

Autism Spectrum Disorder within the Criminal Justice System

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Autism Spectrum Disorder within the Criminal Justice System

Coming into contact with the police or becoming involved in the criminal justice system (CJS) can be extremely difficult and stressful experiences for anyone. However, for individuals with Autism Spectrum Disorder (ASD), such situations can be increasingly difficult due to the possible barriers to verbal communication as well as the understanding and processing of information.

For example, a lack of understanding and awareness of ASD from police officers and other professionals working within the CJS can increase the likelihood of individuals with a suspected or confirmed diagnosis of ASD receiving improper, unfair or discriminatory treatment.

Consequently, this pamphlet has been produced to provide information and guidance on the rights of individuals with ASD when coming into contact with the police, the additional complexities that may be faced during such interactions, and provide guidance on how best to prepare for and handle such situations as and when they arise.

This pamphlet also provides information for professionals working within the CJS on the differing needs and rights of individuals with ASD, how to identify an individual with a suspected diagnosis of ASD, and best practice guidance on how best to recognise and manage their needs effectively and appropriately.

Research Findings

- It is estimated that approximately 700,000 people in the United Kingdom have a diagnosis of ASD.
- Despite the fact that individuals with ASD are more likely to be the victims of crime rather than the perpetrators, and the fact that there is no evidence to support the assertion that they are more likely to engage in criminal activity than people without ASD, individuals with ASD are seven times more likely to interact with the CJS than those who are considered 'neurotypical'.
- This has led to increasing concern from a wide variety of stakeholders, including researchers, professionals within the CJS, the Government and individuals with ASD and their families and friends. These concerns relate to findings that demonstrate that individuals with ASD are not receiving fair, just or equal treatment within the CJS. This in turn has led to individuals with ASD facing significant disadvantages. For example, in 2020 the Equality and Human Rights Commission report stated that the 'CJS [in the UK] is failing those with learning disabilities and ASD'.



Research Findings

Research into this issue by our Human Rights Officers has highlighted some concerning statistics:

- 1 in 5 individuals with ASD will be stopped and questioned by the police before they reach the age of 21.**
- People with disabilities, including ASD, are five times more likely to be remanded in custody than those without disabilities.**
- Despite all individuals with ASD having the statutory right to reasonable adjustments, 75% of individuals with ASD were not given reasonable adjustments during their involvement with our CJS.**
- Despite all individuals with ASD being entitled to an appropriate adult only 43% of those surveyed were provided with an appropriate adult during police investigations, even when an existing diagnosis of ASD had been identified. In addition, a further 18% did not have an 'appropriate adult' present because their diagnosis was not known to the police.**
- Only half of those with a confirmed medical diagnosis of ASD (52%) were considered by the police to be vulnerable adults, even though the law of England and Wales recognises all those with ASD as vulnerable.**
- Of the individuals with ASD whose cases went to trial, more than one in five (22%) were not given any reasonable adjustments even though their lawyers stated that this would have been helpful.**

Why are individuals with ASD more likely to be approached by the police?

ASD affects how a person communicates and interacts with the world around them, and may cause difficulties with communication and social interactions.

Those with ASD may also experience sensory issues relating to noise, smell, and bright lights which can be painful or distressing.

Those with ASD may also feel uneasy or anxious in situations where an unexpected change occurs, such as being approached by or in the vicinity of police officers.

Therefore, individuals with ASD may behave or react differently to certain situations or external stimuli than those without ASD, and such behaviours and reactions may draw additional attention from police officers, or be deemed as suspicious.

This, accompanied by a lack of training and awareness of ASD by professionals working within the CJS, unfortunately, means that individuals with ASD are more likely to have contact with the CJS, including a higher likelihood of being stopped by the police.



What are your rights?

Stop & Question

- The police can stop and question an individual at any time.
- Police community support officers (PCSOs) must be in uniform when they stop and question an individual.
- Police officers do not always have to be in uniform but if they are not wearing a uniform then they must show you their warrant card.

Police officers might stop and ask you the following questions:

- What your name is?
- What you are doing in the area?
- Where you are going?

