

**Offenders with Learning Disabilities:  
The Involvement & Attitudes of Professionals**

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## **ABSTRACT**

It has been reported that there is an over-representation of people with learning disabilities in prison populations. Various explanations have been offered for this including theories that people with disabilities are susceptible to criminal behaviour, and that they receive different treatment within the justice system. There is no evidence of an over-representation of people with learning disabilities in the UK penal system although evidence does suggest that there are a significant number of prisoners with borderline learning disabilities who are psychologically vulnerable. This research set out to examine current levels of contact that psychiatrists have with various criminal justice agencies, as well as exploring the attitudes and beliefs of other criminal justice workers in order to assess current arrangements of treatment and care for offenders who have a learning disability.

791 consultant psychiatrists registered in four sections of the Royal College of Psychiatry were surveyed to detect current levels of contact with five criminal justice agencies, and also to assess their levels of involvement with the diversion of mentally disordered offenders into health care provision. Responses indicated that forensic and general psychiatrists had the highest levels of contact with criminal justice agencies, although there was also limited contact with child and learning disability psychiatrists. Forensic psychiatrists were also shown to be the group who were most likely to be involved with diversion schemes, and there was some evidence to suggest that respondents were unhappy with current arrangements for diversion because of bed and staff shortages.

An attitude survey concerning offenders with learning disabilities was distributed to 100 criminal justice professionals (judges, magistrates, police and appropriate adults). 28 of these respondents also participated in semi-structured interviews which provided qualitative data to supplement the findings of the attitude survey. These studies provided evidence that criminal justice professionals were not eager to assign special rights to people because of their learning disability status, but instead were confident that the present legal system could accommodate the needs of offenders with learning disabilities in the present system. However, significant concern was raised by all respondents that specific training is needed to address learning disability issues before this can be fully achieved. There was little evidence found to support 'susceptibility' theories of learning disability offending, although there was some evidence which gave support to the 'different treatment' hypothesis.

# Chapter 1

## *Introduction*

‘Law’ may be defined as a body of enacted rules which are recognised by society at large as being binding. All members of society are expected to act in accordance with these laws, and so any transgression leads to an individual being drawn into the judicial procedure where a case may be heard to determine whether or not any law(s) has been broken. Because we live in a democratically organised society, the law is regarded as a monolithic entity which is supposed to treat all members of society as the same, regardless of (for example) their age, social class, intellectual capabilities, etc. For this reason, legal proceedings usually remain constant for different individuals; and so, if a person is accused of breaking the law, they normally have the right to have their case heard in court before a court.

There are, however, exceptions to the constant and uniform nature of the law, as certain types of people are treated differently because of their particular characteristics; for example, children and mentally disordered offenders may be treated differently because particular characteristics typical of the group may differ from those of the general population (e.g. their levels of intelligence, moral reasoning, etc.). In recognition of this, the legal process may adopt different procedures to deal with vulnerable groups when they enter the criminal justice system such as providing CCTV when a child is required to give evidence, or mentally disordered offenders may be diverted into health service care where treatment is seen to be more



appropriate than a punitive custodial sentence.

As offenders, people with learning disabilities are recognised as being 'vulnerable' when they enter the criminal justice system, and the law provides certain safeguards to accommodate such vulnerability in order to protect against possible miscarriages of justice.<sup>1</sup> An example of this is the Police and Criminal Evidence Act 1984 which states that the presence of an 'appropriate adult' is required when a person with learning disabilities is interviewed by the police.

There are two questions which arise because of this differential treatment which may be afforded learning disabled suspects and/or offenders. Firstly, do such special provisions really provide adequate safeguards to protect the particular vulnerabilities of those with learning disabilities? Secondly, is justice achieved when such safeguards are adopted? This leads onto two main questions each with further corollary questions: first, do offenders with learning disabilities have the right to full access to the criminal justice system? (e.g. are we denying a learning disabled offender their right to have their case heard in court by diverting them into health service provision?); second, do people with learning disabilities have the right to differential treatment from the criminal justice system because of their particular vulnerabilities? (e.g. should CCTV be used for learning disabled people to give evidence? etc.) The first question may be answered by looking directly at the actual safeguards which are provided for learning disabled offenders. The second question however is a little more complicated because we must address notions of 'rights', and

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<sup>1</sup> Miscarriages of justice have occurred in the past in the U.K. with suspects who have had learning disabilities. Perhaps the most notable of these is the *Confait* Case, in 1972. This contributed to the Fisher Report (1977) which was concerned with vulnerable suspects, and which in turn – along with the Report of the Criminal Law Revision Committee (1972) - led to the establishment of a Royal Commission on Criminal Procedure (RCCP). Many of the recommendations of the of the RCCP formed the basis of the Police & Criminal Evidence Act 1984, as well as the accompanying codes of practice which came into force at the beginning of 1986.

the relationship between rights and justice (this is also problematic because our country does not have a written constitution, and so the particular rights of citizens are not clearly stipulated.) We are here concerned with asking whether procedural change in the law should be allowed because of the presence of a learning disability; but this necessarily takes us into a wider debate of whether or not people should be afforded special rights *just because* of the presence of a learning disability.

Debates in this area (i.e. the 'rights' of the learning disabled) have tended to focus upon the rights of people with a severe learning disability. This is mainly because the range of types and abilities of people categorised as being learning disabled is vast,<sup>2</sup> this group includes people with mild or borderline learning disabilities which may not readily be apparent to others, through to people who are so severely disabled that they may not have any characteristics which are usually associated with normal functioning adults (e.g. ability to reason/communicate/respond to external stimuli etc). There are also a whole range of people in-between who demonstrate widely differing capabilities. When discussing rights of learning disabled people, the debates in this area have usually focussed on the rights of the severely disabled; this is probably because if it is possible to establish rights on the basis of low level functioning and I.Q. levels, then these rights may then be extended to others who are also learning disabled, but to a lesser degree of severity.

Debates surrounding the application of rights to people who are learning disabled is addressed. This necessarily involves a basic introduction to the

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<sup>2</sup> The term, 'learning disability' "... applies to people with a state of arrested or incomplete development of mind which includes significant disabilities of intelligence and social functioning." A 'significant' disability is clinically measured as an IQ below 70. IQ levels are measured using various assessment techniques, for example the Wechsler Adult Intelligence Scale (WAIS-R; Wechsler, 1981) which comprises 11 subsets of questions, testing for abilities relating to (for example) vocabulary, comprehension, etc. "Degrees of learning disability are generally described, for planning or descriptive terms, as *mild*, *moderate* or *severe/profound*. These are not clinical terms... Reference to intelligence quotient is often unhelpful: "a division is of little practical significance to people either

contemporary debate regarding theories of justice, so as to provide a theoretical foundation on which other writers have attempted to apply such theories to issues of special rights for people with learning disabilities.

After this theoretical background, attention will be given to previous research which has looked at the whole situation of learning disabled offenders within the criminal justice system; this will provide a summary of the previous research findings which have been gathered in this field, and so issues such as prevalence rates of offending, characteristics of learning disabled offenders, and attitudes of criminal justice personnel towards such offenders, will all be examined. Following this outline of previous research, attention will then be given to the special legal provisions which are given when a learning disabled offender comes into contact with the criminal justice system. These special provisions are mainly concentrated within PACE (and the accompanying codes of practice), and so are mainly concerned with the legal obligations of the police during the interviewing of vulnerable suspects. This will thus provide a background to the issue of whether or not special rights should be afforded to learning disabled offenders to accommodate their particular vulnerabilities within the criminal justice system, especially in light of the fact that the law recognises that these people deserve certain kinds of differential treatment (at least as is outlined in PACE).

### **1.1 Theories of Justice and Rights**

Recently, there have been two prominent competing theories of justice which have dominated Anglo-American debate. They have been termed, respectively, the 'Welfare-State Liberal Theory', and the 'Libertarian Theory' (see Murphy, 1984a).

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side of it." (Department of Health & Home Office, 1994, p. 14)



The Welfare-State Liberal theory is most notably associated with the work of John Rawls (1971) who advocates a partial redistribution of wealth to improve the position of the most unfortunate members of society (most likely via taxation). Rawls' theory was a major attack on the (then) prevailing utilitarian theories of political obligation and social order, and as such he criticised the legal counterparts of utilitarianism which were theories of *positive law*. Rawls' approach is based on liberalism, and as such his aim is to re-establish natural law theories so as to identify certain values which we can hold as absolute.<sup>3</sup> This approach by Rawls also attempts to replace the kind of 'cost-benefit' analysis which is inherent in utilitarian analysis, and replace it with a more absolute form of argument based around the tenet of 'justice as fairness'.

In contrast to this, another 'liberal' theory developed by Robert Nozick (1974) who views justice as the respecting of other peoples' rights – i.e. their right to keep what is legitimately theirs. Like Rawls, his theory is 'liberal' because it is based on 'libertarianism' (i.e. all people have a basic set of rights), and he also criticises utilitarianist approaches and advocates a theory of natural law. His theory differs from Rawls however because of the primacy he places upon economics, and it is generally laissez-faire in approach which is apparent in the following three tenets of his thesis. One, only individuals are able to have rights or owe duties, whilst any form of society (or collective, or community, etc.) cannot. Two, only the most minimum form of state power is legitimate and is needed to uphold the prior existing rights of individuals – the state is no more than a 'police force'. Three, the prime human right is the right to property. Property may either be acquired as an original act, or it may have be transferred by a legitimate process from someone with an

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<sup>3</sup> *Positive law* encompasses laws which exist in a practical sense, for example, property rights. *Natural laws* in contrast are laws which exist in a theoretical and moral sense, for example, human rights. The absolute values which Rawls wishes to establish through the theory of natural laws are first liberty, and



original legitimate entitlement. Because property rights are absolute, any taxation (above that needed for the provision of minimal state apparatus) is considered as a form of forced labour, and is thus illegitimate.

## 1.2 Rights and Learning Disabilities

Murphy (1984a) provides a brief outline of the opposing theories of rights offered from Rawls and Nozick, and in doing so, he asks, 'What is a right?' (a concept he sees as being central to the concept of justice). He attempts to answer this question by examining 'borderline' cases, where ascribing such rights to certain types of individuals may be problematic. In discussing the ascription of rights to entities, Joel Feinberg (1974) argues that

Normal adult human beings... are obviously the sorts of beings of whom rights can meaningfully be predicated... On the other hand, it is absurd to say that rocks can have rights, not because rocks are morally inferior things unworthy of rights (that statement makes no sense either), but because rocks belong to a category of entities of whom rights cannot be meaningfully predicated. That is not to say that there are no circumstances in which we ought to treat rocks carefully, but only that the rocks themselves cannot validly claim good treatment from us. In between the clear cases of rocks and normal human beings, however, is a spectrum of less obvious cases, including some bewilderingly borderline ones. Is it meaningful or conceptually possible to ascribe rights to our dead ancestors? to individual animals? to whole species of animals? to plants? to idiots and madmen? to fetuses? to generations yet unborn? Until we know how to settle these puzzling cases, we cannot claim fully to grasp the concept of a right, or to know the shape of its logical boundaries. (Feinberg, 1974, p. 44)

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second (but only just) equality.

So, although Feinberg argues that there may be a clear distinction of when rights may or may not be predicated, there are also many borderline cases which are characterised by "... individuals who have *some* of the features normally found in individuals who are clearly rights-bearers, but who do not seem to have *quite enough* of such features to make us confident in ascribing rights to them." (Murphy, 1984a, p. 4) Thus, it may be argued that people with severe learning disabilities may not be accorded rights because they lack certain qualities (e.g. rational choice) which are found in normal rights-bearers; and perhaps that other groups of people (e.g. people diagnosed as being in a persistent vegetative state) may resemble entities to which rights are clearly not applicable (i.e. rocks). However, it may also be argued that a certain kind of decent treatment is owed to people who fall in between the two extreme examples, just as a certain kind of decent treatment is owed to animals. This conceptual debate is introduced by Murphy so that the reader will be able to recognise the clear and absolute theoretical stances which surround the issues (and applications) of rights ascribed to 'borderline' cases, and thus provide an outline of the debate as to whether or not the learning disabled may be afforded rights because of their disability.

Murphy argues that we use the term 'rights' for two different (although related) functions, and so he differentiates between 'Autonomy Rights' and 'Social Contract Rights'. Autonomy rights are located in the tradition of philosophers such as Immanuel Kant and John Locke. Kant believed that a special kind of treatment should be afforded to people who are autonomous and rational persons, in that their destinies can be rationally self-determined by their own choices and decisions. They are, in Kantian terminology, "self-legislating members of a kingdom of ends (a community of other self-legislators)" (Murphy, 1984a, p. 5). These special qualities

of people provide the basis for a special set of moral claims which people may make – i.e. natural or human rights, and Locke follows this by arguing that “No one ought to harm another in his life, health, liberty or possessions” (cited in Murphy, 1984a, p. 5). These human rights are negative in the way that they prohibit interference with the individual; and so they respect a person’s ability to determine their own destiny according to their own choices and decisions. These are what Murphy terms ‘Autonomous’ rights.

In distinction to autonomy rights, Murphy identifies ‘Social Contract’ rights which are located in the tradition of John Stewart Mill (1957) and John Rawls (1971). Whereas the former accounts of rights are morally basic to autonomous individuals, the latter are instead seen to be derivative from more general moral principles: “... rights claims function, not to mark some specially fine feature of persons, but rather to mark out which of all moral claims... *ought to be law*.” (Murphy, 1984a, p. 6) In this perspective, somebody has a right if it is morally reasonable, but what exactly does ‘morally reasonable’ mean? Because Mill is a utilitarian, he believes that the most basic and important moral requirement is to maximise human happiness. Murphy however views such rationale as being morally bankrupt; this is because in a Utilitarian way of thinking, the use of slavery (for example) would be morally acceptable if the end result was that general human happiness and well-being were increased, regardless of the suffering of the minority group of slaves. Although Mill’s explanation of what is ‘morally reasonable’ is ultimately repugnant, it does not necessarily follow that his account of rights (as claims that society ought to enforce) is also defective.

John Rawls offers a similar analysis of rights (i.e. as claims that society ought to enforce) without offering a utilitarian answer regarding what is considered as being



morally reasonable. Rawls thus poses the alternative question: “If a group of ideally rational beings came together in order to pick rules to govern their mutual relations, which rules would they be compelled (by the power of their rationality) to pick?” (Murphy, 1984a, p. 7) Rawls suggests that the notion of a social contract be used as a model of rational decision making regarding issues of morality. This means that a rationally justified / moral principle shall be: unanimously and democratically agreed (in order to capture our intuitive notion of fairness) by a group of rational agents, so as to govern social relations between members of a common community. Rawls thus sees justice as being equal to fairness.

For Rawls, rational agents are primarily self-interested in the way that they value a set of ‘primary goods’ for their own self-interest (e.g. liberty, security, self-respect – i.e. things which all rational people would choose for themselves). However, rational agents also operate under a veil of ignorance in the way that they do not know what may happen to other individuals within society, as well as being ignorant of their own possible position in that society. These unanimously agreed moral principles and practices are termed the ‘original position’, and so govern relations between members of that society. Rawls thus demonstrates that rational people would not choose utilitarianism as a basic moral principle, because they would have no guarantee that they would not be sacrificed in the interests of increased well-being of the majority. Relating this to rights, Murphy suggests that: “An individual should be understood as having a right to  $x$  if and only if a law guaranteeing  $x$  to the individual would be chosen by rational agents in the original position. This concept of a right I shall call a *Social Contract Right*” (Murphy, 1984a, p. 8)

Murphy distinguishes then between autonomy rights (which are concerned with respecting individual choices and decisions), and social contract rights (which



are concerned with providing morally justified legal guarantees). The two may be similar, but there are differences between them; for example, if a person experiences poverty and asks me for help, I may exercise my autonomous right not to assist that person, although in doing so, social contract rights will be violated because (from the original position) the majority of rational people would choose to assist the person in need. Thus, rational agents in the original position would probably choose to provide minimum floors of security (e.g. income, health care, etc.) and regard these as *rights*.

Murphy restricts his analysis of the application of rights to two borderline categories of individuals and so he confines himself to discussing whether children and people with learning disabilities have rights, if indeed they have rights at all. In this discussion, Murphy notes that the actual location of the dividing line between (for example) children and adults is arbitrary, as may be demonstrated by the historical and social factors which have determined which category a person falls into according to their age. Likewise, whether or not somebody is regarded as being learning disabled is contingent upon many factors which determine whether their particular level of IQ (or indeed, other indicators of their functional ability, e.g. social competence) puts them into the classification of being intellectually disabled. Because of this ambiguity of classification, Murphy limits himself to discussing examples of young children and severely learning disabled people, who are non-controversially within the classes in question.

Because young children are not fully rational and autonomous individuals, they therefore cannot be regarded as having the autonomy rights of making their own choices and decisions to determine their futures. Although autonomy rights may be encouraged in young children (perhaps to encourage them to develop and use these qualities in adult life), there are situations in which a child's decisions and choices

may be limited in the interests of the child (e.g. although a child may not wish to take medicine, it may be obviously in the child's interests to be forced to take the medicine). As children grow, so too does their level of self-determination with paternalism gradually being phased out. However, do children have a right to refuse paternalistic intervention? <sup>4</sup> Murphy believes the answer to this is 'no' – the rights of children are not autonomous rights, but instead are social contract rights because this is what rational people in the original position would argue for. Thus, Murphy argues that children may be treated paternalistically because paternalism is a legal guarantee provided by society (perhaps as a way of developing autonomy).

The (severely) learning disabled have even less of a chance of becoming autonomous (and therefore of possessing autonomous rights). Many severely disabled people will never be able to determine their own destinies, and so if they do have rights, these are rights to a certain kind of paternalism based on the grounds of 'social contract' reasoning. In this way, Murphy argues that any rational person may have a learning disabled child, and so it follows that they would want a minimum floor of security for all learning disabled people. The right to be protected from such suffering is a social contract right and not an autonomy right: "... it is simply that which any decent society would guarantee by law to its disadvantaged members." (Murphy, 1984a, p. 12)

In conclusion, Murphy warns against the temptation to multiply the rights of the learning disabled beyond necessity. Social contract rights are concerned with providing minimum floors of support, and any attempt to go beyond this as *a matter of right* will either have the result of developing lists of rights which are impractical

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<sup>4</sup> Paternalism is here defined as... "action in their interest either to prevent certain kinds of harms (such as child abuse, subjection to parental superstition with respect to proper medical care) or to provide them with certain benefits (such as proper education) necessary for having or developing a satisfying

(due to economic constraints), or which are too morally intrusive to enforce. According to Murphy, rational people in the original position will support minimum floor programs of support via taxation, but the same rational people will also expect to control a large percentage of their own income as they see fit to do so; thus, rational people will also be reluctant to agree to anything above minimum floors of security...

Thus, crusades to go above minimum floors as a matter of *right* tend to themselves run the risk of inviting violations of other important rights. If such violations are also economically expensive, they will be opposed on both practical and moral grounds. The final victim of this sort of tension will simply be the important concept of a right itself. (Murphy, 1984a, p. 13)

Joseph Margolis (1984) is critical of Murphy for a number of reasons; his main concerns however may perhaps be summarised by his claim that the debate posed by Murphy between Utilitarianism and Contractarianism, is "... cast in such large terms - in universal terms, in fact - that we are actually deflected by them from attending to manageable issues, or human disputes are, ultimately, conceptual frauds." (Margolis, 1984, p. 19) But how does the casting of debates in universal terms cause problems for moral reasoning? As Margolis says:

In the moral context, universality - or, universalizability - takes two utterly different forms: in one, it is really a consideration of logical consistency neutral to and more fundamental than the moral, a consideration conveniently captured by the principle (often misleadingly characterized as a principle of justice) that "similar things must be similarly judged in similar respects"; and in the other, it is really a consideration of global consensus, an idealized consideration of what every rational person would choose or favor, given all

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life". (Murphy, 1984a, p. 11)



the relevant facts (so-called generalizability). The principle connected with the first is logically vacuous but humanely (and morally) important - and incontestable. The principle connected with the second is morally substantive but always inapplicable in an empirical way - and ultimately self-serving beyond a measure of moderate plausibility. No one can favor inconsistency rationally; no one has the slightest idea of what every rational being *would* choose; and no one can show that the sacrifice of the putative or actual goods of a certain limited population for the benefit of the rest (or of a good part of the rest) of mankind cannot but be motivated by a lack of respect for the dignity or equal standing of those sacrificed. There is, therefore, no likelihood that the proper moral treatment of the retarded can be straightforwardly derived from any self-evident global principles of morality. (Margolis, 1984, p. 19-20)

For Margolis, although the social contract rights advocated by Murphy have probably been ‘... strategically helpful - as well as morally convincing - to emphasise the equality of rights of the retarded and normal’ (p. 20); other debates which have utilised such philosophical tools (concerning for example, abortion, war, capital punishment, etc.), have all been doomed to failure precisely because of the universal global principles of morality which they use - universal morals simply do not exist. Further, Margolis questions - what seems to be uncritically accepted by Murphy - whether natural or human rights should automatically be extended to all members of the human species or only to those who reach a certain level of functional ability. The example of arguments surrounding the rights of fetuses is thus recalled to show how any such attempt is inherently problematic.

Margolis argues that authors such as Murphy have debated this issue without ‘... an objective discovery of the proper norms or of anything that could rightly be called a universal consensus’ (p. 21) Margolis has two main considerations on this point; firstly, he believes human rights to have been confused with citizen rights.



Human rights are 'vacant', in that although they state the fundamental concerns of humanity (i.e. of life, liberty, etc.), they are vacant in the way that they preclude other factors (e.g. war, death by self-defence, capital punishment, taxation, imprisonment, etc.). In this way, "... the doctrine of human rights can never properly be separated from its historical role in promoting certain quite determinate views about the rights and obligations of the members of particular societies during particular intervals of time." (Margolis, 1984, pp. 21-22) Citizen rights (or special rights or obligations) are too often conflated with human rights, and the endorsement of the former does not require reference to the latter. For Margolis, it is '... the debatable standing of [citizen rights]... that commands our proper interest.' (p. 22) The second consideration Margolis gives to the lack of attention to objective norms surrounding human rights, is that no relevant minimum floors of security (*or* moderate, *or* maximum safeguards) can determine human rights. There are many reasons for this, including the points that: the distribution of resources within a society depends on perceived scarcities and on conditions of survival which do change over time; there is no universal consensus regarding anything, let alone minimum safeguards; and, there is a conceptual discrepancy between positive rights and human rights.

So, although Rawls' contractarian view of rights provides many theorists with a powerful conceptual tool with which to protect learning disabled people, it may be considered "mistaken and misleading - and even dangerous" (p. 23) in that his theory of justice fails to demonstrate: (i) that all rational beings (under the veil of ignorance, in the original position) would necessarily place priority on the rest of society over their own interests; (ii) that there could ever be an equal distribution of "all primary social goods"; and (iii) that the supposed just arrangements of any one society (or community) are transferable (or compatible) with another's. In sum,

Rawls does not make suitable provision for the actual scarcity of the goods and resources of any society, or the inequalities of different societies, or for the impossibility of defending the distribution of goods within actual societies without an informed reference to the resources of others and of the entire earth. Hence he cannot make entirely plausible the restricted scope of the demands of justice (as he sees the matter), or the willingness internal to any society to tolerate inequalities in place in that society; or the preference of a principle of justice under conditions of ignorance regarding one's own place (or the place of the families or parties one represents) within any given system of resources. (Margolis, 1984, p. 24)

The wide-ranging plurality of societies, effectively leads to a situation where parts of the population within these societies are inevitably treated unequally, whilst at the same time 'morally required' practices are defended.

Because the presence of learning disabilities does not necessarily correspond with the capabilities of people functioning as responsible agents, and because competence is restricted to particular (in)capacities, then the 'perceived worth' of people with learning disabilities need not alter at all if citizen rights towards this group are denied, modified or reduced: "the loss of citizen rights is... entirely compatible with the inalienable nature of human rights." (Margolis, 1984, p. 25) In his view, the worth of human beings depends upon the basic fact that we are all members of one species (and not upon our intellectual or adaptive capabilities). As such, there are no substantive conclusions which follow concerning ideas of worth, apart from perhaps "... the important procedural constraint of the presumption of equal competence" (p. 27), and even so, this is irrelevant for ideas of providing minimum floors of security for the learning disabled.

We can see then that Margolis criticises Murphy because he argues that the

rights of people with learning disabilities cannot be shaped by a general doctrine of rights or justice. Such doctrines tend to be cast in universal terms, and as such are unable to produce specific claims rights. Murphy is also seen to conflate human rights (e.g. liberty, life, etc.) with citizen rights, without failing to acknowledge that citizen rights may be removed without affecting human rights; and thus, that the human rights of learning disabled people are not necessarily demeaned if citizen rights are lost. The idea of social contractarianism is also specifically criticised for various reasons; firstly it fails to address limitations of resources within societies, and as such does not explain how minimum floors of security are able to determine human rights. It also fails to convincingly demonstrate how rational persons (in the original position) would always reach consensus on their decisions. Finally, the concept fails to address the practical problems regarding the redistribution of economic resources within societies, as well as the social and historical differences which impinge on such re-distributions. In sum, Margolis rejects attempts to locate the treatment of learning disabled people in any universal theory of rights, and instead prefers to ground such treatment on liberal principles held by particular societies.<sup>5</sup>

In a rejoinder, Murphy (1984b) responds to the criticisms of a contractarian view of rights advanced by Margolis. Murphy argues that although the liberal principle espoused by Margolis does explain our concern with learning disabled people, this concern overlaps with our concern about other sentient creatures, i.e. most people would argue that non-human animals also deserve a measure of 'well-being'. Murphy believes that people with learning disabilities deserve a moral status which is higher than that which is given to our pets, and if this is the case, then

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<sup>5</sup> "... a liberal society is committed to enlarging and safeguarding the conditions under which the retarded – both the mildly and profoundly retarded – may enjoy a measure of well-being." (Margolis,



... the Margolis principle is in trouble. It can explain our moral concern about the retarded insofar as it overlaps (as it clearly does) our concern about other sentient creatures, but not as it may represent a special and separate concern. It is this special and separate concern which rights talk seeks to capture; and so, given Margolis' obvious special and separate concern for the retarded, he should perhaps not dismiss the rights tradition so quickly. Perhaps we want to say more than "It is unfortunate that we may have to eat the retarded" (as it might be unfortunate that we may have to eat Rover in an emergency). Perhaps we want to say that eating the retarded is *not an option*, that the non-eating of the retarded is a *guarantee*. But is that not simply to say that the retarded have a right not to be eaten? (Murphy, 1984b, p. 43)

The task Murphy set himself in the original paper was to go beyond feelings regarding the application of rights to the learning disabled (e.g. the majority of people instinctively *feel* that it is wrong to eat the learning disabled), and to see if there were any rational arguments which could be given in defence of such feelings. Margolis argues that species membership is a good reason to defend such feelings, but Murphy disagrees with this. Species membership invites us to identify what is unique in human beings which separates us from the rest of the animal kingdom, but what exactly can this unique quality be? Many Christians would argue that it is the presence of an immortal soul which distinguishes us from animals, but this is rejected by Murphy who resists the temptation of "... grounding fundamental moral distinctions upon dubious theological premises" (Murphy, 1984b, p. 44). As a possible non-secular explanation to this problem, Kant believed that the capacity in humans of autonomous rational choice is what distinguishes us from non-human animals, and gives us the special moral status of persons. However, this is also seen



as being inadequate because this definition would not protect those people with learning disabilities who are unable to make autonomous rational decisions. In his original paper, Murphy attempted to develop the idea of social contract rights, whereby any decent society would be obligated to provide safeguards and security for even its non-autonomous members. Murphy admits that he is not entirely happy with this analysis in many ways<sup>6</sup>, but he is also not in agreement with Margolis' criticisms that it is a 'total washout:

Even in those cases where honesty compels that we admit that the retarded lack what I called autonomy rights, social contract rights still remain to provide them with certain guarantees which we would not provide for non-human animals – certainly more guarantees than would be provided by Margolis' nebulous "liberal principle"... Rights talk forces us to focus on the question, not of what it would be *nice* to do, but what it is *mandatory* to do. (Murphy, 1984b, pp. 44-45)

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<sup>6</sup> "I no longer have any confidence in the general program of rationalistic moral philosophy – Kantian, Rawlsian, or otherwise... I have increasingly come to see these great edifices of reason as explaining the obvious in terms of the obscure – i.e. I have more confidence in any of the actual rights claims I want to make than I do in any of the theories I used to support those claims." [See Murphy (1982) for detailed explanations for this].

# Chapter 2

## *Literature Review*

### **2.1 Offenders with Learning Disabilities: Previous Research**

Traditionally, there has been a long history of commonly held misconceptions concerning people with learning disabilities who come into contact with the criminal justice system regarding offending behaviour. These include the following:

1. Because of their disability, people with learning disabilities are regarded as being naturally disposed to criminal behaviour, i.e. they are ‘congenital moral idiots’;
2. People with learning disabilities are predisposed to dangerous crimes of physical (especially sexual) assault;
3. Because of their learning disabilities, they are unable to grasp moral values of right and wrong;
4. People with learning disabilities are unable to foresee the future consequence of their actions and so cannot be effectively prevented from committing crimes via ‘normal’ means;
5. All people with learning disabilities tend towards delinquent behaviour.

