

PRISON SERVICE JOURNAL

May 2011 No 195



Focus on Disability

Prisoners with learning disabilities and learning difficulties

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Introduction

In 1999, a prison governor writing in the *Prison Service Journal*, said:

We... have a young offender who is due for release shortly... Everyone working with this woman accepts that she should not be in prison. She is severely learning disabled as a result of a physical abnormality of the brain... We know that regardless of court diversion schemes, many like her slip through the net... Perhaps the courts think such people are insolent when they don't reply. In fact, when we had one of these women assessed we discovered that she had a mental age of between seven and eight.

Seven years later, concerned at the on-going plight of people with learning disabilities in the criminal justice system, the Prison Reform Trust embarked on a three-year programme to draw attention to the particular experiences of people with learning disabilities and difficulties who offend, and the staff who work with them. The programme, entitled *No One Knows*, was supported by The Diana, Princess of Wales Memorial Fund and chaired by former prisons minister, Baroness Joyce Quin. One of the first pieces of work undertaken was a survey of prison staff to find out how prisoners with learning disabilities and difficulties were identified and supported, and staff from over half of the prison estate in England and Wales took part. Results showed that there was no routine or systematic procedure for identifying prisoners with learning disabilities, that information accompanying people into prison was unlikely to show if they had a learning disability, and most prison staff said they were not confident that their prison had the skills and expertise to support prisoners with learning disabilities¹. Talking about some of the difficulties faced by such prisoners, one member of staff said:

We have no specialist resources, so having failed at school they fail here again. The most profoundly affected should not be in prison as it's akin to locking up a five year old and has no effect on their potential to reoffend. I can think of no more inappropriate place to send such people.

In 2009 Lord Bradley published his review of people with mental health problems or learning disabilities in the criminal justice system², in which he made a number of recommendations. These included the need for improved screening and identification of people with learning disabilities at the point of arrest and, where appropriate, diversion away from the criminal justice system; screening for learning disabilities at reception into prison; improvements in support for prisoners with learning disabilities, and learning disability awareness training for criminal justice staff.

Although progress has been made, there remains much to be done both nationally and within individual prisons. With the coalition government's plans to radically overhaul the criminal justice system, and changes in health and social care, there is an opportunity to build on what works and to replicate good practice as standard practice across the prison estate.

Learning disabilities and learning difficulties — what do we mean?

A learning disability is defined by the World Health Organisation as a 'reduced level of intellectual functioning resulting in diminished ability to adapt to the daily demands of the normal social environment'. IQ levels are given as a guide and the range 50-69 suggests mild learning disability³.

Typically, people with learning disabilities and low IQs will have limited language ability, comprehension and communication skills, which might mean they have

1. Talbot, J. (2007) *Identifying and supporting prisoners with learning difficulties and learning disabilities: the views of prison staff*. London: Prison Reform Trust.

2. Department of Health (2009) *The Bradley Report: Lord Bradley's review of people with mental health problems or learning disabilities in the criminal justice system*, London: Department of Health.

3. World Health Organisation (1996) *ICD-10 Guide for Mental Retardation*.

difficulty understanding and responding to questions; they are likely to have difficulty recalling information, for example remembering daily prison routines, and take longer to process information. On being questioned, for example at the police station and in court, they may be acquiescent and suggestible and, under pressure, may try to appease other people.

Learning disabilities are largely 'hidden' with few visual or behavioural clues. Many people with a learning disability try hard to hide their impairment due to embarrassment, for fear of ridicule and wanting to appear the same as everyone else.

It is generally recognised that between 5-10 per cent of the adult offending population have learning disabilities, while prevalence rates among children who offend appear to be higher. Studies suggest that 7 per cent of adult prisoners have an IQ below 70, and a further 25 per cent have an IQ between 70-79 (borderline learning disabilities)⁴. An assessment of children who offend in England and Wales found that 23 per cent had an IQ below 70, and 36 per cent had an IQ of 70-79⁵.

Much higher numbers of people in the criminal justice system have learning difficulties. Learning difficulties cover a range of impairments of which dyslexia is the most common. Many people with learning difficulties find aspects of reading and writing hard, and their comprehension and communication skills may be impaired. Communication difficulties are especially common amongst children who offend. Studies suggest that as many as 60 per cent have a communication disability and, of this group, around half have poor or very poor communication skills⁶.