Ordinarily, you do not have to answer these questions. If you do not and there is no other reason to suspect you, then this alone can not be used as a reason to search or arrest you.



Stop & Search

It is extremely important to mention that being searched by the police does not mean that you are being arrested.

Police officers possess the power to stop and search you (regardless of whether you have provided consent) if they have 'reasonable grounds' to suspect that you are carrying:

- **Prohibited substances (e.g. recreational drugs)**
- **Weapons**
- **Stolen property**
- **Items or an item that has been or could be used in the commission of a criminal offence**

Before You Are Searched

Before you are searched a police officer must tell you:

- **Their name and the name of the police station that they are from.**
- **What they expect to find (e.g. recreational drugs, etc...).**
- **The specific reason for the search.**
- **Why they are legally allowed to search you (e.g. by stating specific statutory provisions).**

You are also entitled to a record of the search - if this is not possible, then they must inform you of how you can obtain a copy.

Removing Clothing

- **Police officers can ask you to take off your coat, jacket or gloves.**
- **Police officers can ask you to take off items of clothing that you are wearing for religious or ethnic reasons, e.g. veil, hijab, turban, etc... However, if they do ask you to remove such items then they must take you somewhere out of public view.**
- **If a police officer wants you to remove more than a jacket and gloves then they must be the same gender as you.**

Arrest

To arrest you police officers must have reasonable grounds to suspect that you are or have been involved in a crime for which your arrest is necessary.

Police officers possess the legal authority to arrest you at any time in any place, including on the street, at home or at work.

If you are arrested police officers must:

- Identify themselves as police officers.
- Inform you that you are being arrested.
- Inform you of the criminal offence that you are suspected of committing.
- Explain why it is necessary to arrest you.
- Inform you that you are not free to leave.

If you try and escape or become violent, police officers can use 'reasonable force' to detain you. For instance, you may be handcuffed.

N.B. Police officers have further legal powers to search you when you are arrested.



Arrest

If you are arrested, you have the right to:

- **Remain silent.**
- **Ask for a lawyer immediately - a free, Government appointed lawyer must be provided if you ask for one but you cannot afford to pay privately.**
- **Refuse to sign any paperwork or make any decisions without consulting a lawyer first.**
- **Make a local phone call – this could be to a lawyer, friend, family member or carer, etc...**
- **Answer ‘no comment’ during police interviews.**
- **Request reasonable adjustments - E.g. reducing your contact with external factors which may cause sensory difficulties (bright lights, loud noises, strong smells, specific foods, etc...), or request that the police officers handling your case communicate with you in a manner that is easier for you to understand (such as using short sentences, visual aids and allowing you extra time to respond).**
- **Receive a copy of your police records.**



Appropriate Adults

- Individuals with ASD who have been arrested have the legal right to an appropriate adult.
- Appropriate adults (AA) safeguard the welfare, rights and effective participation of children and vulnerable people who are detained and interviewed by the police as suspects.

an AA could be a:

- Parent, guardian or carer.
- Another family member or friend (aged 18 or over).
- Social worker.
- Volunteer (aged 18 or over).

Release

- The police can detain you for 24 hours before they must either charge you with a criminal offence or release you.
- The police can apply to the courts to hold you for up to 36 or 96 hours if you are suspected of having committed a serious criminal offence.
- You can be held without charge for up to 14 days if you are arrested under the Terrorism Act.
- The police can release you on bail if there is not enough evidence to charge you. You do not have to pay to be released, but you will have to return to the police station for further questioning when asked or on a date and time specified upon your release.

Reducing Risk & Communicating Your Needs

- It is advised to not resist arrest, even if you believe that an arrest is unfair or unnecessary.
- It is advised to not answer questions, make decisions or sign any documents before consulting a lawyer and/or having an AA present.
- If you are able to it is advised to inform the investigating police officers that you have an ASD diagnosis. If you are unable to, then the importance of asking for a lawyer and AA is further increased and please note that the police can arrange this on your behalf.

Autism Alert Cards

- Autism Alert Cards are small cards that can be carried in your wallet or pocket.
- Their primary purpose is to alert individuals that you come into contact with, such as police officers, that you have ASD and/or other communication difficulties.



