

Neurodivergence in Criminal Justice Network: Launch Event

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Summary by Tom Smith, Sophie Marsh, and Alex Hathway

In late July 2021, it was our pleasure to host the launch of the Neurodivergence in Criminal Justice Network (NICJN). This half-day online event saw a range of speakers focus on the theme of autism in the criminal justice process; and with a fantastic 120 registrations to attend, from a diverse range of practitioners, academics, and community members, we were delighted by the levels of interest, and the informative and passionate exchanges that took place. The event was coordinated by Dr Tom Smith (Senior Lecturer in Law, UWE Bristol, and network coordinator), with invaluable assistance from Sophie Marsh and Alex Hathway (both doctoral students at UWE Bristol), supported by the Higher Education Innovation Fund via UWE Bristol.

Neurodivergence as a general concept is widely debated and is, of course, not new – though there is undoubtedly increasing recognition of the very significant role it plays in the ability of individuals to participate fully in society – including accessing justice. Neurodivergence and its role in the criminal justice system is arguably having its moment, with increased attention from policy makers since late 2020. Indeed, in summer 2021, the three criminal justice inspectorates published a report on this issue, outlining a variety of problems and underlining the need for urgent change. Within this context, there is arguably a window of opportunity to truly drive forward positive and sustainable change, which many the attendees at this event have been advocating for a number of years.

The NICJN aims to facilitate this progress by creating a research and knowledge exchange group seeking to promote evidence-led practice in criminal justice processes involving neurodivergent individuals. The scope of neurodivergence is debated, but is generally accepted to embrace a variety of conditions and differences which cause cognitive development which diverges from the typical – including autism, ADHD, dyspraxia, dyslexia, acquired brain injury, foetal alcohol spectrum disorder, and numerous others. In the context of the NICJN, the criminal justice system is defined as including policing, investigation, court processes, prisons and probation – in short, the ‘cradle to grave’ experience of criminal justice. As such, this focuses on the needs of and challenges faced by suspects, defendants, witnesses, and victims.

The NICJN is seeking to promote and facilitate interaction between academics, health practitioners, community members, criminal justice professionals, and policy makers, in the belief that cross-fertilisation of knowledge and understanding will lead to better penetration of evidenced insight into criminal justice practice and – in time – catalyse on-the-ground changes to the way neurodivergence is approached. As mentioned above, the agenda for the launch event focused on autism in the criminal justice system (though future events will vary). A range of academics and community members provided attendees with presentations on autism in policing, courts, and prisons. Below is a summary of each presentation.

Presentation 1:

Street policing and adults with Autism Spectrum Conditions: what do police officers know?

by Iain Dickie

Iain's presentation focussed on the perception of autism and autistic individuals amongst police officers. He argued that whilst the existence of policies and procedures to support officers to engage with autistic individuals is important, a deeper lack of awareness as to what autism is and how autistic individuals can present can be very problematic in practice. As such, he argued that providing officers with access to knowledge about autism is vital. This was particularly so because autistic individuals often require support during police interactions; therefore, developing police officer understanding is key to providing that support. Iain argued that use of language is important, with terminology like 'neurodiversity' demonstrating a more supportive and less othering approach to engaging with autistic individuals because it avoids the deficit implications of other terms (such as Autistic Spectrum Disorder).

To demonstrate the importance of the above, Iain provided an example, describing an encounter with two police officers who were attending a presentation about neurodiversity. He described how they were extremely disinterested, playing games on their phone, and treating the event as an easy afternoon of work they were told to do by superiors. When asking the officers about training and access to training, one told Iain that they would just Google the answers. This sort of apathy highlighted the need for an emphasis on education and understanding that is engaging and effective. With the above example in mind, Iain questioned whether these sorts of training and education events were genuinely having an impact on wider practice and whether the knowledge conveyed was actually trickling down to practice and positively affecting experiences of autistic people interacted with the police.

Iain also suggested that the interest that researchers have in this subject cannot necessarily be replicated amongst officers, and that the insight provided by academics can be challenging to effectively translate and apply in practice. Iain suggested that less broad, more specific training would both allow police to more effectively approach each unique interaction involving autistic individuals; and be more engaging for officers, as they would be able to apply learning more easily in practice. However, Iain raised serious concerns with regard to the efficiency and competency of such training.

