NO ONE KNOWS

offenders with learning difficulties and learning disabilities

The prevalence and associated needs of offenders with learning difficulties and learning disabilities

Dr Nancy Loucks, independent criminologist and PRT research associate

SUMMARY

- The literature review on which this briefing paper is based brings together authoritative research on the prevalence and associated needs of offenders with learning difficulties and learning disabilities.
- The review demonstrates for the first time the vast hidden problem of high numbers of men, women and children with learning difficulties and learning disabilities trapped within the criminal justice system.
- 20-30% of offenders have learning difficulties or learning disabilities that interfere with their ability to cope within the criminal justice system.

This group of offenders:

- are at risk of re-offending because of unidentified needs and consequent lack of support and services
- are unlikely to benefit from conventional programmes designed to address offending behaviour
- are targeted by other prisoners when in custody
- present numerous difficulties for the staff who work with them, especially when these staff often lack specialist training or are unfamiliar with the challenges of working with this group of people.

Background

No One Knows is a UK-wide programme led by the Prison Reform Trust that aims to effect change by exploring and publicising the experiences of people with learning difficulties and learning disabilities who come into contact with the criminal justice system. The programme runs until October 2008, it is supported by The Diana, Princess of Wales Memorial Fund and is chaired by the Rt Hon the Baroness Joyce Quin, former Prisons Minster for England and Wales. This briefing paper outlines a larger review of prevalence and associated needs compiled to provide background information for *No One Knows*. (Loucks 2006)

Most research in the UK and internationally follows a relatively strict definition of learning disability based on IQ measures of 70 or below, or focuses on dyslexia with relatively limited reference to other learning difficulties. *No One Knows*, on the other hand, examines both learning disabilities, as defined in the Valuing People White Paper (Department of Health 2001), and learning difficulties, which include a wider range of impairments such as dyslexia and autistic spectrum disorders. In describing who the programme seeks to benefit, *No One Knows* has purposefully not adopted any crisp definitions of learning difficulties and learning disabilities. Instead, the programme focuses on people within the criminal justice system who have difficulties with certain activities that involve thinking and understanding and who need additional help and support in their everyday living. It is the experiences of this group of people that *No One Knows* will examine.

Prevalence

Even within strict definitions of learning difficulties and learning disabilities, no agreed levels of prevalence are evident. While the Department of Health in England and Wales (1998) estimates that 2% of people in the general population have a learning disability, researchers disagree whether this rate is any higher in populations of offenders. Estimates of prevalence amongst offenders range from 0% - 85%, depending on the assessment tools used, the stage in the criminal justice process at which learning disability is assessed, whether assessments are conducted individually or in groups, the level of training of the people administering the assessments, and variations in policies for diversion. Average estimates of prevalence of learning disability amongst offenders in the UK range from 1 – 10%.

The main methods of collecting information on learning disabilities and offending include assessments of offending behaviour amongst people known to learning disability services; assessing learning disability amongst known offenders; and self-report studies. Research into people known to specialist services can be problematic both because not everyone with a learning disability will be in contact with such services (for example because their disability has not been identified or because of varying criteria for eligibility) and because workers in these services may underestimate or indeed deliberately under-report criminal activity amongst their clients. Conversely, assessments of learning disability amongst known offenders vary at each stage of the criminal justice process as people are diverted from the system. Assessments are not conducted routinely and may rely on information collected prior to reception into custody, for example, which vary in their accuracy and may never reach the relevant prison or young offender institution. Finally, self-report methods are unreliable because of poor accuracy in recall; hesitance to disclose difficulties or disabilities; underestimates of significance of behaviour; and a tendency for some people to identify themselves as learning disabled when clinical assessments suggest they fail to meet the formal criteria for this.

Research conducted by the University of Liverpool in three prisons in England (Mottram and Lancaster 2006; Mottram 2007) compares assessments of prevalence of learning disabilities using three different screening tools in a local prison, a women's prison, and a young offender institution. The researchers found significant differences in IQ scores between the prisoners and standardised norms. About 8% of the general population scores within the learning disabled or 'borderline' group. In their research, the overall average for prisoners assessed either as learning disabled or borderline learning disabled for the three sites was 32%, with 6.7% assessed as learning disabled, as defined by the Valuing People White Paper, and a further 25.4% as 'borderline'. Based on a prison population in England and Wales of about 80,000, these figures equate to over 5,000 people with learning disabilities in prison on a given day. An additional 19,500 prisoners would be either learning disabled or borderline learning disabled, including 6,800 (7.6%) with an IQ between 70 and 74 who would be considered by community services for people with learning disabilities (Mottram 2007).