What can I do if I felt that I have been treated unfairly?

- Write down everything that you can remember. For instance, your location, the police officer's warrant card number, vehicle registration number, the name of the police station that the police officer or officers were from, the contact information of witnesses, what was said during the interaction, etc...
- If your interaction with the police is within a public setting, you can video or audio record it if you wish - provided that you do not interfere with what the police officer is doing or obstruct them in any way.
- You can file a written complaint with the police's internal affairs division or civilian complaint board. This can be done anonymously or by an appropriate adult on a vulnerable person's behalf.



Best Practice Guidance

This section is primarily for police officers and those working within the criminal justice system.

Individuals with ASD may display behaviours that seem 'odd' or draw attention. Therefore, it is important for police officers to consider this as a possible explanation if such behaviour is displayed by members of the public.

ASD is a hidden disability. Consequently, it may not be apparent or immediately obvious that an individual possesses ASD upon initial contact.

However, there are certain behaviours or personal characteristics that can indicate that an individual possesses ASD (please see below).

Behavioural Indicators of ASD

Does the individual in question:

- **Show unusual (or no) eye contact?**
- **Behave inappropriately, unpredictably or unusually?**
- **Struggle to understand you?**
- **Find it difficult to talk to you?**
- **Repeat what you or another person says?**
- **Speak honestly, to the point of bluntness or rudeness?**
- **Seem unusually anxious, agitated or scared of you?**
- **Display repetitive, obsessional-type behaviour?**
- **Show sensitivity to sound, light or touch?**
- **Seem not to realise the consequences of what they may have done?**

Why might individuals with ASD commit offences?

- **Social naivety:** The desire to have friends or to 'fit in' may lead to individuals with ASD becoming befriended by criminals and/or unwitting accomplices. This could be due to a lack of understanding of the third parties' true intentions.
- **Difficulty with change or unexpected events:** an unexpected change in the environment or an individual's daily routine, such as a public transport delay, may cause great anxiety and distress, leading to aggressive behaviour.
- **Misunderstanding of social cues:** Many individuals with ASD have difficulty maintaining eye contact, which may be avoided, fleeting, prolonged, or inappropriate. This in turn can be interpreted as intimidating or alarming.
- **Rigid adherence to rules:** Individuals with ASD may become extremely agitated if other people break rules such as not waiting their turn in a queue or parking incorrectly.
- **Not understanding the implications of their behaviour:** Due to difficulties with social imagination, individuals with ASD may not be able to predict the consequences of their actions or learn from past experiences. Therefore, they may repeatedly offend if they are not offered the correct support and intervention.



Police Contact

If an individual or suspect displays any of but not limited to the behaviours previously outlined, it is important for police officers to consider that:

- Police contact can exacerbate an already difficult and stressful situation for an individual with ASD.
- The use of handcuffs and restraints may be extremely frightening for individuals with ASD, as they may not understand what is happening or the reason behind their use.
- Individuals with ASD may not be able to communicate their fears in an appropriate or an 'ordinary' manner.
- The above, coupled with loud noises, etc... may result in sensory overload causing the individual with ASD to try and run away or to hit out at people, including the police.
- The very presence of the police may cause great anxiety to a law-abiding individual with ASD who has no comprehension of the crime they are suspected of having committed.



How best to manage the situation:

- Switch off sirens and bright flashing lights.
- Approach the individual in a non-threatening manner.
- Give the individual concerned space.
- Use the individual's name (if you know it) at the start of each sentence so that they know you are addressing them.
- Give clear, slow and direct instructions. For example, "Jack, get out of the car".
- Allow the individual time to process information and do not expect immediate responses to instructions.
- Avoid using sarcasm, metaphors or irony as an individual with ASD may take what you say literally.
- Do not shout or raise your voice.
- Clearly explain what is happening and where you are taking an individual with ASD if they are being arrested and detained.
- Use visual information such as visual aids or writing things down.
- If possible, avoid making physical contact with an individual with ASD. Even if it is compassionate in nature.
- Do not try and stop an individual with ASD from flapping or from undertaking other repetitive movements (this is known as stimming and can often be a self-calming strategy and may subside once things have clearly been explained to them).