Presentation 2:

Potential innate vulnerabilities in some individuals with autism spectrum disorder charged with the viewing of indecent images of children (IIOC)

by Dr Clare Alley

Clare argued that there are misconceptions around autism at least partly created by the 'spectrum' approach; she therefore argued there is a clear need to move towards individualised profiles rather than referring to an unhelpful, oversimplified spectrum. It is important to note how varied in presentation autism can be. It is important to not look at autism as a clear spectrum but as different individuals, with varying strengths and needs. She highlighted that the vast majority of autistic individuals are law-abiding citizens (and may in fact be more likely to be victimised). However, when autistic individuals do offend, some trends can be identified. Particularly, she argued that evidence suggests the most common offences committed by autistic individuals without learning difficulties include threats to kill, arson, sexual offending, criminal damage, and stalking. In light of the above misconceptions, Clare argued that the wrong impression of characteristics for each individual can be problematic in criminal justice practice. For example, an autistic individual may be able to communicate in an articulate manner; therefore, professionals

may make assumptions about cognition, perception, and their ability cope with encounters. An example of an unhelpful attitude in this regard was given: “He is a banker, so how can he not know what he is doing is wrong?”. Yet, if this individual is autistic, they could have interests and focusing abilities which allow them to perform their job at a high level; but may find social interactions challenging.

What may be interpreted as criminal behaviour may actually be a presentation of that individual’s autistic profile, relating to social misunderstanding and misinterpretation rather than due to any criminal *mens rea*. Autistic individuals can have difficulties judging their own behaviour or that of others, and this can at times significantly impact their interactions with the criminal justice system. If an individual has an inflexible thinking style, they may draw black and white conclusions about their behaviour. For example, in relation to accessing unlawful materials on the internet, an individual might conclude that because such materials are accessible online, they cannot be illegal. Like neurotypical individuals, autistic people are sexual beings and many turn to the internet for a sexual outlet if they struggle with social communication. They may experience strong sexual impulses whilst not receiving adequate information, support and modelling of healthy sexual behaviour. This may lead to some autistic individuals to search for indecent images online and unknowingly engage in criminal acts. Clare referred to this as ‘counterfeit deviance’: what on the surface appears malicious or deviant behaviour may be driven by innocuous presentation of their autistic profile. In this context, an individual is arguably not culpable or blameworthy. However, poor understanding of autism can lead to a lack of recognition of this interpretation, and potentially prevent fair treatment. It is essential that autistic individuals have access to an appropriate defence, and that judges and jurors have competent training on autism and how this can impact on alleged offending.

Presentation 3:

Courtroom questioning and witnesses with autism - special measures and research gaps by Professor Penny Cooper and Dr Michelle Mattison

Both Penny and Michelle are involved with The Advocate’s Gateway (TAG) – a free online resource created to promote high ethical and professional standards of advocacy when dealing with vulnerable people. TAG provides free access to practical, evidence-based guidance on communicating with vulnerable witnesses and defendants. Prior to 2012, there was no access to this kind of information for lawyers which raised a number of concerns about the identification of autistic individuals in the criminal justice system and the appropriate provision of special measures without this identification. Special measures, introduced by the Youth Justice and Criminal Evidence Act 1999, are designed to support vulnerable individuals involved in criminal court proceedings by adapting trials through various changes and interventions. For example, from 2004 onwards, vulnerable witnesses could be examined in court through an intermediary, widely considered to be a vital development in achieving best evidence providing evidence and supporting witnesses. Penny highlighted that practical issues can affect the provision of intermediaries for vulnerable persons. She described a system which “limps along” due to a lack of resources; as a consequence, intermediaries are not always accessible in court. Penny highlighted some examples of courts going beyond the requirements of special measures to support autistic individuals engaged in criminal cases. For example, in Northern Ireland, dogs can be present in order to help keep an individual calm. In Australia, a court allowed a rooster to be present in the courtroom as the individual found their presence comforting, lowering their stress levels and allowing them to engage effectively. It is common to have rocking horses or sensory tents in waiting rooms in the courtrooms of England and Wales. Such examples ensure that the needs of autistic individuals are met through novel and creative supportive measures.