Research into learning difficulties amongst offenders reveals a similar lack of consensus, though figures appear slightly more consistent. With regard to dyslexia, for example, estimates of prevalence amongst offenders range from 4 – 56%. One example of such research in England is John Rack's (2005) research for the Dyslexia Institute in eight prisons in Yorkshire and Humberside. Rack's research found that simple interview and screening procedures tend to over-estimate rates of dyslexia, while excluding people with low IQs resulting in under-identification. Rack found that 40 – 50% of prisoners were at or below the level of literacy and numeracy expected of an 11-year old (Level 1), 40% of whom required specialist support for dyslexia. He concluded that dyslexia is three to four times more common amongst offenders than amongst the general population, with an incidence of 14 – 31%.

The general agreement in prison-based studies is a rate of about 30% dyslexia, though rates of serious deficits in literacy and numeracy in general reach up to 60%. Deficits in literacy and numeracy are often defined as abilities below the age of an 11-year old (Level 1; Rack 2005; Bryan et al. 2004). By 'serious', however, Herrington (2005) reported that the Basic Skills Agency Initial

Assessment recorded 60% of prisoners with a reading ability equivalent to or less than that of a 5-year old child.

In practical terms, Rack (2005) notes that "20% of the prison population have some form of hidden disability which will affect and undermine their performance in both education and work settings" (ibid:2). In similar vein, McBrien (2003) notes that:

"One of the most prevalent vulnerable groups amongst offenders comprises those who do not have an intellectual disability as formally defined but who do have much lower cognitive and adaptive abilities than do either the general population or the offending population."

For both learning disabilities and learning difficulties, precise information about prevalence amongst black and minority ethnic groups is virtually non-existent. Equally, very limited information is available regarding female offenders. An example of work that has been done includes Henderson's (2004) assessments of dyslexia amongst prisoners in England. Henderson found that ethnic background can compromise the accuracy of assessments of literacy. The current research in three prisons in England (Mottram and Lancaster 2006) reports differences between female prisoners compared to both adult and young male prisoners. The women's prison held a higher proportion of women assessed either as learning disabled or borderline learning disabled (with 40% of prisoners scoring within this range) than either of the other prisons (with 30% and 27% within this range). Differences between adults and young people in custody have been fairly well-documented though reflect the same lack of consensus evident in the research overall.

A number of prison-based tools have been developed that may assist in ascertaining how many people are in need of additional support in the criminal justice system, though none is universally accepted as a 'gold standard'. For learning disability, these include the LIPS scale (Learning Disabilities in the Probation Service; see Mason and Murphy 2002), the National Adult Prison Survey (Murphy et al. 2000), the Hayes Ability Screening Index (HASI; Hayes 2000), and more general preliminary screening tools such as the First Night Assessment Form at HMYOI Brinsford (Bryan et al. 2004). For learning difficulties (rather than disability), the LADS Plus assessment tool (BDA and HMYOI Wetherby 2005; McCaughan 2005) has been piloted, as has a screening checklist for use in prisons developed by the Adult Dyslexic Organisation (NIPS 2000). Unfortunately the most widely accepted tools for assessment (such as the WAIS-III for learning disabilities; Kaufman and Lichtenberger 1999) are not appropriate for determining prevalence of learning difficulties and learning disabilities quickly and efficiently amongst offenders (Holland 2004), such as for routine screening in prisons.

Methods of assessment of need may not reach a consensus, but some form of identification is nevertheless important if needs are to be addressed. More often than not, no systematic screening of learning disability or learning difficulty takes place at all in custodial settings, nor is available information (where it exists) routinely passed to establishments (Herrington et al. 2004; Office of Standards in Education 2004).

Difficulties in the criminal justice system

People with learning difficulties or learning disabilities experience a number of problems once they enter the criminal justice system. First, without routine screening or assessments, and with limited communication with community-based services, they are unlikely to be identified unless their behaviour gives cause for concern. Second, the general health of people with learning disabilities is often poorer than for the general population, particularly with regard to mental health (Rickford and Edgar 2005). Third, without being identified, they are likely to struggle with police questioning and cautions (see for example Clare and Gudjonsson 1991; Murphy and Mason 2005), with the result that they may incriminate themselves even if they are innocent.

The Youth Justice and Criminal Evidence Act 1999 provides for 'special measures' to support vulnerable or intimidated witnesses, including people with learning disabilities, in giving their best evidence in police interviews and in court (Seden 2006). However such 'special measures' are not similarly legislated for in relation to vulnerable defendants who will have similar difficulties to vulnerable witnesses in

understanding complex court procedures and language. Such discrimination is not only unjust but arguably contravenes the Disability Discrimination Act 2005 and may lead to 'unsafe' convictions.

