

Response of the Reward Foundation to the Scottish Government's National Strategy for Community Justice: Revision Consultation

Comments

Aim 1 recognises that those who come into contact with the criminal justice system ***often present with higher levels of vulnerability than the general population and have complex needs.***

Autism Spectrum Disorder

We would like to draw your attention to a key group that has not been mentioned, namely those with autism spectrum disorders (ASD). There are opportunities for cost savings for the Scottish Government amongst this group if diverted away from the criminal justice system.

The stereotypical notion of autism as the Dustin Hoffman portrayal of "Rain Man" is extremely unhelpful and does not cover the huge range of people with the condition. Many of the people entering the criminal justice system for downloading indecent images of children are high functioning autistic people, with what used to be termed "Asperger Syndrome". They often have higher level degrees in science or technology.

Autism is not a mental health condition that can be cured or improved with medication. Rather it is "an early-onset, pervasive and lifelong neurodevelopmental disorder that is characterised by impairments in social communication and repetitive, restricted behaviour patterns and atypical response to sensory stimuli," ([Diagnostic Statistical Manual DSM-V](#); American Psychiatric Association [APA], 2013). Across individuals with ASD, there is also significant variability in both intellectual and communicative ability ([McPartland et al., 2016](#)). Nearly half of individuals with ASD are not intellectually impaired and have normal cognitive and language skills.

Autism is a protected characteristic under the Equality Act 2010 making those with ASD, vulnerable individuals. 1 in 57 people in the United Kingdom are estimated to be on the autism spectrum.

According to autism research charity Autistica, seven out of ten autistic people have a mental health condition such as [anxiety](#), [depression](#), [ADHD](#) or [obsessive-compulsive disorder \(OCD\)](#). We could probably add to that list, one or more forms of internet addiction.

Adults with autism who do not have a learning disability were up to nine times more likely to die by suicide than adults at similar ages who did not have autism.

Adults who have both autism and one or more learning disabilities died at an average age of 39.5 years old. Those with autism, but no learning disability, died at an average age of 58.

Dr Clare Allely, an expert in autism, has just published a highly recommended book called "[Autism Spectrum Disorder in the Criminal Justice System](#)" that explains autism and the range of offences to which autistic people may be vulnerable.

Online Sexual Offending

Two key characteristics of autism are impairments in social communication and higher level of systems thinking ability. People with autism are highly logical and feel at home working with the internet and collecting material. At the same time, they are often emotionally immature.

Individuals with ASD are more likely to be a victim than an offender due to their naivety and trusting nature and their desire to be accepted by others. Some on the autistic spectrum who find it difficult to form relationships, particularly sexual ones, can sometimes find themselves involved in downloading indecent images of children due to the inherent nature of their condition and not because of a deviant mindset.

As a result of that neurological condition, for reasons to be explained in a moment, people with ASD are thought to be more vulnerable to developing compulsive use of internet pornography and as a result, at risk of escalating to illegal material and accessing/downloading indecent images of children. [Compulsive sexual behaviour disorder](#) is a relatively new category of mental health disorder that first appeared in the World Health Organisation's International Classification of Diseases, revision eleven (ICD-11) in 2018. It covers a range of problematic sexual behaviours including compulsive or addictive use of pornography. [Research](#) shows that more than 80% of people seeking treatment for compulsive sexual behaviour disorder have reported an inability to control their use of internet pornography. A common feature of any addictive disorder is tolerance or escalation to stronger stimuli as the brain desensitises over time to lesser stimuli. In regard to pornography this means escalation in amount of time spent using and in the type of content accessed.

