Faculty of Forensic & Legal Medicine

Assessment of people with intellectual disability and learning difficulties in police custody

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Background

People with mental health problems and intellectual disability (ID) are overrepresented in the criminal justice system (CJS). The Criminal Justice Joint Inspection Report published in January 2014 revealed that the identification of people with ID, both by Police Custody Staff and Custody Healthcare Staff, is extremely poor.[1] This has been reinforced by empirical research within custody settings[2, 3] and more recently by the Equality and Human Rights Commission (2020).[4] Lord Bradley's 2009 report states that 'The Police stage in the offender pathway provides the greatest opportunity to effect change'.[5]

The identification and assistance of people with ID in Police Custody has been brought into focus more recently. Lord Adebowale's Independent Commission on Mental Health and Policing[6] and Dame Elish Angiolini's Independent Review of Deaths and Serious Incidents in Police Custody[7] both identify and make recommendations for training for people working in this environment. The Liaison and Diversion Standard Service Specification stipulates that the development of appropriate case identification and referral processes for people with ID.[8]

Intellectual Disability

ID* is described in the World Health Organization's International Classification of Diseases (ICD) version 11 as a 'disorder of intellectual development' and is characterised as a condition 'originating during the developmental period characterised by significantly below average intellectual functioning and adaptive behaviour'.[9] The UK prevalence of ID is estimated to be 2 – 2.5%[10], but there are regional differences.

Estimating the prevalence of ID in the wider CJS is complicated due to variations in methodological approaches.[11] However, it is generally estimated to be approximately 7%.**[, 12, 13]

Estimates in police custody are also high compared to population estimates (Gulati et al., 2020) and vary from 3-7% which underlines its significance in this arena.[2, 3, 14, 15]

Another significant proportion have 'learning difficulties'*** and associated conditions such as dyslexia and ADHD. Although they remain in the normal intellectual functioning range, such difficulties can still cause a variety of issues during criminal justice processes.[11]

Autism and associated conditions

The needs of autistic people in contact with the CJS are now starting to receive more attention. Whilst approximately 32% of people with ID also meet the criteria for autism,[14] it also needs to be acknowledged that autism exists in individuals with normal intellectual functioning. The core features of such disorders include difficulties in social and reciprocal communication, and thus this can have significant ramifications for situations where there is verbal interaction such as a formal police interview.

For further advice and guidance about autism and the needs of autistic people in the criminal justice system please see: *Criminal Justice - a guide for police officers and professionals*.

Other co-occurring disorders

ID is associated with significant psychiatric and physical co-morbidity.[15] As the severity of ID increases, so there is a greater propensity for co-existing genetic syndromes and multiple physical disabilities. Epilepsy is a commonly encountered health problem among all people with ID.[16] Offenders with ID tend to have IQ scores nearer the borderline intellectual functioning (IQs around or just above 70).[17] Nevertheless, despite a less severe degree of ID, a high rate of co-morbidities remain which may impact on the person's presentation.

* Intellectual disability is the internationally accepted terminology, and is used in this document. The term Learning Disability is still frequently used in the UK by service users, their families/ carers, as well as clinicians, although 'intellectual disability' is increasingly being used in the UK.

** Part of the diagnostic criteria for intellectual disability is an IQ less than 70. IQ between 70 and 79 is frequently referred to as borderline intellectual functioning and are associated with impaired educational abilities and some maladaptive behaviours in common with people with ID

*** It is important not to confuse Learning Disability and Learning Difficulties. Learning Disability is a UK term synonymous with Intellectual Disability; organisations supporting such people are moving over to that terminology. Learning Difficulties describes educational issues such as dyslexia, dyscalculia and dyspraxia, but may also include problems relating to deficits of attention and hyperactivity, where there is no impairment of general intelligence.

Additionally, mental health conditions are highly prevalent among people with ID, and can be exacerbated due to cognitive vulnerability in CJS settings. Schizophrenia is three times more common in people with ID;[18] bipolar disorder, depression, ADHD, anxiety disorders and personality disorders are also overrepresented. Sometimes there can be 'diagnostic overshadowing' whereby either mental health or physical health problems are unrecognised due to the existence of the ID, or vice-versa.