A literature review undertaken by *No One Knows* showed that between 20-30 per cent of offenders have learning disabilities or learning difficulties that interfere with their ability to cope within the criminal justice system⁷.

The terms learning disabilities and learning difficulties are often used interchangeably; in this article they are not.

People with learning disabilities and the criminal justice system

There is disagreement among professionals and practitioners — including police officers, healthcare workers and legal practitioners — about the appropriateness of taking formal action against some people with learning disabilities who are suspected of committing a crime. This, to an extent, reflects a lack of clarity in current policy and guidance on the application of the concept of criminal responsibility to these individuals.

On the one hand, the provision of treatment and support for suspects with learning disabilities, rather than prosecution, may help individuals overcome the problems that led them to (allegedly) offend. On the other hand, failure to arrest and prosecute carries its own risks. For example, the individual who has committed a crime but is not prosecuted may not appreciate the gravity of his actions and may reoffend, and possibly commit more serious offences as a result.

Diversion of certain individuals away from the criminal justice system and into healthcare, and the question of fitness to plead are two important areas currently being addressed.

In his review, Lord Bradley recommended that all police stations and courts should have access to criminal justice liaison and diversion schemes, and the coalition government has made a commitment to take this forward. Such schemes will help to identify whether an individual has a learning disability and, in consultation with local services, will determine the most appropriate course of action. For example, options would include proceeding with a prosecution, with appropriate support, and diversion away from the criminal justice system into healthcare.

The main criteria used in determining fitness to plead date from 1836. There has long been concern about the current test used to determine fitness to plead. In October 2010 the Law Commission launched a consultation, *Unfitness to Plead*, which included

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

5. Harrington, R. and Bailey, S., with Chitsabesan, P., Kroll, L., Macdonald, W., Sneider, S., Kenning, C., Taylor, G., Byford, S., and Barrett, B. (2005) *Mental Health Needs and Effectiveness of Provision for Young Offenders in Custody and in the Community*, London: Youth Justice Board for England and Wales.

6. Bryan K., Freer J. and Furlong C. (2007) *Language and communication difficulties in juvenile offenders*, *International Journal of Language and Communication Disorders*, 42, 505-520.

7. Loucks, N. (2007) *Prisoners with learning difficulties and learning disabilities — review of prevalence and associated needs*. London: Prison Reform Trust.

proposals for a new legal test for unfitness to plead. Recommendations from this consultation are expected by summer 2012.

Diversion away from the criminal justice system and the question of an individual's fitness to plead are unlikely to apply to people with learning difficulties, unless there are other concerns, such as mental health problems.

Notwithstanding the above, there are a significant number of people with learning disabilities in prison today — an estimated 6,000 — and many more will have borderline learning disabilities. While some people with learning disabilities, in the future, may be diverted away from the criminal justice system, others will continue to be sentenced to prison.

The experiences of prisoners with learning disabilities and difficulties

The experiences of prisoners with learning disabilities and difficulties were the subject of a report by the Prison Reform Trust, Prisoners' Voices⁸. The report drew on research involving interviews with 173 prisoners from 14 prisons, 154 of who were identified by prison staff as having learning disabilities or learning difficulties. The remaining 19 interviewees did not have learning disabilities or difficulties, and formed a comparison group to illustrate differences between the two

groups. As part of the interview process, interviewees were asked to complete a screening tool to confirm whether they might have learning disabilities.

Interviews with prisoners further reinforced findings from earlier research involving prison staff⁹. These included, for example, limited resources and support for this group of prisoners, difficulties in accessing certain parts of the prison regime and, because of their disabilities, a heightened level of vulnerability within the prison environment.

During interviews prisoners were asked, amongst other things, about their experiences of daily living and what life generally was like for them in prison; what they did during the day; prison rules and discipline, and

the kinds of support that would help them while in prison. Interviewees were also asked about any particular difficulties they had, such as reading prison information and filling in prison forms, understanding what was expected of them, and making themselves understood. Interviewees were further asked to complete a scale that showed levels of anxiety and depression.

