

**Howard League for Penal Reform's response to the government's National Autism Strategy: 'Think Autism'**

**May 2019**

**Summary**

1. The Howard League acknowledges that the situation of people with Autism in the criminal justice system is referred to in the current strategy but believes it is currently insufficient to make a meaningful impact on the difficulties they face. A much more robust approach is required.
2. People with Autism in the criminal justice system often find aspects of the process and the conditions of custody are ill-suited to the needs of many people with Autism, which can make the process traumatic, unduly punishing and unfair. The prison environment is not conducive to supporting children and young adults with autism. For those with autism, prison becomes more than a deprivation of liberty.
3. Our experience of working with children and young adults with Autism illustrates these difficulties. Take for example, a child with Autism who was admonished for not looking at the jury during evidence or a young adult with Autism forced to share a cell or punished for not attending classes in prison that he found overwhelming. Symptoms that can be managed when at liberty cannot be managed effectively under the constraints of the criminal justice system.
4. Special consideration needs to be given to the early identification of children and young people who suffer from Autism in the criminal justice process to ensure fairness and to prevent unduly harsh punishments being imposed.
5. Given the potential adverse impact that the criminal justice system can have on people with Autism, the consultation process must actively engage with this group and those who support them.

## **1. About the Howard League for Penal Reform**

- 1.1 Founded in 1866, the Howard League is the oldest penal reform charity in the world. The Howard League has some 12,000 members, including prisoners and their families, lawyers, criminal justice professionals and academics. The Howard League has consultative status with both the United Nations and the Council of Europe. It is an independent charity and accepts no grant funding from the UK government.
- 1.2 The Howard League works for less crime, safer communities and fewer people in prison. We achieve these objectives through conducting and commissioning research and investigations aimed at revealing underlying problems and discovering new solutions to issues of public concern. The Howard League's objectives and principles underlie and inform the charity's parliamentary work, research, legal and participation work as well as its projects.
- 1.3 Our legal team works directly with children and young adults in prison. This response focuses on the difficulties faced by children and young people in prison in light of our expertise in this area and the decision to extend the strategy to cover children.
- 1.4 The Howard League would welcome the opportunity to provide further information about any of the points below.

## **2. The difficulties autistic children and young adults face in the criminal justice system**

- 2.1 Most people with ASD will struggle with social communication and reciprocal interaction.<sup>1</sup> These struggles are all the more pronounced within a secure setting: there is a 'mismatch between an individual's difficulties with the social demands and physical constraints of such an environment'.<sup>2</sup> Their speech is often blunt and lacking in emotional intonation.<sup>3</sup>
- 2.2 This can also affect how people with ASD are perceived in formal criminal justice processes, such as police interviews, giving evidence and being interviewed for pre-sentence reports. Further, a diagnosis allows adaptations to be put into place to meet the needs of an autistic young person. For example, when being interviewed by the police, an autistic person may appear indifferent or emotionally detached from the issue.<sup>4</sup> It is important that the interviewer is aware that the young person is autistic otherwise the police may form 'negative impressions'.<sup>5</sup> The same applies to jurors in a court room setting when an autistic young person is questioned.
- 2.3 These concerns are borne out by the Howard League's experiences. For example, the Howard League was contacted by a professional who was concerned that a

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<sup>1</sup> Murphy, D. and Allely, C. 2019. Autism spectrum disorders in high secure psychiatric care: a review of literature, future research and clinical direction, *Advances in Autism*.

<sup>2</sup> Ibid, p.3

<sup>3</sup> Murphy, D. 2018. Interviewing individuals with an autism spectrum disorder in forensic settings, *International Journal of Forensic Mental Health*.

<sup>4</sup> Murphy, D. 2018. Interviewing individuals with an autism spectrum disorder in forensic settings, *International Journal of Forensic Mental Health*.

<sup>5</sup> Ibid, p.6

young person with autistic traits was admonished by a judge for not looking at the jury while given evidence. There were concerns that this instruction was not only difficult for him due to being on the autistic spectrum but also due to his young age. It could have affected the quality of his evidence or how he was perceived by those judging him. The Howard League assisted a young adult in a Young Offenders' Institution with autism who was charged with breaking prison rules. He was adjudicated before a District Judge who visited the prison. During the adjudication the young person kept interrupting the judge to ask questions about their charge sheet as he was very concerned about small inaccuracies. The judge concluded that the young person was being rude by not waiting his turn to speak. The fact that he was autistic had not been flagged by the prison and the judge was only made aware of his needs when the lawyer from the Howard League raised it. In our experience, hearings and court appearances can be particularly stressful for people with autism. The Howard League represented a young adult with ASD at a parole hearing. The Parole Board made adjustments for the young adult at our request, including permitting an intermediary to attend. Even so, the young adult struggled to understand the complexities of the parole process. For example, the uncertainty surrounding dates for an adjourned hearing and who would be asking them questions. This uncertainty was a source of great anxiety for the young adult.

- 2.4 The difficulties young autistic people face are compounded by with the firmly established evidence base that young adults are still developing physically and psychologically until their mid-twenties.<sup>6</sup> Young adults have a greater capacity for change in a shorter period of time than older adults<sup>7</sup>. They often retain the vulnerabilities of childhood.<sup>8</sup> In R v Clarke [2018] EWCA Crim 185 the Lord Chief Justice observed:

“Reaching the age of 18 has many legal consequences, but it does not present a cliff edge for the purposes of sentencing. So much has long been clear... Full maturity and all the attributes of adulthood are not magically conferred on young people on their 18<sup>th</sup> birthdays. Experience of life reflected in scientific research (e.g The Age of Adolescence: [thelancet.com/child-adolescent](http://thelancet.com/child-adolescent); 17 January 2018) is that young people continue to mature, albeit at different rates, for some time beyond their 18<sup>th</sup> birthdays. The youth and maturity of an offender will be factors that inform any sentencing decision, even if an offender has passed his or her 18<sup>th</sup> birthday.”