Contact with the police

People with ID and autistic people can encounter the Police in several ways. Contact may occur because of presenting mental health difficulties, and Health Care Professionals (HCPs) should consider this. The police may be called to behavioural disturbances in family homes or crises in care placements. Challenging behaviours associated with the intellectual 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. Although sexual offending and fire setting have received considerable academic attention with respect to the need for adapted treatment strategies, it would be incorrect to conclude that these offences are committed more commonly by people with ID.[19] Acquiescence and suggestibility may also render individuals vulnerable to criminal exploitation. Examples of this have been seen in clinical practice through 'mate crime' and the practice of 'cuckooing' to facilitate 'county lines'.[20] Although very rare, homicide by people with ID has also been reported.[21]

Approaches to identification

The identification of ID and autism is generally poorly served by generic police risk assessments.[3] Whilst guidance exists in the College of Policing's Approved Professional Practice (APP), this does not directly address the identification of people with ID. There also continues to be variation in risk assessment approaches across UK police forces, often dependent upon the custody software system adapted by the individual force. Furthermore, risk assessments tend to be conducted without adaptation for detainees who do not fully understand the questions or require privacy. As referral for healthcare assessments are frequently made based on the risk assessment there is likely to be a substantial proportion of detainees with ID who are never seen by a HCP. Training for custody staff should therefore ensure that ID and autism awareness is included.

Identification of detainees with ID

Screening tools for intellectual disability have been developed to ascertain the likely presence of ID and which people may require further diagnostic assessment. The Learning Disability Screening Questionnaire (LDSQ) takes 5-10 minutes with sensitivity and specificity between 80-90%.[22] The Hayes Ability Screening Index (HASI) performs similarly. It entails more objective tests than the LDSQ and takes a little longer to complete.[23]

More recently, the Rapid Assessment of Potential Intellectual Disability (RAPID) screen has been developed.[24] However, these tools will not provide absolute assurance about the presence or absence of conditions such as autistic spectrum disorder/ADHD/acquired brain injuries or associated psychiatric conditions. Developed by Newcastle University, the HELP-PC risk assessment which is being used by some police forces contains items which have been shown to have discriminatory power in the detection of people with ID.[3]

Liaison and diversion (L&D) services are now becoming well established within police custody and court settings. Whether or not they are having the desired impact on offending and diversion of mentally disordered offenders has not yet been fully established.[25] It is also uncertain whether L&D services have the requisite skills to identify and signpost those with LD.[26, 27] It is likely that specific training will be required not only for police staff, but also for the range of health care professionals working in police custody.

General approach

Organisations providing healthcare services to Police forces and Courts should ensure that all healthcare staff are trained in LD and autism awareness (Health and Social Care Act 2022),[28] and additionally have skills in completing initial screening. A general principle when assessing people with LD and autism is that questions need to be 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 their level of impairment.

It will be necessary to make some reasonable adjustments (Equality Act 2010)[29] to the approach to people with LD or autism with adaptations to personal communication style. For example, using simple language in short sentences and avoiding abstract concepts, idiom, and metaphor. People with LD or Autism may present with rigid robotic answers to questions, have poor eye contact, and lack spontaneous speech. They may also struggle to understand abstract concepts, double negatives, and other metaphors. The use of jargon should be minimised as these terms are often exclusively related to the CJS and have little meaning in everyday language. There should also be consideration for the impact of the custody environment due to the sensory profiles e.g., handcuffs/noise/bright lights than might negatively impact on their ability to engage.

Asking a detainee about contact with Learning Disability services (this tends to be the terminology they use) will detect some people with ID, but in isolation it will miss a large proportion of impaired detainees. Many do not use such services8 as in some areas they cater only for people who have moderate to severe ID, or those unable to use mainstream services even with reasonable adjustments. Some ID services also operate with strict referral criteria for people with IQs under 70; this excludes those with offending behaviour who are on the borderline of intellectual functioning, but who require an adapted approach to offence related treatment and prevention.

For all detainees, screening questions around schooling and qualifications as well as employment history should be asked to assure the police staff or HCP that this is not a person that requires more detailed screening. The ability to read and write is a good discriminator if individuals are 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 intellectual disability. It should also be noted that elsewhere in the CJS, people of Black, Asian or Ethnic Minority (BAME) backgrounds with LD are less likely to be identified as having ID than their white counterparts.[30]

What to do if you suspect person to have ID or Autism

If you suspect that an individual has an intellectual disability, then there are steps that you can take to assist them and ultimately the justice process.

