



Assessment of People with Learning Difficulties and Disabilities in Police Custody

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Background

Regarding people with mental health problems and learning disability in the criminal justice system, Lord Bradley's report states that *'The Police stage in the offender pathway provides the greatest opportunity to effect change'*.¹

The Criminal Justice Joint Inspection Report published in January 2014 reveals that the identification of people with learning disabilities, both by Police Custody Staff and Custody Healthcare Staff, is extremely poor.²

Learning Disability (LD)^{*} is defined by WHO ICD-10 as 'a condition of arrested or incomplete development of the mind, which is especially characterised by impairment of skills manifested during the developmental period, skills which contribute to the overall level of intelligence, i.e. cognitive, language, motor and social abilities'.³

Estimates of learning disability in the UK adult prison population range from 1-10%.⁴ A study in the North East of England found that 7% of prisoners have an IQ less than 70, and a further 25% scoring between 70-79.^{†,5}

Another significant proportion have learning 'difficulties' of a lower than average IQ and

* Learning disability is the terminology used in this document. ICD-10 retains the older terminology "mental retardation" which continues to be used in the USA. The internationally recognised terminology that is increasingly being used in the UK is "intellectual disability."

† Part of the diagnostic criteria for a learning disability is an IQ less than 70. IQ between 70 and 79 are frequently referred to as borderline for learning disability and are associated with impaired educational abilities and some maladaptive behaviours in common with people with lower IQs.

associated issues such as dyslexia which causes problems for them in the criminal justice system.⁶

Learning disability is associated with significant psychiatric and physical co-morbidity. More severe learning disabilities frequently co-exist with genetic syndromes and multiple physical disabilities. Offenders with learning disability tend to have IQ scores nearer the low normal level⁷ although a high rate of co-morbidity remains. One quarter to one third meet the criteria for autism.⁸

Epilepsy is also common. Schizophrenia is three times more common.^{9,10} Bipolar disorder, depression, ADHD, anxiety disorders and personality disorders are also overrepresented. Often these conditions are unrecognised because of 'diagnostic overshadowing' of the learning disability. *Contact with the Police may be because of a new presentation of one of these conditions and Forensic Physicians and Health Care Professionals (HCPs) should consider this.*

People with learning disabilities come into contact with the Police in many ways. Police may be called to behavioural disturbances in family homes or crises in care placements. Acquiescence and suggestibility renders individuals vulnerable to be drawn into offending behaviours. Challenging behaviours associated with the learning disability may lead to offences such as assault and damage to property. Poor awareness of societal norms and boundaries can lead to offending of all types. Sexual offending¹¹ and fire setting is not uncommon¹²; learning disability should be considered in detainees arrested for these offences. Although rare, homicide by people with learning disability has also been reported.¹³

The identification of learning disability is poorly served by Police risk assessments.¹⁴ These are not standardised from Force to Force and are generally conducted without adaptation for detainees who do not fully understand the questions or require privacy. As referral for healthcare assessment is made on the basis of the risk assessment there is likely to be a substantial proportion of detainees with a learning disability that are never seen by a healthcare professional. Doctors involved in the training of Custody staff should ensure that learning disability awareness is included.

Some screening tools for learning disability have been developed to ascertain which people require further assessment. The Learning Disability Screening Questionnaire (LDSQ) takes 5-10 minutes with sensitivity and specificity from 80-90%.¹⁵ The Hayes Ability Screening Index (HASI) performs similarly. It entails more objective tests than the LDSQ and takes a little longer to complete.¹⁶ However these tools will not provide an assurance about the presence or absence of conditions such as autistic spectrum disorder/ADHD/acquired brain injuries or associated psychiatric conditions. Their use is copyrighted and each use entails a cost.

A recent HMIC report found that only 15 of 36 (58%) cases of *learning disability* identified by Probation Services had been previously identified by Police.¹⁷ Taken with the potential for elevated rates of learning disability in the prison population the FFLM recommends that a screen for LD is carried out for every detainee that a healthcare professional is asked to see.

With the ongoing development of liaison and diversion services it is anticipated that in due course more expertise will be available to support Custody Healthcare Staff and Police in the identification, and onward management of

detainees with learning disability, and the potential impact upon the Criminal Justice processes.

Identification of detainees with learning disability

Organisations providing healthcare services to Police forces should ensure that all healthcare staff are trained in learning disability awareness and to have skills in completing initial screening. A general principle when assessing people with learning disabilities and difficulties is that questions are kept as simple as possible and that understanding is frequently checked. People with LD are often suggestible, keen to please, and prone to simple 'yes' or 'no' answers that hide the level of impairment.

Although asking a detainee about contact with Learning Disability services will detect some people with LD, in isolation it will miss a proportion of impaired detainees. This is because community LD services tend to cater only for people with IQs under a strict cut-off of 70.