Penny and Michelle concluded by considering whether progress had been made in this area. They argued that it is now accepted that the judges must control questioning of vulnerable witnesses, including autistic individuals. The default approach in such situations is a pre-trial Ground Rules Hearing with the involvement of an intermediary (if they have been granted). Counsel must follow the ground rules and judges may direct a collaborative approach to questioning. Thus, Penny and Michelle concluded that courts are adapting – but not on the basis of enough research or at a swift pace. They argued that we still do not know enough about how effective special measures are or how helpful Ground Rules Hearings are. Moreover, cross-examination too often remains inaccessible to many witnesses, regardless of whether they have communication issues. Complex or leading questions remain the norm, and autistic individuals can find this particularly challenging. Current evidence suggests legal professionals lack confidence when working with autistic individuals, and there is often a lack of support to achieve best evidence. Consequently, collaborative work, between knowledgeable individuals, is essential to protect the best interests of autistic individuals in the criminal justice system and achieve best evidence.

Presentation 4:

Working with Autistic Individuals in Prison Settings

by Dr Luke Vinter

Luke highlighted that autistic individuals are no more likely to offend than the rest of the general population, but when they do, this tends to be in the context of their autism. The most common types of offences committed by autistic individuals are sexual offences and arson. However, there is limited research into prison-based support, management, and rehabilitation for autistic individuals with convictions for sex offences. Luke highlighted the difficulty in establishing the prevalence of autistic prisoners. Whilst there are wide-ranging estimates, it is generally thought that up to 8.5% of prisoners are autistic. It is therefore assumed that these individuals are probably over-represented in the prison context. Prevalence is difficult to establish for various reasons including a lack of screening tools (which can lead to misdiagnosis or perhaps a missed diagnosis); autistic individuals adapting to the prison environment (and therefore their autism being less identifiable); and limited autism awareness. Luke argued that there are areas of challenge for autistic individuals in the context of prison which reflect those outside of it, including: social environment and interactions with others; routines, rules and regimes and sensory environment.

Social environments and interactions with others:

Luke explained that the prison context is a complex social environment, which can be crowded, busy, and closed-in. Autistic individuals may find this overwhelming due to lack of familiarity, unpredictability, and limited ability to control the environment. They may feel differently to other prisoners, raising the risk of social isolation and/or bullying. As such, autistic individuals may become unwittingly involved in misunderstandings or confrontations; becoming the victim of deception, exploitation or manipulation; and generally facing difficulties in managing social interactions.

Routines, rules, and regimes:

Luke highlighted that, at times, the highly regimented nature prison can in fact be beneficial for autistic prisoners, as routines become familiar and predictable. However, in direct contrast, the prison context can also be highly unpredictable and changeable, with routines being disrupted at short notice and with little or no explanation. This can be extremely challenging for autistic individuals. For example, meetings or visits may be cancelled at short notice; or prisoners may be moved around or out of the prison. Indeed, during the Covid-19, prisoners experienced unprecedented changes to standard operating procedures, with

prisoners locked down for 23 hours of the day. For autistic prisoners, such disruptions (particularly without clear information and explanation) can make imprisonment highly distressing.

Sensory environment:

The prison context can create numerous sensory challenges for autistic prisoners. Prisons are generally very noisy; typically have harsh, fluorescent lighting; and there are likely to be a number of new, unusual and possibly unpleasant smells and textures in the various environments that form part of the prison for autistic individuals. However, the varying needs of autistic prisoners can be accommodated with simple adjustments, such as providing access to quiet environments or ear defenders; more natural lighting or eye masks; and access to fidget toys or other stimulatory comforts.

Luke concluded by summarising that there are many other prison-related issues in the context of autistic prisoners, such as responsiveness, mental health, suicide, employment, and education. He suggested that we are seeing promising steps in the right direction, with the introduction and expansion of National Autistic Society Accreditation, with HMYIO Felton and HMP Watton highlighted as positive examples of prisons which provide staff training on autism and have made efforts to support autistic individuals. However, he also highlighted it is important to bear in mind that there is no one-size-fits-all approach and that rehabilitation of prisoners – including those who are autistic - does not happen in a vacuum: we must consider the broader prison experience for autistic individuals.