(c/f Reichard et al., 1980, p. 114)

These misconceptions may be seen to contribute to an underlying ideology which has traditionally informed (at least sub-consciously) both members of the public and professionals working within the criminal justice system. This negative ideology may

in turn be seen to have contributed to the historical oppression of learning disabled people, and so it may also explain why people with learning disabilities are disadvantaged within the criminal justice system, leading for example to the over-representation of this group within some prison populations of western nations.

## **2.2 Prevalence Rates of Offending**

Accurate figures for prevalence rates of crimes are notoriously difficult to identify in the general population, and the situation is further confounded with the presence of learning disabilities. Levels of criminal behaviour can usually only be examined on the basis of the number of people actually convicted of a crime which leads to obvious reservations concerning the true validity of such figures. Sigelman et al. (1981) have also highlighted another problem with using convictions of offences to determine prevalence rates within this population; this is that people with learning disabilities are perhaps more likely to be caught if they commit an offence, as well as being more likely to confess to it during questioning; this is probably because people with learning disabilities are often thought to be more suggestible and acquiescent during interviews, which in turn means that they are correspondingly more likely to admit to an offence which they have not actually committed. Other studies have shown that offenders have lower I.Q. test scores than non-offenders (see Hirschi, 1977 and Wilson, 1985), and there have been other studies that have attempted to determine prevalence rates of learning disabilities (usually classified as I.Q. < 70) among the criminal population.

Various studies from 'Western' countries have shown there to be an over-representation of prisoners with learning disabilities. In North America, MacEachron (1979) conducted a review of studies in the U.S. which examined prevalence rates,



and she reports that there are widely varying prevalence rates of prisoners having a learning disability ranging from 2.6% of the prison population up to 39.6%. More recent studies of inmates in United States prisons (see Collins & Schlenger, 1983; Daniel et al., 1988; Hyde & Seiter, 1987; and Neighbors et al., 1987), and of penitentiary inmates in Canadian institutions (see Hodgins & Cote, 1990) have also revealed higher prevalence rates among these prisoner groups than the general population. In Australia, many studies have detected an over-representation of people with learning disabilities in the prison population (see Hayes, 1994b, Hayes & Craddock, 1992; Nobel & Conley, 1992). Walker & Biles (1986) found a prevalence rate of 12-13% of learning disabilities among the prison population of New South Wales; while in contrast Hayes & McIlwain (1988) estimated that 2.4% of this prison population had an I.Q. level below 70; while Jones & Coombes (1990) found this rate to be only 1.17% in Western Australian prisons.

The situation seems to be different in the U.K. however, with many studies (although not all) suggesting that there is not a similar over-representation among prisoners in this country. A Department of Health study team (Department of Health, 1989) states that offending behaviour by people with learning disabilities is fairly rare with no more than 1% of the criminal population being characterised as having a learning disability (see also Day, 1988). Coid's (1984) literature review however found a higher proportion of prisoners who were learning disabled, and his study (1988) of remand prisoners over a 5 year span claimed that learning disability accounted for 10% of prisoners diagnosed as 'abnormal' by prison doctors. The Department of Health (1989) concluded that "Offending [by learning disabled people] is virtually confined to those of borderline intelligence and those with a mild or moderate degree of mental handicap" (p. 46), and a more recent report by Kieran &

Albortz (1991) has also shown that recent studies suggest that there is perhaps a much lower prevalence rate of learning disabilities among sentenced prisoners in England and Wales than previous studies have indicated. A survey of prisoners on remand in South London by Murphy et al. (1995) concluded that people with learning disabilities were not over-represented, although they also concluded that there were a number of men on remand who were on the borderline of being classified as learning disabled, and that this group were 'very psychologically vulnerable'.

As stated above, accurate rates of offending are notoriously difficult to determine; however Gudjonsson et. al. (1993) conducted an original study involving the psychological assessment of suspects held in custody with the aim of identifying vulnerable psychological characteristics.<sup>7</sup> From this study, it was found that

Almost nine per cent of the sample (N = 164), had an I.Q. score below 70 with forty two per cent falling in the 'borderline' range, between 70 and 79. If we consider that an I.Q. score of 75 or below indicates a significant intellectual impairment, this would classify about one third of the total sample as being intellectually disadvantaged. Such findings reinforce the need for clear guidelines on the identification of those 'at risk'. (Gudjonsson, et al., 1993, p. 149)

All studies which have attempted to accurately determine the rate of offending behaviour by people with learning disabilities do need to be looked at with a critical view regarding the validity of their findings. This is because offending behaviour

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<sup>7</sup> Gudjonsson (1994) has divided the 'clinical assessment of vulnerability' into three groups: first, mental disorder, including mental illness and learning disabilities; second, abnormal mental state, e.g. high anxiety, phobias, and cases of recent bereavement; and third, personality characteristics, e.g. suggestibility, compliance and acquiescence (it is important to note that this division is academic, and so for example people with learning disabilities may also suffer from an abnormal mental state and/or may be more likely to demonstrate vulnerable personality characteristics; however it is also equally important not to assume any of this when dealing with a learning disabled client).

often does not result in contact with the police or any other part of the criminal justice system because of what Lyall et al. (1995) have referred to as a 'filtering process' taking place, which often depends on the attitudes, experiences and tolerance levels of carers and staff who work with this client group whether or not an offence is reported. Also, the way in which the penal system and care system are organised may have a substantial effect on prevalence studies; and studies that use IQ-based concepts of identification show low rates of offending while other studies using wider methods of identification (e.g. attendance at a special school) show higher prevalence rates (see Spruill & May, 1988, and Simpson & Hogg, 2001a).

### **2.3 Types of Offences**

Despite problems with identifying crimes committed by learning disabled people, the Department of Health (1989) lists the four most likely manifestations of offending behaviour as: one, property offences (the most common category for people with learning disabilities); two, sexual offences, and three, arson (both of which are considerably over-represented in this group); and four, serious physical assault (violence is under-represented). Holland (1991) points out that some crimes are certainly under-represented by people with learning disabilities; while Hodgins (1992) found that offenders with "... intellectual handicaps committed multiple offences of all types" and that "... those with an intellectual handicap" were more likely to commit "violent offences and thefts." (Hodgins, 1992, p. 481)



## 2.4 Characteristics of Offenders

With regards to the characteristics of offenders, the Department of Health (1989) describes offenders with moderate disabilities as often having disturbed behaviour, and those with mild disabilities as being 'intellectually dull', having a 'marked inadequacy of social adjustment', and as having difficulties 'in coping with life'. This report also points out that many mild handicaps may not be recognised by people working in the criminal justice system, as is the case with autism wherein even if a diagnosis is made, the significance of it may not be understood. A later report stated that 'Only a small minority of people with learning disabilities offend. Most have mild or 'borderline' disabilities. Their needs are often overlooked or go unidentified.' (Department of Health & Home Office, 1992, p. 9). Holland (1991) has pointed out that there is little evidence with which to support the idea that there is a correlation between the presence of a learning disability and a predisposition towards criminal behaviour. Although the number of people who offend with autism is very low, Howlin (1992) has considered the condition and its relevance to offending behaviour. She believes that offending behaviour from people with autism usually arises because: they are exploited by others; they show aggressive behaviour because of a change in their usual routine/s; or because their lack of communication and understanding abilities, obsessional tendencies, or morbid interests predispose people with autism to behave in an anti-social fashion. Howlin summarises the situation regarding 'autistic offenders' as follows:

In many cases the police have acted with considerable tact and understanding... frequently they do not press charges. However, there are cases when the behaviours are so dangerous, and when the individual's

perception of the implications of their actions is so poor, that confinement is necessary. Even in special prisons understanding of autism is likely to be very limited and within the regular prison system there is likely to be no knowledge of the nature of autism... In particular [autistic peoples'] apparent lack of remorse may result in unduly harsh treatment, especially when this is coupled with their marked impairments in social skills and their ability to form social relationships. Adequate diagnostic and assessment services for people with autism, particularly those who are not of normal I.Q. and whose deficits may be much more subtle than those shown by more severely handicapped individuals, are essential. (Howlin, 1994, p. 180-1)

Research has shown that detection of a learning disability is not by any means a certainty; for example, McAfee & Gural (1988) found that only 52.3% of accused persons with a learning disability were identified as such before they appeared before the court. As Susan Hayes states:

The identification of an accused person as having learning disabilities, it may be argued, merely adds a label to that person, and has little effect upon the outcome of their court case. The opposite view, however, is that the lack of identification may have more serious implications for the individual's rights in terms of the conduct of the case. (Hayes, 1996, p.8)

Identification of learning disabilities by police has also shown to be highly problematic, and Pearse (1995) has shown that even when police officers are given explicit information and clues to the presence of a learning disability, they are still unlikely to identify vulnerabilities of detained persons.

Alcohol and substance abuse may be a significant problem with offenders with learning disabilities, as there is evidence (Hayes, 1994a, 1995) that 51.5% of offenders with such disabilities reported a problem with alcohol. Studies attempting

to ascertain the relationship between drugs and alcohol with offending behaviour are problematic because the possibility of substance abuse is often over-looked in this group because many of the effects of alcohol can be mistaken for the characteristics of learning disabilities (Hayes & Carmody, 1994).

Recent research in the UK has argued that the available data on predisposing factors and offending behaviour amongst people with learning disabilities is problematic. This is because there is often no data available that are offence specific and so several dimensions remain unexplored, specifically race and class, although there is evidence to suggest that the average age of offenders with a learning disability is higher than amongst other offenders (Simpson & Hogg, 2001b)

## **2.5 Normalisation and Negative Stereotyping**

Normalisation is a philosophy concerning the most appropriate way to provide services for people with learning disabilities. It initially developed in Scandinavia (see Nirje, 1969; and Bank-Mikkelsen, 1980) with the aim of encouraging institutions which cared for people with learning disabilities to recreate 'ordinary' patterns of life within institutional settings. Normalisation was here defined as:

Making available to all mentally retarded people patterns of everyday living which are as close as possible to the regular circumstances and ways of life of society. (Nirje, 1980, p. 33)

Normalisation philosophy was further developed in the work of Wolfensberger (1972) in North America and encouraged a shift in emphasis from changing institutional practice to changing individuals and ensuring their integration into all aspects of ordinary life. Here normalisation was defined as the:



Utilization of means which are as culturally normative as possible, in order to establish and/or maintain behaviours and characteristics which are as culturally normative as possible. (Wolfensberger, 1972, p. 28)

There are various problems and criticisms of normalisation including the definition of 'normal' and the suppression of individuality that this philosophy may encourage. Normalisation has also been criticised because of the emphasis it places on individual responsibility rather than community responsibility:

The paradox of normalisation is that although it has emphasised the role of social processes in stigmatisation, responsibility for change has been laid at the feet of the disabled, not the community... As a result, despite its good intentions, the theory has ultimately served to justify and maintain existing social relations; the community has not been challenged to confront the intolerance of diversity that is the major factor maintaining stigmatisation and marginalisation. (Glaser & Deane, p. 352-353)

However, in spite of these conceptual criticisms it can also be argued that the philosophy of normalisation (in its various guises) has informed learning disability policy for the past three decades and real advances have been made. People with learning disabilities are now no longer automatically cared for in long-stay institutions but are instead more likely to receive community-based systems of care and support.

With regards to criminality, Carson (1995) has noted that normalisation as a philosophy has been particularly weak in the area of criminality where the key question is:

Should people with learning disabilities be regarded as responsible, including

legally liable, for their behaviour if it breaks the law or offends against contemporary social standards? Responses vary largely according to whether the question is interpreted as one of principle or whether it includes practical considerations. (Carson, 1995, p. 77)

Carson argues that if practical considerations are ignored then many people would answer that offenders with learning disabilities should progress through 'normal' routes of law. However, if the actual routes of law are considered, the answer that people give is usually different because of the practical problems involved with bringing a person with a learning disability into the criminal justice system. It can be argued that the system does not necessarily adopt a learning framework, and that it is slow and cumbersome. It can also be argued that carers and service providers may interpret behaviour in different ways (as either criminal or not) to people who are unrelated to a person with a disability who transgresses. Finally, the system has limited options for the types of disposal which would address an individual's needs; and criminal justice agencies may be all too enthusiastic to transfer a person's care into the health/social services. Carson (1995) suggests that an alternative (or separate, although not segregationist) legal system may be the answer, but this is with the proviso that such a system must also educate:

The development of 'alternative criminal justice systems' for all but the most serious and contested alleged crimes need not be seen as devaluing or segregationist. If built upon the principle that a criminal justice system should teach as well as punish and prevent then it would have much to offer the more traditional system within which it would operate. (Carson, 1995, p. 80)

Wolfensberger (1983, 1991) later proposed that the principle of normalisation

be re-named 'Social Role Valorisation'. He argued that devalued people in society will be treated badly and thus are also likely to behave badly, and if they behave badly it leads into a cycle of de-valuation. The stereotypes and characteristics that have been traditionally assigned to people with learning disabilities have placed them in the role of "an eternal child, a menace, sick, or an object of pity" (Cockram *et al.*, 1994, p. 4) and has resulted in them being treated in negative ways. Because of this, people with leaning disabilities need to be given valued roles in order to effect positive change. Wolfensberger (1991) suggests that the negative stereotyping which people with learning disabilities face from many sections of society ensures they experience segregation from others and are forced to associate with "their own kind". If this is indeed the case, then the presence of learning disabilities will disadvantage offenders within the criminal justice system and so have an important effect upon the process of justice. In Australia, Cockram, Jackson & Underwood (1992) develop this idea and suggest that

... the attitudes of judges and magistrates and others in the criminal justice system would be a major determinant of the over-representation in prison of marginalised groups. (p. 190)

and although such over-representation does not seem to occur in the U.K., from this line of reasoning, the attitudes of professionals working within the criminal justice system will play a vital role in determining what course of action is to be taken with a learning disabled offender. Indeed, it is not just the attitudes of criminal justice professionals which are important in this process – other agencies including the police, the Crown Prosecution Service, and social and health services are all also involved when an offender is recognised as being learning disabled, and so the



attitudes and opinions of professionals from all of these groups are of relevance to the pursuit of justice.

Cockram et al. (1991, 1992, 1994a, 1994b, 1998) devised a questionnaire to determine the nature of the attitudes, perceptions and belief systems of the various group of professionals who were involved when people with learning disabilities entered into the criminal justice system. Their main motivation was to test the hypothesis that the attitudes etc. of these groups contributed to the over-representation of this client group within the prison population. Although we do not have such a problem in this country, "The move towards community care for people with mental illness [and with learning disabilities] suggests the vulnerable population is likely to increase." (Pearse & Gudjonsson, 1996a, p. 572.) The issue of offending by people with learning disabilities has only begun to receive attention in recent years and so our knowledge of such phenomena is at present scant. Because of this it may be argued that the attitudes and perceptions of all professional groups involved with the criminal justice system are of major importance, and so by examining such attitudes, we may be able to identify any possible short-comings in our justice process at present; as well as highlighting examples where such agencies have worked together to improve the situation for all involved. This is especially important when considering that the Reed Report (Department of Health & Home Office, 1994) suggested a priority area of future research should be a 'process study of offending and learning disabilities'; by this they mean:

We see advantages in collecting and disseminating examples of existing good practice and experience. This could also help to influence future policy and service development. We should want to see particular emphasis given to the needs of people with a mild learning disability and the inclusion of services for

people with autism. (Department of Health & Home Office, 1994, p. 63)

In doing this, it will be hoped that the rights of the learning disabled would be fully upheld and that they do not face any form of disadvantage or discrimination within the justice system. The rights of these people within the criminal justice system were summarised by the then Parliamentary Secretary for Health as follows:

... people with a learning disability - of whatever degree - are entitled to be treated with the same respect and dignity as everyone else... [their] own views and wishes must be taken seriously and respected at all times... [they] should have their health and social care needs on an individual basis, and not be offered predetermined sets of services because of ill-considered or outdated notions of what people with learning disabilities actually need or should be satisfied with... [and they] have the same rights in relation to statutory services as anyone else. This includes the right to access both primary and health care as well as the right to have their needs for social care assessed. It means incidentally that the patients charter applies equally to them as it does to any other patient. (Stephen Dorrell, 1991)

## **2.6 Differential treatment for Offenders with Learning Disabilities**

There are two forms of 'assistance' which may be provided to help vulnerable and mentally disordered offenders when they enter the criminal justice system; they are 'Appropriate Adult Schemes' and 'Diversion Schemes'.

As has already been noted, the Department of Health (1989) suggests that the small number of prisoners with a mild handicap are unsuited for prison and so should be diverted into Health and/or Social Service care provisions; and in accordance with this, many diversion schemes have been set up throughout the country and operate in a variety of 'criminal justice' settings (e.g. police stations, magistrates' courts,

prisons). A 'diversion scheme' may be defined as

... an arrangement between a magistrates' court and a psychiatrist whereby the psychiatrist attends the court regularly (or is on call and can be available rapidly) to assess defendants who are suspected of being mentally disordered and to advise the court on alternatives to custody if appropriate. This definition includes the use of a panel scheme whereby a community psychiatric nurse or approved social worker attends the court regularly and brings mentally abnormal defendants to the attention of other mental health professionals working in a multi-agency team that jointly arranges diversion and management. (Blumenthal & Wessely, 1992, p. 1323)

It has also been briefly noted that the Department of Health & Home Office (1992) states that because the police are the first service that comes into contact with 'mentally disordered' suspects, they should make arrangements with local health/social services to provide facilities for the removal of a person (under section 136 of the Mental Health Act) to a 'place of safety', and that under the Police and Criminal Evidence Act of 1984, that provisions should be made for the involvement of an Appropriate Adult when interviewing mentally disordered suspects. But why were appropriate adult schemes established?

Perhaps the main influence on the establishment of such schemes was the murder of Maxwell Confait in 1972. The body of 26 year old Maxwell Confait was discovered in a house fire in South London, and the pathologist reported that death occurred by strangulation with a ligature. Three youths were later arrested following some other fires, and after being detained from approximately 5.30pm, they had all made verbal confessions regarding the murder of Confait within 2 ½ hours. Signed confessions were later obtained by all three suspects by 11pm that evening; these confessions then later contributed to the convictions of all three boys, despite the later



retraction of the statements by all suspects. Colin Lattimore was 18 years old, illiterate and had an IQ = 66; Ronald Leighton was 15 and of borderline intelligence (IQ = 75); Ahmet Salih was 14, and spoke English as a second language (no IQ score was obtained for Salih). Lattimore was thought to have a mental age of about 8 years, and was described by a psychiatrist as being "... very markedly suggestible so that the slightest indication of the expected answer will produce it." (Price & Caplan, 1977)

Late in November 1992, Lattimore was found guilty of manslaughter (on the grounds of diminished responsibility); Leighton was found guilty of murder; and all three were found guilty of arson. After spending three years in prison (and at a young persons' detention centre), the three convictions were quashed via a hearing in the Court of Appeal, and the boys were subsequently released. The Court of Appeal found their convictions to be "unsafe and unsatisfactory", and led to the establishment of the Fisher Inquiry, which later reported (Fisher Report, 1977) that there had been three breaches of the 'Judges' Rules' and 'Administrative Directions' (which provided the existing legislation regarding legal standing of confessions as evidence). The Confait case breached the legislation in the following ways:

1. Two of the boys (Lattimore and Leighton) had been interviewed without their parents being present;
2. None of the boys had been informed of their rights to a solicitor and their entitlement to communicate with any other person; and
3. The police questioning of Lattimore was leading. The police were at the time aware of Lattimore's mental handicap, but chose to ignore it.

(Gudjonsson, 1992, p. 239)

In 1979, all three boys were exonerated for the crimes after two other people confessed to the murder of Confait. Since then, the case has often been cited as an

example of how wrongful convictions may be obtained based on false confessions.

Along with the Report of the Criminal Law Revision Committee of 1972, the Fisher Report led to the then Labour government establishing a Royal Commission on Criminal Procedure (1981), whose recommendations formed the basis of the Police & Criminal Evidence Act 1984. It is here within PACE and the accompanying Codes of Practice (Home Office, 1987) that we are able to find the procedural 'rights' which mentally disordered and vulnerable suspects may expect to hold when they are interviewed by the police.

Before proceeding to outline the actual legal provisions for learning disabled suspects during their time at the police station, it may be of some value to firstly examine why these people are thought to be vulnerable during police interviews; thus, an examination of the psychology of police interviewing will be provided, along with a short exposition of the recent research which has been conducted in this area.

## **2.7 The Psychology of Interviews and Learning Disabilities**

Gudjonsson, Clare & Cross (1992b) have shown that people with learning disabilities who are suspected of an offence may be disadvantaged from the beginning of their contact with the police because they may not fully comprehend the 'Notice to Detained Persons' which is read to all suspects when first arrested. This study demonstrated that suspects with a learning disability only understand an average of 11% of the sentences in this notice, compared with a mean of 68% of the sentences being understood by detainees with 'normal' IQs. Further, only 8% of people with learning disabilities understood the caution fully (compared with 80% of the 'average' intellectual group), and only 17% (compared with 53%) understood the right to have a solicitor present during the interview. It must be noted that the 'Notice to Detained

Persons' has been modified by way of reducing it from 60 to 37 words; however, Gudjonsson, Clare & Cross also state that this probably does little to help people with learning disabilities because

... the modification of the right to silence remains a complicated legal concept... which is likely to be difficult for inexperienced and/or intellectually disadvantaged suspects to understand. (Clare & Gudjonsson, 1995, p. 113).

Clare & Gudjonsson (1993) define 'interrogative suggestibility' as comprising two parts: "... to 'yield' to 'leading questions'; and to 'shift' the initial answers in response to 'negative feedback'." 'Confabulation' is defined as "... the distortion or fabrication of story elements - which occurs when people replace gaps in their memory with imaginary experiences which they believe to be true"; 'acquiescence' is thought of as "... the tendency to answer questions affirmatively, regardless of their content" (p. 296); and finally, 'compliance' refers to "... the tendency of the individual to go along with propositions, requests or instructions for some immediate instrumental gain" (Clare & Gudjonsson, 1995, p. 114). These four qualities - which are often commonly assumed to occur when people with learning disabilities are interviewed - were tested by Clare & Gudjonsson by using the 'Gudjonsson Suggestibility Scale'. This scale was administered to one group of people with learning disabilities (with a WAIS-R IQ level between 57 and 75; the mean IQ being 65, SD = 5.3) and another group of people with 'average intellectual ability' (WAIS-R between 83 and 111; the mean being 99, SD = 7.2). The results of this study showed that the group with learning disabilities were much more susceptible to leading questions; confabulated more; and were generally more acquiescent; all of which "... emphasized their potential vulnerability to giving erroneous testimony during



interrogations.” (p. 295)

In addition to people with learning disabilities being disadvantaged in understanding the police caution, and being disadvantaged during interview because of susceptibility, suggestibility, compliance and confabulation, Clare & Gudjonsson (1995) have identified ‘decision-making’ as a third area which is relevant to the vulnerability of people with learning disabilities during police interview. Not all suspects confess during a police interview, and so Hilgendorf & Irving (1981) have suggested that the interview process is demanding and complicated requiring suspects to make decisions concerning when to speak or answer a question, when to seek legal advice, and whether to make an incriminating confession. They propose that these decisions all involve the suspect’s perception (however unlikely) of what are “... the most likely consequences of a particular course of action, balanced against its perceived benefits.” (Clare & Gudjonsson, 1995, p. 115) Various factors have been identified as perhaps influencing a suspect’s decision-making, and these include: age, criminal history, the perceived strength of evidence against the suspect, fear of being locked up, and the protection of others. In addition to cognitive and social impairments, people with learning disabilities are often socially isolated and have a limited range of experiences; and so, combined with the potential influences on decision-making mentioned above, “... it was believed that people with intellectual disabilities might base their decisions during police interviews on different perceptions from those of the average intellectual ability counterparts.” (p. 115) In order to test this theory Clare & Gudjonsson made a fictional film showing a suspect giving a true and false confession after a police interrogation. This film was shown to a group of people with learning disabilities and another matched group with ‘average intellectual abilities’. It was found that the people with learning disabilities were less

likely to think that a confession after a police interview would have serious consequences for the suspect. In Clare & Gudjonsson's words

Their views reflected the importance they placed on the suspect's actual, rather than professed, guilt or innocence. Moreover, they believed that an innocent suspect might be protected because his or her innocence would be evident to others. (Clare & Gudjonsson, 1995, p. 110)

From this it may be concluded that an innocent person with a learning disability is more at risk during police interviews because they believe that their innocence will be obvious to all concerned, and so the impetus is upon others to demonstrate their innocence.

Although Rapley & Antaki (1996) have argued that "... there is probably no uniform 'acquiescent' motivation which accounts for all inconsistencies and agreements that might be produced..." (p. 207) during interviews with people with learning disabilities, there has been an attempt made by Heal & Sigelman (1995) to try and give guidelines to interview techniques which may perhaps reduce 'yea-saying' responses which are thought to be signs of acquiescence. In their review of the research concerning acquiescence, they conclude that

... acquiescence by mentally retarded respondents was circumvented by recasting yes/no questions into an either/or or a multiple-choice format. Although either/or questions induced their own bias - a disposition for respondents to select the latter of two choices regardless of content - this bias was not so large as the acquiescence bias. (Heal & Sigelman, 1995, p. 339)

We have seen then some of the problems which have been associated with the interrogative interviewing of people with learning disabilities. There is obviously no

easy answer to alleviate these problems, although there seems at present to be some interest in using particular methods of interviewing people with learning disabilities. One such method which has emerged is known as the *cognitive interview* (see Geiselman et al, 1984), and was developed mainly from theoretical research into the cognitive psychology of memory. The findings of this research resulted in three general principles being formulated: one, a memory trace is made up of several features (e.g. shape, size, colour etc.); two, a cue to retrieve a particular memory is more effective when it has a greater number of similarities with the encoded event; and three, memory traces usually have many different paths of retrieval, although one may be more effective than another. The cognitive interview uses four methods of 'facilitation retrieval', two of which attempt to increase '... the similarities between the encoding and retrieval contexts' (i.e. by the witness concentrating on the context surrounding the incident, and by making several attempts to report anything at all concerning the incident); and the others which '... focus on utilizing more than one retrieval path' (i.e. by recalling the incident from different perspectives), (see Gudjonsson, 1992a, p. 172).

Evidence suggests that the cognitive interview is superior to the more commonly used techniques utilised by the police in several ways. Fisher, Geiselman & Raymond (1987) analysed tape-recorded police interviews and found there to be three widely used techniques which reduced the ability to retrieve and recall memories:

1. Frequent interruptions of witnesses' descriptions
2. Asking too many short-answer questions
3. Inappropriate sequencing of questions. (cited in Gudjonsson, 1992a, p. 173)



Inappropriate sequencing was also sub-divided into three types: 'predetermined sequencing' (i.e. did not allow flexibility in question order); 'lagging sequencing' (i.e. not asking follow-up questions immediately after relevant points in the statement); and 'arbitrary sequencing' (i.e. asking questions which required the witness to use unrelated sensory modalities such as 'what did you see?', and 'what did you hear?'; and also interjecting general knowledge questions in the middle of the report which often distracts the witness.) Fisher, Geiselman & Amador (1989) trained experienced police detectives in the cognitive interview technique, and subsequently compared the results with other experienced detectives who had not received this training. Their findings showed highly significant differences between the results of the interviews from the two groups of officers, as the cognitive interviews produced an average of 63% more information which also tended to be more accurate. The only major criticism of the cognitive interview method which Fisher *et al.* give is that it requires more time, concentration and flexibility from the interviewer, but obviously this is not necessarily a bad consequence and in fact may prove to be quite the opposite. Supporting the work of Fisher *et al.* (1989) is McCauley & Fisher (1995) who tested the effectiveness of the cognitive interview on children. They also found that the cognitive interview produced significantly more correct information than the 'standard interview', and children who were interviewed twice using the cognitive interview recalled more unique and accurate facts. However, similarly, the cognitive interview also produced more inaccurate facts than the standard interview, although the proportion of accurate/inaccurate facts was the same for both. There does not seem to have been any research conducted yet concerning the effectiveness of the cognitive interview with people with learning disabilities. (See also Milne & Bull, 1995, who have also found that the use of the cognitive interview with children with a

learning disability, may increase their resistance to misleading and leading questions).