There is little formal research on how compulsive sexual behaviour disorder can drive users to access illegal material and none on how it affects people with autism specifically. However, the anecdotal evidence from anti-child abuse charities who see increasing numbers of men charged with this offence, has been mounting steadily for the past 10 years since broadband made internet pornography so accessible. These autistic men are not paedophiles (people who have a primary or exclusive sexual attraction to prepubescent children and often act out as contact offenders) and rarely have a history of child abuse. Rather they are men with a compulsive sexual behaviour disorder or pornography addiction the nature of which, with the help of algorithms providing edgier content, can help drive them to illegal material. Increasing numbers of men charged with accessing illegal material are later diagnosed with autism.

There is a high risk of suicide among those men who are charged with downloading indecent images of children. They almost always have no previous convictions, and have high levels of education. The work of anti-child abuse charities like Stop it Now! (part of the Lucy Faithfull Foundation) includes helping prevent suicide by men when they are first charged by the police. Later this year a group of experts will be publishing a book on this area of offending.

The rise in cyber-enabled crime, especially the downloading of indecent images of children, has brought many more offenders to the notice of the authorities, many of whom appear to be autistic. The courts are totally overburdened with sexual offending cases. Also the strain on MAPPA officers to monitor such individuals, who are generally considered by experts to be at a very low risk to society, is enormous and disproportionate.

Although a majority of these people are first time offenders - they often hold down professional jobs and have a family - they are treated by the system in the same way as contact offenders who are a medium to high risk to society and need high levels of supervision post-conviction. Men who have downloaded indecent images of children and

have not sought connection with children directly are consistently reported by experts to be low risk and have a very low rate of recidivism. Sadly, in some cases, criminal justice officials and healthcare professionals who do not appreciate the risks around pornography, especially for people with autism, have encouraged them to continue using pornography after conviction. This has resulted in reoffending online by a few.

Diversion

These men are a group of offenders who are ideal for consideration for diversion for two main reasons. First, the criminal justice system is not suitable for dealing with people with autism. None of the risk assessment tools currently used focus on online sexual offending (they are generally tested for sexual violence), and none is normed for people with autism. This means that the neurotypical treatments and assessments do not fit with the specific needs of this category of offender.

Second, the chances of reoffending are extremely low. While autism itself is a permanent condition, compulsive sexual behaviour disorder can be treated. Indeed, high levels of recovery have been recorded as online recovery websites such as NoFap.com; Rebootnation.org and Yourbrainonporn.com can testify. Tens of thousands of people have reported that they have been able to recover. This is also supported in anecdotal information from sex therapists with whom the author has collaborated during her four-year term of office as a board member of the US Society for the Advancement of Sexual Health.

However, the damage done to the individual and his wider family because of the heavy-handed approach of a criminal justice system that is justifiably aimed at protecting society from contact offenders, is considerable and unnecessary. Not only is cyber-enabled crime the fastest growing area of sexual offending, but it will continue to grow while ignorance of pornography's harms goes unrecognised. This means that people with autism who commit this type of offence will continue to be adversely affected and disproportionately so.

Treatment in other Jurisdictions

In some ways the English and US criminal justice systems have given more thought to the issue of online sexual offending by people with autism. Please note that unlike European commentators and academics, people in the US still refer to child sexual abuse material (CSAM) as "child pornography".

"The condition does not provide a legal defence. It is not an excuse or justification for actions. But it does often provide an explanation for what amounts to criminal behaviour. " (*Failing the Vulnerable* <https://www.lawgazette.co.uk/commentary-and-opinion/failing-the-vulnerable/5059700.article>)

"Tests of adaptive functioning (social communication) and sexual interest repeatedly confirm that these are individuals who are not deviant but simply unaware of the social opprobrium attached to the sexualisation of children and who are also unable to intuit the abusive and cruel nature of the circumstances under which these images are created. They present what is best described as "**counterfeit deviance**" - they engage in behaviour we consider deviant without the mental understanding or blameworthiness we assume on the part of the people engaging in the behaviour." (Mark Mahoney: *Caught in the Web of the Criminal Justice System, US*).