Level	Actions	Rationale
Statutory obligations	• Provide an Appropriate Adult • Make Reasonable Adjustments	• Safeguarding • Facilitate equitable access to justice
Service level adjustments	• Have accessible information available such as EasyRead, Audio or large print. • Flag and alert other professionals about the learning disability • Refer to Liaison & Diversion services/Health Care Professional	• Facilitate understanding and equitable access to justice. • Information sharing
Interpersonal skills	Communication: • Use short, simple sentences. • Allow time to process information and formulate replies. • Avoid technical words, jargon, idiom and metaphor. • Allow frequent rest breaks. • Check understanding through paraphrasing. • Beware the environment could increase distress and reduce effective communication (flicking lights, noise, temperature etc.) Make changes where possible. • Behaviours such as hand flapping, spinning, rocking, and humming can be self-soothing	• Facilitate communication and understanding, reduce suggestibility and acquiescence

The table below provides some useful pointers in ascertaining the presence of a learning disability (adapted from Bradley and Lofchy (2005)).[31]

Early Development	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)
	Were you told you had special educational needs at school or were you given a 'Statement'? Did you need extra help or go to a special school? Did you have any tests by learning disability workers or psychologists? What did they say? (This may be attendance at a Special Educational Needs school, schooling in a unit attached to a mainstream school/ support in lessons within mainstream or getting a Statement of Special Educational Needs etc.)
Current Functioning	Can you tell the time? (Ask for demonstration using an analogue clock or watch)
	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.
	If you are going to a new place, do you need someone to show you how to get there?
	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?
	Do you look after your own money? How (and who) pays your bills? How are you managing at home? Who does your laundry?
	How much does a packet of crisps cost? A can of cola? A house? This will reveal poor money skills and an inability to estimate well.
	Do you have a job? Did someone help you get it? What do you do? Do you need help to do it?
	Can you use a mobile phone? Do you have one? Who pays the bills?
Things to look out for	Rigid robotic answers to questions
	Unusual eye contact (too much or none)
	Lack of spontaneous speech
	Inability to follow the flow of conversation (in absence of obvious intoxication)
	There should also be consideration for the impact of the custody environment due to the sensory profiles e.g., handcuffs/noise/bright lights than might negatively impact on people with LD or Autism.