## **2.8 Legal safeguards for suspects with learning disabilities: the Police & Criminal Evidence Act 1984 and the accompanying Codes of Practice**

Statutory law providing safeguards for vulnerable suspects is found in the Police and Criminal Evidence Act (1984), and Section 77 is outlined below because it relates specifically to ‘confessions given by mentally handicapped persons’:

### **S. 77 Confessions by mentally handicapped persons**

(1) Without prejudice to the general duty of the court at trial on indictment to direct the jury on any matter on which it appears to the court appropriate to do so, where at such a trial—

- (a) the case against the accused depends wholly or substantially on a confession by him; and
- (b) the court is satisfied—
  - (i) that he is mentally handicapped; and
  - (ii) that the confession was not made in the presence of an independent person, the court shall warn the jury that there is a special need for caution before convicting the accused in reliance on the confession, and shall explain that the need arises because of the circumstances mentioned in paragraphs (a) and (b) above.

(2) In any case where at the summary trial of a person for an offence it appears to the court that a warning under subsection (1) above would be required if the trial were on indictment, the court shall treat the case as one in which there is a special need for caution before convicting the accused on his confession.

(3) In this section—

“independent person” does not include a police officer or a person employed for, or engaged on, police purposes;

“mentally handicapped”, in relation to a person, means that he is in a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning; and

“police purposes” has the meaning assigned to it by section 101 (2) of the Police Act 1996.

S. 77 thus acknowledges that a person with a learning disability is likely to need special protection when being interviewed by the police, and if there is any doubt as to whether a person does have a learning disability, there should be an assumption made that the person is at risk. (Walters & O’Connell, 1985)

Guidelines for how officers implement s. 77 are provided within the Codes of Practice that accompany PACE, especially in Code C: ‘Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers’ (Home Office, 1997, pp. 27-81), the details of which are outlined below.

Regarding the identification of vulnerabilities, Code C, 1.4 states:

If an officer has any suspicion, or is told in good faith, that a person of any age may be mentally disordered or mentally handicapped, or mentally incapable of understanding the significance of questions put to him or his replies, then that person shall be treated as a mentally disordered or mentally handicapped person for the purposes of this code. (Home Office, 1997, p. 28) <sup>8</sup>

This part of the code has been criticised by Palmer & Hart (1996) in the way that ‘mental disorder’ is inadequately defined. They argue that the Codes of Practice fails to provide any meaningful definition of the term because it “... recognises that the

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<sup>8</sup> ‘Notes for Guidance’ 1G (p. 31) also states: “The generic term ‘mental disorder’ is used throughout this code. ‘Mental disorder’ is defined in section 1(2) of the Mental Health Act 1983 as ‘mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder of disability of mind’. It should be noted that ‘mental disorder’ is different from ‘mental handicap’ although the two are dealt with similarly throughout this code. Where the custody officer has any doubt as to the mental state or capacity of a person detained an appropriate adult should be called. (p.



term is generic and repeating the definition contained in... the Mental Health Act 1983” (p. 13). Also, ‘mental disorder’ and ‘mental handicap’ are treated similarly in the Codes of Practice; but whereas custody officers are required to call a police surgeon for ‘mental disorder’, they are not so required for ‘mental handicap’.

If a ‘mental disorder’ or mental handicap is detected in a suspect, then Code C, 1.7 (b) describes an ‘appropriate adult’ as follows:

In this code ‘the appropriate adult’ means... in the case of a person who is mentally disordered or mentally handicapped:

- (i) a relative, guardian or other person who is responsible for his care or custody;
- (ii) someone who has experience of dealing with mentally disordered or mentally handicapped people but who is not a police officer or employed by the police (such as an approved social worker as defined by the Mental Health Act 1983 or a specialist social worker); or
- (iii) failing either of the above, some other responsible adult aged 18 or over who is not a police officer or employed by the police. (Home Office, 1997, p. 31)<sup>9</sup>

Regarding the actual interviewing of ‘mentally disordered’ suspects, Code C, 11.14 states:

A juvenile or a person who is mentally disordered or mentally handicapped, whether suspected or not, must not be interviewed or asked to provide or sign a written statement in the absence of the appropriate adult... (Home Office,

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31)

<sup>9</sup> Notes for Guidance 1E also states: “In the case of people who are mentally disordered or mentally handicapped, it may in certain circumstances be more satisfactory for all concerned if the appropriate adult is someone who has experience or training in their care rather than a relative lacking such qualifications. But if the person himself prefers a relative to a better qualified stranger or objects to a particular person as the appropriate adult, his wishes should if practicable be respected.” (p. 31)

1997, p. 57)

and Code C, 11.16 goes on to say

Where the appropriate adult is present at an interview, he shall be informed that he is not expected to act simply as an observer; and also that the purposes of his presence are, first, to advise the person being questioned and to observe whether or not the interview is being conducted properly and fairly, and secondly, to facilitate communication with the person being interviewed. (Home Office, 1997, p. 57)

The *rights* of the appropriate adult are outlined as follows. Code C, 2.4 and 2.5 state:

A solicitor or appropriate adult must be permitted to consult the custody record of a person detained as soon as practicable after their arrival at the police station. When a person leaves police detention or is taken before a court, he or his legal representative or his appropriate adult shall be supplied on request with a copy of the custody record as soon as practicable. This entitlement lasts for 12 months after his release. (Home Office, 1997, p. 32)

And

The person who has been detained, the appropriate adult, or the legal representative shall be permitted to inspect the original custody record after the person has left police detention provided they give reasonable notice of their request. A note of any such inspection shall be made in the custody record. (Home Office, 1997, p. 32)

Also

The person shall be advised by the custody officer that the appropriate adult (where applicable) is there to assist and advise him and that he can consult privately with the appropriate adult at any time. (Home Office, 1997, p. 35)

The above Codes of Practice offer police guidelines when dealing with people who have a learning disability. Although the number of cases using s. 77 will be very small, when a confession is gained from a 'mentally handicapped' person in the absence of an independent person, that confession is likely to be challenged under s. 76 or s. 78 of the 1984 Act. The relevant part of s. 76 that may be used to challenge a confession states that:

#### S. 76 Confessions

(2) If, in any proceedings where the prosecution proposes to give in evidence a confession made by an accused person, it is represented to the court that the confession was or maybe obtained—

- (a) by oppression of the person who made it; or
- (b) in consequence of anything said or done which was likely, in the circumstances existing of anything said or done which was likely, in the circumstances existing at the time, to render unreliable any confession which might be made by him in consequence thereof,

the court shall not allow the confession to be given in evidence against him except in so far as the prosecution proves to the court beyond reasonable doubt that the confession (notwithstanding that it may be true) was not obtained as aforesaid. (S. 76 (2) Police & Criminal Evidence Act, 1984)

Thus,

...this section places an onus on the prosecution, where the admissibility is challenged, to provide beyond reasonable doubt that a confession was not obtained by oppression or was not obtained in consequence of anything said or done which was likely to render it reliable.' (Osin, *et al.*, 2001, p. 142)



S. 78 of the 1984 Act can also be used to challenge the admissibility of evidence:

**S. 78 Exclusion of unfair evidence**

(1) In any proceedings the court may refuse to allow evidence on which the prosecution proposes to rely to be given if it appears to the court that, having regard to all the circumstances, including the circumstances in which the evidence was obtained, the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it.

Thus, the court is given this general and flexible facility to exclude prosecution evidence if there is any doubt that the evidence has not been fairly obtained. (Osin *et al.*, 2001, p. 145)

**2.9 Legal safeguards for suspects with learning disabilities: The Youth Justice & Criminal Evidence Act 1999**

The Youth Justice & Criminal Evidence Act 1999, identifies eight ‘special measures’ that can be made available to courts when witnesses are known to have a learning disability. The majority of these special measures are available for all eligible (broadly speaking, vulnerable and intimidated) witnesses, with the addition of two other measures that are also available for witnesses who are eligible on the grounds of youth and incapacity only (Birch & Leng, 2000).

The six special measures that are available to all vulnerable (and intimidated) witnesses are:

- (a) screening the witness from the accused (s. 23)
- (b) giving evidence by live link (s. 24)
- (c) ordering removal of wigs and gowns while the witness testifies (s. 25)

- (d) (in sexual cases and cases involving intimidation) giving evidence in private (s. 26)
- (e) video recording of evidence in chief (s. 27)
- (f) video recording of cross-examination and re-examination (where evidence in chief is recorded) (s. 28)

(Birch & Leng, 2000, p. 55)

The Act also makes available two other special measures for people who qualify on grounds of youth and on grounds of incapacity. Broadly speaking, witnesses who qualify on grounds of youth are under 17 at the time of the hearing, and people who qualify on the grounds of incapacity are eligible if they are considered to be mentally disordered.<sup>10</sup> The two measures available for these witnesses are

- (a) examination through intermediary (s. 29)
- (b) provision of aids to communication (s. 30)

Because of the potential availability of these two special measures to witnesses with learning disabilities, they are worth briefly outlining to give an indication of their

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<sup>10</sup> S. 16 (2) (a) of the Youth Justice & Criminal Evidence Act 1999, defines 'mental disorder' by use of the same definition given in the Mental Health Act 1983, s. 1 (2):

s. 1 Application of Act: "mental disorder"

(2) In this Act—

"mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind and "mentally disordered" shall be construed accordingly;

"severe mental impairment" means a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned...

"mental impairment" means a state of arrested development of mind (not amounting to severe mental impairment) which includes significant impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned...

"psychopathic disorder" means a persistent disorder or disability of mind (whether or not including significant impairment of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the person concerned... (Jones, 1983, p. 12)

possible benefits:

#### S. 29 Examination through intermediary

This special measure can only be made available to witnesses who are eligible on the grounds of youth or on the grounds of incapacity. An 'intermediary' is defined as an interpreter or other person approved by the court (s. 29 (1)); and intermediaries are responsible for communicating questions and answers to and from the witness, so as to enable as objective an understanding as is possible (s. 29 (2)). The Act does not provide details of who would act in the intermediary's role, although this issue may be addressed in future with rules of court that are to be made under the 1999 Act. What is clear about the role of intermediary is that its most important use will be with regards to witnesses who have a learning disability that affects their ability to communicate. However, this is not to confuse the role of intermediary with that of appropriate adult:

Many people with a learning disability who have problems with communication are able to make themselves understood to a particular family member or support worker. That person might be ideal in the role of 'appropriate adult' where the individual is being interviewed, either as a suspect or as a witness,... because the role of the appropriate adult includes advising and being on the side of the person being questioned as well as assisting, where necessary, in communicating with him. But the intermediary's function is limited to communicating, in as objective a way as possible, with the witness, and any attempt to gloss or supplement his answers by reference to the intermediary's personal knowledge or relevant events, or of previous accounts given by the witness or others, must be avoided, as must any attempt to steer the witness towards, or away from a particular answer. It would be very hard for someone close to the witness... to be so objective. (Birch & Leng, 2000, p. 76).



Because of these requirements, intermediaries who are not too closely involved with the witness are likely to provide more reassurance to the court that objective communication is possible and that ‘untainted’ evidence is achievable. However, a possible consequence of this might be that no intermediary may be easily found for witnesses who have severe learning disabilities and whose communication is highly idiosyncratic.

### **S. 30 Aids to interpretation**

The other facility available to witnesses who qualify on grounds of youth or incapacity is addressed by s. 30 of the Youth Justice & Criminal evidence Act 1999. This section permits a special measure direction to make available aids to interpretation, and the “... sort of device contemplated... is an alphabet or sign board or a voice synthesiser or enhancer which may enable a disabled witness to respond to questioning.” (Birch & Leng, 2000, p. 78)

## **2.10 The ‘Appropriate Adult’: Previous Research**

PACE was devised in 1984, and the accompanying Codes of Practice (relating to the detention, treatment and questioning of detained persons by police officers) became effective on 10 April, 1995. Up until this time, it is probably fair to say that the knowledge about, and usage of, appropriate adults (for vulnerable adult detainees) was not particularly well known. One of the first reports which addressed the topic of the appropriate adult was The Royal Commission on Criminal Justice – Research study no. 12 (Gudjonsson *et al.*, 1993), which looked at vulnerable people within police custody and the identification of their vulnerabilities). This study involved three

clinical psychologists attending two police stations over a three month period, with the intention of assessing suspects psychologically prior to their being interviewed by the police. Their findings showed that

... the police only called in an appropriate adult in exceptional circumstances (i.e. when they were fully satisfied that the detainee had mental problems). This is much below the 15 per cent figure recommended by the researchers on the basis of their clinical interview alone. However, in the researchers' view, the police were able to detect the most disabled and vulnerable detainees and take the necessary action to call an appropriate adult. There were no cases where the police called an appropriate adult where the researchers considered that one was not needed. (Gudjonsson, *et al.*, 1993, p. 16)

From this study, the researchers concluded that the most striking finding of their research was the low level of I.Q. scores obtained from the psychological assessments (using WAIS-R). The average score was 82 (out of 156 detainees at two police stations) which the authors describe as being 'very low'. Almost 9 per cent of the sample had IQs < 70 (therefore, officially *learning disabled*); and a further 42 per cent had an I.Q. score of between 70 and 79 per cent (i.e. falling within the borderline range). Gudjonssen et al. suggest that if an I.Q. score of 75 or below is used to indicate significant impairment, then approximately one third of the sample were intellectually disadvantaged. In conclusion, the authors make the recommendation that

... a comprehensive review of the role, function, qualification, training, and availability of persons acting as an appropriate adult is urgently needed. The police clearly had problems with obtaining suitable persons to act in this capacity. This calls for an establishment which will provide suitably qualified

individuals to fulfil this role at all times. Gudjonsson, et al., 1993, p. 27)

A report by Bean & Nemitz (1994) (but also see Nemitz & Bean, 1994) also examined situations in which the police called out an appropriate adult. This research consisted of examining the custody records (over a twelve month period) of four police stations. Out of 20,805 records searched, there were only 38 cases (0.2%) which involved the attendance of an appropriate adult. In an observational study of seven London police stations (21 days at each station), Robertson, et al. (1996) found a slightly higher rate of two per cent of cases where appropriate adults were used during the interviewing of adults. Bean & Nemitz (1994) also collated a further 446 records which revealed a need for the presence of an appropriate adult. The data from this study suggest that when social workers or probation officers were used to act in this capacity, there was a possibility of a conflict of interests occurring, especially when the suspect is also the client of such a professional. This concern with possible conflicts of interests of professionals (especially approved social workers) acting in the role of the appropriate adult is also raised by Evans & Rawstorne (1997), and issues concerning the effectiveness of the appropriate adult to intervene when necessary during police interviews, are also raised by Spencer (1997). Part of this research by Spencer, was concerned with the analysis of the taped-interviews of suspects which included the presence of an approved social worker acting in the role of appropriate adult. Results of this analysis showed that the approved social workers who acted as appropriate adults failed to intervene on 80 per cent of the occasions that three independent 'raters' felt they should have intervened. Bean & Nemitz (1994) also found that some custody officers made assumptions regarding the role of the appropriate adult, namely, for example, they assumed that an appropriate adult was needed only for juvenile detainees, and also that many officers assumed that the decision to use an



appropriate adult was a medical decision (made by the police surgeon). Custody officers were also viewed to be confused as to the role of the appropriate adult, as many officers believed that an appropriate adult should never interrupt an interview, and if they did, it should only be for 'welfare' reasons (e.g. food/drink/lavatory). They concluded their research with the following statement of the workings of appropriate adult schemes:

... it is clear from this research that the Appropriate Adult Scheme, apart from a very few cases, is not working. As such, much of Code C of the PACE... Code of Practice... is not being implemented for many vulnerable people. Quite apart from the fact that a piece of legislation is largely being ignored, the implications for mentally disordered and vulnerable suspects detained in police stations is very serious, especially worrying is the likely consequences of miscarriages of justice. (Bean & Nemitz, 1994, p. 3)

Palmer & Hart (1996) conducted a study funded by the Mental Health Foundation, to look at the implementation and effectiveness of the safeguards in PACE for mentally 'handicapped' and 'disordered' suspects. This study was qualitative in nature, relying in large part on data gathered from semi-structured interviews with significant people working within the criminal justice system (mainly custody officers, police surgeons, and defence solicitors - although no appropriate adults were interviewed). The findings of this study showed that all criminal justice personnel who were untrained in issues of mental disorders and learning disabilities (and vulnerabilities in general), had difficulties in identifying such vulnerabilities (e.g. most just looked for symptoms in the overt behaviour of suspects); thus they concluded that there was an urgent need in the provision of such training - especially among custody officers. The implementation of the safeguard of calling a police

surgeon was found to be generally good, although they also point out that PACE and the Codes of Practice do not mention or define their role.

Although the methodology of Palmer and Hart's report did not include the interviewing of appropriate adults, they do make some interesting observations regarding both the role and the effectiveness of the appropriate adult. They found that when an appropriate adult is not called for a suspect who is thought to be either mental disordered or learning disabled, the reason is mainly because there is "... serious confusion [among professionals] regarding exactly when one is required, and, for minor offences, practical difficulties in accessing an appropriate adult" (Palmer & Hart, 1996, p. 89). The authors were also concerned with the effectiveness of the people filling the appropriate adult role, especially when they had received no special training and also because they had often not been given any advice regarding their role. Part of the problem is then that appropriate adults - at least in the South Yorkshire area where the research was conducted - do not necessarily belong to an appropriate adult scheme:

... to establish a system requiring the presence of an appropriate adult to fulfil a role which includes offering advice, overseeing the fairness of police interviews and facilitating communication with people who may have varying degrees of mental disorder or mental handicap, without also enacting a system to provide people with the necessary skills to perform this role, appears a serious oversight [in the implementation of the safeguards provided by PACE]. (Palmer & Hart, 1996, p. 89)

Pearse & Gudjonsson (1996a, 1996b) also examine a number of practical problems concerned with the implementation and delivery of the role of the appropriate adult; specifically the suitability, availability of and training of the

candidates. Pearse & Gudjonsson point out that although there is no specific and comprehensive job description for the role of the appropriate adult, they do however speculate that necessary requirements for the role include: effective interpersonal and communication skills; sound knowledge of the law (especially of PACE); an understanding of the vulnerabilities and needs of vulnerable suspects; skills of courage and assertiveness to contend with the 'intimidating environment of a police station'; an awareness of disposal schemes within the criminal justice system; and 'sufficient quantities of that rare and most precious commodity, time' (Pearse & Gudjonsson, 1996b, p. 103). They recall that previous research has shown that people who have been called on in the past to act as an appropriate adult are unlikely to have such comprehensive experience (e.g. see: Dixon et al., 1990; Brown et al., 1992; Bean & Nemitz, 1994, Littlechild, 1995; Robertson et al., 1995, 1995b; Pearse & Gudjonsson, 1996a). However, they also say that because the role of the appropriate adult is so complex, then such a list of acceptable qualities is misleading because the situational dynamics of the role require much more; for example, getting the balance right between having a sound working knowledge of the criminal law (and being able to put that knowledge towards acting as an effective appropriate adult) and resisting the temptation to act in the role of legal advisor (as the two roles are clearly not identical). Regarding availability, Brown et al. (1992) and Bean & Nemitz (1994) found that the waiting times for an appropriate adult to appear at a police station could vary widely, with some reports suggesting that waits of up to 18 hours plus were not unheard of: "Such delays may not only have a debilitating effect on the health and welfare of mentally vulnerable suspects but also suggest that people may be detained longer than is actually necessary" (Pearse & Gudjonsson, 1996b, p. 103). Finally, problems of training are highlighted due to there being no recognised national training



scheme / package (with adequate funding) or agreed national standards for appropriate adults to adopt.<sup>11</sup>

## **2.11 Diversion Schemes: Previous Research**

With regards to court diversion schemes, Blumenthal & Wessely's (1992) study (The Extent of Local Arrangements for the Diversion of the Mentally Abnormal Offender from Custody, cited in Department of Health & Home Office, 1992, p. 14), reported that at that time there were diversion schemes operating in over 40 British courts with others being planned; however, it was also found that fewer than half of the district health authorities had planned strategies to cope with the diversion of mentally disordered offenders away from the penal system. The Department of Health (1989) suggests that the small number of prisoners with a mild handicap are unsuited for prison and so should be diverted into Health and/or Social Service care provisions. More specifically, the Department of Health & Home Office (1992) states that because the police are the first service that comes into contact with 'mentally disordered' suspects, they should make arrangements with local health/social services to provide facilities for the removal of a person (under section 136 of the Mental Health Act) to a 'place of safety', and that under the Police and Criminal Evidence Act of 1984, that provisions should be made for the involvement of an Appropriate Adult when interviewing mentally disordered suspects. Also

Where a mentally disordered person is suspected of an offence, every effort should be made to ensure that he or she is not drawn unnecessarily into the

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<sup>11</sup> However, an 'AA Network' was set up at a Mencap conference (Mencap, 1995) with one of its aims identified as to examine issues surrounding the problems of training for the appropriate adult.

criminal justice process. For this reason, among others, police stations are not really suitable places of safety... and suspects should be held there, if at all, for as short a period as possible. (Department of Health & Home Office, 1992, p. 14)

Diversion schemes have now been operational in varying forms (for example, based in police stations or at magistrates courts) staffed by various professionals (see for example Banerjee *et al.*, 1992; Home Office & Department of Health, 1995) for the past decade or so, and there has been research into the efficacy of these schemes. Studies have indicated that schemes based at magistrates courts have hastened the time taken to get psychiatric referrals and assessments completed (Cooke, 1991; James & Hamilton, 1991; Joseph & Potter, 1993; Exworthy & James, 1993; Wright, 1993; Exworthy & Parrott, 1997; Chambers & Rix, *in Press*); and that assessments made at court could, in practice, replace the majority of those made on remand in prison to speed up the justice process (Joseph & Potter, 1993; James *et al.*, 1997). Research has shown that the operation of such diversion schemes tends to result in the majority of people being initially diverted into locked or secure placements which is considered preferable to being initially placed in a remand prison where appropriate medical and psychiatric care may not be as readily available (James *et al.*, 1997). Other research has demonstrated that the majority of people diverted into secure care are usually receiving community based psychiatric care a year after diversion (Holloway & Shaw, 1993; Thomas & Singh, 1995; Rowlands *et al.*, 1996). Other research has, however, inevitably highlighted that limited resources (especially bed shortages in regional secure units), have undermined the success of some schemes (Hajioff, 1989; Jackson, 1998).

Diversion has not necessarily received an unqualified welcome however as

concern has been raised with regards to taking away the benefits that come with being in the justice system, for example the access to legal advice that is at hand. This early response to the idea of diversion is illustrated in the following passage voicing concern over the potential loss of rights:

Diversion not only diverts the alleged offenders from the courts but automatically deprives him or her of the benefit of legal advice. If the whole matter of prosecution and disposal is arranged by the police and the probation service (who stress that the question of guilt or innocence is irrelevant and, indeed, should not be broached) there is every possibility that an innocent person could be subjected to a “sentence”... We feel that [the right to consult a lawyer]... is the right of every citizen and diversion may well frighten the timid and gullible into agreeing to any disposal rather than facing the court procedure... Perhaps the severest criticism that should be levelled at diversion proposals is that they remove scrutiny of criminal legal processes from the public... and diversion schemes have a lack of public accountability. (McKittrick & Eysenck, 1984, p. 378-9)

Concern has also been raised from the perspective of the probation service in the way that diversion schemes must make explicit reference to the victims or the issue of public protection. Diversion must never become a favoured route because of benefits to either cost or time (in terms of referrals):

The policy of diversion is a question of balancing the care/treatment needs of the mentally disordered offender with the needs/rights of the victim and public protection issues. This means that all offenders with a mental disorder should be considered for diversion but the scheme cannot give an automatic guarantee that all offenders will be diverted. (Myerscough, 2001, p. 39)

Although there are calls for the diversion of people with learning disabilities away



from the criminal justice system wherever possible, there will still inevitably be cases when it is in the public interest for a prosecution to occur. This raises important questions concerning how differently offenders with learning disabilities should be treated by the law compared to offenders from the general population, and so in turn issues are also raised concerning the philosophy of normalisation (which has informed policy decisions for this group in recent years). McNally (1995) and Carson (1995) argue that this philosophy of normalisation requires that people with learning disabilities should be treated as any other offender within the criminal justice process, and so accept the rights and responsibilities that correspond to being a fully valued citizen. In addition to this they also argue that the criminal justice process may be an effective means of highlighting any inadequacies and short-comings in other services offered for people with learning disabilities, which may be lenient with offending behaviour by overlooking it, and therefore inadvertently contributing towards the perpetuation of such behaviour. This is not to say that the criminal justice system should not be flexible when dealing with people with learning disabilities, and following this McNally identifies innovative inter-agency developments which point towards how a balance may be achieved between the police, social/health services, other agencies and voluntary organisations which all aim to ensure the accountability of actions and protection of individual rights (see Jarman & Beaumont, 1994).

## **2.12 Research Aims**

The review of research literature concerning people with learning disabilities who offend shows that there is evidence of an over-representation of people with learning

disabilities in several western prison populations around the world. Research also suggests that this over-representation may – directly or indirectly – be linked with various misconceptions that have historically been held concerning the nature of learning disabilities and regarding the criminal behaviour of people with a learning disability. There is no such over-representation of learning disabilities in the UK although research does suggest there are a significant number of prisoners with borderline learning disabilities (IQ 65 – 80) who are psychologically vulnerable.

There seems to have been widespread support for the notion that people with learning disabilities are vulnerable within the criminal justice system and so moves have been made in the previous twenty years to support mentally disordered offenders when they enter the justice system and to encourage the diversion of such people into health care provision if appropriate. This interest was translated into policy during the time when health and social services received governmental encouragement to provide appropriate health care provision, and when the police received new guidelines for the treatment of vulnerable suspects. Research was conducted early during the previous decade to assess levels of provision for the diversion from custody of mentally disordered offenders as well as to ascertain levels of contact that psychiatrists had with criminal justice agencies. This research showed that provisions for the diversion from custody were inconsistent and piecemeal across localities, as well as being largely dependant upon the work of individual professionals to keep such schemes operational. An intention of this research was thus to try and assess current levels of contact that psychiatrists working in various specialisms have with criminal justice system agencies. It was also an aim of this research to attempt to ascertain the nature of involvement that psychiatrists have with provisions for the diversion of mentally disordered offenders, and to identify any problems that are

identified with the running and co-ordination of such schemes. Another aim of this research was to conduct a thorough investigation into the attitudes and belief systems that are held by professionals working within the criminal justice system towards the nature of learning disability and towards people with a disability who offend. By conducting such an assessment, it was hoped to illuminate any processes or practices which may further disadvantage this vulnerable group.



# Chapter 3

## *Methodology*

### 3.1 Methodological Issues and Research Design

The process of research necessarily involves making decisions regarding the choice of which particular methodology to use in order to gather data on an issue under investigation. Any serious consideration of methodological options requires that theoretical aspects of knowledge be addressed. This is explained by the fact that, as humans, we inevitably approach empirical observations via our own theoretical understanding, no matter if we are conscious of this or not. As Karl Popper states, “observations... are always *interpretations* of the facts observed; they are *interpretations in the light of theories*.” (Popper, 1968, p. 107) Bottom echoes this observation and states that “... there are no theory-neutral facts, and theory is inextricably involved in the process of data-gathering and data interpretation.” (Bottom, 2000, p. 18) In effect, observation does not occur in a theoretical vacuum but is instead related to some theory and it is theory that determines what kind of data is collected (see Deese, 1972). Because of this inexorable link it is clear that some engagement with theory is unavoidable in social science and psychological research, and this is especially true in the early stages of such research when a researcher’s belief system or world view may guide them in their

selection of methodology. The use of any particular methodology inevitably involves assumptions being made about how the world can be known, and because of this it is worth expanding on the epistemological assumptions that underpin different research approaches.

Research may be divided into approaches which adopt either *quantitative* or *qualitative* methodologies. This dichotomy is simplistic and there is disagreement regarding the actual definitions of quantitative and qualitative research, as well as there being little consensus regarding the basic principals of either tradition (see for example Murphy *et al.*, 1998) However, making this distinction does enable a brief discussion of the two divergent epistemological positions or paradigms that are associated with each of these approaches. Natural science is characterised by positivism and so is associated with quantitative research and is based on the assumption that objective knowledge can be gathered using the hypothetico-deductive model, where the aim is to understand the world by using objective methodologies that empirically test hypotheses (see: Giddens, 1974; Keat & Urry, 1975). In comparison to this is the naturalistic paradigm which is rooted in the hermeneutical tradition. This tradition rejects positivist assumptions and instead advocates a constructivist/interpretivist approach which is critical of the idea of knowledge being objective and fixed; knowledge is instead seen as being subjective, flexible, speculative and open to interpretation (see: Bauman, 1978; Mason, 1996; Murphy, 1988; Silverman, 2000).

The quantitative and qualitative split in methodological approach is typified by two competing philosophies which attempt to explain the relationship between theory and data in research. 'Positivism' (and specifically, the *hypothetico-deductive* model) is the

philosophy that is most associated with quantitative methods whereas 'phenomenology' is the philosophy that is commonly associated with qualitative methodologies.

