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Focus on Disability

Disability — the next equality challenge?

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The Prison Service's work on equality has until recently been primarily focused on race issues, following the racist murder of Zahid Mubarek at HMYOI Feltham in 2000. It was right to focus on this and the improvements made and lessons learned have been huge. Although the challenge to ensure fair outcomes for Black and Minority Ethnic (BME), and particularly Black, prisoners remains there is a growing concern both inside and outside the organisation about the way in which we manage prisoners with disabilities, whether physical, sensory or intellectual impairments.

This, of course, is not a new issue. The Prison Service has strived for well over a decade to ensure appropriate provision for disabled prisoners. The introduction of the Disability Discrimination Act (DDA) 1995¹ made it unlawful to discriminate against people in respect of their disabilities in relation to employment, the provision of goods, facilities and services, education and transport. The DDA defined a disabled person as a person 'who has a physical or mental impairment which has a substantial or long term adverse effect on their ability to carry out normal day to day activities'. The Act also placed a duty on service providers to make 'reasonable adjustments' to ensure equality of access for disabled people by taking steps to remove barriers from disabled people's participation. In response, the Prison Service developed policy to comply with the law — PSO 2855².

Ten years later, the DDA 2005³ introduced a duty on public authorities to promote equality for disabled people. PSO 2855 was amended accordingly and underpinned by an auditable Standard. More recently, the new Equality Act 2010⁴ carries forward the protection provided for disabled people by the Disability Discrimination Acts and the new public sector equality duty — which covers all 'protected characteristics', including disability — comes into force on 6 April 2011. This is reflected in the new

Prison Service Instruction on ensuring equality in service delivery.

As well as ensuring compliance with developments in legislation, the Prison Service has had to respond to increasing scrutiny from external stakeholders and regulators. In 2009, the Chief Inspector of Prisons published a thematic report on disabled prisoners⁵. The Chief Inspector reported that prisons were not yet able fully to discharge their duties under the Disability Discrimination Act. Not only were prisons unaware of the extent of disability amongst the prison population, but also disabled prisoners reported poorer outcomes in almost all areas of prison life. They felt unsafe and said they had less access to activities, and younger disabled prisoners were much more likely than other young prisoners to say that force had been used against them. Examples of very good practice were rare and dependent on committed individual staff.

The Equality and Human Rights Commission (EHRC) has also turned its attention to disability in prisons. A statutory inquiry is taking place into disability-related harassment, at which Michael Spurr recently gave evidence. The EHRC Legal Directorate has written to all high security prisons asking a series of detailed questions about provision for disabled prisoners. And the Commission supported a disabled prisoner and wheelchair user held on remand in bringing a discrimination claim alleging a number of failings under the DDA which was recently settled out of court.

In addition, the Prison Reform Trust's *No One Knows* report⁶ and Lord Bradley's review⁷ highlight the experiences of people with learning difficulties and learning disabilities in the criminal justice system. Both reports concluded that disabled offenders were less able to access facilities in prison and although they quoted areas of good practice, these were not widespread or consistent.

The drivers for action are not only legal and external. We have a moral duty to care for disabled

1. *Disability Discrimination Act 1995.*

2. *Prison Service Order 2855. Prisoners with disabilities.*

3. *Disability Discrimination Act 2005.*

4. *Equality Act 2010.*

5. Her Majesty's Chief Inspector of Prisons (2009) *Disabled prisoners: A short thematic review on the care and support of prisoners with a disability.*

6. Prison Reform Trust (2008) *No One Knows. Prisoners' Voices: Experiences of the criminal justice system by prisoners with learning disabilities and learning difficulties.*

7. Lord Bradley (2009) *The Bradley Report. Lord Bradley's review of people with mental health problems or learning disabilities in the criminal justice system.*

prisoners and to meet their specific needs. We also have good business reasons for doing so, as it is the only way that we will be able to help them to reduce their risk of reoffending, and thereby to protect the public.

Of course, it is recognised that providing effectively for disabled prisoners is not always easy, given the age of some establishments and the pressures on accommodation. The dislocation between health and social care can also be a huge barrier to effective provision. However, these cannot be used as excuses and there is a good deal we can, and should, do to improve our treatment and care of disabled prisoners.

What are the issues?

The challenges are varied and numerous. One of the most pressing is to increase the recording of disability information and improve data quality. The Chief Inspector of Prisons thematic review of disabled prisoners found that, of the prisoners surveyed, 15 per cent said that they had a disability. The actual number is likely to be higher than this, as many disabled prisoners are not aware that they have a disability or choose not to say so. However, at the time data taken from LIDS⁸ showed only 5 per cent of prisoners had a disability, with no information being recorded for 85 per cent of prisoners.