Presentation 5:

The criminal justice system could minimise its inherent discrimination against ASD

by Andrew Duncan

Andrew Duncan is the father of an autistic man, who has been involved in the criminal justice process. Andrew explained how he built a successful relationship with his son's second probation officer, and strongly believes that his son would not have returned to prison had this relationship been built with the first officer. Andrew argued that the probation service should adapt its approach to engaging with autistic individuals involved in low level offences in three stages:

1. A shift in attitude by the probation officer to prioritise support for autistic offenders, rather than simply seeking to challenge their behaviour.
2. As part of this, probation officers need to adopt a more understanding and empathetic approach to neurodivergent individuals generally, so as to more effectively understand their criminogenic needs.
3. An autism expert should be available to liaise between an autistic offender and the probation officer; and that a small number of one-to-one sessions between the probation officer and an autism expert should be made available in order to provide a tailored insight, that can genuinely support an autistic offender.

Andrew argued that this framework – which described the approach used with the second probation officer – could be very effective if adopted for a particular category of autistic individuals. Specifically, those with a formal or working diagnosis of autism; low level, first time offences; used in place of formal sentencing and punishment (in short, a form of diversion). He asserted that, had this approach been adopted with his son from the start, then he would have avoided prison – which (as highlighted by Luke) can be an extremely damaging experience for an autistic individual. Andrew also acknowledged that, without an appropriate framework and attendant knowledge, it is understandable that probation officers

would struggle to effectively manage the needs of an autistic individual. This, he argued, only highlights the importance of adopting this proposed approach.

Andrew asserted his belief that it should not be difficult to minimise discrimination against autistic offenders; in his experience, a significant change in approach in this context could be achievable with little training. He argued that producing such a change needs imaginative explanation by someone who can understand a neurodiverse mindset and effectively convey this to probation officers. Doing so could produce enormously important benefits and reduce unnecessary criminalisation and imprisonment of vulnerable individuals.

Presentation 6:

Systemic Abuses and Failures to Safeguard Autistic People by Criminal Justice and Other Statutory Professionals

by Ian and Angela Cutler

Like Andrew, Ian and Angela Cutler are parents of an autistic man who has been involved in the criminal justice system, particularly experience on police interactions. They argued that there is currently insufficient guidance on autism for professionals within the criminal justice system, and that there is a particular lack of engagement by the police to accommodate or understand the needs of neurodivergent individuals. They spoke of an autistic individual they had engaged with, who had provided an autism awareness card to an officer, only for it to be disregarded completely. They described their experience (and those of others) of the police being one defined by trickery, disengagement and ostracization, in that the police had sought to keep families of autistic suspects 'out of the way' to stop what the police perceived to be obstructing their investigation. They argued that this prevented autistic individuals from receiving the support and protection that they require, contributing to a distressing experience and the increased possibility of injustices being perpetrated.

They argued that an increasing number of autistic individuals are coming into contact with the police, highlighting the importance of addressing problems in this area. They suggested that budget cuts to social services and the NHS have left that police as first responders for incidents involving autistic individuals, reflecting the broader problem of the police acting as mental health first responders. Ian and Angela felt that whilst the College of Policing provide sufficient guidelines on how to respond when an autistic individual comes into contact with the police, officers tend to ignore them rendering such guidance ineffective. They highlighted how their son had no appropriate adult or assessment of his needs during his interactions with police officers. Like Andrew, they believed that a major cultural shift is needed within these organisations, as opposed to merely providing guidance, in order to ensure that autistic individuals are treated not only with respect and understanding, but receive the support that they need to both cope with criminal justice processes and access justice effectively. They concluded by arguing that the inadequate treatment of autistic individuals by the police in many of the cases they have encountered reflects how society fails to properly treat its most vulnerable members. Such inadequate treatment takes a large and lasting toll on the physical and mental health of autistic individuals and their families, which is an injustice in itself.