A classic formulation of the hypothetico-deductive theory is developed by Merton (1967, 1968) who advocates an approach towards research where the underlying procedural logic is deductive rather than inductive, where a small number of limited factual observations are the starting point of research upon which a hypothesis may be formed to explain such observations. Layder (1998, p. 16) usefully summarises Merton's argument in the following way:

[Merton] argued that although we develop our initial ideas about a research problem through empirical observations of some social phenomenon... we then construct a possible theoretical explanation for the phenomenon through a logical, deductive process, which is consistent with the known facts. Research then proceeds on the basis of finding more facts and information about the topic, area or problem in question in order to 'test-out' the original hypothesis. The unearthing of evidence through empirical research either confirms the initial theoretical ideas or disconfirms them, leading to their reformulation or abandonment. [It is argued that] the more theory is tested-out in this manner, the more likely it is that supportive evidence will be found and this can lead to a relatively stabilized body of theory which can help to illuminate other research in the area. (Layder, 1998, p. 16, cited in King & Wincup, 2000, p. 41)

A criticism of the hypothetico-deductive theory is that the very process that is advocated in this method of enquiry means that the researcher's focus is restricted precisely because the emphasis is on the refinement of an existing hypothesis by process of either verification or falsification. This process perhaps leaves little room for imagination and



so is not inventive in the process of theory generation because it emerges from the limited structures of existing knowledge. As Bottom says,

... fresh data that might make one want to think again about the framework underpinning the original formulation might not be very actively sought by the researcher – and, even if discovered accidentally, might not be very carefully thought about. (Bottom, 2000, p. 42)

In spite of this criticism however, the hypothetico-deductive approach does have merit and is an important and valid model for conducting empirical research.

Positivism is the dominant philosophy informing the hypothetico-deductive method, and counter to this is phenomenology which has provided prominent critiques of positivist approaches. Advocates of the phenomenological tradition argue that positivism is flawed because it fails to address the human dimension to social 'facts'; this is because positivism considers such social facts to be separate and discrete dimensions, and fails to acknowledge that they are instead arrived at through human interaction and through the shared meanings that are negotiated by people within social contexts (see Giorgi, 1995). This phenomenological approach was typified in social science by the work of Berger and Luckmann (1967) who disagreed with positivist assumptions that human beings are formed by social forces. Rather, they argued that people create the social world through multiple meanings derived from human interaction, and also that the focus of research should be on aiming to discover these socially constructed meanings. From a phenomenological stance, the objectivity that is allegedly achieved in positivist methodologies is inappropriate in gaining an understanding of social constructed

meaning, and such objectivity is replaced with a subjective ideal towards achieving *verstehen*, or understanding, (Weber, 1949) where the researcher attempts to interpret and to understand the meanings that people give to their actions and beliefs.

Within psychology and social science, positivism and phenomenology have traditionally advocated the use of particular research methods. Positivism has encouraged the techniques of natural science and so experiment and observational methods producing quantitative data have traditionally been favoured where the investigator has (or aims to have) little or no effect on the object under investigation. Phenomenology has also influenced methodologies within psychology and social science and has espoused the use of methods which shun any ambition towards objectivity, instead encouraging reflexivity from the researcher who should be conscious of the constructive and interpretative processes occurring when social phenomena are investigated. Research methods which follow the phenomenological tradition (such as ethnography and unstructured in-depth interviews) tend to be concerned with providing qualitatively rich data with subjective insights.

Positivism and phenomenology have both influenced the methodologies utilised in psychology and social science, and the study of attitudes has not been exempt from such influence which means there are a variety of competing methods that have traditionally been used by researchers. Two of the most prominent methods used in social science and psychology to assess attitudes include postal surveys and interviews. Both of these methods come in a variety of forms with some being quantitative and based on positivist assumptions (e.g. structured interviews and postal attitude surveys with Likert scale responses), while others which are qualitative and aligned to

phenomenological ideals (e.g. semi-structured interviews and open-ended questionnaires).

Attitude surveys using Likert scales (Likert, 1932) are perhaps one of the most popular methods of assessing attitudes. They do not require judges to rate the attitudes of those under investigation, but instead they require respondents to place themselves on an attitude continuum for specific statements (e.g. '*Strongly agree*', '*Agree*', '*Neutral*', '*Disagree*' and '*Strongly Disagree*'). These responses are given corresponding numerical values which can easily be converted into quantifiable scores to indicate the nature of attitudes held. The reliability of Likert scales tends to be good although the actual scores that are achieved have been criticised because of the way that attitudes are assessed with a number statements whose scores are added. This produces a

... lack of reproducibility (in the technical sense): the same total score may be obtained in many different ways. This being so, it has been argued that such a score has little meaning or that two or more identical scores may have totally different meanings. Often, for this reason, the pattern of responses becomes more interesting than the total score. (Oppenheim, 1992, p. 200)

This criticism is valid but does not totally detract away from the value that such attitude surveys bring to research in that they are uni-dimensional where the items under discussion are usually cohesive and uniform. (Oppenheim, 1992)

Research interviews come in a variety of forms and so it is perhaps no surprise that they have been widely used in attitude investigations by researchers following both positivist and phenomenological assumptions. Interviews undertaken in research with a positivist slant often come in standardised forms so as to increase reliability. They



usually involve the same sets of questions being put to respondents in a formal and standardised manner, and may also involve attitudes being measured according to standardised categories such as those found in Likert scales (Fowler *et al.*, 1990). While standardised interviews are often advocated by positivist researchers, ‘exploratory’ (or ‘semi-structured’ or ‘in-depth’) interviews are more commonly used in research with a phenomenological approach because...

The purpose of the *exploratory* interview is essentially heuristic: to develop ideas and research hypotheses rather than to gather facts and statistics. It is concerned with trying to understand how ordinary people think and feel about the topics of concern to the research... The job of the... interviewer is thus *not* that of data collection but *ideas* collection. (Oppenheim, 1992, p. 67)

Positivist and phenomenological orientated methodologies are rooted in what is seen as two divergent epistemological positions. Positivism encourages the collection and analysis of objective and quantitative data using methods applicable to the study of natural science (i.e. via the hypothetico-deductive model). Alternatively, phenomenology encourages the collection of subjective and qualitative data with the epistemological foundations of constructivism and interpretivism. Traditionally these two approaches have been seen as being mutually contradictory in the assumptions they make about how we can know the world, and some have argued that the different epistemological foundations are irreconcilable (Walker, 1985). In practice however, many (see Pope & Mays, 1995, Murphy et al., 1998, Silvermann, 2000) have argued that decisions regarding whether or not to use quantitative or qualitative methodologies should be made primarily on instrumental and pragmatic considerations. The key issue is whether a particular

method will lead to an answer to a research question in an efficient and effective fashion, and so arguments regarding which methodological approach is superior or inferior is fruitless. Qualitative and quantitative methodologies should both instead be seen as being potentially valuable tools, and in this way the two types of methodology are viewed as being complementary rather than contradictory means of gathering data. Pope & Mays (1995) argue that qualitative research operates in several ways which can complement and supplement quantitative research. First qualitative research can identify words, phrases and concepts and can also generate descriptive accounts from social actors which would remain undisclosed using other methods. Second, these concepts, words and ideas could then be used, for example, in the formulation of postal questionnaires or other tools used in quantitative methods. Third, qualitative research can supplement other research approaches so as to offer 'triangulation' by providing different perspectives that are achieved through the use of quantitative methods of looking at the same phenomena. In addition to this, quantitative methods may be employed first to get an overall view for which explanations may be later sought using qualitative methods. In sum, qualitative and quantitative approaches do not have to be viewed as being in competition and or opposition and neither approach needs to be afforded superior status. The point is to use whichever methods are appropriate for the task in hand, and the 'distinction between qualitative and quantitative research is really a technical matter whereby the choice between them is to do with their suitability in answering particular research questions' (Bryman, 1988, 99. 108 – 109; cited in Henwood & Pigeon, 1992, p. 100); and that by using a combination of methods wherever possible, the research will be strengthened and the generation of knowledge may possibly be more successful (Henwood & Pigeon,

1992). In this spirit, the methods of investigation selected to answer the research questions and achieve the aims of the research have been chosen in light of these theoretical considerations and also because of various ethical issues and practical constraints.

### **3.2 Ethical & Practical Issues**

At the outset of this research I had many intentions in following a course of action to try and conduct a prospective investigation into the process of following people with learning disabilities from their arrest at their entry into the justice system through to its conclusion. The main aim of this proposed route of action was informed by a critique that was applicable to many of the previous research projects that have looked at issues surrounding offenders with disabilities. This critique was namely that many of the previous studies had relied upon retrospective methodologies which were inadequate in ascertaining true experiences of all parties involved. In an attempt to follow an ethnographic course of research and to gain access to situations where I would have contact with vulnerable police detainees be able to collect data from involved parties, I trained to act in the role of appropriate adult. This training was provided by the newly established Derbyshire Appropriate Adult Scheme with whom I was to work as a volunteer for a two year period.

Acting in the role of appropriate adult soon made me fully realise that there is sometimes very little distinction between the status of victim and criminal, and this was



all too evident as many vulnerable detainees – most notably those with learning disabilities and mental health problems – and when they were given the opportunity to tell their stories, they often related histories and experiences of abuse, neglect, poverty, isolation, and general disadvantage in many aspects of their lives. I soon realised that I was unwilling to pursue my intended course of research that would have involved me maintaining contact with the people who had been involved with the police, and with the various professionals who had come into contact with that person as they progressed through the justice process. There were several reasons why it became evident why this course of action would have been ethically dubious.

First, I came into contact with these people acting as their appropriate adult, and as such my prime responsibilities were to enable communication with the detained person at the police station and also to ensure that they were properly looked after and that their welfare was addressed. To begin collecting data (informally or otherwise) would have been to confuse the role of supporting that person as their appropriate adult and may have possibly affected my efforts to do this.

Second, communicating with different people who were involved with an arrested or detained person could have transgressed boundaries of confidentiality. People are often arrested for events that they may wish to remain private in their lives and so I felt that there was a danger in exposing people to unnecessary social stigma by possibly revealing their offending status to other people.

Third, as people gave their life stories and their personal circumstances were revealed to me while they were at the police station, it became ever obvious that much offending behaviour could be explained as a function of the wider social isolation and

systematic devaluation of people with learning disabilities by the community in general. To remain in contact with a person as they progressed through the justice system, and by possibly remaining in contact with that person after they had left the justice process, both may have magnified the event in that person's life and so I felt there was a strong possibility of increasing the associated trauma that accompanies involvement with the criminal justice process. This reinforced my discomfort with the nature of the proposed methodology once I had begun working as an appropriate adult and had come into contact with several detained people with learning disabilities who would have made ideal case studies. Once the details of peoples' life stories became apparent, a major concern became to do with issues of exploitation. This point is neatly encapsulated in the following passage from Burman:

A legitimate question that should always be posed (both in conducting and in evaluating research) is whether the participants have been exploited, that is, whether their psychological or material conditions worsened through their involvement in the research. (Burman, 1994)

I believed that there was a strong possibility of this happening if a case study methodology was followed, and obtained through my work as an appropriate adult, despite even the best intentions of conducting the research in a sensitive and delicate manner.

A fourth reason why I decided not to follow an ethnographic research programme was because I felt that involving these people in this research process was contributing towards the historic tendency in learning disability research where the research process is

criticised for the way it reinforces power structures that maintain the oppression of people with learning disabilities. Oliver argues for an active effort to achieve *emancipatory research* that facilitates

... a politics of the possible by confronting social oppression at whatever level it occurs. Central to the project is a recognition of and confrontation with power which structures the social relations of research production. To put it bluntly, research has been and essentially still is, an activity carried out by those who have power upon those who do not. (Oliver, p. 110, 1992)

In this tradition, much previous criminological research has been concerned with the “sociology of nuts, sluts and perverts” (Liazos, 1972), and has failed to address the inequity of power relations that is at play in research and which contributes towards the continued devaluation of people with learning disabilities in society (Barnes, 1992). Likewise, Morris (1992) offers a feminist critique of disability research where she highlights ‘... the importance of research which turns the spotlight on the way in which non-disabled society oppresses disabled people.’ (p. 157) Morris points out that all oppressed groups need allies and so it should perhaps be a moral obligation to encourage opportunities in research where any forms of oppression can be highlighted and addressed with an intention of changing oppressive situations in the wider social structure:

Non-disabled people’s behaviour towards disabled people is a social problem – it is a social problem because it is an expression of prejudice. Such expressions of



prejudice take place... through social, economic and political institutions.  
(Morris, 1992, p. 165)

In the spirit of these critiques and with an intention not to contribute towards the further suffering of vulnerable detained people, I decided to switch my attention of research “from the powerless to the powerful” (Jenkins, 1971, quoted in Wenger, 1987 and in Oliver, 1992). According to Giroux (1988), a prime aim of research should be to

... understand how subjectives are produced and regulated through historically produced social forms and how these forms carry and embody particular interests. At the core of this position is the need to develop modes of enquiry that not only investigate how experience is shaped, lived and endured within particular social forms... but also how certain apparatuses of power produced forms of knowledge that legitimate a particular kind of truth and way of life. (Giroux, 1988, quoted in Sherman & Webb, 1988 and in Oliver, 1992).

It was thus hoped that the apparatuses of power could have begun to be examined by investigating the attitudes and belief systems of the professional groups involved with the criminal justice process when a vulnerable person is detained and prosecuted. The professional groups chosen to participate included judges and magistrates, police and appropriate adults, and also two nurses working in a custody setting. These were the people who had real power over detained persons, precisely because they were the people who made the decisions that ultimately affected their liberty. For example, decisions regarding whether or not to press charges; decisions regarding guilt and innocence; and decisions regarding appropriate punishment or care.

Permission was eventually granted from the Lord Chancellor's Department to approach members of the judiciary, and permission from other professional organisations soon followed once this was given. The process involved in gaining access to this group of respondents took in excess of one year to achieve, and so the first element of this research process (the national survey of psychiatrists) was devised and instigated during this time to ascertain the current provisions for arrangements to divert 'mentally disordered offenders' into health care provision. This survey also enabled me to look at the frequency and levels of contact that different psychiatry specialists had with the criminal justice system. From a practical point of view, this survey also conveniently made use of the period of waiting for the Government to grant me permission to approach judges.

### **3.3 Respondent Sample Groups**

All of the people who participated with this research were self-selecting volunteers. Individual psychiatrists decided on whether or not they wished to respond to the questionnaire sent to them, and all of the respondents involved with the attitude survey also volunteered to participate. This was with the exception to the group of police respondents who completed the attitude survey as officers were asked by their Inspector to complete the survey as part of their professional routine and so were allocating time at work to achieve this task. This is an important consideration with this form of qualitative research because issues of personal motivations regarding research participation may

affect the attitudes and beliefs that respondents offer in interviews. Rosenthal (1965) refers to these issues of personal motivation as *volunteer characteristics*:

This phenomena only appears when people are allowed to volunteer in research in the first place. If a strict sampling of the population were to be carried out and only certain identified individuals were selected to take part and they *did* take part, then the characteristics of the subjects would thereby be controlled for... The types of people who choose to take part in psychology studies tend to be younger, brighter, friendlier, less conventional or authoritarian, but with a strong need for approval. (c.f. Rosenthal, 1965, cited in Parker, 1994)

It is doubtful as to how far these characteristics may be shared by professionals working in an authoritarian field, but the point does need to be made that respondents who provided data for this research, did so voluntarily. These issues will be discussed further in Chapter 10.

### ***Survey of Psychiatrists***

The survey of psychiatrists involved sending a postal questionnaire to all 791 psychiatrists registered on the Royal College of Psychiatry's mailing list of consultant grade members in England and Wales. The psychiatrists were registered in four Sections of the Royal College of Psychiatry: General & Community ( $n. = 347$ ), Forensic ( $n. = 195$ ), Child & Adolescent ( $n. = 144$ ) and Learning Disability ( $n. = 105$ ).



### *Attitude Survey*

The postal survey of the attitudes of criminal justice professionals involved sending a questionnaire to the following groups of professionals. The sample of judges ( $n. = 20$ ) consisted of practising Recorders and Circuit Judges, all of whom presided over criminal law cases in the Oxford and Midland Circuit. Several of the members of the Judiciary also acted as barristers when they were not presiding as judges. The sample of magistrates ( $n. = 20$ ) were all recruited from the Nottingham Magistrates Association and all had had several years of experience within the Adult Court, and five magistrates also had experience of sitting in the Youth Court. Two of these respondents were Stipendiary Magistrates, and the remainder were Lay Magistrates who all sat on a part-time basis and who all came from a variety of different backgrounds and professions unrelated to the law. The sample of police respondents ( $n. = 40$ ) were all recruited from the Nottinghamshire Police Constabulary. This group consisted of Custody Sergeants ( $n. = 10$ ), Detective Constables ( $n. = 10$ ), and uniformed Police Officers ( $n. = 20$ ) and all worked across the five police districts in Nottinghamshire. The respondents who acted as appropriate adults ( $n. = 20$ ) did so for the Derbyshire Appropriate Adult Scheme. Two of these respondents also worked as co-ordinators of the appropriate adult scheme and were included because they both had extensive experience of acting in this role. Sample sizes were largely determined by the governing agencies who gave me access to judges and magistrates, and there were only approximately twenty volunteers working for Derby Appropriate Adult Scheme at that time. Although the composition of professional sample groups was different to that of Cockram *et al.* (1994b), attempts were made to

achieve a similar total sample group ( $n. = 100$ ), and so it was requested to the police that forty officers complete the attitude survey. This also meant that the responses from the police to the attitude survey might have been more representative by including the three roles that were considered to be most likely to encounter an offender with learning disabilities in the course of their work.

### *Semi-structured Interviews*

The respondents who participated in the semi-structured interviews represented all of the professional groups who participated in the attitude survey, this is with the exception of the police where only custody sergeants ( $n. = 6$ ) and one WPC were interviewed. It was intended that the majority of interviewees with police respondents were with custody sergeants, this was because the statistical analysis (chi square) of attitude survey responses revealed no significant difference between the responses from the groups of detective sergeants, uniformed officers and custody sergeants. It was also true that, unlike detectives and PCs, custody sergeants are primarily responsible for initial decisions regarding which course of action should be followed once an arrest has been made and the police interview has been conducted. A third reason for focussing on the attitudes of custody sergeants rather than the other two groups was because the work of custody officers is concerned with the care of police detainees and is largely directed by PACE and the accompanying Codes of Practice in the way that vulnerable detainees are treated. Out of all of the interviewees, only three did not participate in the postal attitude survey stage of this research. One of these was an appropriate adult who was included

because she was responsible for formulating a widely used guide for appropriate adults that was published by Mencap, as well as having had extensive experience of acting in the role of appropriate adult and who provides freelance appropriate adult training courses to police and social service groups. The two other interviewees were included because they worked as community forensic psychiatric liaison nurses and who were based in custody suites in the Nottinghamshire Constabulary providing an on-site service to assess people detained at police stations. These three respondents were included because of their unique knowledge and experience of working with vulnerable detainees who have learning disabilities, and it was also felt that the two nurses could offer valuable additional perspectives from a different professional group.

Attempts were made to include the participation of solicitors in this research by first approaching the Law Society to gain their support and help to recruiting a sample of their members, ideally who practised criminal law as a duty solicitor for the police. These requests for assistance proved fruitless however and so attempts were then made to recruit the solicitors (and legal executives) who represented the vulnerable police detainees for whom I acted as appropriate adult (especially those detainees who were identified as having a learning disability). It was hoped that this would have created a convenience or opportunistic cluster sample and would have had the advantage of ensuring the participation of solicitors who had had experience of representing disadvantaged and/or vulnerable people. These attempts also proved fruitless however and so solicitors did not participate in this research.



**Table 3.1 Details of the sample groups who participated in the postal survey of attitudes and with the semi-structured interviews.**

	Total	Judges	Magistrates	Police	A.A.s
Sample groups recruited for survey	100	20	20	40	20
Returned attitude Survey	91 %	16 (80 %)	18 (90 %)	38 (95 %)	19 (95 %)
Semi-structured interviews	28*	7	6	7	6

\* includes 2 community psychiatric nurses working as forensic liaison nurses in police custody suites.

***Considerations on the effects of familiarity with respondents***

The majority of the professionals who contributed to this research by participating in the semi-structured interviews were not known to the researcher prior to this study. This situation concurs with traditional and orthodox accounts of interviewing which usually assume that respondents are for practical purposes anonymous to the researcher, and that the two parties do not share any involvement with each other, either prior to the interviews, or after the research is complete (Galtung, 1967). Following on from this, the role of the researcher is also assumed to be segregated from that of the respondent, because the role of researcher is distinct and separate from the respondent's, whose role is significant because it is likely to have a bearing upon the topic under investigation. The respondent/researcher relationship is assumed to be unequal whereby the (usually) higher status of the researcher can be used in the interview process to enable

manipulation of the encounter so as to maximise opportunities to collect data that is of interest to the researcher.

Although the majority of respondents in this research were not known prior to the interview process, the sample of appropriate adults who did participate do not share the traditionally assumed characteristics of anonymous respondents. My work as an appropriate adult involved undergoing the same programme of training that all of the other volunteer appropriate adults received before acting for the Derby based scheme. In addition to this programme of training, I attended regular team meetings with the other volunteers and this meant that I became well known to this sample group. Such contact naturally meant that many of our opinions, attitudes and experiences were perhaps known to each other, and so there was an element of familiarity (if not friendship) between interviewer and respondent before the interviews took place. Such familiarity is likely to have affected the dynamics of the social encounter of the interview process, as well as perhaps influencing how interview data was interpreted. Because of this it is necessary to address issues that may rise when a researcher interviews respondents who may be considered to be one's peers.

Platt (1981) provides a useful analysis of her own experience of conducting qualitative research whereby her own peer-group of university lecturers made up the sample of respondents who participated in the semi-structured interviews that she conducted. Platt states that interviewing her peers was a very different experience from that described in more traditional accounts of the interview process, and she describes three important considerations of interviewing one's peers that may have consequences for the interview.

The first relevant consideration is that of shared group membership between interviewer and respondent. Platt points out that friends, acquaintances and colleagues are not anonymous to the researcher and there is a shared history between the two, and that this shared group membership can have an influence upon whether or not respondents agree to participate in the research or not, as well as being a cause for conversation and amusement amongst colleagues; but what is more difficult to demonstrate is that

... personal and community knowledge are used as part of the information available to construct a conception of what the interview is meant to be about, and thus affect the content of what is said. (Platt, 1981, p. 77)

These social relations do work both ways however and so Platt describes how the researcher may be anxious to ensure that the interviews are a socially enjoyable experience and also to make sure that s/he appears in a good light to respondents. This may mean that

... there is a temptation to contribute discreditable stories about oneself in anticipation and legitimation of return, to appear to get to the point quickly without requiring explicit statements, and to treat the interview situation as no different from other conversations and so contribute one's own quota of gossip and comment to the discussion. (Platt, 1981, p. 77)

Shared group membership can be enormously helpful in assisting a researcher to obtain data from respondents, but this acquaintance may also hamper the eagerness of



respondents to 'open up' to the researcher and reveal certain attitudes and experiences etc. for reasons of embarrassment or whatever. Under these circumstances, it may be necessary for the researcher to undertake a form of role-play where s/he overtly aims to take on the more formal role of researcher which temporarily eclipses the role of friend, colleague or acquaintance.

When the problem of social ease is solved, a second consideration of interviewing one's peers is that researcher and respondent may have similar background knowledge and shared understandings. Prior knowledge of the researcher may mean that respondents assume that it is unnecessary to go into things that they already know the researchers knows about. Alternatively, where a researcher draws on background knowledge, inevitable biases of such knowledge can be introduced which mean that there may be a danger of the interviewer's interpretations being imposed on data, rather than those of the respondent:

In either case, one is assuming that one already has knowledge which makes the 'research' superfluous, or directs it towards some areas and away from others.  
(Platt, 1981, p. 80)

A third consideration when interviewing one's peers is related to status and equality. Although status differentials may be relevant when interviewing one's peers, issues of equality can be more salient. Platt argues that a norm is violated if one manipulates or dominates an equal by claiming the right to define a situation for them. Because of this, it seems reasonable to provide an honest and fairly full account of the purpose of the research without being intellectually condescending. However, it can be

difficult to achieve this without inviting discussion of the study rather than getting on with the interview, and without providing too much information that may influence the course of the interview. Having an element of equality in the relationship between researcher and respondent also implies that, to an extent, norms are shared. Where there is an assumption that norms are shared between researcher and respondent, such norms do not need explaining which may lessen the quality of interview data. Alternatively, if a researcher requests explanation of norms, it can have the effect of defining the researcher as not being from the same community, which could possibly disturb a personal relationship.

Platt demonstrates that some of the characteristics of interviewing one's peers – most notably shared community membership and the continuing relationship – make it resemble participation observation rather than the traditional interview; and because of this, she argues that the conventional distinction between modes of data collection are not always useful. For Platt, some interviews are as much like participant observation as they are like other interviews, and in conclusion she suggests that

No single recipe emerges for the technical conduct of the interview... The conclusion is not drawn that interviewing as a method of data collection is completely vitiated by the problems discussed... The weaknesses of interviewing are intrinsically bound up with its strengths as a specialised mode of social interaction. (Platt, 1981, pp. 88-9)

### **3.4 Access and Procedure**

#### ***Psychiatry Survey***

Support for the survey of consultant psychiatrists was given by the Royal College of Psychiatrists who provided the names and contact addresses of members registered in the General & Adult, Forensic, Child & Adolescent, and Learning Disability sections. Psychiatrists were re-sent the questionnaire if no response was forthcoming one month after sending the original questionnaire.

#### ***Attitude Survey***

The Lord Chancellor's Department was approached to request the participation of Judges with this research. Judges were canvassed by this Department to ascertain if they were willing to complete the attitude questionnaire via post and they then provided names and contact addresses of willing participants. Magistrates were recruited in a similar manner by approaching the Magistrates' Association who also gave permission to proceed and who provided a list of those Magistrates willing to participate. The Chief Constable of Nottinghamshire Constabulary gave permission to allow members of his force to participate with this research. Individual officers were selected by Police Inspectors working across the five police districts in the Nottinghamshire area. These Inspectors were responsible for the distribution and collection of questionnaires. Respondents who acted as volunteer appropriate adults for the Derbyshire Appropriate Adult Scheme were approached by myself to participate in this research and access to these respondents was possibly enabled because I had two years experience of acting as an appropriate adult for



the Derbyshire Scheme after it was established in 1998. Respondents were contacted by phone or letter one month after the initial contact was made to request the return of any outstanding attitude surveys. This was with the exception of the police where I had to rely on the individual Police Inspectors to retrieve and return completed responses to me.

### ***Semi-structured Interviews***

Respondents who completed the attitude survey were invited to indicate on the questionnaire if they were willing to participate in semi-structured interviews concerning the issues surrounding vulnerable offenders with learning disabilities. All of these people were then contacted by myself and interviews were arranged to occur at times convenient to respondents. The majority of interviews lasted for approximately one hour, although the duration did vary (minimum = 0.5 hours, maximum = 2.5 hours). Interviews were recorded onto audio cassette tape using a portable recording machine.

## **3.5 Questionnaires and Question Agendas**

### ***Survey of Psychiatrists***

The questionnaire sent to consultant psychiatrists was based on those originally used by Blumenthal and Wessely who originally conducted an assessment of diversion from custody schemes in England and Wales (1992); and who also conducted a survey of general and forensic psychiatrists asking about professional contact with criminal justice agencies (1993). The questionnaire was designed to elicit the same information that was

gained in Blumenthal & Wessely's original studies and so comprised three sections. The first requested information on the extent of formal and informal contact between psychiatrists and five criminal justice agencies: the police, court services, the probation service, the Crown Prosecution Service and prisons. The second section of the questionnaire requested information on the possible involvement of psychiatrists with 'diversion from custody' schemes, as well as information on other professionals involved in such schemes. The third section of the questionnaire asked respondents to identify if diversion from custody schemes were unsatisfactory in their area, and if so, why. A pilot study was conducted by requesting local psychiatrists ( $n. = 3$ ) to complete the questionnaire. These psychiatrists had all had experience of working in the specialisms of either forensic or learning disability psychiatry, and the adapted and updated version of Blumenthal & Wessely's two original questionnaires was organised largely in light of remarks and comments offered by pilot study respondents. The changes that were made from suggestions offered by pilot study respondents were structural and no questionnaire items were either added or omitted.