A prisoner's ability to 'get on' in prison is predicated on a number of factors, including the ability to understand what is expected of them and to be understood, and the ability to read and write. Results from the learning disability screening tool, completed by prisoners as part of the interview process, showed that over two-thirds experienced difficulties in verbal comprehension skills, including difficulties understanding certain words and in expressing themselves. Over half said they had difficulties making themselves understood in prison, which rose to more than two-thirds for prisoners with learning disabilities.

The consequences of not understanding, and of not being able to make yourself understood can be grave. Some prisoners said they would ignore whatever it was they didn't understand and 'hope it would go away', while others said they would get angry and 'kick off' or 'storm out'. When asked what he would do if he didn't understand something, one prisoner with learning

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disabilities said:

I wouldn't do anything really; I'd be too scared to ask, so I'd do nothing.

Talking about her difficulties in making herself understood, one prisoner said:

That happens to me most of the time; I get depressed when people don't understand me so I leave them alone, but then it doesn't get done.

While another said:

8. Talbot, J. (2008) *Prisoners Voices: experiences of the criminal justice system by prisoners with learning disabilities and difficulties*. London: Prison Reform Trust.
9. Talbot (2007) see n.1.

I muddle up words all the time and that causes problems.

Not being able to read and write very well, or at all, caused further difficulties. More than two-thirds of prisoners interviewed had difficulties reading, which rose to four-fifths for those with learning disabilities, and similar numbers had difficulties filling in prison forms. Talking about his inability to read very well, one young offender said:

I can read some things but not others. I skim over the words that I don't know and then it doesn't make sense to me.

While another said:

I take a guess, or I just get on the best I can. They (prison staff) got me to sign something the other day; I didn't know what it said, I just signed it.

Not being able to read and write very well caused particular problems when it came to filling in prison forms. Prisoners described how they missed out on things such as visits and activities because they couldn't fill in prison forms, or had filled them in incorrectly, and some said they got frustrated and angry at not being able to complete them. One woman prisoner said:

I end up not knowing what it's about and that has happened to me before. I ended up with no credits on my phone.

While another prisoner said:

I don't fill in any applications so I don't get anything. Nobody helps me. I get embarrassed asking for help so I don't ask. There's no point.

One prisoner, with learning disabilities, explained how he filled in his meal sheet:

I knew 'a' was sandwiches, so I lived off sandwiches.

Asking for help was not always an option that prisoners felt comfortable with. Reasons given included not knowing who to ask, fear of ridicule, feelings of shame and embarrassment at needing to ask for help, and not wanting to bother other people — whether prison staff or other inmates. A number of prisoners explained that they would ask certain officers for help, but not others, and that while some officers seemed willing to help, others were not. One prisoner said:

Nobody tells you who can help, you've got to find out and because I can't read and write I can't ask anyone and nobody comes.

Against this backdrop, when asked what prison was like for them, it was perhaps not surprising that many prisoners said it was hard, tough, stressful, scary, depressing and lonely.

Results from the anxiety and depression scales showed that prisoners with learning disabilities and difficulties were almost three times as likely as prisoners without such impairments to have clinically significant depression or clinically significant anxiety. Further, over two — fifths of prisoners with learning disabilities and difficulties experienced both depression and anxiety, compared to less than a fifth of prisoners without.

Although most prisoners said they knew what they would do if they felt unwell, fewer than two — thirds of prisoners with learning disabilities said they did, and around a fifth said they would need help to access

healthcare. One prisoner with learning disabilities said:

I know you have to fill in a form but I wouldn't know what to put on it.

Prisoners were asked about the things they did during the day, and prisoners with learning disabilities were the most likely to spend time on their own and have fewer things to do. As one prisoner with learning disabilities pointed out:

There's not much I can do.

Prisoners with learning disabilities were less likely to have a job in prison than other prisoners, however

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they were more likely to be attending education (however, this finding may reflect how prisoners involved in the research were identified, which was largely through education staff). Prisoners who didn't attend education gave a number of reasons including finding being in a group difficult, lack of one-to-one support in the classroom and, having tried it, found that it didn't meet their particular needs. One young offender with learning disabilities said:

I haven't been asked if I want to go education; I don't mind going. No one has ever talked to me or assessed me for my ability to do activities.