Although the national policy includes a mechanism for disability monitoring, and the amount of data collected is growing, it remains likely that there is significant under-recording of disability. This is clearly something that needs to be tackled to ensure we have a more comprehensive picture of the number of prisoners with a disability.

Linked to this is the need to have effective systems for measuring and monitoring outcomes for disabled prisoners. The Prison Service has been widely praised for the introduction of SMART — the tool that enables monitoring of outcomes for BME prisoners. This has been instrumental in providing robust management information that enables senior leaders and staff in the organisation to have a clear understanding of the key areas of disproportionality.

It has to be a goal to have the same level of monitoring and analysis in relation to disability, as well as all other protected characteristics. Of course, we need robust monitoring data first if we are then to proceed to analysing outcomes in terms of access to the regime.

There is also work to do to improve reception and induction processes, not only to ensure that monitoring data is captured and there is an appropriate assessment of the immediate needs of prisoners, but also that the information we provide is readily understandable to all, particularly those with learning disabilities or learning difficulties. There is a real risk that some prisoners spend their first hours and days in custody with no understanding of what is happening to them or how they access the regime. This is particularly distressing for those people who are being received into custody for the first time.

The recent disability discrimination claim referred to above demonstrates the need to continue working towards ensuring that reasonable adjustments are made to accommodation. In addressing the claim, the prison accepted that some limited failure to make reasonable adjustments in accordance with its obligations under the DDA had occurred. These related to failure to make reasonable adjustments to allow

the prisoner independent access to a toilet and bath, for example by installing a ramp in the shower area. Although it is important to recognise the inherent limitations of an ageing estate, this does not mean that more cannot be done to make adaptations to cells, shower areas, classrooms and landings to ensure equality of access for all prisoners.

Care planning, and in particular adequate assessment of need and recording of adjustments made, also needs further attention. Both the Bradley Report and HMCIIP thematics on disability and older prisoners⁹ highlight issues around care plans not being completed or not being effectively monitored once in place. More recently, lawyers representing individual prisoners who claim establishments have not provided adequate protection or care to their disabled clients have raised the issue of the lack of

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8. The electronic prisoner record system in use at the time.

9. Her Majesty's Chief Inspector of Prisons (2004) *'No problems — old and quiet': Older prisoners in England and Wales. A thematic review by HM Chief Inspector of Prisons.*

documentation which outlines their needs and the support they require. This does not necessarily mean that no assessment of need has been made or support given but simply that this has not then been noted on the prisoner's record which makes it very difficult for the Service to defend cases in court.

A particularly significant challenge, which is at the core of our business and fundamental to what we do, is to ensure access to interventions, whether that be Offending Behaviour Programmes (OBPs) or the raft of other activities which a prisoner may engage in order to demonstrate reduction in risk and progress through their sentence. The outcome of a recent judicial review case found that NOMS had failed to provide appropriate courses to a learning disabled offender.

This related to an indeterminate sentence prisoner with a four year tariff which expired in 2005. Throughout his sentence planning, participation in OBPs was identified as a key way of demonstrating risk reduction. Although he was progressing, OBPs remained a sentence plan target which he could not meet due to his learning disability. Although the prison arranged one-to-one work, with a view to behavioural risk reduction, the judge held against NOMS because OBPs were both in the sentence plan and considered of significant importance in our policies. The judge found the Secretary of State had unlawfully breached the statutory duty to take steps to ensure practices, policies and procedures do not discriminate against an intellectually disabled prisoner and to enable him to undertake some type of offending behaviour work. This brought to the fore the importance of designing interventions with the needs of disabled prisoners in mind and ensuring they are delivered in ways or places that mean they are accessible to disabled prisoners.

The self-inflicted death of a young prisoner with learning and physical disabilities, described by staff and prisoners as 'a boy in a man's world', is another indication of what can happen when disabilities are not identified and reasonable adjustments are not made. This young man was very vulnerable, and whilst some staff and prisoners provided support for him, he clearly suffered bullying and exploitation from some other prisoners, and the case was described by the Coroner as one of the most harrowing that he has had to deal with.

These cases highlight the massive impact that learning disabilities have on the ability of those affected to engage and cope with the prison regime. Currently there are no precise figures of the percentage of the prison population likely to have a learning disability but we know that there is likely to be a high level of unidentified need, and this is an area which requires some immediate focused attention.

What action are we taking?

Action at both national and local level is required to tackle the issues described above.