People with learning disabilities or learning difficulties often have trouble complying with community-based orders. Research into Anti-Social Behaviour Orders, for example (BIBIC 2005), found that people with learning disabilities or autistic spectrum disorders often did not understand the terms of the Order or why it was imposed. This makes compliance with such community-based penalties highly unlikely, which in turn increases the likelihood of eventual custody.

Once people with learning disabilities or learning difficulties reach custody, they are likely to have difficulty understanding and adjusting to rules and regimes. Prison behaviour deemed disruptive, such as misusing in-cell emergency call bells, kicking cell doors, damage to prison property, and shouting have all been linked to learning difficulties for some prisoners (see for example Bryan et al. 2004). Prisoners with such difficulties end up being targeted by others and barred from available programmes, including offending behaviour programmes, due to their impairments. Frustration at being so excluded can lead to prisoners acting out and sometimes becoming violent or isolating themselves – or being isolated by prison staff for their own protection – thereby increasing their vulnerability to problems such as mental distress and suicide.

Bryan's research on speech, language, and communication difficulties amongst young offenders in England emphasised the need both for early identification and appropriate support if prison-based offending behaviour programmes are to have any impact:

"The results indicate that around 40% of young offenders might have difficulty in benefiting from verbally mediated interventions such as anger management and drug rehabilitation courses. This would imply they might be more likely to leave prison with unresolved problems known to contribute to re-offending. A young offender leaving prison who finds it hard to talk to others and who has difficulty in understanding others is likely to experience added difficulties in reintegrating into society." (2004: 399)

Freer and colleagues (n. d.: 2) agree that

"… identifying hidden or undiagnosed learning disability and communication difficulties… may impact upon interventions aimed at reducing re-offending, engaging with appropriate services and meeting ongoing needs upon resettlement into the community." Myers (2004) too noted that, in the absence of appropriate resources, prisoners with learning disabilities or learning difficulties may not have an opportunity to address their offending behaviour, or indeed to function effectively in society (Freer et al., n. d.).

One question is whether diversion from the criminal justice system offers a better alternative to support offenders with learning disabilities. The evidence suggests that this is not necessarily the case. While more support and appropriate activities are available in specialist health service facilities for learning disabilities, offenders diverted into the health care system tend to remain in custody longer than they may have in prison (Myers 2004). Due process considerations may be sidelined in favour of 'treatment', with the risk that learning disabled offenders become 'lost' in the health care system (Clare 2006; see also Holland 2004).

Problems in provision

The provision of support for people in the criminal justice system who have learning disabilities or learning difficulties depends on accurate and timely identification (or indeed on whether they are identified at all). The British Dyslexia Association's research into young offenders in Bradford (2004) showed that problem behaviour amongst young people with dyslexia was evident early but was often identified before - or indeed instead of - the dyslexia. Over a third (37%) of the young people the BDA identified as dyslexic had a statement of Special Educational Need, but all of these were for behavioural problems rather than for the dyslexia. School exclusions are common for young offenders generally, which may further reduce the likelihood of any learning difficulties being identified. Mottram and Lancaster's research in

three prisons (2006) found that 85% of the young offenders in their sample had been excluded from school at some point, with 30% excluded more than ten times.

Even where the vulnerability of a participant in the criminal justice process has been identified, support is not necessarily available. Special measures for vulnerable witnesses in England, for example, do not apply equally to defendants under law (Seden 2006). Further, cross-over between services for people with learning disabilities and learning difficulties and programmes for offenders is patchy at best and non-existent at worst. Few community-based services for learning disabilities in the UK are set up specifically to address offending, and few programmes for offenders or addiction services have been adapted for people with learning disabilities or learning difficulties. Nor are there consistent links between mainstream provision of services and services for people with learning disabilities. Strict definitions of learning disabilities mean that people assessed as 'borderline' may not be eligible for the community-based support they need.

Equally problematic is the identification of needs without having the facilities to address them. Prison staff expressed a need for training and for defined policies about how to address the needs of people with learning disabilities or learning difficulties. In prisons, the length of stay in an establishment is crucial in determining what support prisoners may receive and what links can be established with community-based services. Current pressures of overcrowding exacerbate the problems associated with 'churn' whereby sentenced prisoners are moved regularly around the prison estate, often with only short periods at any one establishment. Informal approaches to through-care and after-care for people serving shorter sentences and for those regularly on the move within the prison estate mean they are less likely to receive follow-up support in the community. Even where services exist, these may not be located near prisons, nor will prisoners necessarily be released to local communities. Variation in provision, both in terms of existence and quality, repeatedly stands out in the literature as a problem. Although custody may be the only opportunity some people have of benefiting from some services, this cannot justify any needless use of imprisonment.