- 2.5 In our legal work at the Howard League, we regularly support young people in the criminal justice system who suffer on both fronts: they may not yet be fully matured and may also be autistic.
- 2.6 Within the prison setting, communication difficulties can result in prison staff misunderstanding the young person's intentions. Staff may perceive an individual's behaviour to be the result of an anti-social personality as opposed to a result of their autism. For example, we were contacted by the mother of an autistic young person at in a Young Offender's Institution. Her son was 20 years old, Black British

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<sup>6</sup> Written evidence submitted by the Royal College of Psychiatrists to the young adult offenders inquiry, HC 937, 13 October 2015

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justicecommittee/the-treatment-of-young-adults-in-the-criminal-justice-system/written/22190.html>

<sup>7</sup> (R v Lang [2005] EWCA Crim 2864, paragraph 17(vi))

<sup>8</sup> Centre for Mental Health (2014) *The Bradley Commission, Young adults (18-24) in transition, mental health and criminal justice*

[https://www.centreformentalhealth.org.uk/sites/default/files/2018-09/briefing\\_Bradley\\_youngadults.pdf](https://www.centreformentalhealth.org.uk/sites/default/files/2018-09/briefing_Bradley_youngadults.pdf)

Caribbean and over six feet tall. He had been diagnosed with autism when he was a young child. Whilst the prison was aware of his diagnosis and a report had been written by the prison psychologist confirming his diagnosis, the impact on his behaviour and how best to manage him in light of his autism, these recommendations were not put into practice. In reality he spent prolonged periods of time in his cell in conditions amounting to solitary confinement as the prison could not find any purposeful activity that he could take part in and reasonable adjustments were not made to enable him to effectively participate. On one occasion, this young person contacted us to tell us that he had been removed from a workshop run at the prison. He was told that he had not been working hard enough. When we broke this down with him, he said he did not understand how this could be the case as he had not been given any instructions about what to do during the workshop. He was very disappointed and frustrated about being sacked from the workshop as it meant that once again he had to go back to spending over 22 hours a day in his cell. The Howard League contacted the prison about this: while the prison acknowledged his needs, it was clear it was simply not equipped to deal with them. The same young person has regularly been punished and adjudicated for poor behaviour: it is possible that staff who do not have a full understanding of his needs may wrongly attribute his behaviour.

- 2.7 In one of the most extreme examples, we worked with an autistic young adult who was so distressed by being detained in a prison and forced to share a cell with a stranger, with only limited opportunities to call his mother, he self-harmed prolifically for months. There was a medical consensus that he ought to have been placed in hospital under the Mental Health Act 1983 and he wanted this to happen but there was no bed for many months. The Howard League made numerous attempts to contact the prison and seek reasonable adjustments, including setting aside punishments had been imposed due his reactions to stress that left him completely isolated from his support networks (ie calling his mum). These requests were met with inconsistent responses and legal proceedings had to be threatened to ensure the recommended transfer to hospital took place. In hospital, he recovered well.
- 2.8 Conditions in custody are often ill-suited to the needs of many people with autism, which can make the process traumatic, unduly punishing and unfair. The prison environment is not conducive to supporting children and young adults with autism. For those with autism, prison becomes more than a deprivation of liberty. In our experience, while accreditations in autism demonstrate a positive level of awareness, accreditation is not sufficient to counter the difficulties may autistic people in custody face.

### **3. Importance of early diagnosis**

- 3.1 In our experience, a number of autistic children and young adults enter the criminal justice system without having been diagnosed with autism. A diagnosis of autism may be directly relevant to culpability, the way the trial is conducted and the severity of punishment impose. It is crucial therefore that a young person presenting signs of autism undergo an assessment as soon as possible. The Howard League has come across a number of instances where a child or young adult has only been diagnosed with autism long after receiving a hefty custodial sentence.
- 3.2 A diagnosis will also inform placement. For those who are sentenced in the absence of a diagnosis, they may find themselves placed in a Young Offenders Institute (YOI)

or a Secure Training Centre (STC) as opposed to a secure children's home which are much better resourced to provide support tailored to an autistic child's needs.

- 3.3 The Howard League is concerned that professionals are not seeking assessments for young people with suspected autism at an early enough stage in the criminal justice process. It is imperative for the young person's wellbeing that they have an opportunity to be assessed. Special consideration needs to be given to the early identification of children and young people who suffer from ASD in the criminal justice process to ensure fairness and to prevent unduly harsh punishments being imposed.

#### **4. The importance of this strategy and the need for the widest possible consultation**

- 4.1 In light of the specific challenges posed to children and young adults with autism in custody it is crucial that the strategy is properly formulated and informed by the widest possible consultation. We consider that prisoners with autism should be consulted and their experiences discussed with members of the medical profession to inform the content of the strategy as it applies to prisons.

#### **5. Concluding observations**

- 5.1 The observations from our legal work suggest that much more needs to be done to reduce the risk of custody for autistic people and to appropriately adapt the environment for those who are incarcerated. At present the strategy focuses on the role of health and social care in supporting prisons to adapt appropriately for autistic people. Given the risks and concerns outlined in this paper, we suggest a much more robust approach is required.
- 5.2 We would be happy to meet with you to discuss this further.

**The Howard League for Penal Reform**

**16 May 2019**