The Prison Service Instruction on equality in service delivery sets out how the requirements of the DDA should be met and mandates a number of actions to ensure compliance. In practice, the effectiveness of the arrangements for managing disability issues varies between establishments, and they are not always integrated with other processes. Some prisons have full-time or equivalent Disability Liaison Officers — sometimes working as part of diversity departments — who are taking forward the work in a very proactive way, often using prisoner representatives to assist. Many have committed staff in other areas, such as education and healthcare who ensure that prisoners receive the care and support that they need.

Examples of good practice include a range of educational interventions for prisoners with learning disabilities and difficulties, the provision of work that is suitable for disabled prisoners in a number of prisons, specific activities for disabled prisoners, for example adapted PE provision, and the involvement of relevant voluntary sector groups in some prisons. However, too many of these examples of good practice around the estate still rely on the efforts of individuals, rather than integrating disability work fully into core business. This is why the new Prison Service Instruction on Residential Services will make it clear that, through their engagement with individual prisoners, it is residential staff that are expected to identify prisoners with any particular needs and to make reasonable adjustments to their daily routine. There will continue to be a role for staff with specialist responsibilities around equalities to provide support and advice, but this is a general

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responsibility for all residential staff to be proactive in identifying prisoners' needs, rather than waiting for the prisoner to disclose a disability.

At a national level, our main programme of activity on equalities issues is set out in our Single Equality Scheme (SES)¹⁰, with the actions on disability equality informed by the findings and recommendations from the various reports mentioned above. Some of the key actions include:

Equalities policy framework — the PSI sets out the framework for the management of all equalities issues in service delivery in prison establishments. This includes the key actions to ensure legal compliance — for example, equality monitoring information on all prisoners must be collected and recorded; there must be an annual programme of equality impact assessments of the issues presenting the greatest risk to delivery of fair services; and Governors must ensure that there are effective systems in place for reporting and responding to incidents of discrimination, harassment and victimisation — but is designed to allow Governors greater flexibility in terms of how they go about delivering the required outcomes, and in particular to encourage better integration of equalities work into core business.

Improving the collection of monitoring data — the replacement of LIDS with NOMIS makes recording easier and data more accessible and amenable to analysis. NOMIS

allows the recording of more detailed disability data on prisoners than was previously possible. Any number of disabilities can be recorded under the personal care needs section of a prisoner record. Staff can select the type of disability from the list provided and add further description if needed.

Prisons will also have the ability to produce a report that enables them to see how many prisoners they have recorded against each type of impairment and any reasonable adjustments made. This should radically improve the information we hold on disabled prisoners, enabling diversion of resources to where there is most need.

Work is also underway to improve the procedures for facilitating disclosure on reception

which will be helpful in increasing the recording of disability and improve monitoring.

Monitoring outcomes — the introduction of NOMIS also makes possible disability monitoring of outcomes. A tool has been developed that allows establishments to monitor outcomes for prisoners and to compare results for disabled prisoners with those for non-disabled prisoners, in a similar way to our well-regarded and highly praised ethnic monitoring tool — SMART. The tool is flexible, allowing users to decide what information to monitor, by which characteristic and, to a degree, for how long.

In future, a more sophisticated monitoring tool, linked directly to NOMIS, will allow us to provide outcome monitoring data for establishments, rather than requiring them to enter it locally. A series of reports on the performance hub will report on different protected characteristics applying the same form of analysis as is used in SMART. This will utilise existing streams of data collection and would have the advantage of providing analysis at local, regional and national levels. These reports are expected to be in place by the end of 2011.

Impact assessments — an integral part of the SES is the Equality Impact Assessment (EIA) process — a systematic appraisal of the effects of a function, policy or practice on different groups of people. It

involves the collection of relevant monitoring data and other evidence and consultation with stakeholders (including prisoners) with the aim of discovering any adverse impact on any group and putting in place measures to address it.

All Headquarters policies are subject to an EIA. In establishments, subjects for EIA are prioritised according to local need using a risk assessment process which includes the consideration of disability issues and the involvement of disabled prisoners. An on-line tool — NEAT — guides staff through this process, along with a DVD to train staff in the use of the tool.

These arrangements will drive much of the improvement, bringing changes to national policies

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10. National Offender Management Service (2009) *Promoting Equality in Prisons and Probation: The National Offender Management Service Single Equality Scheme 2009-2012*.

where appropriate and facilitating the proactive identification and tackling of issues at a local level.