Arresting an individual with ASD

If you need to arrest an individual with a confirmed or a suspected diagnosis of ASD, it is important to remember:

- Individuals with ASD have the legal right to an appropriate adult.
- If an individual with ASD refuses a solicitor, it may be because they do not understand their circumstances and suspect that they will become even more confused when another third party becomes involved.
- When the custody officer asks an individual whether they have a disability, most individuals with ASD will say no because the question is not specific enough.
- If the custody officer suspects that an individual may have a disability, it is advised that a specialist in the field of ASD, such as a clinical psychologist or psychiatrist, is contacted.
- Being held in custody may be a particularly stressful and frightening situation for individuals with ASD and can lead to difficult emotional and physical outbursts.

Factors that could intensify this are:

- Harsh lighting
- Strong smells
- Loud noises
- Food preferences not being met – e.g. individuals with ASD may not be able to eat foods of a certain colour or texture, or that have touched other food.

Interviews & Conversations

When communicating with individuals with a suspected or confirmed diagnosis of ASD, it is of the utmost importance to ensure that they fully understand the situation. For example, what is being asked of them, and if applicable, the details of any crimes or cautions that they are being charged with or receiving.

Individuals with ASD may appear extremely able with a good vocabulary, meaning that there may be no reason for an interviewing police officer to suspect that the interviewee requires additional help, despite the likelihood that the situation is increasingly anxiety-provoking for someone with ASD.

Throughout the course of an interview, an interviewing officer may find that they begin to receive blunt answers, the subject matter is changed or the individual is reluctant to make direct eye contact. This may be due to the literal way in which an individual with ASD interprets language. That in turn can lead to them giving incorrect answers or becoming increasingly anxious.

All of the above-mentioned factors or behaviours can contribute to an assumption of guilt. That in turn can lead to false confessions. Therefore, it is extremely important that police officers are well versed in the behaviours that may indicate that an individual possesses ASD and thus requires additional support.



To improve the effectiveness of a conversation and to help to elicit the correct responses from an individual with a suspected or confirmed diagnosis of ASD, police officers can:

- **Keep their language clear, concise and simple.**
- **Use short sentences.**
- **Ask the interviewee to explain all of the elements of the charge, caution or warning in order to ensure a robust understanding.**
- **Use the interviewee's name at the start of each sentence so that they know that they are being addressed.**
- **Avoid the use of irony, sarcasm or metaphors.**
- **Be aware that the interviewee may repeat back the question that has been asked of them.**
- **Be aware that when an individual with ASD is asked a yes or no question, then they may repeat back the first or last word spoken without a true understanding of the question being asked. In order to mitigate the aforementioned interviewers can ask a series of yes or no questions in order to determine the style and dependability of the interviewee's response and then follow this up with the key yes or no questions that they need to be answered.**
- **Allow individuals with a suspected or confirmed diagnosis of ASD extra thinking time to process the information.**
- **Keep their facial expressions and hand gestures to a minimum.**
- **Make use of visual aids such as pictures or writing questions down.**
- **Allow for longer or more frequent breaks.**

Useful Resources

National Autistic Society

- Website: www.autism.org.uk
- Helpline: 0808 800 4104

National Appropriate Adult Network

- Website: www.appropriateadult.org.uk
- Telephone: 07592263734
- Email: admin@appropriateadult.org.uk

National Police Autism Association

- Website: www.npaa.org.uk

Victim Support

- Website: www.victimsupport.org.uk
- Support line: 0808 1689 111 (24/7, 365 days a year)
- Email: via the website using the online form

Resources for Autism

- Website: <https://resourcesforautism.org.uk>
- Telephone: 07817736096
- Email: wmadmin@resourcesforautism.org.uk

Crown Prosecution Service (ASD Toolkit for Professionals Working Within the CJS)

- Website:

www.cps.gov.uk/legal-guidance/psychological-evidence-toolkit-guide-crown-prosecutors#_Toc522539046