Around half of prisoners visited the library, although a number said they didn't go because they couldn't read.

Prisoners were asked if they had done any programmes to help them stop offending. Around a third of prisoners with learning disabilities and difficulties said they had, compared to over half of prisoners without such impairments. Prisoners with learning disabilities were the least likely to have done any programmes to help them stop offending. When asked if she would like to do a programme to help her stop offending one prisoner said:

Yes, I would, but I can't read and write; it's very embarrassing. You can't do the courses if you can't read and write.

Another prisoner serving an indeterminate sentence said:

It's hard, hard dealing with the sentence let alone dealing with the stresses of not being able to do the course... and knowing that you'll have to be here longer because you can't read is hard.

Prisoners were asked how they knew about prison rules. Prisoners with learning disabilities and difficulties were less likely to say they knew about prison rules than prisoners without such impairments. The availability of written information and formal briefings didn't necessarily mean that prisoners understood what the rules were. As one woman prisoner explained:

They (prison staff) read the rules out when you first come on to the wing, but I didn't really understand them all, there was too much going on in my head to take it in.

While another prisoner, with learning disabilities, said:

They are in a leaflet, some bits are easy to read and some are rushed.

A number of prisoners said they relied on informal ways to know what the rules were, for example watching what others did, figuring it out for themselves and picking things up as they went along. As one woman prisoner explained:

Sometimes people will tip you off, but they don't tell you much. You're constantly trying to guess what the rules are and trying not to break them.

While others said they learnt by their mistakes, only getting to know about a rule once they had broken it. When asked how he knew about prison rules, one prisoner said:

That's easy! You know about the rules when you break the rules.

Perhaps unsurprisingly, therefore, prisoners with learning disabilities and difficulties were five times as likely to say they had been subject to control and restraint techniques as prisoners without such impairments, and were more than three times as likely to say they had spent time in the segregation unit.

Although most prisoners knew why they were in prison, they didn't all know when their release date was. Prisoners were asked if they knew when they could go home; just under a fifth didn't know because they were either on remand or had indeterminate sentences. Discounting this group around one in ten said they didn't know when they could go home, which more than doubled for those with learning disabilities, almost a quarter of whom said they did not know when they could go home.

Although the experiences of prisoners were, on the whole, grim — and on occasion, shocking — there were a number of examples where seemingly small acts of kindness by prison staff and other inmates made all the difference. Some prisoners said their personal officer provided help, others described how there were certain officers they could 'talk to', and one young offender was especially glowing in his praise of a particular officer:

There is an officer on B3 who I can ask for help, I can't fault him. What a guy! He listens to you.

A number of prisoners described how they had improved their skills while in prison, in particular with reading and writing. One prisoner with learning disabilities said:

Being here has helped with my reading and writing as I do Toe-by-Toe and go to a reading class on a Wednesday.

While others talked positively about activities such as library visits:

I go on a Friday. I can read books now, even though it takes me a long time. My first book took me nearly a year and a half to read.

What prisoners with learning disabilities and difficulties said would help

Prisoners were asked about the kinds of support that might help them while in prison. Ideas ranged from the very practical, such as increasing the size of prison forms and help making phone calls, to specific help with personal problems and difficulties, and more constructive activities that they could take part in.

Almost half said what would help was somebody who they could talk to about personal problems and difficulties. Sometimes prisoners wanted specialist help and support, such as help with dyslexia, while on other occasions it was the opportunity to talk more generally to somebody and be listened to. By way of example one young offender said:

I would like someone to have a sit down and talk with, to tell me what's happening and how to do things.

Some prisoners talked specifically about one to one help, often adding, so that other prisoners wouldn't get to know about their impairments. Some prisoners were clear about support needing to come from somebody unconnected with the prison, while on other occasions prisoners suggested that the person who could help might be a prison officer.

The types of support looked for by prisoners included help with sentence progression, filling in forms, making plans for the future, reading and writing, and staying in touch with family members.

Prisoners said that less time when there was nothing to do and more constructive things to do would help, and those with learning disabilities were the most likely to say this. Time alone, with nothing to do made prisoners feel depressed, frustrated and angry. Several prisoners, in particular young offenders, said more opportunities to learn to read and write would help. One young offender with learning disabilities said:

I would have liked reading and writing classes and I would have liked to have worked. I'm in my cell 23 hours a day.