*See Appendix A: Questionnaire used for a national survey of the involvement of psychiatrists with the criminal justice system and to determine current arrangements for diversion from custody in England & Wales.*

### ***Attitude Survey***

The attitude survey utilised in this research was initially chosen because it was a well established research tool for use with a variety of criminal justice personnel (see Cockram et al., 1991, 1992, 1994a, 1994b, 1998). This attitude survey was used to

conduct a pilot study to test if it was applicable to the criminal justice system in the UK, and so would be applicable to a variety of professionals from this country. The pilot study involved administering the attitude questionnaire to the following respondents: learning disability psychiatrists ( $n. = 3$ ), a criminal lawyer, a magistrate, a police officer, and an appropriate adult. All of these respondents were opportunistic contacts and many of them agreed to participate because of an existing interest with learning disabilities and the law. Responses from this pilot study indicated that the majority of the original items from Cockram's attitude questionnaire were applicable to the UK justice system. Only 5 items were thought to be inappropriate for UK respondents, for example, some items referred to the Aboriginal people of Australia, and others referred to institutions and/or legislation that was specific to the Australian social structure. These items were substituted for statements that referred to corresponding issues and institutions found in the UK, and the changed items are the those numbered 2, 13, 28, 37 and 43. The adapted questionnaire consisted of 54 items, each requesting a response on a Likert Scale with answers including: '*Strongly Agree*', '*Agree*', '*Neutral*', '*Disagree*', and '*Strongly Disagree*'. The items included in the attitude survey relate to five broad issues: characteristics of people with learning disabilities; contact with criminal justice system personnel; the sentencing and disposal of people with learning disabilities; services for people with learning disabilities; and the role of legal professionals working with people with learning disabilities.

*See Appendix B: Questionnaire to determine attitudes of criminal justice personnel towards people with a learning disability.*



### *Semi-structured Interviews*

It was felt from the outset of this research that the quantitatively orientated methodology of postal attitude survey should be complemented by a research method that was more qualitative in orientation. An obvious choice to achieve this was to employ semi-structured interviews in order to explore the range of attitudes and beliefs held by a selection of criminal justice personnel, especially because the use of semi-structured interviews in addition to a postal survey was an appropriate and effective way to collect 'rich' data and include subject areas which may not have been addressed by interviews or postal questionnaires alone (Maykut & Morehouse, 1994).

There have been several successful attempts to provide details on how researchers may prepare semi-structured interviews and also how they may conduct them and also analyse their data (see for example, Banister et al., 1994; King, 1994; Smith, 1995; Chamaz, 1995). These methodological accounts are useful in that they make the reader aware of important practical issues to bear in mind while conducting interviews, for example, the development of question agendas and the importance of using open-ended questions; the development of rapport with the respondent; the use of probing questions; etc. Following this advice, a loose and fluid question agenda was formulated for the semi-structured interviews which made reference to issues included in the adapted form of the attitude questionnaire. Other issues were also included as topics for discussion, and so issues including normalisation, diversion from custody schemes, expert evidence, training issues, court procedures, etc., all may have been brought into the conversation for discussion. These interviews were very much conducted in the spirit of enabling a forum where any issue concerning offenders with learning disabilities could be discussed

and by using a semi-structured approach, it was hoped to enable respondents to reflect on their thoughts and return to issues if they wished. Respondents were also encouraged to instigate discussion on the issues that they believed to be important so as to identify concepts and beliefs which may have structured their perception of the social world. The nature of semi-structured interviews means that they are necessarily an individual, fluid and evolving processes. The richness and depth of the data that are collected is inevitably characterised by low scientific reliability, and as such, semi-structured interviews conducted with these aims are not repeatable and should not aim to be conducted in a strict straight-jacket approach of presenting questions. Because of this, the question agendas that were used in this research were as numerous as the number of interviews conducted. However, a question agenda that was used in one of the first interviews conducted with a magistrate is presented to provide an example of the questions and the format they were presented in order illustrate the general type of approach taken.

*See Appendix C: Example of a question agenda used for interviewing a magistrate.*

### **3.6 Analysis of Data**

#### ***Survey of Psychiatrists***

Responses from the national survey of psychiatrists were tallied to provide information on the involvement of consultant psychiatrists with criminal justice agencies. Responses were also tallied to indicate the nature of any involvement that psychiatrists had with

diversion from custody schemes, as well as providing insight into their perceptions of the efficacy of such schemes. The results of this survey are presented in Chapter 4.

### *Attitude Survey*

Responses from the attitude survey were also tallied to provide details of group responses to each of the items on the attitude survey. It was possible to score answers by giving all responses numerical values, where ‘*Agree*’ and ‘*Strongly Agree*’ = 1, ‘*Neutral*’ = 2, and ‘*Disagree*’ and ‘*Strongly Disagree*’ = 3.<sup>1</sup> By scoring responses, it was possible to identify mode responses from groups of professionals as well as enabling the calculation of the mean responses to questionnaire items. The results of this survey are presented in Chapter 5 (see also *Appendix D for Tables of Frequency Responses*).

### *Semi-structured Interviews*

The interview transcripts were coded and analysed according to a methodology that was informed by a selection of qualitative approaches rather than by following explicit guidelines advocated in formalised methods of analysis. Taking note of Smith (1995) who argues that ‘There is no one correct way to do qualitative analysis’ (p. 18) and following the advice of Marshall & Rossman (1995) who encourage flexibility and fluidity in undertaking qualitative analysis, the aim during the analysis of this research was to be flexible in such analysis without religiously following the precepts of singular formulised systems of data analysis. However, this is not to say that the fundamental

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<sup>1</sup> The two ‘*Agree*’ responses (‘agree’ and ‘strongly agree’) and the two ‘*Disagree*’ responses (‘disagree’ and ‘strongly disagree’), were collated together when marking so as to remain consistent with the method of analysis originally used by Cockram et al. (1992).



principals of specific methodologies were not addressed, the most notable of which came from insights offered by theorists of grounded theory (see Glaser & Strauss, 1967; Glaser, 1978; Strauss & Corbin, 1990, 1994). Grounded theory refers to theory that is generated from, and grounded in, the close examination of data collected through qualitative research (often from explorative interviews). According to proponents of this methodology, researchers are encouraged to think of concepts as evolving and fluid, and are also encouraged to explore the roles of people, and the interrelationships between their conditions, meanings and actions (Strauss & Corbin, 1990). The methodology of Grounded Theory was seen to be especially valuable because of the way that it encourages researchers to enter into research without aiming to either prove or disprove existing theory. Researchers are encouraged to enter into the research process without any *a priori* beliefs about the area of investigation, and although this is impossible to fully achieve, it was thought that lessons may be learnt from this encouragement to remain as open-minded as possible, where theory should be generated from data rather than being imposed on it. Grounded Theory does provide structured and formalised methods of coding and analysing data (see especially Charmaz, 1996) but rather than strictly follow these guidelines it was decided to loosely follow the directions of a variety of writers in this area (especially Burnard, 1991 and Smith, 1995). This involved attempting to incorporate elements from a variety of accounts with regards to instructions to analyse interview data, and by doing this it was hoped to remain true to the ideal of being flexible, fluid and reflexive in the research process. Burnard was particularly useful in the way he provides a framework for the systematic interpretation of interview transcripts and although he identifies fourteen stages for the analysis of data, this process

was refined down to several activities and processes that are outlined below. Burnard loosely terms this method, 'thematic content analysis' (1991, p. 461).

The semi-structured interviews were transcribed in full prior to the coding and analysis of the text and this transcription produced a body of data comprising over 200,000 words. The method of transcription was chosen in order to concentrate on the actual words produced during an interview, but other basic records were also made of relevant non-verbal cues and occurrences (including laughter, pronounced pauses, interruptions, etc.) It was felt that there was no purpose to be served by following a more detailed method of analysis that is typified by the Jeffersonian method of transcription (see Atkinson & Heritage, 1984), and which is sometimes adopted in psychological research, especially where conversational analysis or discourse analysis is employed. These types of research demonstrate that it is possible to transcribe interviews to a very high level of detail by including notations of events such as overlapping speech, extended sounds, stress/emphasis on words, and audible inbreaths (for example, see: Drew, 1995 and Potter & Wetherell, 1995). It was thought that this level of recording was inappropriate for this research because it would have been too time-consuming to transcribe 200k words in this manner. It was also thought that this form of transcription might have distracted attention away from the actual attitudes and beliefs of respondents under investigation.

Following the importance that Burnard places on the researcher becoming 'immersed' (1991, p. 462) in data, one of the interview transcripts was closely examined and re-read several times. Notes were taken in the margin of this transcript where key words, general themes (issues) were provisionally identified for later use. These notes

were then referred to and used as a framework to help guide in the identification of themes and issues from several of the other interview transcripts. The initial list of coding categories was amended several times during this process until a level of confidence was achieved with the inherent coherence of the emerging themes. When this stage had been reached, the coding categories were then written onto index cards which were subsequently used as the basis for coding the remainder of the transcripts. *See Appendix E for list of Coding Issues identified during analysis.*

Once this list of coding categories was arrived at, all of the interview transcripts were then systematically examined to identify instances of when coding categories could be identified in interviews. These sections of text were cut from photocopies of the interview transcripts and pasted onto index cards which were grouped together according to coding categories. Two copies of each transcript were used in this process so that if a piece of text was identified as being relevant to more than one of the coding categories, it was possible to paste this piece of text onto more than one of the index cards so that it could be considered in more than one of the coding categories.

Excerpts of transcripts were then collated together according to the coding issues previously identified. These issues were then examined to identify several 'themes' so as to enable an analysis of the concepts that were embedded within the text. *See Appendix E for list of Emerging Themes identified during analysis.* The coding issues and themes were then organised into three groups for the purpose of analysis and this organisation is reflected in the presentation of the results achieved from the semi-structured interviews:

- Perceptions of people with learning disabilities (*see Chapter 6*)
- People with learning disabilities and criminal justice (*see Chapter 7*)



- Criminal justice, professional roles, and service provision (*see Chapter 8*).

## Chapter 4

# *Psychiatry and the criminal justice system: the involvement of consultant psychiatrists.*

### 4.1 Background

Early in the 1990s, the government suggested that ‘a mentally disordered person should not be remanded to prison to receive medical treatment or assessment’ (Home Office, 1990). This was followed by the Reed Report which focussed attention on the need to improve services for the care and treatment of mentally disordered offenders and which suggested that ‘every effort should be made to ensure that [a mentally disordered offender] is not drawn unnecessarily into the criminal justice process.’ (Department of Health and Home Office, 1992, p. 14). In response to this encouragement, a number of ‘diversion schemes’<sup>1</sup> were established with the intent of diverting mentally disordered offenders away from the criminal justice system and into health care provision.

It is important to recognise that diversion from custody is not synonymous with the use of the Mental Health Act 1983. Part III of the Mental Health Act provides statutory guidance regarding patients who have a mental disorder who are also concerned with criminal proceedings, and so the Act covers the assessment of patients; the admission of patients into

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<sup>1</sup> A ‘Diversion Scheme’ is defined as: “... an arrangement between a magistrates’ court and a psychiatrist whereby the psychiatrist attends the court regularly (or is on call and can be available rapidly) to assess defendants who are suspected of being mentally disordered and to advise the court on alternatives to custody if appropriate. This definition includes the use of a panel scheme whereby a community psychiatric nurse or approved social worker attends the court regularly and brings mentally abnormal defendants to the attention of other mental health professionals working in a multiagency team that jointly arranges diversion and management.” (Blumenthal & Wessely, 1992)

hospital from prison or remand centre; and the treatment and care of such people in hospital (see Dolan & Powell, 2001 and Department of Health & Home Office, 1993). The Mental Health Act 1983 and diversion from custody schemes are similar in that they operate to provide medical treatment for people with a mental disorder outside of the penal system. Diversion from custody schemes differ from provisions from Mental Health Act provisions in the following ways: diversion from custody schemes were originally designed to identify vulnerable people early on the criminal justice system and to divert them into health care provision for assessment and/or for treatment. The Mental Health Act in contrast outlines those disorders of mind for which detention is permitted and which sets out the nature and extent of powers of hospital authorities to detain a person for assessment and treatment of those disorders. If a person is diverted into health care provision from the criminal justice system, if that person is to remain in the health service for further treatment and assessment then the same framework of rules found in the Mental Health Act apply and need to be adhered to. If a person is diverted into health care provision via one of the diversion schemes, it is likely that they will either be returned to the criminal justice system if treatment is not needed, or they will be kept in the health system (as long as the stipulations of the Mental Health Act 1983 have been followed). For this reason, diversion from custody does not imply an 'automatic' use of the Mental Health Act, but instead is rather a system whereby mentally disordered offenders may receive appropriate assessments and treatments more quickly than they perhaps would if they were (for example) in the care of the prison system. The continued treatment of people with a mental disorder must necessarily take place under the rules of the Mental Health Act.

Although the establishment of diversion schemes was largely due to professional input from forensic psychiatrists, it was recognised that the resources of forensic psychiatry were not sufficient to enable a network of such schemes across the country to be successful and



comprehensive (Blumenthal & Wessely, 1993). It was also recognised that the majority of the service-users of these schemes were more appropriately the concern of local care offered by general psychiatrists, as opposed to secure care offered by specialist forensic psychiatrists (James & Hamilton, 1991; Joseph, 1992).

Because it was argued that the resources of general psychiatry should be involved in the successful diversion of mentally disordered offenders, Blumenthal & Wessely (1993) undertook a survey of all forensic psychiatrists and a random sample of general psychiatrists in order to identify the levels of formal and informal contact (formal contact is defined as having contact with a criminal justice agency at least once a month, and informal contact is contact that is less frequent than this) they had with the criminal justice system. They found that 91% of general psychiatrists had some form of professional contact with the criminal justice system and 36% visited a magistrates' court, a prison or police station at least once a month. This survey also found that general psychiatrists were more likely to have contact with the criminal justice system at the police station, and forensic psychiatrists were most likely to have contact at the prison. They concluded that although the co-ordination and running of diversion schemes were largely the responsibility of forensic psychiatrists, 'if diversion from custody is to be successful, more emphasis must be given to the involvement of non-forensic psychiatrists, and to settings other than the magistrates' court' (Blumenthal & Wessely, 1993, p. 569).

If it is correct that the majority of mentally disordered offenders are more suited to management by local, non-secure care, then perhaps it is also true that certain groups of mentally disordered offenders who have specific vulnerabilities or needs may also be better suited to management and treatment from specialist psychiatrists. For example, it may be that offenders with learning disabilities and child offenders would receive more appropriate care from specialist learning disability psychiatrists and child and adolescent psychiatrists during

any time that they spend in the criminal justice system (as witnesses, defendants, or in whatever capacity). This acknowledgement is perhaps reflected in recent attempts to extend statutory powers to introduce special measures for particularly vulnerable groups during their time in the criminal justice system as is demonstrated by the Youth Justice and Criminal Evidence Act 1999, which acknowledges the particular and unique vulnerabilities which both children and learning disabled adults may possibly face when they enter the criminal justice system.

## **4.2 Aims**

By conducting a national survey of consultant psychiatrists it was hoped to achieve the following aims:

1. Determine current levels of contact general and forensic psychiatrists have with the criminal justice system.
2. Ascertain levels of contact that child and adolescent and learning disability psychiatrists have with the criminal justice system.

## **4.3 Method**

### **Sample & Procedure**

The study involved a survey of 791 psychiatrists, all of consultant grade registered in four Sections of the Royal College of Psychiatry: General & Community ( $n. = 347$ ), Forensic ( $n. = 195$ ), Child & Adolescent ( $n. = 144$ ) and Learning Disability ( $n. = 105$ ). Support for this study was given by the Royal College of Psychiatrists who provided the names and contact addresses of members registered in each section. This information was believed to be a fairly

accurate representation of the consultant membership for each Section, although this information is only as accurate as the information College members give to the Registration Office. The membership lists did not include the names and addresses of those members who asked for a confidential indicator to be placed against their name at the time of registration. Old age psychiatrists, psychotherapists, psychopharmacologists and full-time private practitioners were excluded. The study was restricted to England and Wales, and took place in Autumn 1998. The questionnaire was posted to psychiatrists with a self addressed envelope and a covering letter which gave basic information about the survey as well as assuring that all answers were to be treated in confidence. Respondents were posted this information only once and no follow-up questionnaires were sent out to respondents who failed to reply.

## **Questionnaire**

The questionnaire was based on the two questionnaires previously formulated and used by Blumenthal and Wessely (1992, 1993). The first of the questionnaires was used to assess arrangements for diversion from custody, whereas the second was used to assess levels of contact that psychiatrists had with criminal justice agencies. The first study (1992) involved surveying several groups of professionals about diversion and so only items which were aimed at psychiatrists were included in the present questionnaire. These were accompanied by all of the questionnaire items included in the survey of psychiatrists (1993) and so the adapted questionnaire comprised three sections. The first requested information on the extent of formal and informal contact between psychiatrists and five agencies of the criminal justice system: the police, court services, the probation service, the Crown Prosecution Service and prisons. The second section of the questionnaire requested information on the possible involvement of psychiatrists with diversion schemes, as well as information on other professionals involved in such schemes. The third section of the questionnaire asked



respondents to identify if diversion schemes were unsatisfactory in their area, and if so, why.

*See Appendix A for questionnaire.*

## 4.4 Results

### The involvement of psychiatrists with criminal justice

Completed replies were received from a total of 323 (41% total response rate) psychiatrists of consultant grade: 131 (38% response) from the ‘general & community’ Section, 68 (35%) from the ‘forensic’ Section, 79 (55%) from the ‘child & adolescent’ Section, and 45 (43%) from the ‘learning disability’ Section. In total only 26 (8%) of the returned questionnaires from psychiatrists did not report any contact (regular or otherwise) with any of the five agencies of the criminal justice system in the previous twelve months: 11 (8%) general psychiatrists, 0 forensic psychiatrists, 6 (8%) child psychiatrists, and 9 (20%) learning disability psychiatrists.

Of the four sections surveyed, levels of regular contact with the criminal justice system were greatest amongst forensic psychiatrists, with child psychiatrists and learning disability psychiatrists having the lowest levels of contact. The only exception to this was for regular attendance at court where child psychiatrists ( $n. = 18, 26\%$ ) appeared more than general psychiatrists ( $n. = 12, 9\%$ ). See column 1 in Tables 4.1 to 4.4.

Contact with the criminal justice system within the last year was assessed by collating numbers of psychiatrists who had had contact within the previous six or twelve months (columns 4 and 5 in Tables 4.1 to 4.4), and this showed that contact with agencies within the previous year was also highest for forensic psychiatrists followed by general psychiatrists. The levels of contact between these two groups and all five agencies of the criminal justice system were generally high, with the exception of general psychiatrists and liaison with the

C.P.S. (*n.* = 48, 37%). The highest levels of contact of child psychiatrists with the criminal justice system were from attending court (*n.* = 63, 80%) and liaison with the police service (73%). The highest levels of contact of learning disability psychiatrists were from court attendance (*n.* = 36, 80%), liaison with the police service (*n.* = 35, 78%), and liaison with the probation service (*n.* = 26, 58%). See columns 4 and 5 in Tables 4.1 to 4.4.

Of the general psychiatrists, the most frequent category of regular contact was with the police (*n.* = 31, 24%) and with the probation service (*n.* = 30, 23%). Although regular contact with criminal justice agencies was low, the majority of general psychiatrists had had some form of contact with one or other of the criminal justice agencies within the previous twelve months, for example, only 20 (15%) of general psychiatrists reported having had no contact with the police, only 32 (24%) reported no contact with the probation service, and 34 (26%) reported no attendance at court. See Table 4.1

**Table 4.1 General Psychiatrists: current and future plans for regular contact with CJS, and current contact levels**

Total: 347; completed replies: 131 (38%)

	Regular contact	Being considered	No regular contact	Contact in last 6 months	Had contact in last year	No contact in last year
Police	31 (24%)	2 (2%)	98 (75%)	91 (69%)	20 (15%)	20 (15%)
Court	12 (9%)	1 (1%)	118 (90%)	79 (60%)	18 (14%)	34 (26%)
Probation Service	30 (23%)	0	101 (77%)	86 (66%)	13 (10%)	32 (24%)
Crown Prosecution Service	7 (5%)	0	124 (95%)	31 (24%)	17 (13%)	83 (63%)
Prison	13 (10%)	0	118 (90%)	49 (37%)	23 (18%)	59 (45%)

Of the forensic psychiatrists, the most regular contact was with the probation service (*n.* = 36, 53%) and with prison (*n.* = 33, 49%). As expected, professional contact within the



previous six months was high for all agencies of the criminal justice system especially with the police (*n.* = 63, 93%) and the probation services (*n.* = 62, 91%). *See Table 4.2*

**Table 4.2 Forensic Psychiatrists: current and future plans for regular contact with CJS, and current contact levels**

Total: 195; completed replies: 68 (35%)

	Regular contact	Being considered	No regular contact	Contact in last 6 months	Had contact in last year	No contact in last year
Police	30 (44%)	0	38 (56%)	63 (93%)	2 (3%)	3 (4%)
Court	27 (40%)	4 (6%)	37 (54%)	57 (84%)	6 (9%)	5 (7%)
Probation Service	36 (53%)	4 (6%)	28 (41%)	62 (91%)	1 (1%)	5 (7%)
Crown Prosecution Service	23 (34%)	3 (4%)	42 (62%)	45 (66%)	5 (7%)	18 26%
Prison	33 (49%)	3 (4%)	32 (47%)	54 (79%)	4 (6%)	10 (15%)

Of the child & adolescent psychiatrists, regular contact with all agencies of the criminal justice system was very low. 55 (70%) of psychiatrists had attended court and 42 had had contact with the police in the previous six months. *See Table 4.3*

**Table 4.3 Child Psychiatrists: current and future plans for regular contact with the CJS, and contact levels**

Total: 144; completed replies: 79 (55%)

	Regular contact	Being considered	No regular contact	Contact in last 6 months	Had contact in previous year	No contact in last year
Police	6 (9%)	1 (1%)	72 (91%)	42 (53%)	16 (20%)	21 (27%)
Court	18 (26%)	1 (1%)	60 (76%)	55 (70%)	8 (10%)	16 (20%)
Probation service	5 (7%)	0	74 (94%)	28 (35%)	9 (11%)	42 (53%)
Crown Prosecution Service	4 (6%)	0	75 (95%)	17 (22%)	5 (6%)	57 (72%)
Prison	1 (1%)	0	78 (99%)	7 (9%)	2 (3%)	70 (89%)

With the learning disability psychiatrists, contact was again generally low, the highest being level of regular contact being with the probation service (*n.* = 5, 11%). Over half of the



psychiatrists who responded to the questionnaire indicated that they had had some contact with the police (*n.* = 27, 60%) in the previous six months; and 28 (62%) had attended court in this time. *See Table 4.4*

**Table 4.4 Learning Disability Psychiatrists: current and future plans for regular contact with CJS, and current contact levels**

Total: 105; completed replies: 45 (43%)

	Regular contact	Being considered	No regular contact	Contact in last 6 months	Had contact in last year	No contact in last year
Police	3 (7%)	1 (2%)	41 (91%)	27 (60%)	8 (18%)	10 (22%)
Court	3 (7%)	1 (2%)	41 (91%)	28 (62%)	8 (18%)	9 (20%)
Probation service	5 (11%)	1 (2%)	39 (87%)	21 (47%)	5 (11%)	19 (42%)
Crown Prosecution Service	2 (4%)	0	43 (96%)	12 (27%)	5 (11%)	28 (62%)
Prison	4 (9%)	0	41 (91%)	11 (24)	6 (13%)	28 (62%)

Formal (i.e. regular) contact between psychiatrists and the five agencies of the criminal justice system was generally rare among child and learning disability psychiatrists. Levels of informal contact (i.e. on an ad hoc basis and not as part of a psychiatric assessment scheme) within the previous twelve months were higher with all agencies of the criminal justice system. All forensic psychiatrists reported having some contact with at least one agency of the criminal justice system. 6 (8%) child psychiatrists, 9 (20%) learning disability psychiatrists, and 11 (8%) general psychiatrists reported having no contact with any agency of the criminal justice system in the previous year.

### ‘Diversion’ schemes

Respondents were asked about their possible involvement with diversion from custody schemes. 30 (44%) forensic psychiatrists reported professional involvement with a ‘diversion’ scheme. This was compared to 27 (21%) general psychiatrists; 7 (16%) learning

disability psychiatrists; and 1 (1%) child psychiatrists. When asked to describe the schemes in which they were involved, co-ordination and management were more likely to be the responsibility of psychiatric and community nurses (51%), managers (35%) forensic psychiatrists (31%) and probation officers (31%). When asked to list the professionals involved in the day to day running of the diversion schemes, 54 respondents (83%) reported the involvement of a psychiatric/community psychiatric nurse; 20 (31%) reported the involvement of the probation service; 25 (38%) reported the involvement of social workers/approved social workers; 15 (23%) reported the involvement of a forensic psychiatrist; and 19 (29%) reported the involvement of a general psychiatrist. *See Table 4.5*

**Table 4.5 Professionals involved in the co-ordination and running of diversion schemes**

	General N = 27 (21%)		Forensic N = 30 (44%)		Child n = 1 (1%)		Learning Disabilities n = 7 (16%)		All 4 Sections N = 65 (20%)	
	Co-ord.	Running	Co-ord.	Running	Co-ord.	Running	Co-ord.	Running	Co-ord.	Running
Forensic psychiatrists	5 (19%)	6 (22%)	15 (50%)	8 (27%)	0	0	0	1 (14%)	20 (31%)	15 (23%)
General & community psychiatrists	10 (37%)	10 (37%)	5 (17%)	7 (23%)	0	0	1 (14%)	2 (29%)	16 (25%)	19 (29%)
Child & adolescent psychiatrists	0	1 (4%)	0	0	0	0	0	1 (14%)	0	2 (3%)
Learning disability Psychiatrists	0	1 (4%)	1 (3%)	1 (3%)	0	0	0	1 (14%)	1 (2%)	3 (5%)
Clinical psychologists	1 (4%)	2 (7%)	2 (7%)	3 (10%)	0	0	0	0	3 (5%)	5 (8%)
Forensic clinical psychologists	2 (7%)	1 (4%)	2 (7%)	2 (7%)	0	0	0	0	4 (6%)	3 (5%)
Psychiatric & comm. psychiatric nurses	18 (67%)	23 (85%)	13 (43%)	26 (87%)	0	1 (100%)	2 (29%)	4 (57%)	33 (51%)	54 (83%)
Social Workers/ASWs	6 (22%)	9 (33%)	7 (23%)	15 (50%)	0	0	0	1 (14%)	13 (20%)	25 (38%)
Police	9 (33%)	7 (26%)	5 (17%)	5 (17%)	0	0	0	0	14 (22%)	12 (18%)
Probation officers	12 (44%)	8 (30%)	7 (23%)	10 (33%)	0	0	1 (14%)	2 (29%)	20 (31%)	20 (31%)
Crown prosecution Service	0	3 (11%)	3 (10%)	2 (7%)	0	0	0	0	3 (5%)	5 (8%)
Court personnel	6 (22%)	6 (22%)	6 (20%)	7 (23%)	0	0	0	1 (14%)	12 (18%)	14 (22%)
Managers of mental health provider units	11 (41%)	8 (30%)	11 (37%)	2 (7%)	0	1 (100%)	1 (14%)	0	23 (35%)	11 (17%)
Other	3 (11%)	2 (7%)	3 (10%)	4 (13%)	0	0	0	0	6 (9%)	6 (9%)

**Current arrangements for diversion**

Respondents were asked “Are the arrangements in your area effective for the diversion from custody of mentally abnormal offenders?” In total, 77 (24%) replied ‘yes’ to this question, 70 (22%) replied ‘no’, and 176 (54%) gave no response to this question. Of those respondents who gave a negative response, the greatest dissatisfaction was with a shortage of beds in their area (n = 46, 66%), followed by a shortage of mental health staff (n = 32, 46%), regular



attendance at court by psychiatric services (n = 27, 39%), and unsatisfactory arrangements for hospital orders (n = 20, 29%). *See Table 4.6*

**Table 4.6 Difficulties encountered with the running of diversion schemes**

	Total N = 70
Regular attendance at court by psychiatric services	27 (39%)
Regular attendance by a community psychiatric nurse	12 (17%)
Regular attendance by an approved social worker	11 (16%)
The running of the scheme is dependent on one key person	16 (23%)
The scheme is at risk of closure should key person leave	10 (14%)
Inadequate transport arrangements	12 (17%)
Shortage of beds	46 (66%)
Shortage of mental health staff	32 (46%)
Unsatisfactory arrangements for outpatient treatment	14 (20%)
Unsatisfactory arrangements for informal admissions	21 (30%)
Unsatisfactory arrangements for hospital orders	22 (31%)
Other	18 (26%)

**4.5 Discussion**

**The involvement of psychiatrists with criminal justice**

Blumenthal and Wessely (1993) found that the main focus of contact of general and forensic psychiatrists with the criminal justice system was at the police station and the remand prison, although many psychiatrists did have regular contact with the probation service. The findings of the present study indicate that the main focus of regular contact for general psychiatrists was with the police and the probation service. The focus of regular contact for forensic

psychiatrists was more evenly distributed among all five criminal justice agencies with the largest regular contact being with the probation service and prison. It was interesting to note however that contact within the previous twelve months (excluding regular contact made on a monthly basis) with all five agencies was common amongst both general and forensic psychiatrists, the lowest level of contact being between the Crown Prosecution Service and general psychiatrists (37%). *See columns 4 and 5 in Tables 4.1 to 4.4.* It is important to note however that levels of psychiatric contact with the police may be a reflection of the use of Section 136 of the Mental Health Act whereby the police station is often used as a 'place of safety'. Because general psychiatrists are more often called by the police, the high level of contact between these may possibly be an artefact of this provision.

