this need.

TRANSITIONS FROM CHILDREN'S MENTAL HEALTH SUPPORT TO ADULT MENTAL HEALTH SUPPORT

It is identified that mental health support needs are more prevalent amongst people with a neurodiversity than in the neurotypical population. There is a greater duty of care to provide Child and Adolescent Mental Health Service support to under 18s, however adults must meet certain criteria to be eligible for support. Consequently, many young people find that the support for their mental health conditions stops when they reach 18, despite their needs not changing. Those whose support does continue can find that there is little support in making the transition to Adult Mental Health services and fail to engage with them.

RECOMMENDATIONS

Another recommendation made in the 2021 Criminal Justice Joint Inspectorate Report '*Neurodiversity in the Criminal Justice System*' is that Criminal Justice System agencies should work together and with other statutory and third sector organisations in a coordinated way, to understand and meet the needs of neurodivergent individuals in the community, prevent offending and support rehabilitation. Such a move towards more co-ordinated wrap-around services that meet neurodiverse young people's needs would help ensure that they are supported to engage with adult mental health services. Where no adult mental health support is available, frontline staff should support young people to access third sector organisations that can provide support.

AWARENESS TRAINING

It has been identified that better understanding and awareness of neurodiversity is required across the Criminal Justice System. This will better enable professionals to identify difficulties that might be related to undiagnosed neurodiversity and understand how to adapt their support and communication when difficulties are identified or diagnosed.

RECOMMENDATIONS

This research supports the recommendation made in the 2021 Criminal Justice Joint Inspectorate Report '*Neurodiversity in the Criminal Justice System*' that training designed and delivered by 'experts by experience' should be provided across the Criminal Justice System and that this training should be mandatory. As part of this it is recommended that more Neurodiversity Awareness Training is included in the training that frontline staff such as Youth Justice workers, Probation Officers, Prison Officers and Police Officers receive before they undertake these roles. Such training should include recognising indicators of neurodiversity, and how to adapt interactions, communication and service delivery to accommodate different needs.

EDUCATION, HEALTH AND CARE PLANS

Education, Health and Care Plans were identified as a useful but under-utilised document with too little focus on the health and care aspects compared to the educational component. Although they can be used with young people up the age of 25, there is evidence that they are not always being passed on to Adult services when people make the transition to them. This may account for why there was evidence of a poor understanding of what they were, the information they contained and how they could be used to provide better support to young adults.

RECOMMENDATIONS

Staff working with young adults in the Criminal Justice System should familiarise themselves with the contents of an Education, Health and Care Plan and should routinely ask young adults if they have had one as this may provide insight into communication and social needs that they may not otherwise disclose.

SCHOOL EXCLUSIONS

It was identified during the research that a disproportionate number of people in the Youth Justice System have been excluded from school at Primary age.

RECOMMENDATION

School exclusion at this stage in a young person's life should be viewed as a 'red flag' and systems should be in place to assess children in this situation to establish whether unmet needs relating to neurodiversity are contributing to any challenging behaviours.