"Once the legal rules and the social stigma surrounding child pornography are clarified explicitly, the autistic individual is unlikely to visit such links again. Individuals with ASD are extremely reliable because they are so rigid. They do not represent a risk to society." (Mark Mahoney 2009 *Asperger's Syndrome and the Criminal Law (US)* page 46)

[The age of criminal responsibility has recently been raised to 12 in Scotland.]

“... prosecution of an autistic young adult for possession of child pornography is morally equivalent to the prosecution of a 10-year old for the same crime. Much like a 10-year old, a young adult with autism may not fully appreciate the moral reprehensibility and illegality of downloading such images.

While it would be problematic to try to limit criminal prosecution according to developmental (versus chronological) age, in general, in this area, with conduct involving little more than looking at pictures by persons who simply do not represent the threat anticipated by Congress or state legislators, consideration of developmental age is most appropriate.” (Mark Mahoney 2009 *Asperger's Syndrome and the Criminal Law* p42).

It is always important to remember that while looking at images of a child being raped and doing the physical act oneself are different, we should not forget the manner in which the child sexual abuse material (CSAM) is made, and that the impact on the victims cannot be overstated. However, this difference might not be apparent to persons who do not automatically question beyond the function of what is in front of them. It could be argued that what drove offending was, in most cases, ignorance of these aspects, rather than an active desire to have a sexual encounter at the expense of a child. In acknowledgement of small, but potential, demographics, there might be some autistic people, most notably [low functioning and with cognitive impairment](#), who are attracted to children, we would suggest that for both them and non-paedophilic autistic persons, diversion that addresses either what they do with their attraction or any addictive tendencies brought on by problems in living encountered through autism would be a more productive preventative strategy than current measures.

Many autistic men are truly upset when they are told about the harm surrounding CSAM offending and, having a tendency to be rule-driven, make efforts according to their conscience not to contribute to further harm. The more that autistic offenders are supported to live offence-free lives in a context of understanding their crime within their developmental issues, the more they can contribute to both their family and wider social dynamics.

Challenge for the Criminal Justice System in Scotland

It is clear that autism is widely underassessed and diagnosed. Criminal justice social workers and judges will not take an offender's autism into account unless there is a formal diagnosis. There are very few psychologists in Scotland trained to assess it and is better assessed by a group than a sole individual. There are waiting lists for assessment of 4-5 years on the NHS and private assessment costs upwards of £2,500, often with a waiting list too. To that extent, the system is failing a highly vulnerable group. Being notified on the Sex Offender Register often for 10 years makes it almost impossible for these men to find employment despite their high skills. If married, the marriage almost invariably ends, and because the system treats them like paedophilic contact offenders, social services generally do not allow them to see their children. This has a seriously detrimental effect on both the children and the father.

Further, press coverage of such cases, causes long term damage to these people. It invites vigilante activity and potential bullying of their children at school and social harassment, both online and offline, to other members of the family. There are high levels of suicide among this group.

These are men with high functioning autism whose skills are being lost to society and whose families suffer more than necessary because disposal through the criminal justice system rather than via diversion to a more suitable form of treatment and rehabilitation.

Opportunity for the Criminal Justice System

It is only by chance that some men are encouraged to seek an assessment for autism. Few can afford to go private or to wait for an assessment via the NHS 4-5 years down the line. The NHS timescales are of no use to someone awaiting a court date. However, the cost to the criminal justice system of supervising such men for years on end when they are a very low risk, is colossal. If the Scottish Government invested in training psychologists and other healthcare professionals to do assessments for autism more widely, including in schools, then autistic people who are vulnerable to internet addictions could have preventative education and cut down the risk of offending in the first place, Second for those already out of the education system but who have offended, they could be assessed and diverted away from the criminal justice into a less expensive and more effective system of treatment and rehabilitation.

Recognition of the vulnerability of people with autism, especially high functioning autism, is essential in order to get appropriate help for these people and to stop them entering the criminal justice system. More assessment and more diversion are key to improving justice for this vulnerable group in Scotland.