Both child and learning disability psychiatrists also had high levels of informal contact (i.e. less frequently than once a month) with the police, the probation service and with courts. Such levels of contact with courts may however result from the questionnaire used because respondents were not asked to indicate which type of court they attended and so such contact may perhaps have been concerned with non-criminal cases, especially as respondents were not requested to indicate whether such contact was concerned with their clients appearing as witnesses, defendants, or as wards of court, etc. The civil component of the work of these psychiatrists may be larger than the criminal area and so may reflect the amount of time in court dealing with, for example, custody cases or other matters that come under the Children Act.

A notable difference between the findings of this survey and that of Blumenthal & Wessely is that the 1993 survey indicated that 87% of forensic psychiatrists regularly visited prison compared to only 49% of forensic psychiatrists in this present survey. This decrease is not complemented by a significant increase in formal contact between general psychiatrists and prison (1993: 6%; 1998: 10%) although as stated before, such comparisons may be a



reflection of differences in samples. In 1993, Blumenthal and Wessely noted a small (although unexpected) number of general psychiatrists (4%) who regularly visited a court; the findings of the present survey indicate a slight increase in this number (9%) and this may possibly be a reflection of the claim made by James & Hamilton (1991) and Joseph (1992) that it is more appropriate that clients of court assessment schemes receive local care offered by general psychiatrists as opposed to secure care offered by specialist forensic psychiatrists in order to prevent mentally disordered offenders being disposed in the penal system.

### **Diversion schemes**

In section B of the questionnaire respondents were asked about their involvement with diversion schemes. This survey found that forensic psychiatrists formed the largest group of psychiatrists who had professional involvement (n = 30, 44%); although respondents reported the involvement of a number of practitioners from other specialisms (general psychiatrists = 27: 21%; learning disability psychiatrists = 7: 16%; and child psychiatrists = 1: 1%). It was not possible to identify the overall number of diversion schemes in operation because the survey did not differentiate between different psychiatrists who may be professionally involved with the same scheme; for this reason there is a possibility that several responses to the questionnaire may have come from psychiatrists who are involved with the same diversion scheme. Similar to the present findings, Blumenthal and Wessely also reported that forensic practitioners formed the main group of psychiatrists involved in a diversion scheme. They described forensic services as being organised on a regional basis with scanty resources that did not permit uniform coverage across regions by means of psychiatric assessment schemes. Blumenthal and Wessely suggested that if such schemes were to be successful, more emphasis should be given to the involvement of non-forensic psychiatrists, and the results of this present survey suggest that this recommendation has partially been achieved. These results are perhaps also indicative of the recommendation of James & Hamilton (1991)



and Joseph (1992) that the majority of the services-users of such schemes are more appropriately the concern of local care offered by general psychiatrists.

### **Current arrangements for diversion**

When asked if arrangements in their area for the diversion of mentally disordered offenders from custody was satisfactory, the responses were roughly equally divided: 77 (24%) replied 'yes'; 70 (22%) replied 'no'. Overall, the greatest dissatisfaction was with the shortage of beds for such clients and with a shortage of mental health staff; this was followed by dissatisfaction with regular attendance of psychiatric services at court. Such dissatisfactions suggest that the majority of problems with diversion are financial in origin with not enough funds being directed to the accommodation of mentally disordered offenders once they have been diverted away from the penal system. However, due to a roughly equal distribution of responses between satisfaction and dissatisfaction with arrangements, such dissatisfactions may perhaps be the result of limitations of the present study, for example in the way that this survey did not differentiate between psychiatrists working in rural and urban areas.

### **Conclusion**

One of the aims of this research was to try and establish proportionate levels of contact between four different specialist fields within psychiatry and five agencies of the criminal justice system, and it was found that regular contact was still highest among forensic psychiatrist followed by general psychiatrists. This survey was influenced to a large extent by that conducted by Blumenthal and Wessely (1993) and so asked questions regarding the frequency of contact psychiatrists had with criminal justice agencies and about their involvement with diversion schemes. The two surveys are however different in that this survey sought to ascertain the levels of contact that other psychiatric specialisms had, and so it also included child and learning disability psychiatrists in the sample. This present study is thus not a strict replication of that undertaken by Blumenthal and Wessely, but rather an

adaptation of it. Although the two studies were similar in that they both include general and forensic psychiatrists in their samples, there are also significant differences between these samples which render many difficulties when attempting to compare the findings of the two studies. First, the survey undertaken by Blumenthal and Wessely included a sample of consultant general psychiatrists and all forensic psychiatrists with a full time post (including psychiatrists of grades other than consultant). This present study included all consultant psychiatrists named in the Royal College of Psychiatry's membership lists in the Sections of general and community psychiatry, forensic psychiatry, child and adolescent psychiatry and learning disability psychiatry. Further, although it was hoped that this list was accurate and included all members within each section, it is acknowledged that there were inaccuracies of members' details and omissions of members' names because of factors such as retirement, professional relocation, and omissions of details if members did not wish their name to appear on the College's mailing list. The samples of forensic psychiatrists in the two surveys were also different in that the present survey did not seek to differentiate between respondents who worked within a special hospital or prison and those who worked in a community based setting. Moreover, psychiatrists with an interest in forensic work may actually be registered in the forensic section even though they work substantially as general psychiatrists. A final limitation on the sample used in this survey is that the response rate was comparatively low (total = 323/791: 41%) compared to that received by Blumenthal and Wessely (total = 197/236: 83%), and so caution must be taken before any generalisations are made from these findings.



## Chapter 5

### *Attitudes of Criminal Justice Professionals towards Offenders with Learning Disabilities: An Attitude Survey.*

#### 5.1 Background

In many countries there is an over-representation of learning disabilities in prison populations (see for example, MacEachron, 1979; Collins & Schlenger, 1983; Hyde & Seiter, 1987; and Neighbors *et al.*, 1987; Daniel *et al.*, 1988). Possible explanations for this include: a learning disability predisposes people to criminal behaviour; people with learning disabilities (PWLDs) are disadvantaged when they enter the C.J.S. (criminal justice system) increasing the likelihood of conviction; and the imprisonment of PWLDs is related to a systematic devaluation of PWLDs in broader society (c.f. Sigelman *et al.*, 1981). Although there is not an over-representation of learning disabilities in U.K. prisons, research has shown that there are a significant number of prisoners who are close to the disability range (IQ < 75) and who are psychologically very vulnerable.

Apart from the introduction of 'Appropriate Adults' who support vulnerable suspects during Police interviews, there has been little interest in supporting vulnerable suspects in later stages of the criminal justice system. With the introduction of European Human Rights legislation there is an urgent need for the vulnerabilities of suspects (as



well as witnesses) to be recognised and supported. Because criminal justice is a social process that is dependent on the input of different professionals, the attitudes and beliefs of these actors will inevitably have an influence upon this and so it can be argued that by surveying the attitudes of criminal justice professionals we may possibly identify any attitudes and belief systems that may potentially influence the justice process, especially when people with learning disabilities are involved.

## **5.2 Aims**

By investigating the attitudes of criminal justice professionals towards people with learning disabilities within the criminal justice system it was hoped to achieve three aims:

1. Explore differences in attitudes of criminal justice personnel between a country which has an over-representation of learning disabilities in its prison population (Australia) with a country which does not (U.K.)
2. Examine possible differences in attitudes held by different professional groups within the criminal justice system.
3. Explore how criminal justice personnel perceive learning disabilities and how they view the adequacy of the criminal justice system when dealing with offenders who have learning disabilities.

## **5.3 Method**

### **Questionnaire**

The questionnaire employed was an adapted version of one originally formulated in Australia by Cockram *et al.* (1991, 1992, 1994a, 1994b, 1998). A pilot study was conducted which adapted the questionnaire for use with respondents in the U.K. The adapted questionnaire (*see Appendix 2*) consisted of 54 items, each requesting a response on a Likert Scale. The 54 questionnaire items relate to broad areas: characteristics of PWLDs; contact with criminal justice system personnel; the sentencing and disposal of people with learning disabilities; services for people with learning disabilities; and the role of legal professionals working with people with learning disabilities.

### **Samples**

The samples of professionals who were approached to complete the questionnaire were not chosen randomly. Judges were recruited directly by the Lord Chancellor's Department and all were of either Recorders or Circuit Judges and some were also practising barristers. All of the magistrates sat on the Nottingham Magistrates Bench and were recruited by the Magistrates' Association. All magistrates sat in adult courts and several also sat in the youth court. All were lay magistrates although one stipendiary magistrate also participated. Police officers were selected by Police Inspectors from the five districts in the Nottinghamshire Constabulary. Twenty police constables, ten detective constables, and ten custody sergeants were all requested to complete the attitude survey. The appropriate adults were all recruited by myself and were colleagues of mine who supported vulnerable people at police stations for Derby Appropriate Adult scheme. Both the magistrates and the appropriate adults came from a variety of backgrounds and

several had had previous experience of working with people with learning disabilities.  
 (See *Table 5.1* for details or attitude survey response rate).

***Table 5.1: Details of response rate to attitude survey.***

	Total	Judges	Magistrates	Police	Appropriate Adults
Sample no.	100	20	20	40	20
Response rate	91	16	18	38	19
Percentage	91 %	80 %	90 %	95 %	95 %

**5.4 Results & Discussion**

**Differences Between the Attitudes of Australian & UK Criminal Justice Personnel.**

The mean ratings for each of the 54 items from the Australian sample were compared with the mean ratings of the UK sample using Pearson’s product moment correlation. This gave a coefficient of 0.879 and was significant at the 0.01 level (*see Table 5.2*) showing there to be no significant difference between overall results of the original Australian attitude survey and the present study.



**Table 5.2: Mean ratings of Australian <sup>1</sup> and UK groups.**

Mean ratings of UK Groups *	2.88 (SD = 0.67)
Mean ratings of Australian groups *	2.85 (SD = 0.68)
Pearson's product moment correlation coefficient	0.879 (significant at 0.01 level)

\* means ratings were achieved by calculating the mean of the 54 mean scores of the questionnaire items.

**Differences Between the Attitudes of UK Groups of Criminal Justice Personnel.**

The mean ratings on each question were calculated for each of the four UK sub-groups (see Table 5.3). These were then compared using Pearson's product moment correlation (see Table 5.4). All correlations were found to be significant with the highest correlations between Magistrates and Appropriate Adults, Police and Appropriate Adults, and Magistrates and Police. The lowest correlations were between Judges and Police, and Judges and Magistrates.

**Table 5.3: Mean ratings for UK groups.**

Groups	Mean	Standard Deviation
Judges	2.96	0.67
Magistrates	2.74	0.80
Police	2.96	0.58
Appropriate Adults	2.76	0.87
Total UK Respondents	2.88	0.67

<sup>1</sup> The professional groups surveyed in this research are different to those included in the original Australian study (Cockram *et al.*, 1994). Australian respondents included: Service Workers (*n.* = 20), Police (*n.* = 20), Judges (*n.* = 20), Prison Officers (*n.* = 20) and Community Correction Officers (*n.* = 20). Cockram *et al.* found no significant difference between ratings of Australian sub-groups and so the only information provided for mean responses was whether these were 'Agree', 'Neutral', or 'Disagree'. Because of this no further detailed comparison of the similar Australian and UK sub-groups (Judges or Police) was possible.

**Table 5.4: Pearson product moment correlation coefficients between mean ratings of UK groups.**

	Judges	Magistrates	Police	Appropriate Adults
Judges	—	.822	.800	.862
Magistrates	.822	—	.897	.942
Police	.800	.897	—	.906
Appropriate Adults	.826	.924	.906	—

All correlations are significant at the 0.01 level (2-tailed).

**The Perception of Criminal Justice Personnel (UK) towards People with Learning Disabilities and the Criminal Justice System**

Tables 5.5 through 5.9 show the mean and mode ratings of all UK sub-groups on the five question areas and are presented at the end of this Chapter. Also see *Appendix D* for frequency tables of responses to individual questionnaire items. The implications for these results are summarised below and are further explored and discussed in Chapter 10.

**Characteristics**

For characteristics of people with learning disabilities, UK responses generally indicated that all groups disagreed that people with a learning disability are not likely to be more susceptible to leading questions (Q. 35); are likely to be aware of the right to remain silent (Q. 36); are less easily led into committing offences than other people (Q. 52). All groups generally agreed that people with learning disabilities need more education about the criminal justice system (Q. 4); have different needs to other marginalised groups (Q. 40); are likely to have a desire to please (Q. 46); are likely to have a fear of authority (Q.



50). With the exception of the police, all groups also agreed that people with learning disabilities are less sensitive to non-verbal cues than others (Q. 45). All of these ratings show that UK respondents generally believed that people with learning disabilities do have certain characteristics that would mean that they were likely to be disadvantaged if they entered the criminal justice system.

UK responses generally disagreed that for people with learning disabilities, boredom and emptiness are not causes of offending behaviour (Q. 33); that people with mild learning disabilities are less likely to offend than people with severe disabilities (Q. 47); and that they were likely to have poorly developed moral foundations (Q. 49). These questions indicate that UK respondents did think that people with learning disabilities did have characteristics that would pre-dispose them towards offending behaviour, although there was some uncertainty amongst respondents as to whether people with learning disabilities were less likely to offend than the general population (Q. 27), or to whether the segregated upbringing of many people with disabilities means that the learning of acceptable behaviour is deficient (Q. 48).

All groups generally agreed that people with disabilities are likely to want to appear competent in front of criminal justice personnel (Q. 25), and they disagreed that it is easy to determine if a person has a learning disability (Q. 8). Both of these questions indicate that respondents thought that people with learning disabilities had characteristics that would possibly prevent them from getting the extra help and support they would need if they did enter the criminal justice system.



## Contact

For questions relating to contact with criminal justice system personnel, there was agreement amongst all groups that there was general uncertainty amongst criminal justice personnel about the distinction between mental illness and learning disability (Q. 30). There was also agreement that the police require additional training in order to better understand people with disabilities who offend (Q. 17), and to interview them more adequately (Q. 22).

All respondents agreed that there should be special provisions made available in court (Q. 2), and that there should be more guidelines issued for the police when dealing with people with learning disabilities (Q. 28). All respondents disagreed that it was not necessary to interview people with a disability in front of an appropriate adult (Q. 10); although there was uncertainty as to whether or not cases involving a learning disabled person should be 'fast-tracked' (Q. 37). These responses together indicate that there is general agreement with the existing guidelines for police and court, as well as for the associated special measures that have been made available for use with people with learning disabilities when they enter the criminal justice system . This is not to say however that respondents believe that professionals are sufficiently trained in dealing with such people, or that existing guidelines are adequate, even though special provisions have now been in operation for several years.

There was general disagreement that prison should be banned for people with learning disabilities (Q. 11); that people with learning disabilities should not receive the same consequences for their actions as other people (Q. 16); that it is better for people with learning disabilities to be found unfit to plead (Q. 41); and that people who

repeatedly offend will not be treated harshly (Q. 42). These questions go some way to supporting a philosophy of normalisation which would perhaps advocate that people with learning disabilities progress through the normal criminal justice process. This is not an unqualified acceptance of normalisation however as there was general agreement that offenders with learning disabilities should be sent to a specialised prison or part of a prison (Q. 23). There is also uncertainty as to whether or not people with disabilities are more likely to be let off by courts (Q. 39).

### **Sentencing**

There was general agreement that people with learning disabilities do not understand sentencing options (Q. 44); while there was general disagreement that there should not be more sentencing options for people with learning disabilities (Q. 12). The majority of respondents were neutral as to whether or not community service orders should be used more frequently by courts (Q. 5); while there was disagreement with regards to whether or not the court's role is to determine solutions rather than sentences for people with learning disabilities (Q. 15). These responses together indicate disagreement amongst groups concerning the role of the court and regarding the actual options that should be made available to it as sentencing options.

There was general disagreement that people with learning disabilities sent to prison were unlikely to be victimised (Q. 14); and that they were less unlikely to be sexually assaulted than other prisoners with learning disabilities (Q. 21). These responses indicate that there is a common belief that people with learning disabilities would be extremely disadvantaged in a prison setting and also possibly explains why respondents



believe that they should be sent to a specialised prison or specialised part of a prison (Q. 23).

## Services

It was generally believed that services for people with learning disabilities are inadequate (Q. 53); and that an officer is required to liase services for people with learning disabilities within the criminal justice system (Q. 29).

It was also generally agreed that social services should be involved in planning sentencing options (Q. 1); and that people with learning disabilities do need support as soon as they come into contact with the police (Q. 34). There was general neutrality regarding whether services should be more directed towards community integration than towards assisting with contact with the criminal justice system (Q. 51).

Responses indicate that there was wide-ranging agreement that the primary responsibility of social service staff is towards protecting the legal rights of people with learning disabilities (Q. 20); although there was uncertainty as to whether social service staff may be too eager in helping the police to prosecute their clients (Q. 38). The above responses together with those before indicate that although there is a general belief that even if people with disabilities are supported when they enter the criminal justice system, in practice they can still very much be at a disadvantage in terms of the characteristics that professionals believe them to have. This supports the findings of the original Australian study and is potentially dangerous because, as Cockram *et al.* point out, 'What such a process might do however might be to give a cloak of "fairness" to a system that disadvantages them.' (p. 19, 1994b)



## **Lawyers**

Responses relating to the role of lawyers indicates that there is a general agreement with the belief that the lack of legal representation is a significant issue for people with learning disabilities; this is with the exception of the police who generally disagreed with this statement. A possible explanation for this may be that the police are responsible for ensuring the support of an appropriate adult for vulnerable suspects at the police station, and they may also recommend that a solicitor represents them during interview. However, this confidence may be confounded when we take into account the response where the Police do not think that such vulnerabilities are easily identifiable (see Q. 8). Again, this is potentially dangerous if it is the case that the police are confident that they are able to ensure that a person with a disability receives the necessary legal support.

**Table 5.5: Mode and mean responses related to the characteristics of people with learning disabilities.**

Question	Total	Judges	Magistrates	Police	AAs
4. People with learning disabilities need more education about the criminal justice system.	1 2.47 (2.17)	2 2.69 (1)	1 2.33	1 2.46 (1)	1 2.42
8. It is generally easy to determine if a person has a learning disability.	3 3.68 (3.17)	3 3.80 (3)	3 3.56	3 3.58 (1)	3 3.89
25. People with a learning disability are likely to want to appear competent and not disabled when confronting criminal justice system personnel	1 2.57 (2.98)	1 2.47 (2)	1 2.33	2 2.73 (2)	1 2.56
27. People with a learning disability are less likely to offend than the general population.	2 3.06 (3.22)	3 3.44 (2)	2 3.17	2 3.03 (2)	1/2 2.67
33. I believe that boredom and emptiness are not prime reasons for people with learning disabilities offending.	2 2.77 (2.91)	2 2.94 (2)	1 2.56	2 2.86 (2)	1 2.63
35. People with learning disabilities are not likely to be more susceptible to leading questions than others.	3 4.22 (3.99)	3 4.44 (3)	3 4.22	3 3.95 (3)	3 4.58
36. People with learning disabilities are likely to be aware of the importance of the right to remain silent.	3 4.14 (4.20)	3 4.19 (3)	3 4.50	3 3.82 (3)	3 4.42
40. People with learning disabilities have different needs to other marginalised groups.	1 2.12 (2.05)	1 2.20 (1)	1 2.06	1 2.29 (1)	1 1.79
45. People with learning disabilities are less sensitive to non-verbal cues than others.	1 2.76 (2.09)	1 2.31 (1)	2 2.39	3 3.08 (1)	1 2.84
46. People with learning disabilities are likely to have a desire to please.	1 2.39 (2.36)	1 2.25 (1)	1 2.39	1 2.65 (1)	1 2.00
47. People with a mild/borderline level of learning disability are less likely to offend than those with a severe learning disability.	3 3.43 (3.51)	2 3.13 (2)	2/3 3.56	3 3.46 (3)	3 3.47
48. The segregated upbringing of many people with learning disabilities means that the learning of acceptable behaviour is deficient.	2 2.88 (2.53)	2 2.87 (2)	2 3.17	2 2.92 (2)	1 2.50
49. People with learning disabilities are likely to have a poorly developed moral foundation.	3 3.46 (3.28)	3 3.20 (2)	3 3.33	3 3.59 (2)	3 3.53
50. People with learning disabilities are likely to have a fear of authority.	1 2.65 (2.91)	1 2.63 (1)	1 2.61	1 2.73 (2)	1 2.56
52. People with learning disabilities are less easily led into committing offences than other people.	3 3.77 (3.78)	3 3.88 (3)	3 3.94	3 3.68 (3)	3 3.68

**N.B. The Key to Tables 5.5 through 5.9 is presented at the end of this chapter.**



**Table 5.6: Mode and mean responses related to contact with criminal justice system personnel.**

Question	Total	Judges	Magistrates	Police	AAs
2. Special provisions should be made available in court when a case involves a person with a learning disability	1 1.99 (*)	1 2.31	1 1.94	1 2.05	1 1.63
9. People with learning disabilities are treated the same as other people.	3 3.78 (3.63)	3 3.63 (3)	3 3.67	3 3.74 (3)	3 4.11
10. It is not necessary to interview people with a learning disability in front of an appropriate adult.	3 4.40 (3.93)	3 4.53 (3)	3 4.44	3 4.13 (3)	3 4.79
13. Adults with a learning disability should have the same legal status as children within the criminal justice system	3 3.36 (*)	3 3.75	3 3.28	3 3.21	3 3.42
17. Police should be trained to have a greater understanding of people with learning disabilities who offend.	1 1.82 (2.03)	1 2.06 (1)	1 1.56	1 2.05 (1)	1 1.42
18. It is difficult to be consistent when deciding whether to charge a person with a learning disability.	1 2.45 (2.49)	1 2.40 (2)	1 2.35	1 2.53 (2)	1 2.42
19. The police will take action against people with learning disabilities only if they think they can gain a conviction.	3 3.39 (3.41)	3 3.20 (2)	2 2.89	3 3.84 (3)	3 3.11
22. The police are not adequately trained in interview techniques with people with learning disabilities.	1 2.15 (2.08)	1 2.50 (1)	1 2.06	1 2.18 (1)	1 1.89
24. The number of people with learning disabilities interacting with the law will probably increase with care in the community.	1 2.10 (2.12)	1 1.80 (1)	1 2.33	1 2.24 (1)	1 1.83
28. In addition to the Police and Criminal Evidence Act (1984), special guidelines should be issued for the police when dealing with people with learning disabilities.	1 2.37 (*)	1 2.67	1 1.72	1 2.79	1 1.89
30. Criminal justice system personnel are not clear on the distinction between mental illness and learning disability.	1 2.17 (2.41)	1 2.87 (2)	1 2.00	1 2.11 (2)	1 1.89
32. Offenders with a learning disability are sufficiently informed of the seriousness of their actions by criminal justice system staff.	2 3.09 (3.02)	2 3.07 (2)	2 3.33	2 2.95 (1)	3 3.16
37. Cases involving a learning disabled person should be 'fast-tracked'.	1 2.77 (*)	2 3.00	2 2.44	2 2.95	1 2.53

**N.B. The Key to Tables 5.5 through 5.9 is presented at the end of this chapter.**



**Table 5.7: Mode and mean responses related to the sentencing of people with learning disabilities.**

Question	Total	Judges	Magistrates	Police	AAs
5. Community service orders should be used more frequently by courts.	2 2.75 (3.04)	1 2.38 (2)	2 2.72	2 3.11 (2)	1 2.39
11. Prison should be banned for people with learning disabilities.	3 3.81 (4.08)	3 4.19 (3)	3 3.61	3 3.97 (3)	3 3.37
12. There shouldn't be more sentencing options for people with learning disabilities.	3 3.64 (3.43)	3 3.31 (3)	3 3.83	3 3.63 (2)	3 3.74
14. People with learning disabilities who go to prison are no more likely to be victimised than other prisoners.	3 4.03 (4.02)	3 4.25 (3)	3 4.11	3 3.76 (3)	3 4.32
15. The courts' role is to determine solutions rather than sentences for people with learning disabilities.	3 3.00 (2.52)	2 2.94 (1)	1/3 2.94	3 3.18 (2)	1 2.74
16. People with learning disabilities should not experience the same consequences of action as other people.	3 3.39 (3.31)	2/3 3.27 (1)	3 3.22	3 3.53 (3)	3 3.39
21. People with learning disabilities who go to prison are no more likely to be sexually assaulted than other prisoners.	3 3.74 (3.31)	3 3.63 (3)	3 3.86	2/3 3.51 (2)	3 4.17
23. A specialised prison (or specialised part) is required for people with learning disabilities.	1 2.38 (2.10)	1 2.38 (1)	1 1.78	1 2.53 (1)	1/2 2.68
26. The criminal justice system is not an effective way for people with a learning disability to learn the consequences of their actions.	1/3 2.97 (3.00)	3 3.25 (2)	1 2.94	3 3.03 (2)	1 2.63
39. People with learning disabilities are not likely to be let off by courts.	2 3.10 (3.27)	1 2.94 (2)	2 2.94	2 3.46 (1)	2 2.67
41. It is better for people with learning disabilities to be found unfit to plead.	3 3.70 (3.70)	3 4.25 (3)	3 3.33	3 3.68 (3)	3 3.63
42. People with learning disabilities who repeatedly offend will not be treated harshly.	3 3.35 (3.19)	3 3.31 (2)	2 3.39	2 3.14 (1)	3 3.78
44. People with learning disabilities don't understand sentencing options.	1 2.65 (2.17)	1 2.57 (1)	2 2.28	2 2.86 (1)	1 2.63
54. People with learning disabilities should not be convicted on confession alone.	1 2.04 (3.00)	1 2.63 (2)	1 1.56	1 2.27 (3)	1 1.58

**N.B. The Key to Tables 5.5 through 5.9 is presented at the end of this chapter.**

**Table 5.8: Mode and mean responses related to services for people with learning disabilities.**

Question	Total	Judges	Magistrates	Police	AAs
1. Service agencies should be involved in planning sentencing options.	1 2.01 (2.06)	1 2.14 (1)	1 1.82	1 2.11 (2)	1 1.89
7. Guardianship legislation will benefit people with learning disabilities who offend.	1 2.57 (2.81)	1 2.56 (2)	2 2.61	2 2.72 (2)	1 2.24
20. Staff responsibility is primarily to ensure that the legal rights of people with learning disabilities are protected.	1 2.27 (2.30)	2 2.73 (2)	1 1.94	1 2.54 (1)	1 1.78
29. A 24 hour on-call central liaison officer is needed to co-ordinate court and psychiatric services.	1 2.32 (2.02)	2 2.88 (1)	1 2.06	1 2.35 (1)	1 2.05
34. People with learning disabilities need support as soon as they come into contact with the police.	1 1.99 (2.17)	1 2.00 (1)	1 1.67	1 2.32 (2)	1 1.63
38. Staff may be too ready to assist the police in assuring a conviction.	2 3.48 (3.38)	2 3.43 (2)	3 3.44	3 3.57 (3)	3 3.37
43. People with severe learning disabilities are less likely to offend because they are likely to receive more supervision.	2 3.11 (*)	3 3.44	2 3.06	2 3.08	1 2.95
51. Services should be more directed towards people with learning disabilities gaining community friends than with assisting them with the criminal justice system.	2 2.84 (2.49)	1 2.56 (1)	2 2.83	2 2.89 (1)	2 3.00
53. Services are inadequate for offenders with learning disabilities.	1 2.32 (1.98)	2 2.57 (1)	1 2.00	1 2.43 (1)	1 2.21

**N.B. The Key to Tables 5.5 through 5.9 is presented at the end of this chapter.**



**Table 5.9: Mode and mean responses related to the role of lawyers working with people with learning disabilities.**

Question	Total	Judges	Magistrates	Police	AAs
3. Lawyers should have the person with a learning disability Present when taking instructions from parents or guardians.	1 1.94 (1.98)	1 2.67 (1)	1 1.50	1 1.97 (1)	1 1.72
6. Lack of legal representation is a significant issue for People with disabilities.	1 2.56 (2.27)	1 2.69 (1)	1 1.89	3 2.97 (2)	1 2.28
31. Lawyers require training in interview techniques with People with a learning disability.	1 2.11 (1.98)	1 2.56 (1)	1 1.78	1 2.29 (1)	1 1.68

### Key to Tables 5.5 through 5.9

- Top figures are *mode* responses from survey of UK professionals, where:  
1 = Agree / Strongly Agree; 2 = Neutral; 3 = Disagree / Strongly Disagree.
- Bottom figures are *mean* ratings.
- Bottom figures in brackets (*n.*) are the mean ratings of Australian personnel. Scores from 1.00 to 2.49 = '*agree*'; scores from 2.50 to 3.49 = '*neutral*'; and scores from 3.50 to 5 = '*disagree*'.
- Available mean ratings for Australian Judges and Police are also presented where:  
1 = Agree / Strongly Agree; 2 = Neutral; 3 = Disagree / Strongly Disagree.  
Presented in Cockram *et al.* (1994b).
- \* Indicates items not originally included in Australian survey but included for use in the UK survey after completion of the pilot study (More details of which may be found in the account of 'Questionnaires and Question Agendas - Attitude Survey' in the methodological discussion found in Chapter 2.