Reasonable adjustments — a guide to reasonable adjustments in prison has been issued, including explanations of common disabilities and conditions, examples of good practice in making adjustments for them and contact details for government and third sector organisations which can advise and support staff.

Establishment information — a comprehensive survey of all establishments has been undertaken with the aim of collecting information on the services and facilities available to disabled prisoners. This includes access to premises; accessible accommodation and facilities; regime activities such as visits, education, work, and religious services; and the availability of adapted interventions such as offending behaviour courses. This has been compiled into a database which enables us to better understand provision for disabled prisoners across the estate; assists regions in developing resources locally as well as more specialised facilities; and to advise where improvements are needed.

Access to offending behaviour programmes — we have embarked on a programme of work to assess the accessibility of our various programmes and to devise adjustments or alternatives as necessary. A review of existing OBPs and the way in which they are delivered is taking place and an adapted version of the Sex Offenders Treatment Programme for prisoners with low IQs is already available. Interim sentence planning guidance for staff working with prisoners with a learning disability or difficulty has been issued to Probation Chief Executives and relevant Offender Management leads. A briefing note was also sent to Directors of Offender Management providing guidance on issues surrounding learning and other disabilities and areas of concern for consideration in the offender management process.

Learning disability — much of the work which is currently underway involves partnership working between NOMS, prisons and Offender Health. This is especially the case around issues for prisoners with

learning disabilities — arguably one of the most pressing challenges for the Prison Service.

Improving Health, Supporting Justice: A delivery plan is the cross-government response to Lord Bradley's report¹¹. Key deliverables in the plan include training of frontline staff; screening for learning disabilities; and support to resettle into the community on release. Progress has been made already in the training of frontline staff, including the development of a module on learning disabilities and other hidden disabilities in the training for new entrant prison officers. Offender Health has also rolled out a one day training course on learning disability awareness to key prison staff.

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One of the most significant projects is the development and application of a screening tool for learning disabilities — a key recommendation in the Bradley Report which was carried through into the Delivery Plan. The Learning Disability Screening Questionnaire (LDSQ) is a short tool consisting of a number of questions which can be asked of a prisoner which will give a reliable indication of whether the individual is likely to have a learning disability. Any member of staff can apply the questionnaire — it does not require a learning disability specialist. The prisoner has to give his/her permission to the test, and to the results of the test being shared. Those prisoners identified as being

likely to have a learning disability should then be referred to healthcare and education, and wing staff informed that the individual will need additional support. The information will also be fed into sentence plans. The tool has been piloted at a number of prisons and is currently being trialled in courts and prison custody suites. Early indications are that the tool is producing results comparable to those from a far more complex tool and the aim is to implement the use of the screening tool across the estate. This will include a plan for training on both the use of the tool itself and training on communication and management skills for prison service staff.

In addition, in partnership with Offender Health and Surrey Primary Care Trust, work is underway to

11. Department of Health (2009) *Improving Health, Supporting Justice: The National Delivery Plan of the Health and Criminal Justice Programme Board*.

translate some of the key information for prisoners into an 'easy read' format. This includes a basic induction handbook covering what happens when you first arrive; everyday life and required routines; education; and health screening and services. Factsheets will also be available on issues such as how to make a complaint; understanding the adjudications process; and how to progress through the incentives and earned privileges scheme. The policies to be translated were selected by staff and prisoners from across the estate and reviewed by a learning disability user group which acts as a consultation forum for Offender Health. Work is expected to be completed by the end of June 2011.

Conclusion

There can be no doubt that the issues described above represent significant challenges that NOMS and prisons must tackle in order to ensure we are effectively meeting the needs of disabled prisoners and facilitating equality of access. The wider context of the Spending Review and the need to make substantial savings at local and national levels means

that it is increasingly important and necessary to think creatively about how to meet these challenges.

In addition, as the government's 'rehabilitation revolution' gets underway, the experience of disabled prisoners must not be forgotten. In particular, in implementing the concept of 'working prisons' — where prisoners are obliged to work a full working week — as set out in the recently published Green Paper¹², care must be taken to ensure that this does not disadvantage disabled prisoners who may face barriers to their participation.

Despite the challenges ahead and considerable work that remains to be done, there is greater awareness of the issues and a greater willingness to tackle the problems that prisons and prisoners face. NOMS is committed to providing a fair service to all and with support from prisons and third sector organisations, we can continue to address any inequalities and ensure that disabled prisoners are able to benefit from their experience of prison and resettle successfully into the community. It is not only our legal obligation but the only way to deliver an effective service that achieves our core aim of preventing victims by changing lives.

12. Ministry of Justice (2010). *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*.