Examples of good practice

Assessment of offenders for learning disability and learning difficulties is inconsistent at best. Elements of good practice are evident despite this. The use of speech and language therapists in prisons and young offender institutions stands out as an example in which assessment and constructive support benefited both staff and prisoners. Research on such initiatives demonstrates reductions in violence and overall improvements in behaviour. The adapted sex offender treatment programme (SOTP) is an example of offending behaviour programmes which have been adapted specifically for people with learning difficulties or learning disabilities in prisons in Scotland and England. Routine assessment for dyslexia of all young people admitted to HMYOC Hydebank Wood in Northern Ireland shows another way forward, demonstrating that wider-scale assessments of prisoners to identify needs and avenues for support is possible in a criminal justice setting. Staff training and prison programmes and regimes will no doubt need to be developed to meet the needs of people with learning difficulties, but some useful resources are already available.

Conclusions

This briefing paper highlights the fact that, even without agreed estimates of prevalence, many offenders have learning difficulties or learning disabilities that interfere with their ability to cope within the criminal justice system. They are at risk of continued offending because of unidentified needs and consequent lack of support and services. They are unlikely to benefit from conventional programmes designed to address offending behaviour, are targeted by other prisoners when in custody, and present numerous difficulties for the staff who work with them, especially when these staff often lack specialist training or are unfamiliar with the challenges of working with this group of people.

A number of ways forward have been identified in this briefing paper and are described more fully in

the larger review. These include staff training and joint training for people in different areas of criminal justice; better use of supports for vulnerable defendants; and assessment of offenders for learning disabilities at the earliest possible stage so the police, courts, probation and social work teams, and prisons will be able to work with them appropriately. Initiatives such as the use of speech and language therapists show the benefits of focusing on "choice, control, and participation" rather than "vulnerability, risk, and dependency", as the Disability Rights Commission emphasises (2005: 34), for people with learning difficulties or learning disabilities.

The full report on which this briefing paper is based will be available on the Prison Reform Trust website from spring 2007.

References

British Dyslexia Association (2004) Unrecognised Dyslexia and the Route to Offending. Report of a project between the British Dyslexia Association and Bradford Youth Offending Team. Reading: British Dyslexia Association.

British Dyslexia Association and HM Young Offender Institution Wetherby (2005) Practical Solutions to Identifying Dyslexia in Juvenile Offenders: Report of a Joint Project of the British Dyslexia Association and HM Young Offender Institution Wetherby, 2004–05. Reading: British Dyslexia Association.

British Institute for Brain Injured Children (2005) "'Ain't Misbehavin': Young People with Learning and Communication Difficulties and Anti-Social Behaviour." BIBIC Campaign Update. www.bibic.org.uk.

Bryan, K. (2004) "Preliminary study of the prevalence of speech and language difficulties in young offenders." International Journal of Language and Communication Disorders 39(3), 391-400.

Bryan, K., Freer, J., and Furlong, C. (2004) Speech and Language Therapy for Young People in Prison Project: Third Project Report, May 2004 – October 2004. University of Surrey.

Clare, I. (2006) Personal communication with Dr. Isobel Clare, Clinical and Forensic Psychologist, Department of Psychiatry, University of Cambridge, 7 August 2006.

Clare, I. C. H. and Gudjonsson, G. H. (1991) "Recall and understanding of the caution and rights in police detention among persons of average intellectual ability and persons with a mental handicap." Proceedings of the First DCLP Annual Conference 1, 34-42. Leicester: British Psychological Society (Issues in Criminological and Legal Psychology Series, No. 17).

Department of Health (2001) Valuing People: A New Strategy for Learning Disability for the 21st Century. White Paper, Cm 5086. London: Department of Health.

Department of Health (1998), cited in McBrien, J., Hodgetts, A., and Gregory, J. (2003) "Offending and risky behaviour in community services for people with intellectual disabilities in one Local Authority." Journal of Forensic Psychiatry 14 (2), 280-97.

Disability Rights Commission (2005) Putting Disability at the Heart of Public Policy in Scotland: Priorities for Action. Stratford upon Avon: Disability Rights Commission.

Freer, J., Furlong, C., and Bryan, K. (n. d.) "The Experience of Offenders with Learning Disabilities within the Prison Service." University of Surrey.