Some prisoners suggested that they should be asked, on arrival into prison, about their support needs, and for their views on what might help.

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Concluding remarks

The Prison Reform Trust's *No One Knows* programme concluded that the criminal justice system does not recognise, let alone meet, the particular needs of people with learning disabilities and difficulties. Consequently, criminal justice agencies, including prisons, are failing in their legal duty to promote disability equality and to eliminate discrimination¹⁰. This is not to say that nothing good ever happens — it does. There are many examples of where prison staff work creatively and hard to

support prisoners with particular needs. However, such examples tend to be ad hoc and reliant upon good and committed staff, rather than any routine and systematic and procedures.

More recently, a number of things have happened. Under the auspices of the Department of Health, every prison in England and Wales has been invited to take part in learning disability awareness training, while for new recruits a module on learning disabilities and difficulties has been included in Prison Officer Entry Level Training. Again, under the auspices of the Department of Health, a learning disability screening tool has been successfully piloted, and around 20 prisons are currently using it to help identify prisoners with a learning disability. It is expected that the screening tool will be made more widely available across the prison estate during 2011.

10. Talbot (2008) see n.8.

The Bradley report¹¹, gave important recognition to concerns about people with learning disabilities in the criminal justice system, and certain recommendations made by Lord Bradley are being pursued by the Ministry of Justice and the Department of Health. Such recognition is important and helpful for prison staff and others working in prisons, for example health and education staff. Concerns long held about the particular difficulties and support needs of certain prisoners can now be more easily stated and acted upon. For example, in every prison between 5-10 per cent of the population will have learning disabilities; to ensure their support needs are recognised and met individual prisons should have procedures in place to identify such prisoners, and

ensure that prison regimes are largely accessible to them. Accessible regimes for prisoners with learning disabilities will benefit other prisoners too, for example prisoners with learning difficulties, prisoners who find reading and writing difficult, and prisoners whose first language is not English.

It's a big task, but not an impossible one — even in the current climate of austerity. Relatively small changes can make a significant difference to the lives of prisoners with learning disabilities and difficulties, and the staff who work with them. There are a number of good resources available that can help, and the following checklist should provide a helpful start.

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| <ol style="list-style-type: none"> 1. Which members of prison staff have undertaken learning disability awareness training? Does any further awareness training need to be arranged? 2. Does your prison have a named disability liaison officer and a named member of the senior management team with responsibility Does your prison have access to a learning disability nurse? 4. Are procedures in place to identify prisoners with a learning disability? 5. Is there a clear referral route for prison staff concerned that an individual prisoner might have learning disabilities or other particular support needs? 6. Are prison forms and prison information published in 'easy read'? Are copies of the prisoner information book and prisoner | <p>information book for prisoners with a disability readily available?</p> <ol style="list-style-type: none"> 7. Does your prison have good links with your local learning disability partnership board? 8. Does your prison education have a qualified special educational needs coordinator and access to a dyslexia specialist? 9. What arrangements are in place to support prisoners with learning disabilities and prisoners who are unable to read and write very well, or at all? 10. Which parts of the prison regime are accessible to prisoners with learning disabilities and which are not? For example, are offending behaviour programmes and work opportunities accessible and, if not, what alternative activities are in place? |
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The following resources are available to download free of charge:

- * *Positive practice, positive outcomes: a handbook for professionals in the criminal justice system working with offenders with learning disabilities*; it is expected that the second edition, revised and updated, will soon be available from the Department of Health.
- * *Mencap's Make it clear: a guide to making easy read information*: www.mencap.org.uk
- * *Autism: a guide for criminal justice professionals*: www.autism.org.uk
- * *Prisoners information book*, available in 'easier read'; *Information book for prisoners with a disability*: www.prisonreformtrust.org.uk/Publications
- * *Prisoners Voices: experiences of the criminal justice system by prisoners with learning disabilities and difficulties*; checklist for prison, pages 95-96: www.prisonreformtrust.org.uk/nok

11 . Department of Health (2009) n.2.