References

1. 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.
2. Young S, Goodwin E, Sedgwick O, Gudjonsson GH (2013). The effectiveness of police custody assessments in identifying suspects with intellectual disabilities and attention deficit hyperactivity disorder. *BMC Medicine*; 11:248.3.
3. McKinnon I, Thorp J, Grubin D (2015). Improving the detection of detainees with suspected intellectual disability in police custody. *Advances in Mental Health and Intellectual Disabilities*; 9(4):174-85.
4. Human Rights Commission (2020). *Inclusive justice: a system designed for all* (accessed 16 April 2024)
5. Department of Health (2009). *Lord Bradley's review of people with mental health problems or learning disabilities in the criminal justice system*. London, UK: Department of Health.
6. Lord Victor Adebowale (2013). *Independent Commission on Mental Health and Policing*. London, UK: House of Lords.
7. Angiolini E (2017). *Report of the Independent Review of Deaths and Serious Incidents in Police Custody*. London, UK: Home Office.
8. NHS England & Improvement (2019). *Liaison and diversion standard service specification 2019* (accessed 24 April 2024)
9. World Health Organization (2020). *ICD-11 for Mortality and Morbidity Statistics (version 09/2020)* [accessed 16 October 2020].
10. Public Health England (2016). *Learning Disabilities Observatory People with learning disabilities in England 2015: Main report*. London, UK: Public Health England.
11. Marshall-Tate K, Chaplin E, McCarthy J and Grealish A (2020). A literature review about the prevalence and identification of people with an intellectual disability within Court Liaison and Diversion Services. *Journal of Intellectual Disabilities and Offending Behaviour*, 11(3), pp.159-169.
12. 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.
13. Hellenbach M, Karatzias T, Brown M (2017). Intellectual Disabilities Among Prisoners: Prevalence and Mental and Physical Health Comorbidities. *Journal of Applied Research in Intellectual Disabilities*; 30(2):230-41.
14. NHS Digital (2023). *Health and care of people with Learning Disabilities, experimental statistics 2022 to 2023* (accessed 30 April 2024)
15. Cooper SA, McLean G, Guthrie B, McConnachie A, Mercer S, Sullivan F, et al. (2015). Multiple physical and mental health comorbidity in adults with intellectual disabilities: population-based cross-sectional analysis. *BMC Fam Pract*; 16(1):110.
16. Bowley C, Kerr M (2000). Epilepsy and intellectual disability. *J Intell Disabil Res*; 44:529-43.
17. Chester V, Tharian P, Slinger M, Varughese A and Alexander RT (2023). *Overview of offenders with intellectual disability*. In: McCarthy JM, Alexander RT, Chaplin E (2023). *Forensic aspects of neurodevelopmental disorders*, pp.24-33. Cambridge, UK.: Cambridge University Press.
18. 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. *J Intell Disabil Res*; 45(6):495-505.
19. Jones J (2007). Persons with intellectual disabilities in the criminal justice system: review of issues. *Int J Offender Ther Comp Criminol*; 51(6):723-33.
20. Simmonds R, Burke C, Ahearn ER and Kousoulis A (2018). *A Life without Fear? A Call for Collective Action against Learning Disability Hate Crime*. Mental Health Foundation: London.
21. Glaser W, Deane K (1999). Normalisation in an abnormal world: A study of prisoners with an intellectual disability. *Int J Offender Ther.*; 43(3):338-56.
22. McKenzie K, Michie A, Murray A, Hales C (2012). Screening for offenders with an intellectual disability: the validity of the Learning Disability Screening Questionnaire. *Research in developmental disabilities*; 33(3):791-5.
23. Hayes SC (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(2):120-8.
24. Ali S, Galloway S (2016). Developing a screening tool for offenders with intellectual disabilities - the RAPID. *J Intellect Disabil*; 7(3):161-70.
25. Kane E, Evans E, Mitsch J, Jilani T (2020). Are Liaison and Diversion interventions in policing delivering the planned impact: A longitudinal evaluation in two constabularies? *Criminal Behaviour and Mental Health*; 30(5):256-67.
26. Forrester A, Samele C, Slade K, Craig T, Valmaggia L (2017). Demographic and clinical characteristics of 1092 consecutive police custody mental health referrals. *J Foren Psychi Psych*; 28(3):295-312.
27. MMcKenna D, Murphy H, Rosenbrier C, Soulsby A, Lyall A, Keown P, et al (2019). Referrals to a mental health criminal justice Liaison and diversion team in the North East of England. *The Journal of Forensic Psychi Psych*; 30(2):301-21.
28. United Kingdom. *Health and Care Act (2022)*, C31.
29. United Kingdom. *Equality Act (2010)*, C15.
30. Lammy D (2017). *An independent review into the treatment of, and outcomes for Black, Asian and Minority Ethnic individuals in the criminal justice system*. London, UK: UK Government.
31. Bradley E, Lofchy J (2005). *Learning disability in the accident and emergency department. Advances in Psychiatric Treatment*; 11(1):45-57

Additional references

Equality and Human Rights Commission. (2020). *Inclusive justice: a system designed for all*. Equality and Human Rights Commission. (accessed 16 April 2024)

McCarthy, J., Chaplin, E., Harvey, D., Tate-Marshall, K., Ali, S. and Forrester, A. (2023). Recognising & responding to defendants with intellectual disability in court settings. *Forensic Science International: Mind and Law*, *4*, p.100116.

Gulati, G., Kelly, B.D., Cusack, A., Kilcommins, S. and Dunne, C.P. (2020). The experience of law enforcement officers interfacing with suspects who have an intellectual disability–A systematic review. *International Journal of Law and Psychiatry*, 72, p.101614.

Produced by:

Dr Iain McKinnon, Consultant Forensic Learning Disability Psychiatrist, Cumbria Northumberland Tyne and Wear NHS Foundation Trust/ Senior Clinical Lecturer, Newcastle University

Salma Ali, Registered & Chartered Forensic Psychologist, North London Forensic Service, Barnet, Enfield & Haringey NHS Trust

Karina Marshall-Tate, Consultant Nurse Learning Disabilities, South London and Maudsley NHS Foundation Trust/ Senior Lecturer & Researcher, London South Bank University

on behalf of the Faculty of Forensic & Legal Medicine

Send any feedback and comments to forensic.medicine@fflm.ac.uk