Hayes, S. (2000) Hayes Ability Screening Index (HASI) manual. Sydney: Behavioural Sciences in Medicine,

University of Sydney.

Henderson, C. (2004) “Key Findings and Recommendations Arising from a Study into the Prevalence of Dyslexia amongst Inmates at HMP Brixton: A Summary Report.” London: The Dyslexia Institute.

Herrington, V. (2005) “Meeting the healthcare needs of offenders with learning disabilities.” Learning Disability Practice 8(4), 28-32.

Herrington, V., Hunter, G., Curran, K., and Hough, M. (2004) “The feasibility of assessing learning disabilities among young offenders.” London: King’s College London and Hounslow Primary Care Trust.

Holland, A. J. (2004) “Criminal behaviour and developmental disability: an epidemiological perspective.” In W. R. Lindsay, J. L. Taylor, and P. Sturmey, eds., Offenders with Developmental Disabilities. Chichester: Wiley & Sons, Ltd,, 23 – 34.

Kaufman, A. S. and Lichtenberger, E. O. (1999) Essentials of WAIS-III Assessment. Chichester: John Wiley & Sons.

Loucks, N. (2006) *No One Knows*: Offenders with Learning Difficulties and Learning Disabilities. Review of prevalence and associated needs. London: Prison Reform Trust.

Mason, J. and Murphy, G. H. (2002) “Intellectual disability amongst people on probation: prevalence and outcome.” Journal of Intellectual Disability Research 46(3), 230-238.

McBrien, J. (2003) “The Intellectually Disabled Offender: Methodological Problems in Identification.” Journal of Applied Research in Intellectual Disabilities 16, 95-105.

McCaughan, A. (2005) “Identifying the Dyslexic in HMP Magilligan.” Paper for Hornsby Diploma, September 2005.

Mottram, P. G. (2007) HMP Liverpool, Styal and Hindley Study Report. Liverpool: University of Liverpool.

Mottram, P. and Lancaster, R. (2006) “HMPs Liverpool, Styal and Hindley YOI: Preliminary Results.” Cumbria and Lancashire: NHS Specialised Services Commissioning Team.

Murphy, M., Harrold, M., Carey, S., and Mulrooney, M. (2000) “A Survey of the Level of Learning Disability among the Prison Population in Ireland.” Dublin: Department of Justice, Equality and Law Reform.

Murphy, G. and Mason, J. (2005) “People with Intellectual Disabilities who are At Risk of Offending.” In N. Bouras, ed. Cambridge: Cambridge University Press.

Myers, F. (2004) On the Borderline? People with Learning Disabilities and/or Autistic Spectrum Disorders in Secure, Forensic and Other Specialist Settings. Edinburgh: Scottish Executive Social Research.

Northern Ireland Prison Service (2000) Prison Education Beyond 2000: A Review of Educational Provision for Prisoners in Northern Ireland. Belfast: NIPS Inmate Activities and Services.

Office of Standards in Education, in consultation with HM Chief Inspector of Prisons (2004) Girls in Prison: The education and training of under-18s serving Detention and Training Orders. London: Her Majesty’s Inspectorate of Prisons.

Rack, J. (2005) “The Incidence of Hidden Disabilities in the Prison Population.” Egham, Surrey: Dyslexia Institute.

Rickford, R and Edgar, K (2005) “Troubled Inside: Responding to the Mental Health Needs of Men in Prison.” London: Prison Reform Trust

Seden, R. (2006) “Access to Justice for Vulnerable Defendants.” Legal Action, March 2006, 11-12.

No One Knows is a UK-wide programme led by the Prison Reform Trust that aims to effect change by exploring and publicising the experiences of people with learning difficulties and learning disabilities who come into contact with the criminal justice system. The programme runs until October 2008, it is supported by The Diana, Princess of Wales Memorial Fund and is chaired by the Rt Hon the Baroness Joyce Quin, former Prisons Minster for England and Wales.

For more information about *No One Knows* please contact Jenny Talbot on:

020 7251 5070

or

email: jenny.talbot@prisonreformtrust.org.uk

or visit

www.prisonreformtrust.org.uk/nok

PRISON REFORM TRUST

The work of the Prison Reform Trust is aimed at creating a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform.

Prison Reform Trust
15 Northburgh Street
London
EC1V 0JR

Tel: 020 7251 5070
Fax: 020 7251 5076

e-mail:
prt@prisonreformtrust.org.uk

Registered Charity No 1035525

Company Limited by Guarantee in England & Wales No 2906362