

CHALLENGING CASES: ISSUES IN SENTENCING AND POST SENTENCING

Pamela Attwell, Karen van Gerko, Andrew Sperling in
conversation with Keith

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“The Government is failing in its duty of care towards people detained in England’s prisons.”

House of Commons Health and Social Care Committee Prison Health Twelfth Report of Session 2017–19

Headlines: prisoners who may find it difficult to demonstrate reduction in risk and progress

- IPP Prisoners
- People with ASD and/or LD
- People with pervasive emotional and behavioural difficulties
- People with complex co-morbidities (mental health, substance misuse, personality)
- BAME prisoners – Lammy Report
- Prisoners who may not do well in Open (Cat D) prisons
- Prisoners who are institutionalized and have no experience of a prosocial life in community – what does desistance mean for this group?

IPP prisoners

- IPP sentence abolished 2012
- 6080 IPPs in 2012 down to 2,598 by end September 2018
- Recall of IPPs –
- 2016 905 IPPs released (including re- release of recalled 249 IPPs) BUT in the same period 482 IPPs recalled: more than 50% of number released were recalled
- Around 60% of those recalled and reviewed at Oral hearing rereleased – suggesting that by time case gets to hearing most are not assessed as presenting significant risk to public

Autistic spectrum disorder (5-9%) and LD (7%)

"Mr. X's disability was not recognised at the time of the offence, was not taken into account during sentencing and throughout his time in custody he has engaged in a sentence plan that has not been fully responsive to his ASD related strengths, deficits or needs. "

ASD example

- Sexual offence
- WAIS – borderline, but lost in translation
- Completed TSP
- Empathy and perspective taking identified as untreated need
- Need for “higher intensity” identified
- Completed HRP
- Empathy and perspective taking still identified as untreated need
- Recommendation for further individual work on empathy and perspective taking

People with pervasive emotional and behavioural difficulties (over 60% prison population)

May:

- Invite label PD, with potential to stigmatise “it’s just bad behavior”
- Drop out of treatment
- Disrupt smooth running of institutions
- Make complaints against staff
- Be difficult to disentangle personality traits that interfere with progress from traits that drive risk

Offender Personality Disorder Strategy 2013

- Jointly commissioned HMPPS and NHS
- Provides a pathway of psychologically informed services for complex and challenging group
- Who are likely to likely to attract a diagnosis of 'personality disorder'. and (for men) pose a high risk of harm to others

OPD

- OPD does not rely on diagnosis of PD
- Focus is on using relationships and therapeutic environments; reduced emphasis on formal interventions.
- Person centered, holistic, formulation based approach
- Emphasis on workforce development

2016 Numbers

**Approximately 36000 offenders
screened in**

3000 women

33000 men

(Prevalence of all “PD”:

Community 10%; Hospital inpatient 40%, Probation 50%, Prison 70%)

**Behaviour is communication.
Change the environment and
behaviours will change.** (Lana David)

(Some) **Autism in Criminal Justice
Settings.**

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What is ASD? (Briefly)

Group of pervasive developmental disorders characterised by:

1. Communication & Interaction: Verbal/ non-verbal; relating/ interacting in a socially reciprocal way.
2. Imagination/ flexibility of thought: understanding and predicting other people's behaviour and abstract ideas; coping with unfamiliar situations

Sensory Processing

Over 90% of individuals with ASD have difficulty with processing sensory information such as sights, smells, movement and sounds.

- ☐ Over-responsive
- ☐ Under-responsive
- ☐ Sensory seeking

<https://www.youtube.com/watch?v=IcS2VUoe12M>

This can interfere with daily:

- Personal care
- Work
- Personal relationships
- Leisure

<http://www.autism.org.uk/sensory>

ASD & offence profiles

- Social naivete– open to manipulation
- Aggressive in response to change
- Obsessional interests (Gary McKinnon: The hacker who exposed NASA's secret UFO files)
- Low empathy/ theory of mind
- Poor emotional regulation
- Problems with moral reasoning/ consequential thinking
- Psychiatric co-morbidity
- Anxiety/ depression, paranoia, fear of negative evaluation
- Higher compliance

ASD & custody

Raging argument between:

I like prison because it is:

- Structured
- Predictable
- Routine
- Activity based
- Isolate
- Organised

I don't like prison because it is:

- ✗ Unpredictable
- ✗ Noisy
- ✗ Chaotic
- ✗ Boring
- ✗ Busy
- ✗ Socially complicated

Is it about the type of prison?

What hinders progress?

1. Late diagnosis therefore **labelled as difficult**.
2. Difficulties **communicating** needs---- crisis (!)
3. Personality/ character ie **insular**, withdrawn or unsocial.
4. Poor theory of mind = lack of victim empathy = psychopathic.

What to do?

1. Sit still and give the person time to process you
2. Speak clearly and avoid jargon
3. Is the environment noisy?
4. Check out their understanding
5. Psycho-ed for staff to increase awareness
6. Involve those they have depended on ie family/ services
7. In custody:
 - Smaller groups with similar presentations
 - Modified activities
 - Alone time/ single cell
 - Structure and predictable rules
 - Non-exploratory/ analytic more behavioural/ instructional

Key points to remember

- Not more likely to offend
- Same factors in ASD predispose non-ASD
- More high functioning ASD over-represented because those with ASD and LD lack mens rea, judged unfit to plead, are side-tracked out and charges are not pressed.
- Similar to LD group because:
 - More suggestible and acquiescent
 - More likely to falsely confess and make poor decisions
 - Misunderstand complex language and terminology
- We know little: Research findings are inconclusive/ poor quality