For all detainees, screening questions around schooling and qualifications as well as employment history should be asked to assure the HCP that this is not a person that requires more detailed screening. The ability to read and write is a good discriminator only if actually asked to demonstrate these skills. However the custodial population have often left school early, without formal qualifications due to behaviour issues and have struggled to find work. These cases should prompt a careful search for an underlying learning disability.

The table on page 3 provides some useful pointers in ascertaining the presence of a learning disability (adapted from Bradley and Lofchy (2005)).

Early Development

1. What year did you get to in school? How old were you when you left? Did you repeat any years?

(Note many of the custodial population will have been excluded for behavioural problems. However behind many behavioural issues will be a learning disability that has been unrecognised by education services)

2. Were you told you had special educational needs at school? Did you need extra help or go to a special school? Did you have any tests by learning disability workers? What did they say?

(This may be attendance at an SEN school, schooling in a unit attached to a mainstream school/support in lessons within mainstream etc.)

Current Functioning

3. Can you tell the time? (ask for demonstration)

4. Do you go out alone? Can you catch a bus or a train alone? Get the person to describe a journey they have undertaken recently.

5. If you are going to a new place, do you need someone to show you how to get there?

6. Can you read a newspaper? Which one? What sections do you like? Tell me about something you have read recently? Similar questions with television – can they repeat a plot of a soap story/film?

7. Do you look after your own money? How (and who) pays your bills?

8. How much does a bag of crisps cost? A can of cola? A house? This will reveal poor money skills and an inability to estimate well.

9. Do you have a job? What do you do? Do you need help to do it?

References

1. Great Britain. Parliament. (2009) Lord Bradley's review of people with mental health problems or learning disabilities in the criminal justice system London, UK: Department of Health.
2. Criminal Justice Joint Inspection. (2014) A joint inspection of the treatment of offenders with learning disabilities within the criminal justice system - phase 1 from arrest to sentence. Manchester, UK: HMI Probation.
3. World Health Organisation. (1992) The ICD-10 Classification of Mental and Behavioural Disorders: Clinical descriptions and diagnostic guidelines. Geneva, Switzerland: WHO.
4. Loucks, N. (2007) No one knows: offenders with learning difficulties and learning disabilities. The prevalence and associated needs of offenders with learning difficulties and learning disabilities. London, UK: Prison Reform Trust.
5. Mottram, P. G. (2007) HMP Liverpool, Styal and Hindley Study Report. Liverpool: University of Liverpool.
6. Talbot, J. (2007) 'No One Knows: offenders with learning difficulties and learning disabilities', *British Journal of Learning Disabilities*, 35, pp. 154-61.
7. Barron, P., Hassiotis, A. and Banes, J. (2002) 'Evaluation of a group intervention for convicted arsonists with mild and borderline intellectual disabilities', *Journal of Intellectual Disability Research*, 46, (6), pp. 454-463.
8. Bradley, E. and Lofchy, J. (2005) 'Learning disability in the accident and emergency department', *Advances in Psychiatric Treatment*, 11, pp. 45-57.
9. Deb, S., Thomas, M., & Bright, C. (2001) Mental disorder in adults with intellectual disability. 1: Prevalence of functional psychiatric illness among a community-based population aged between 16 and 64 years. *Journal of Intellectual Disability Research* 45(6) pp 495-505.
10. Wyatt JP, Squires T, Norfolk G, Payne-James J. (2011) *Oxford Handbook of Forensic Medicine*.
11. Lindsay, W. R. (2002) 'Research and literature on sex offenders with intellectual and developmental disabilities', *Journal of Intellectual Disability Research*, 46, pp. 74-85.
12. Taylor, J. L., Thorne, I., Robertson, A. and Avery, G. (2002) 'Evaluation of a group intervention for convicted arsonists with mild and borderline intellectual disabilities', *Criminal Behaviour and Mental Health*, 12, (4), pp. 282-293.
13. Glaser, W. and Deane, K. (1999) 'Normalisation in an abnormal world: A study of prisoners with an intellectual disability', *International Journal of Offender Therapy and Comparative Criminology*, 43, (3), pp. 338-356.
14. McKinnon, I. G. and Grubin, D. (2013) 'Health screening of people in police custody - evaluation of current police screening procedures in London, UK', *Eur J Public Health*, 23, (3), pp. 399-405.
15. McKenzie, K. and Paxton, D. (2006) 'Promoting access to services: the development of a new screening tool', *Learning Disability Practice*, 9, (6), pp. 17-21.
16. Hayes, S. C. (2002) 'Early intervention or early incarceration? Using a screening test for intellectual disability in the criminal justice system', *Journal of Applied Research in Intellectual Disabilities*, 15, pp. 120-128.
17. HMI Probation, HMI Constabulary, HM Crown Prosecution and Inspectorate, Care Quality Commission (2014) A joint inspection of the treatment of offenders with learning disabilities within the criminal justice system.

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