## Chapter 6

*Results from interviews:*

*Perceptions of people with learning disabilities*

### 6.1 Introduction

Respondents to the attitude survey were invited to indicate if they were willing to participate in the semi-structured interviews for this research to further discuss the issues of offenders with learning disabilities and the criminal justice system and gain some qualitatively rich data around these issues. If respondents indicated that they did wish to participate, appointments were then made and the interviews were conducted at times and places convenient to the interviewee. All interviews were transcribed in full and the transcripts were coded into issues that were divided into three broad areas which are presented here and in the two subsequent chapters (individual issues are presented in brackets):

## **Details of results of the semi-structured interviews:**

### **Ch. 6: Perception of people with a learning disability**

*(classification; detection; disadvantages & vulnerabilities; care in the community; challenging behaviour).*

### **Ch. 7: People with learning disability and contact with the criminal justice system**

*(normalisation; accommodation & different treatment; PACE; witness issues; diversion; diversion & rights; disposal).*

### **Ch. 8: Professional roles and service provision**

*(service availability; function of the criminal justice system; professional roles; training issues).*

Details of the question agenda used for these interviews can be found in Chapter 3 and *Appendix E*. Details of methods of analysis can also be found in Chapter 3.

## **6.2 Classification of learning disabilities – definitions & terminology**

### **Confusion**

The first issue that was raised during interviews with criminal justice personnel was concerned with the actual definition of the term learning disability. Participants who were knowledgeable about learning disabilities indicated that the term often causes confusion as it is similar - although technically different - to the term learning difficulties:

I get annoyed when people usually get it wrong and they call it learning difficulty which actually implies that you can improve the situation whereas you really can't change what is genetically ingrained. (M - 1)

When knowledge of learning disabilities is limited, participants may be aware of a difference between learning difficulty and disability , but this awareness is limited and not supported by any real certainty:

I'm not sure whether there is a difference. A learning difficulty may be something to do with the person themselves, that they've not attended school, so they could have a learning difficulty purely because of that. But the disability they are actually born with it. (M - 2)

One participant told how he thought the term learning disability was confusing because of the word *learning*.

Well it's the adjective 'learning' that's the problem isn't it because the syndrome that it describes is to do with much more than simply a difficulty in learning – it's a difficulty in social and general functioning isn't it? (J - 1)

This concern was also seen to be potentially problematic in the criminal justice arena:

I think there are a lot of people who go through the criminal justice system who have learning disabilities and they are not perceived as such because I think for the general public learning disabilities means something which is blatantly obvious as soon as you meet the person and I don't think that's so. (M - 3)



## **Unclear Definition**

There was concern amongst several participants that the term learning disability caused much confusion because of the way that it grouped many different conditions under one, all encompassing definition. This seemed to be of particular concern to Judges who also expressed concern over viewing things in absolute types or categories as is demonstrated by the following three quotes:

I think the difficulty is that it [the term learning disability] covers such a wide range of conditions that actually are very different from one another... I think another problem about the actual words is that its close to 'learning difficulty', which of course is really quite different. (J - 2)

I'm very wary about seeing any issue in the criminal justice system in black and white, and so I'm very wary about having people in particular categories saying that's the difficulty for them. The next category they have difficulties but they are not the same categories, so I think there is bound to be some overlap. (J - 3)

I much prefer to avoid generalisation. I much prefer to avoid the idea that people with learning disability are to be treated as a category, there is a quality that a lot of people share, but you are judging them as people, and to lump them altogether and say here are a set of rules on how to treat, how to deal with people with this disability, I think is very dangerous, and the problem with too much, with talking about training is that it leads to that sort of stereotyping. I much prefer the notion that we build our experience and our knowledge and that enables us to be more compassionate. (J - 4)

Although others echoed these concerns over all-encompassing definitions, one magistrate also realised that this will be an on-going problem:

I think that the gamut of learning disability is so wide, I think there's probably never going to be a term that's going to encompass it all adequately, and its probably as good as any other term, and I'm sure as the years go on they'll try and change it to something else. (M - 4)

The unease with which members of the magistracy and judiciary view the category of learning disability possibly may reflect the strict legal framework within which they work. This legal framework was also perceived to be problematic in the way legal and medical definitions of learning disability are not completely transferable:

One goes back to the Mental Health Act which was either mental impairment or severe mental impairment, and I would understand it these days as really encompassing that sort of definitions... So I think it can be unclear and it's not helpful when the legislation has different phraseology. I imagine many lay magistrates who have no legal training might find it quite confusing. (J - 5)

I'm not sure when... mental handicap fell out of use and was replaced because mental handicap is in fact still the statutory language isn't it?, so if we are using out of date jargon, I'm not sure it is a reflection on our inadequate training, maybe the law as a whole has not adopted political correctness, I mean the Police and Criminal Evidence Act still talks about mental handicap. I don't think you can blame judges for using that language. (J - 4)

## **Legal Definition**

Similarly, concerns may also arise when the legal definition is used in the court setting – concerns to which the participant is conscious of due to her own professional background:

Working in a hospital setting and community setting with colleagues who work with learning disability clients, I am much more aware, but I probably wouldn't be if I didn't have this professional background. I think that mental handicap to me would seem Ok, but as a lay magistrate sitting on the bench with two others who perhaps aren't aware of that, I'd personally struggle with solicitors and police who continue to use that term, so I'd find that very strange and archaic. (M - 4)

## **Political Correctness**

A theme that seems to underlie several responses about the term learning disability was related to the concept of political correctness. There was evidence to suggest that the term was perceived to be a euphemism with little actual content:

[The term]... causes confusion, because we all knew what mental handicap means. If you've just changed the term, changed the jargon, that smacks to me of political correctness. You want to avoid the stigma that is carried by mental handicap, so you give it a new name hoping that it will change the stigma, but in a short time, once we all understand the new jargon, then the stigma will attach to the new name. So it's a way of clouding the issue it seems to me. (J - 4)



... we tend to get phrases which, some would say were euphemistic, but they're less offensive, I accept that, but they don't have the meaning, well they're not the same phrases that are used in the legislation that we have to use. (J - 5)

## **Benefits**

Although it is recognised that the term learning disability is problematic, it was also noted that the term might have possible benefits, in that:

I think there's been more stigma attached if its mental handicap because then I think people very easily get drawn in and mixed up with mental illness so I think the fact that its taken out of that sort of mental context is much, much better and it really describes more appropriately what the problem is, but as I say, I don't think the term is completely adequate because within that there are various aspects. (M - 4)

### **6.3 Strategies used to detect learning disabilities**

Criminal justice professionals displayed different levels of knowledge about learning disability and as such, the specific content of such knowledge was varied and largely based upon personal contact with learning disabilities (primarily through occupation and/or family/personal contact). Despite such a variance in levels of knowledge there seemed to be common elements in the things respondents identified when asked what they would look for.

## **‘Feeling’**

All respondents identified some kind of interpersonal sign to indicate the presence of learning disabilities. Some respondents relied on an undefined ‘feeling’ about a person which they got when they met someone:

I think you tend to identify or you tend to get a sniff of something being, erm, not quite right, more by what they say than the way they look, although its quite difficult. (J - 6)

... in any situation you get a feeling about people. When you meet people you immediately get a feeling about them and you get a feeling about people that come before you... But its difficult to, you know, you can’t sort of say there’s a single characteristic, you get a feel of the person. (M - 5)

## **‘Normal Behaviour’**

Others respondents looked for specific aspects of behaviour which are somehow different to what they have come to expect as being ‘normal’, especially with regards to understanding communication:

To me its an impairment from what is perceived as to be a normal standard, so if somebody comes into custody and for whatever reason I don’t think they understand me, I certainly look for indicators like their speech may be slower, their actions and functions maybe slower, speech and mannerisms maybe slower or they may be faster, and something just triggers an alarm bell in me... (P - 1)

Yes, there are some obvious characteristics, I would say people who can’t concentrate on something or perhaps fidgeting a lot. It could be that some people

are over confident or appear over confident, then they, you know they might be too fast in what they are saying etc. It might be that they are trying to avoid reading various pieces. (M - 6)

### **Ability to Communicate**

For others, the ability to communicate effectively is the key behavioural indicator of a learning disability:

Inability to understand what I'm saying and he communicates thoughts or ideas that are incomplete; hasn't grasped, has difficulty in grasping the issue in what we're talking about. (J - 4)

Another Judge also uses this strategy of observing the way somebody is communicating:

When one is in the court situation, either as a judge or as a barrister, you tend to get a sense of when somebody is not picking up on everything that is being put to them or questions that are being asked, or sometimes they say things which make you think the person is not understanding everything an ordinary person might do... When one's a barrister or a solicitor and you meet the client and you sit with them, then you do detect signs. Sometimes its gradual in terms of you talk to them and you start to realise that they are not picking up on what you are saying. (J - 3)

Likewise, the key sign of effective communication was often cited as being the person appearing to understand and respond in an appropriate way:



... the obvious characteristics are slowness of reaction, slowness of comprehension, lack of articulacy, characteristics of that kind. (J - 1)

... quite often there's evidence in the eyes as it were and in the stuttering and in the frustration and the anger of not being able to say whatever perhaps they want to say. Or alternatively a quite marked retreat and an inability to communicate at all. A marked fear I've sometimes seen as well where a person withdraws into themselves and is unable or unwilling to communicate at all. (P - 2)

Sometimes people seem a little slower to respond, they're taking more time to assimilate the information that they are being given. Their expressive capability could be quite reduced. It may be that they're not able to read the oath or those sort of things. People don't necessarily look or act different, but sometimes it's obvious from how they respond to things that they probably have got a learning disability... and then sometimes alarm bells start to flash because you think they're not responding in the way that I would have expected somebody to, so that might lead you to think that they've got problems with their learning. (M - 4)

### **Difficult to Detect**

The above quote is interesting in that it reiterates what was a common belief amongst respondents – namely that learning disabilities will probably be hard to identify, and that learning disabilities is such a broad category which includes a variety of conditions with no obvious unifying features:

The question is would it strike one sitting in a court that somebody has a learning disability as an obvious thing and the answer is that no it wouldn't. (J - 1)

... you're talking about such a different group of people, if you leave aside those... er, the group that obviously one can recognise are, its not simply Downs Syndrome but people who from birth had some learning disability which makes them when you encounter them seem out of the ordinary, and I suppose as I say Downs Syndrome is the one we all come back to because one sees so many Downs Syndrome people in the community. (J - 2)

... because you've got a learning disability, its not always evident, and I think perhaps you work in that field... People often present well but they've most likely learnt tactics to hide their disability to get past them. They fool me even now, people who I work with and who I know very well and I know how disabled they are, they still fool you. (A - 1)

## **Environment**

There was also an indication that people hide such disabilities because of a cultural pressure to appear normal:

You want to put people into nice little boxes, people don't want to go into nice little boxes... A lot of people [present very well]. Most people with mild to upper do present very well because the shame of being seen as different, they present very well. So to identify is actually very tricky at times... (A - 2)

## **Drugs**

The proliferation of drugs amongst people who are brought into the custody suite also has an influence on the working practices of officers as the police often expect any strangeness in behaviour to be due to drugs rather than a disability:

Its harder now with so many people coming in on drugs and they're not altogether *compos mentis* sometimes, so how would you say that that person is on drugs and that person is retarded? You just don't know. (P - 3)

In contrast to this widely held opinion that it was difficult to identify substance misuse, one community psychiatric nurse working as a forensic liaison officer in a custody suite did

... think anybody with a reasonable amount of intellect or a reasonable amount of people skills can suss out whether somebody has a drug problem. (H - 1)

but this statement was later qualified by the nurse also saying that

... the way we find people here is very hit and miss. We have no way of detecting people, so its pure chance. So if people are good at hiding it then we're not going to find it. (H - 1)

### **Person's History**

As is demonstrated from the above quotes, professionals may not be consciously looking for the presence of learning disabilities in people who are displaying unusual behaviour. Such behaviour may often be explained by reference to other causes, such as drugs. But when the presence of a learning disability is suspected, how are such suspicions acted upon? For one police officer, a suspicion of the presence of a learning disability was checked by looking at a person's history and background to see if that will offer reasons towards any unusual behaviour:



... you do start to get a sixth sense and think, 'I'm not happy with this person'. The minute you start feeling like that, that's when you start asking extra questions as to whether or not they are under the doctor for any reason, are they seeing their GP? (P - 4)

Likewise, officers may also check the individual's personal history of schooling or other possible indicators from their personal background.

... if somebody comes into custody and for whatever reason I don't think they understand me I certainly look for indicators, like their speech maybe slower, their actions and functions maybe slower, speech and mannerisms maybe slower, or they maybe faster, and something just triggers an alarm bell in me and I will treat that person as possibly somebody with a learning disability, and I'll ask them what school they went to, where do they live, and try to find out actually what their background is. (P - 1)

Perhaps this demonstrates that the key to successful detection at the police station is achieved by the officer taking time to chat with the detainee and trying to get to know them a little, but the practicalities of working in such an environment do not always enable this to happen. In effect, the way the custody suite operates acts as a barrier to the detection of learning disabilities:

We're not infallible and we're all human and sometimes we make mistakes and sometimes yeah, you possibly miss one or two, but its not very often. And even if you missed it when you were booking them in, because sometimes it can be totally chaotic and other times it can be quiet, so on the times its quiet, everything

is running smoothly, and then when its really busy, you know, your mind is racing from one job to the next, so it is possible in that situation you might miss somebody with a learning disability. (P - 3)

Also,

With the best will in the world Richard, we don't have time always to sit down, unless its on a quieter day, then you can sit down and spend more time talking to them before they go for interview. Just a general chat with them... If they've behaved quite civil to you then you don't mind talking to them when you're not busy. (P - 3)

### **Other Professionals**

Because their working routine can often be so hectic, custody sergeants (detention officers) may also rely on other professionals to notice any vulnerabilities:

At the end of the day, in all fairness, it's the detention officers, the care bears as we call them, those blokes do a great job and they're the ones who'll pick up on things. They'll pick up on things because they'll go and see a prisoner in his cell, and that prisoner might be withdrawn, he might be aggressive, he might be talkative, you know there's a number of things that could sort of indicate that a person has a mental deficiency. But you wouldn't always see it when you book them in. When they go to the cell, that's when the detention officer might notice it. So really they will play a very good part in this. They play a more important part than the custody officer to an extent in the role of viewing a person with a disability. (P - 3)



And it is not just in the police cell where you find this assumption that the detection of a learning disability will be achieved by someone else or another professional:

By the time its got here then the learning disability will have been identified, I mean if those defending the accused are even half way competent, they will have identified the learning disability, so, by the time its reached the Crown Court there isn't really the problem of identifying the learning disability. (J - 2)

If somebody has a learning disability... then you would expect social services to either be there or to have written a letter to say this is the situation. (J - 3)

I think that before they even get into court, the court clerk will have talked to solicitors and they will have a very good feel for who's coming up... I don't know if its written into a job description but its, within my training as a magistrate, it has always been said, I've always been led to expect that that would happen, that there's a safety net before we even start. (M - 4)

Perhaps a reason for this assumption that other professionals would pick up on the presence of a learning disability in a person (who enters the criminal justice system) is the fact that the majority of professionals who participated in this research had had no form of training that dealt with learning disabilities in general, or more specifically within a forensic context. The only professionals who had received formalised training including these issues were appropriate adults who generally perceived the police as not being sufficiently trained to deal with such vulnerabilities in suspects. This lack of training also had the effect of making the police err on the side of caution when they suspect any possibility of a vulnerability in a detainee.



I think the police often use as a safeguard for themselves. And certainly a lot of call outs we are having now as appropriate adults are for people because they can't read or write. I think its very difficult for custody sergeants (A - 3)

... you see such a lot of people coming through while you are there [at the police station]... I think the police err on the side of caution these days probably a lot more and they'll call us out perhaps even if they are iffy, and I've been asked to stay even when the doctor has seen them and said that they are OK. (A - 1)

#### **6.4 Perceived disadvantages & vulnerabilities faced by people with learning disabilities**

Respondents were asked about how they perceive people with learning disabilities to be disadvantaged, and all agreed that such a disability would disadvantage people and make them vulnerable within the criminal justice arena. Disadvantages and vulnerabilities were thought to be generally apparent across all institutions and all stages of the criminal justice process, and they were also thought to be pertinent to both witnesses and defendants who have learning disabilities in the court setting.

Although there was general agreement that defendants and suspects are vulnerable within the criminal justice system, respondents gave differing accounts of what they thought the causes of such disadvantages were – on the one hand vulnerabilities were seen to be directly related to the specific characteristics and personality traits that were thought to accompany a learning disability; while other responses indicated that the criminal justice system itself was a major cause in rendering such people vulnerable.

## **Recognition of Disability**

One of the first hurdles that may disadvantage a person with a learning disability within the criminal justice system is actually having their disability recognised as such by professionals who deal with them. Respondents were generally aware of the difficulty in identifying such disabilities and most responded that they had received little (or no) training to assist them in doing this. Another problem that was highlighted by one magistrate (who had a relative who was disabled) was that she recognised that people with mild learning disabilities often learnt strategies to appear 'normal':

Nobody appreciates how extremely limited he is and they all develop that survival technique if you like, at whatever level, and so certainly the ones who are mild to borderline, very difficult to gauge unless you're alert to it... Now if people knew that they had a learning disability, they are far more likely to get a discharge than if they don't know. (M - 1)

The inability to identify a disability was also raised by a judge who was concerned that hidden disabilities may be interpreted in a negative light:

... the difficulty about having somebody with a learning difficulty or who is mentally handicapped that one doesn't know about in the witness box is that you may well be confusing the way that they are reacting to questions or, you may well be assuming that the way they are behaving is caused not because they are suffering from some kind of disability but because they are being deliberately obstructive or evasive, when that may not be what they are being at all. (J - 6)



However, a magistrate who also raised similar concerns about not being confident to personally identify a disability seemed to assume that someone else would have brought this to the Bench's attention by the time the case had reached court – an assumption which is all the more pertinent when you consider that many people who appear in a Magistrate's court often do not have legal representation.

... if it was a Bench who weren't aware and the clerk wasn't aware of the learning disability... I think it's important for the defendant to bring this, if they've got a solicitor acting on their behalf, to bring this up, and it's important for the solicitor to bring this up in front of us because you know, it might be you see, you might not be able to pick it up straight away because if the defendant is very, very shy and very inward about bringing it up, you just might think that this person is very shy, so it's very difficult. (M - 6)

This danger of not recognising the presence of a disability is also a problem in the earlier stages of the criminal justice system. For example, a community psychiatric nurse who was based in a busy custody suite as a psychiatric liaison officer voiced his particular concerns that if the presence of a disability was not noticed early on, that person would probably slip through the net and any vulnerabilities would remain hidden. If a disability is spotted early on however, then he views a person's progress through the criminal justice system as being very different:

... if it's not identified appropriately that they do have learning disabilities, then they will be more appropriate to manipulation, they are more vulnerable to pressure and coercion in interviews, things like that. If they've been identified... the interviewing officer will adjust their approach and hopefully take that into



account so that they're not seen to be being pressuring, but when that hasn't been identified, then I suppose there is a vulnerability to them being placed under pressure or not as able to handle that type of pressure. There may be difficulties in terms of how they cope with being locked up in a cell, how they manage their anxiety there... if it had been identified that there was a man with a learning disability, they would have been handled much more different to that. (H - 2)

### **Socio-economic Background**

This concern for the consequences of learning disabilities not being identified was supported by the quote below made by a magistrate. This quote is worth citing because it shows an awareness of the further disadvantages that reach into the socio-economic sphere of a person's life, and so recognises that what may be a 'normal' financial penalty for one person may have unintended punitive results that magistrates may have no conception of:

They would end up with a fine to pay that they might find great difficulty... If they gave no indication that they had some sort of disability allowance included in that, then nobody would know and they would be fined at that level and they might find it extremely difficult to budget to meet that because they'd be living on a very low income if they're living unsupported and that requires a degree of intelligence to work out how you're going to pay it. (M - 1)

In support of this concern about the social deprivation that people may face in the community is the following observation made by a very experienced appropriate adult who has supported many suspects with learning disabilities while they are being held and questioned at the police station.

A lot of these people need, need to be together in care. I found most of the offenders that I've been to see are just crying for help. They need somebody to take notice of them. The majority of them are very lonely, they're in an environment that they're just not used to. (A - 4)

There was also recognition from another magistrate that people with mild/borderline learning disabilities do often live in deprived and impoverished environments with little of the support and care that people with more moderate/severe learning disabilities receive when they live in the community. Basically, their social disadvantage faced by people with mild disabilities can be comprehensive, affecting all aspects of their lives:

Yes, they're vulnerable in all manner of ways. Every aspect of life really, applying for jobs, the criminal justice system, homelessness, I mean everything really. Harassment, violence... (M - 3)

Responses such as these outlined above demonstrate that there is an awareness of the socio-economic deprivation that many people with such disabilities face, and also that there is a general attitude that the normal punitive course should not be implemented. Its just that a disability needs to be identified before this can occur.

### **People with learning disabilities are child-like**

Several participants commented that they thought there was a certain similarity between the possible disadvantages that are encountered by adults with learning disabilities and by children when they enter the criminal justice system. One respondent implied that these



similar vulnerabilities were recognised by law because legislation dealing with both groups attempted to accommodate for such vulnerabilities:

... plainly they can be childlike so they can have the characteristics of children and they may well have the same vulnerabilities of children. Children have to have an appropriate adult at the police station, they should have a parent at court although often they don't. So there are similarities plainly between the two. (J - 5)

A police officer commented that adults with learning disabilities and children were similarly vulnerable because of some kind of innate desire to please:

I think that there's a great risk that they won't stand up for themselves. That they'll be asked a question and my experience of working with children and working in the field when you've got to pick children out from children's' homes who have suffered abuse and who are vulnerable, and interviewing people with learning disabilities as victims as well as accused, they want to please. They think that you know the answer, and of course as a police officer sometimes you don't know the answer. It's their willingness to please people. There's also a tendency to answer yes to questions, especially in interview. (P - 1)

This view was not however shared by all respondents. For example, although another police officer recognised that both groups are vulnerable, he also perceived the vulnerabilities experienced by the two groups as being qualitatively different:

I think they [children and PWLDs] are both vulnerable really. You probably spot a vulnerability in an adult more than you do in a juvenile. I think they have more



within themselves, juveniles. Adults with learning disabilities, I think they are more within themselves and they don't say that much. Children are the ones who become delinquent if you don't sort them out... And these people [with LDs] are, they are very nice people actually aren't they? Yes, they're just very, very nice people and I feel sorry for them. (P - 3)

Although several respondents did indicate that there were similarities between the two groups, others gave answers that showed that such comparisons can be difficult to sustain as demonstrated by the following two quotes from judges. The first is interesting in that it suggests that people assume there to be similarities because most people have had very limited contact with anyone who has a learning disability. The second quote is interesting because it gives a possible explanation as to why it may be seen to be legitimate to compare the problems faced by both groups within the criminal justice system.

... its just very hard to generalise but I certainly think that the difficulties are pretty common between children and people with learning disabilities. The difficulty of recall and suggestibility and so on. It is of course much easier for Judges to make proper allowance for children because we've all met children and we all, most of us, know children intimately if we're parents, but we haven't on the whole necessarily had any intimate dealings with people with learning disabilities. (J - 1)

I think its legitimate in the setting of the criminal justice system to compare those [problems faced PWLDs] with children. Now I know that groups involved with looking after the interests of those with learning disabilities don't, are sometimes, don't like the comparisons between children and those with learning disabilities

because obviously, you know, you can't carry it all the way. An adult with a learning disability has adult problems and adult rights and so on as well as, but I think that in the context of the criminal justice system it is apt because many of the same dangers arise and many of the solutions I think are the same for children and for those with learning disabilities. I mean the dangers being, obviously, the difficulty of coping with a situation which is strange and difficult for anybody. The most able or the most intelligent person in the world is going to find it upsetting and difficult in the police situation. (J - 2)

Two respondents did explicitly deny the appropriateness of grouping adults (with learning disabilities) and children together in terms of vulnerabilities.

I certainly don't think that it's the appropriate way to treat an adult with learning disabilities as a child... I would say that I certainly don't class them as being childlike. They are an adult with learning disabilities and certainly do not portray childlike symptoms. (P - 5)

... the way we approach children in our society is characteristic of children, not of adults with a learning disability. It's a different group of people and they need to be treated as adults with a learning disability not as children. It's one thing to say we need to be aware that people with learning disability are vulnerable and they need a special kind of facility or a special kind of approach, but it's another thing to say that they need the same treatment as children do because I don't think that's how it is. I think we're making a mistake if we go down that track. (A - 5)

A possible explanation as to why this attitude was the exception rather than the norm may be that both respondents had each had many years of experience of working within social



services and within child protection agencies, and such experience would have probably acquainted them with arguments surrounding the protection of vulnerable people.

### **Honesty / Ability to Communicate**

Two respondents answered that they thought that people with learning disabilities may be disadvantaged because they are perhaps more honest than other people, and may also not be able to communicate as effectively as other people:

Funnily enough, sometimes you find that people who have learning disabilities are more honest than people who don't have those disadvantages so that might be a disadvantage for them. Yes, the answer would be because they often get upset and don't say what they should say or they say too much. (M - 7)

you and I can probably talk our way round problems and we don't get frustrated because we can communicate, so if someone seems to be oppressing us or we're cross with somebody, we'll talk to them and be able to articulate our thoughts and views, but I think if you can't do that, it breeds frustration and frustration leads to violence and that may be the problem with this person. (J - 5)

These issues were not however mentioned by any other of the respondents, unlike the issue of suggestibility that was brought into conversation by all participants in this research.

### **Suggestibility**

Many respondents indicated that they thought people with learning disabilities were likely to be suggestible and that this suggestibility would render them vulnerable to criminal exploitation from others in the community:



The adolescent person with a disability at the top end of the range is vulnerable because they try to keep up with their peers and therefore if they get in with a bad crowd, they will try to copy them, and they can be used very easily as the fall guy. They're the one who's caught, they're the slowest to get away... part of the vulnerability of people with learning disabilities is that somebody else can effectively impose their views and what they want said on the person with a learning disability with the greatest of ease. They may be suggestible... Fact and fiction are very much mixed in people with a learning disability. They really don't know the difference between fact and fiction. You only have to watch how they watch things like soaps on television – they are factual as far as they're concerned. (M - 1)

As is demonstrated by the above quote, respondents felt that suggestibility was likely to be found in people with disabilities, and further discussions explored how this trait may be particularly relevant in a forensic setting. As would perhaps be expected, members of the judiciary and magistracy saw this as being a problem during cross-examination of a person in court and intimately linked to the adversarial system under which institutions in the later stage of the criminal justice process operate:

They possibly wouldn't realise the significance and importance of questions which are asked of them and therefore might inadvertently not give an answer which might be the most appropriate answer in the circumstances, perhaps even a truthful answer... I think a lot of the solicitors do try very hard as part of, particularly the cross examination process, to suggest things to people and get them to agree with them. They're clever with words and for somebody who is not of as high intelligence as the average person, they may well be taken in by what the solicitor has to say during cross examination. (M - 7)

Anybody who has a learning disability is obviously...at a disadvantage... It's something which undoubtedly makes them susceptible, particularly in a forensic context, I suspect to exploitation. You know, a skilful barrister can spot it,... he or she wouldn't say to themselves, 'that person is, erm, has a learning disability, they're clearly suggestible', and therefore would probably... try to get them into a position whereby they would assist their case in a way that they might not, because they wouldn't be so suggestible if they didn't suffer from a learning disability, or to put it another way, had a slightly higher IQ. (J - 6)

I'm sure there'd also be a danger that they would be suggestible, as I've said before, the defence, if they can get somebody off by anyway possible, and they get up to any tricks and I'm sure they would do. They really take advantage of them. It does concern me, it really does concern me. This particular girl with the Fragile X syndrome, because she had very great difficulty in replying to any questions, it took a full day where as it should have only taken half that. So the court didn't appreciate you see... I don't think anybody, I don't even know whether the solicitor had a full appreciation of where she was coming from. (M - 2)

This problem of people being suggestible to the games that solicitors and barristers may play is further confounded because it is upon this play of words and adversarial form of interrogation that decisions of guilt and innocence are based:

They are plainly suggestible. Difficulty of comprehending what they are being asked which is all part of the suggestibility thing. I mean, one sees this, that the defence council can suggest to people, usually with a very mild learning disability, any number of propositions which they will readily agree with; provided they are put sympathetically enough. And they are perceived, rightly or



wrongly by fact finding tribunals, juries in criminal cases, as being less reliable as witnesses than people without that disability would be. (J - 1)

However, although the adversarial system is identified as being potentially damaging to a defendant/witness who is assumed to be suggestible, judges and magistrates were also ready to defend this system as they argued that it has an in-built mechanism whereby the truth may be gained:

... regrettably they [council] aren't out to find the truth, they are out to win the case and it does mean that they will use tricks to try to win the case either way, but the safeguard of that is by allowing the re-examination from the other side. (M - 7)

I think the games that solicitors play are very complex and very sophisticated and sitting on the bench, I feel uncomfortable sometimes and I've known my chairman stop the proceedings and have to talk to the solicitor about, just the fact that they are pressing the point too much and we've heard it all before, but we have to be careful as a bench not to be seen to be stopping the solicitor having the full opportunity to cross examine. So it really is a fine line. If we say 'can you move on from that question?', the solicitor may turn round and say 'you're prejudiced, you allowed the other solicitor to ask questions and now you're not letting me'. So we have to be careful... the process is not a pleasant one, it's a very complicated one. But most of the time solicitors are fine and most of the time the court clerk will intervene. (M - 4)

It is not just the court setting where this suggestibility is seen to be problematic in a forensic setting as is shown by the following quotes which demonstrate that the interview at the police station is of major concern:



It's their willingness to please people. There's also a tendency to answer yes to questions, especially in interview. (P - 1)

... the difficulty of coping with a situation which is strange and difficult for anybody, whether they're fully able or the most intelligent person in the world is going to find it upsetting and difficult to deal with the police situation, but also the particular problems of, the desire to please in the answer, particularly if the person with a learning disability, if it's not a particularly severe one so that the interviewing officers, he or she may seem just to as not a very bright person, and they may not realise that that person may be the kind who's easily led to give an untrue answer or may simply give the answer that the questioner thinks they want (J - 2)

### **Intimidating Environment**

As is shown above, the adversarial system is seen as being problematic in the way that it may heighten the chances of a vulnerable person being suggestible, but this is the long established system under which the criminal justice process operates. Criminal justice is possibly intended to be a daunting and intimidating experience and so it is perhaps no surprise that the very institutions under which the law operates are seen to induce fear into those people who encounter them in the justice process:

I think it's inevitable, I think it's, it's the problem of people who are going to court are clearly nervous about being there and I think people still are nervous about going to court, it's an ordeal, it's a highly artificial environment and a highly unfamiliar one for most people, and so when somebody gets up in a wig and gown and starts asking them questions and they're in a state of anxiety, I

think that they, after all, they obviously don't want to be there, and I suspect that they're inevitably anxious to please their questioner and so might well allow themselves to at least put a gloss on what they're saying, which they wouldn't really in the cold light of day have put on it, particularly if they hadn't been in any way manipulated, so yes, I mean, I think it's inevitable that they're susceptible to... (J - 6)

But this fear that any 'normal' person is expected to experience when they enter the criminal justice process is exaggerated if a person has a learning disability, mental illness, or indeed any other vulnerability:

I can well imagine that for someone with very serious learning disabilities, there is a real fear and perhaps a sense of bewilderment, I can well understand (J - 5)

I think that if all court users or court staff had an appreciation of people with mental illness, I think that would be a big stride in the right direction. Make it a more friendly atmosphere for them to come to court. I mean I know that should apply to everybody, but particularly for people who may be very, very frightened to come to court, because although most people are frightened to come to court, but people with learning disabilities, I would have thought some of them would be extremely frightened. And I think with this, hopefully with this training, I think that would be a big step in the right direction. (M - 2)

And again, this fear is viewed to be evident in the police station as well as the court environment:



... the interview situation [at the custody suite] is very oppressive and stifling, especially in the summer. They seem to be heated in the summer but not in the winter and the interview rooms can be quite frightening for people. (A - 7)

Although it is generally acknowledged that the court is an especially intimidating arena in which to appear, one magistrate believed that the unfamiliar setting of the adult court was much more problematic than the youth courts, because of the support that a child or adolescent would automatically receive:

I don't think they are disadvantaged in the youth court to be honest because usually the social services are always present, they would always appear with a parent or guardian or social worker, so they've really got somebody with them, and they would pretty well always be represented. So I don't think they are disadvantaged. And certainly in a family court they are not disadvantaged because they've always got a lawyer, again they've always got a solicitor who fights very hard for them and puts their case across. I'm not so sure that it works so well in the adult court because... you won't necessarily have one of your three magistrates [who sit on the bench] who'll recognise the problem. They won't necessarily have a solicitor, in fact they are most unlikely to have one, because unless someone picks up that they've got a problem they won't see the duty solicitor. (M - 1)

The unfamiliar setting of the court room was reiterated by the following judge who also identified how this problem may possibly be overcome when people appear who have a learning disability.



I think that anybody who is unfamiliar with the court system is at a disadvantage because there are an awful lot of rules and regulations... Now somebody with a learning [is] bound to be at a disadvantage... Ideally they should be prepared as to what is to happen in court, individually on a one to one basis by somebody who understands the process. I'm not sure that a social worker without special training would actually be able to give them proper advice – you need somebody who knows how it works really. (J - 3)

The following quote illustrates what seemed to be the general consensus amongst judges and magistrates – that is, that they as professionals working in the court situation are more than willing to adopt any kind of special procedures, or adapt the court in any way so as to make it appear less intimidating to people who may be vulnerable. The trouble is that the disability needs to be firstly identified before these measures can be brought into place:

Within the court room I think everything is done, if you can recognise that there is a potential problem, everything is done to try and make sure the person is, their case and their situation, is fully presented to the court... so that the court has the information to make the appropriate decisions. (M - 5)

Although professionals working at the court were happy to adapt proceedings to help people overcome any disadvantages they may face, the law does not readily allow changes in proceedings to be made while at the police station. An example of this is that the caution must be given to anyone who is arrested and who is formally interviewed by the police. The caution however is problematic and confusing for most people, even if there is no learning disability present:

How could you simplify the caution? Quite honestly we have difficulty explaining it to so called normal functioning people. I'm not entirely sure that all police officers understand it. I have heard police officers try and explain it in other words to solicitors and to appropriate adults and to accused people going through the system, and the words that come out don't match my understanding of it at all. I think we've got a difficulty with the caution full stop. (P - 2)

### **Lack of Support**

When people are arrested and a vulnerability is noticed, legislation dictates that a vulnerable person should be supported by an appropriate adult. However, the experience of one of the participating custody sergeants shows that the aims of PACE are often not fulfilled because of the difficulties that custody sergeants may encounter when they attempt to find someone to act in the role of appropriate adult:

It can sometimes take hours to get an appropriate adult or other person to help, by which time, the learning disabled person has already suffered a great deal more psychological trauma than any other person would have done, and therefore my contention would be that we were possibly working towards breaching section 76 and 78 of PACE in terms of unfair and oppressive treatment towards that individual. But because of the narrowness of interpretation strict straight-jacket of PACE, it's quite difficult to see how to get round it in the present set of circumstances. (P - 2)

The experience of an appropriate adult also demonstrates that even though police may be aware that a vulnerable person needs the support of an appropriate adult, many officers



make no effort to ensure the safety and well being of the detained person once they leave the confines of the custody suite and are released back out onto the street:

I think if we didn't push for them to take them home, they wouldn't do. There was one... when [another appropriate adult] really had to push, it was that murder in town and the woman was learning disabled and she was also an alcoholic and the police had sealed off her flat for forensic purposes, and they put her up in a hotel, but they didn't give her any money or anything, they weren't going to take her there, it was just like, 'well we've arranged for you to go there, off you go'. It was really late at night and [the appropriate adult] had to force them to take her and he got them to give her some money as well to buy food with because they wouldn't let her back into the flat at all. And there are times like that when I think, as I say, if [the appropriate adult] hadn't have pushed they'd have just let her out and that would have been it... (A - 6)

Regarding representation while at court, several respondents voiced concern that solicitors were not really adequately trained or equipped to deal with the particular problems that people may face in the criminal justice system when they have vulnerabilities such as learning disabilities or mental illness. The following recommendation was offered by one magistrate:

I think what's really needed is a specialist team of solicitors plus the court intermediary scheme which will hopefully come into operation. But solicitors are notoriously bad at explaining things to anybody let alone somebody who's got learning disabilities. And I think it would be very useful to have a group of solicitors that, you know, that specialise in that. (M - 3)



A more fundamental problem regarding representation (or rather the lack of it) was discussed by another magistrate:

I wish a lot more defendants would ask for support because I really worry, I think half of the time a lot of them without solicitors are making a plea that perhaps they shouldn't be or they're not aware of what will happen. They can't make a strong case for themselves and they can't present the facts appropriately as a solicitor would for them. Another concern of mine is with the oath, sometimes you get people who take the oath and they're not aware of what they're saying and you can tell they're not sure, or they don't ask; and then you get the other situation where they're over patronised. (M - 6)

The previous quote to the one above demonstrates that many professionals do not feel confident in knowing how to deal with the problems that may arise when a vulnerable person presents within the criminal justice system. This concern is repeated in the following quote by a custody sergeant who worries that there is a general lack of training provided to officers to enable them to deal effectively and fairly within the legal guidelines, with people who may be vulnerable. This quote is also quite revealing in that it offers a window into how an experienced police officer believes other officers think and perceive the world:

The reason that learning disabled people are disadvantaged in the criminal justice system is partially because a lack of training and understanding amongst personnel... The general police psyche tends to like things fairly neatly boxed and anything that steps outside of that first of all presents a difficulty, and anything that presents a difficulty in a pressured situation automatically raises hackles, raises barriers... So what would be needed would be far more training, far more

understanding, preferably in an ideal world, designated officers to deal with situations like that and far more available help. (P - 2)

If it is the case, as this officer suggests, that the police do in fact think like this and perceive people and things in terms of concrete and absolute categories, then this may obviously become problematic when dealing with learning disabilities. 'Learning disability' is an all encompassing term that includes a multitude of conditions and syndromes that may have very little in common with each other, and also which mean that people who are affected by them may behave in a variety of ways and with a heterogeneous range of possible vulnerabilities and disadvantages.

## **6.5 Care in the Community**

The policy of 'care in the community' has been prominent now for several years in our society and has had the effect of moving people with learning disabilities away from traditional forms of care in long-stay hospitals, to being cared for in smaller homes where residents are assisted by carers and encouraged to participate in community activities.

### **No Support & Isolation**

The topic of care in the community was introduced into the discussion by many of the participants often without much prompting from the interviewer. This was especially the case with the police and appropriate adults who were interviewed and this implies that this issue is of special significance to these professionals when they think about why people with learning disabilities possibly offend. When asked "Is there a common theme



in the lives of learning disabled suspects who you've dealt with?", one appropriate adult replied that lack of support and isolation in the community were major concerns:

I think care in the community is failing them, there's a lack of support out there within the community and they become victim to alcohol and drugs they are so vulnerable... Up until the age of 19 when they are still regarded as children, services for children with learning disabilities are fantastic, and then all of a sudden they become adults and the services just take a nose dive. The support just vanishes and people have to fend on their own, living alone, managing their financial and other affairs, they just can't cope at all. (A - 7)

Similarly, another appropriate adult also seems to have the opinion that 'care in the community' is a misnomer because people with disabilities living in community settings often do not receive adequate levels of care or support:

Many of them feel very isolated, the majority I've spoke to have gone on the drink or drugs. Mainly to cover up that they've not..., they don't actually get anybody to really talk to them. To sit down and talk. And a lot of them are forgetting how to talk, with another person. (A - 4)

There was perception amongst several police officers that because many people with learning disabilities were not receiving adequate care and support, they were often coming into contact with these people during their working lives, and that this contact could (and should) have been avoided:



... they probably have no one in terms of family or friends, they can't make friends. They exist in a little environment of their own, they are self-sustaining if you like, but to a point. And then we come across them for whatever reason... and then we have to find somebody to help them. And because the system has only finite resources, it's usual that there isn't anybody that can actually do anything for them that is going to contribute to their standard of lifestyle. Social workers will come in, and they'll say 'yes, we know of this person, we will try and find him some accommodation or a hostel or wherever', but there's not a lot more they're going to do... there doesn't seem to be the facilities or the back up for these people. But they will just continue to meander and keep going back out there into the so called care in the community, but they're not getting anything. They're not giving anything to the community as such but they're not getting anything back, and they're just literally floating around and achieving nothing... Unfortunately, sometimes, there isn't a great deal that we can do. We've become a jack of all trades and master of none as a police service and that may not be right, but the fact is there isn't anybody else. If nobody else can deal with it, if nobody else wants them, we get them. The buck stops here, but then we can only do so much. (P - 4)

Another custody sergeant nicely summarises what seemed to be the general attitude of the majority of respondents in that they saw the failure of the implementation of community care policies largely due to little support and rejection from the community in general:

I'm very critical of the community in general, you know, these people are actually thrown out there, and you know, go and look after yourself and they can't, well I feel as though they need some assistance. (P - 6)

## **Cry for Help**

One of the impressions that was also apparent amongst professionals who dealt with learning disabled offenders when they first entered the criminal justice system was that a common reason as to why they were there was because their offending behaviour could be explained as a cry for help. This impression was apparent amongst all police officers and appropriate adults, and is no surprise when it is considered that it is these people who initially see the detainees and listen to their stories as they unfold in police interview.

Basically, what I've found is when I've gone to see some of these people, it's not so much that they've committed an offence, as a cry for help and attention. They are in a flat by themselves, their families don't want to know them through various reasons, but you know yourself, a family can only take so much, and they've got to say 'I don't want to know anymore'. For their own sanity. And a lot of these people need, need to be together in care. I found most of the offenders that I've been to see are just crying for help. They need somebody to take notice of them. The majority of them are very lonely, they're in an environment that they're just not used to. (A - 4)

## **Police Not Social Workers**

This shows that these professionals view see these people as being within the criminal justice system because of lack of support within the community setting, and that criminal behaviour is often committed directly because of this lack of support. That the police have to deal with these people is also criticised by the same appropriate adult who praises the police for the way that they often sensitively deal with them, but that they are not social workers and should not be called upon to fulfil this role:



Some times I don't think there's that much of a difference between criminal and victim, especially when the person you're dealing with is so vulnerable. Some of the coppers recognise this, there's quite a few that recognise it, but they're in a position when what can they do about it? They're there to do their job at the end of the day and they're not social workers. And they're quite annoyed that the social system is breaking down and this is happening, because quite a few of the coppers really genuinely want to try and help them. You get the impression that they'd like to do more but it's just not their job and they haven't got time. I've found that quite a few times. (A - 4)

### **Discrimination**

One of the particular mechanisms that was seen to encourage people with learning disabilities into offending behaviour was they were believed to generally be unaccepted by the community and often actively discriminated against:

Obviously, we get people who are targeted still that live in the community who get bullied and things happen to them... Anybody that's vulnerable will be picked on. (A - 1)

Perhaps this rejection of people with learning disabilities may be explained in terms of a rejection of care in the community policy. A policy that is often held in suspicion by the public in that it brings them into contact with people who they believe to be potentially dangerous.

... in essence care in the community was accepted by everybody, but, you know, as long as they don't build the community resource next door to me then that's fine. I think certainly the community care experience by society has swung the



pendulum back in the other direction where people are much happier if people... were actually locked away in institutions out in the middle of nowhere 'where they couldn't do any harm to us'. (H - 2)

## **6.6 Challenging and criminal behaviour**

### **Frustration**

When discussing instances of challenging behaviour that may be displayed by people with learning disabilities, the theme of frustration arose as an explanation towards the cause of such behaviour.

... you and I can probably talk our way round problems and we don't get frustrated because we can communicate, so if someone seems to be oppressing us or we're cross with somebody, we'll talk to them and be able to articulate our thoughts and views, but I think if you can't do that, it breeds frustration and frustration leads to violence. (J - 5)

Similarly, while discussing the sentencing of people with learning disabilities, another judge also discussed frustration as a possible cause of offending behaviour:

... with mental handicap, if a mental handicap is contributory to the crime, I mean often it's not, but, you don't, I mean why should mental handicap be contributory to the crime? Erm, does mental handicap make you hit people? It might do I suppose because of frustration, could do. But alright, if it, if it does contribute to the crime, and you can treat it, then I'm very much in favour of doing that... a

person who is, er, mentally handicapped may be more likely to be angry because of their frustrations. (J - 4)

### **Predisposition**

A theme that was not prevalent amongst the majority of respondents was that a learning disability somehow predisposes people towards offending behaviour. Although this attitude was rare, it is worth mentioning here to reinforce Reichard's (1980) observation that such traditional misconceptions about the nature of learning disabilities may still be held by people.

A lot of people might say that criminality has got associated problems of behavioural problems and mental problems for them to do the thing in the first place. It's not just greed, corruption and down right naughtiness. (P - 4)

### **Leniency & Tolerance**

Explaining offending behaviour as a function of a learning disability may have the effect of offenders with such disabilities being partially forgiven for their transgressions. These people may be considered to be not responsible for their actions and so an attitude of tolerance and a lenient approach was advocated by some:

We do have a tendency to positively discriminate I think in relation to people with disability, be it because sometimes we find it difficult to deal with. The law has to take it's course, but equally, on occasions we should also give them the benefit of the doubt. Sometimes we get people in who's disability or whatever individual circumstances lead them to display behaviours which you'd class as being anti-social, but we should make allowances for this and we should understand it. If

the *mens rea* is not there, then they should not be dealt with within the criminal system because they're not criminally liable. They will act in a certain way, but they don't understand what they've done is wrong or right, or they possibly don't even remember that they've done what they've done. (P - 4)

## Reprimand

However, this attitude of tolerance was not shared by all as some respondents believed that by ignoring such transgressions, we are not really helping the person who offends to learn from their mistakes. In essence, there was an attitude that offenders who have a learning disability should be treated the same as other offenders and receive appropriate reprimands:

Some people think that we should make allowances but you can argue that its, if they don't know what's broken, how are they supposed to mend it? They need to be told what they've done is inappropriate and often they're not told directly that it's wrong. I think also historically people sort of thought that it was too much trouble, you know, there's probably not much chance of getting a conviction here so we won't pursue the matter. (A - 7)

They make that fatal mistake of letting people push the boundaries because of their learning disability, and then when they do step over the mark, wham. And it can be quite difficult. (A - 1)

Also,

... if you judge something to be with intent, then you should judge that within the law. In the same way that if I did it, nobody would think twice about doing me.



We are all responsible until it's found that we are not and I think sometimes we let people off too soon, and we do it because, 'ah, they're handicapped', they suddenly use that word, 'handicapped'. Often it's just used to provoke sympathy in us. People want them to use their disabilities to try and get them away, and off things, or reduce something, whether it's, well, look at 'can we get free entrance?, can we get free this and that because we've got mental handicap?' type of thing. Why should we be different? Why should it be any different? (A - 3)

As is demonstrated by the above quote, at the core of this issue was the concept of *mens rea*, i.e. whether there was any criminal intent on the part of a person with a learning disability when they commit offending behaviour. The presence of intent behind criminal behaviour was of paramount importance for the majority of respondents when considering how criminal and challenging behaviour should be dealt with:

... plainly there are people who commit offences or commit perhaps, what we call the *actus rae*, the facts of the offence, who perhaps have very severe mental health problems of whatever type that might provide them a defence simply because they couldn't form the mental intent to commit the crime, and I think they do need to be diverted from the criminal justice system. (J - 5)

I should say that we should punish individuals according to the levels of testing anybody's *mens rea*, that if they know something to be wrong, then within the parameters of the just system they should be made to account for their actions. (P - 2)

I strongly believe that, if I have an individual, if they have a disability, whatever it is, in terms of the fact that he knows what he's doing is right or wrong, the *mens rea* is there and he's committed the crime. Then why would you take into account

that person's disability?... The law has to take its course, but equally, on occasions we should also give them the benefit of the doubt. Sometimes we get people in whose disability or whatever individual circumstances lead them to display behaviours which you'd class as being anti-social, but we should make allowances for this and we should understand it. If the *mens rea* is not there, then they should not be dealt with within the criminal system because they're not criminally liable. (P - 4)

## Chapter 7

### *Results from interviews:*

#### *How professionals perceive people with learning disabilities within the criminal justice system*

The second main grouping of issues discussed during interviewing criminal justice professionals was concerned with the treatment that people with learning disabilities received when they enter the criminal justice system and how they fare under the process of law. These issues were organised into three areas: First, attitudes towards the inclusion of people with learning disabilities in the criminal justice system (including attitudes towards normalisation policy and its application to the criminal justice system; the accommodation of people with learning disabilities into 'normal' justice processes and different treatments given to people within criminal justice because of a learning disability). Second, attitudes towards the practical aspects of inclusion of suspects and offenders with learning disabilities within the 'normal' process of law (including the efficacy of legislation designed to assist vulnerable people within the criminal justice process, and witness issues when people with learning disabilities appear at court.) The final area of discussion looks at what should happen at the end of the criminal justice



process to people who have a learning disability (including issues of diversion of mentally disordered offenders into health care provision and how this may affect a person's rights, and also issues of disposal at the end of the criminal justice process).

## **7.1 Normalisation**

### **Care in the Community**

All respondents were asked during the interviews about their understanding of the term normalisation and about how they perceived this philosophy (and accompanying policies) affects the criminal justice process for people with learning disabilities. Responses to this question revealed that many interviewees directly linked normalisation with care in the community policy, for example, when asked what they understood by normalisation, the following magistrates replied:

It really is the closing of the huge mental health hospitals, bringing people back into the community and supporting them in the community. (M - 1)

That people should so far as possible live in the community, so they should live with their parents or in institutions which have recently opened so that they can actually perform as many of the ordinary everyday tasks as they can. (M - 7)

Some respondents saw this policy as a good thing with positive benefits:

... it means helping people to achieve their potential and be integrated into mainstream rather than having people away in institutions or in sheltered housing

or in other programs which seemed to be the case years ago, so I would see it as integration into main culture or society. (M - 4)

However, when the end result of normalisation policy was discussed (i.e. community care policy), it was more usual that respondents regarded it as being problematic. On a practical level for example, one magistrate saw community care policy as fundamentally flawed in that it was primarily "... a way of saving money." (M - 1) Care in the community policies were also seen to fail because such policies were not usually accompanied by adequate levels of support for people placed in the community:

I feel that sometimes the care in the community is just the end of the line where some people are placed because no one else can help them any further, and unfortunately they tend to come more to our notice because sometimes their behaviour is not appropriate. (P - 5)

Likewise, community care policy can often face active hostility from the wider community:

... in essence care in the community was accepted by everybody, but, you know, 'as long as they don't build the community resource next door to me then that's fine.' I think certainly the community care experience by society has swung the pendulum back in the other direction where people are much happier if people... were actually locked away in institutions out in the middle of nowhere 'where they couldn't do any harm to us'. (H - 2)

The above quotes illustrate how respondents linked community care policies with normalisation. To them community care is the direct result of normalisation and so from this perspective one cannot be considered without reference to the other. Although community care was often seen to fail people with learning disabilities because of factors such as inadequate support and a rejection and/or fear from other members of the community, there did seem to be a general recognition that normalisation had brought about tangible positive benefits to people with learning disabilities which out-weigh any negative consequences:

... the treatment [that people with learning disabilities receive from 'community care'] is different from the sort of treatment that they used to have in the old institutions in that they're in much smaller units and so the way in which they can be introduced to, or the way in which they can be helped into coping with everyday tasks..., it's much more flexible..., the new arrangements have worked better than the old arrangements and certainly the amount of help and care which they've been given. (M - 7)

## **Vulnerability**

Once respondents had indicated what they thought normalisation was, the interviews involved enquiring about how applicable respondents believed the philosophy of normalisation was when considering whether people with learning disabilities should be treated differently within the criminal justice system or the same as other people without such vulnerabilities.

Several respondents indicated that they thought normalisation was not applicable to the criminal justice system. For example, the following quote by a magistrate indicates



that she thought a person with a learning disability would be too vulnerable to be treated the same as 'normal' defendants:

I think they have to be treated as vulnerable and therefore you can't, they can't be meted out quite the same level of punishment as their more intelligent compatriots, or they shouldn't be. And one should try really to help them rather more than you would, it's not that you shouldn't help the rest but they should be held to account shall we say rather more than the people with learning disabilities. They do have an excuse if you like, part of the excuse is perhaps if they'd have had more support in the community, they wouldn't be offending. Maybe there wouldn't be that problem if there were people taking a little bit more care of them if you like. (M - 1)

In this way, the presence of a learning disability would be seen as a mitigating factor in explaining why such a person has offended, and this mitigation is also seen as more pertinent when one considers the accompanying low-levels of support that people with learning disabilities receive from the community. Another magistrate offered a slightly different explanation as to why she did not think normalisation philosophy should necessarily be applicable to the criminal justice system – here the reason seemed to be because criminal justice is such an 'abnormal' part of society which people only rarely come into contact with:

I think for most people on the street, a lot of people on the street don't have any inkling of what the courts do because they've never been to a police station, they've never been asked for evidence, been a witness or got anywhere near the courts so I'm not sure. I suppose the judicial system is part of normal society but most people don't encounter it so I don't know if we should make it more

accessible for someone with learning disabilities unless it's on a need to know basis so that if there's a possibility of them being a witness or making a complaint about something, the they should know what to do and that applies to everybody, so I don't really know. (M - 4)

Another magistrate was quite clear in that she thought that people with learning disabilities should be treated differently, precisely because their disabilities may make them vulnerable within the criminal justice process:

Well I suppose you've got to go right back to the basics and see whether they understand and are as capable as anybody else. If you can normalise them there then you can treat them the same, but if you can't then I think there's got to be some sort of positive discrimination. (M - 3)

## **Mens Rea**

In opposition to this attitude, several respondents thought that normalisation could and should be applied to criminal justice, and that offenders with learning disabilities should be treated the same as other defendants. One police officer said that he thought the *Mens Rea* of an act should be the deciding factor in this – if a person had intended to commit a criminal act then that intent should dictate that a person with learning disabilities should be treated the same as any one else:

I strongly believe that, if I have an individual, if they have a disability, whatever it is, in terms of the fact that he knows what he's doing is right or wrong, the *mens rea* is there and he's committed the crime, then why would you take into account

that person's disability? Then it's only right and fair that they are dealt with appropriately within the criminal justice system. (P - 4)

This officer explained this statement by pointing out that if criminal liability does not accompany an act, then that person should not be dealt with in the criminal justice sphere:

The law has to take its course, but equally, on occasions we should also give them the benefit of the doubt. Sometimes we get people in whose disability or whatever individual circumstances lead them to display behaviours which you'd class as being anti-social, but we should make allowances for this and we should understand it. If the *mens rea* is not there, then they should not be dealt with within the criminal system because they're not criminally liable... Immediately you see that you're not going to be able to deal with them along the lines of criminality, let's have them out of the custody suite, let's have them out of that system as soon as possible. (P - 4)

Another custody sergeant also thought that if a person was sent to court, this process was appropriate and there seemed to be an assumption that if a person was significantly vulnerable, then they would have been diverted away from the criminal justice process:

You've got this trial, this correct trial... I don't know that there should be any difference within a court. I think that they should actually see that they've done wrong. I don't know that it should be different for them as it is for anybody else. You should be flexible when you're investigating it but once you've decided that it's going to court it should be as normal as possible. As regards witnesses, I think it's slightly different as they're not accused of anything. I think it should be as normal, they should see that it's as normal and that, they're accused of this, that



and the other, and that's how other people are dealt with. It should be quite normal and proceed in the same direction as anybody else. (P - 6)

### **Educative function of criminal justice**

Another reason why several respondents thought that it was important to apply normalisation principals to criminal justice was because by diverting them away from this, such people may not learn the consequences of their actions, and also that concerned professionals may not be able to keep track of a person's offending behaviour if it is not recorded as such:

... one of the reasons people need to stay in the system is because people [with learning disabilities] aren't necessarily not responsible for their actions. And I think that's a dangerous road to go down, to make these, there are assumptions made that because someone has a [learning disability], that crimes are always committed within the context of that and that's not always the case... If people aren't actually charged with the offence and it's not recorded anywhere that, such as I could get access to on criminal record for example, then we cannot see the pattern, we can't see the escalation. (H - 1)

### **Fairness**

One police officer who seemed to advocate the application of normalisation philosophy to the criminal justice system believed that there was a possible danger in being too lenient with an offender because of a disability:

I do believe that you should treat people fairly. But I do think that if they are guilty of something, they ought to have the same sort of punishment as anybody

else. I don't think you can say that because a person, unless they're seriously mentally subnormal, you can't make one rule for one and one rule for another, because, believe me, some of the criminals we get will deliberately make out they are mentally retarded in one way, shape or form to get out of being prosecuted, and they are wise enough to do it. So I don't think you should have one stand for one and one stand for another, but I do believe that if you have a person that has a mental problem, they ought to be treated fairly. They ought to have the opportunity to have an appropriate adult out, and/or a solicitor... and that is something that the custody officer should be able to pick up on and decide themselves. But nobody comes in with a badge on saying 'I'm mentally retarded.' It would make life so much easier for us if they did but they don't, so you have to use your own discretion on who you think is and who you think isn't retarded. But no, I do believe everything ought to be fair, but sadly the systems aren't fair. (P - 3)

This call for equal treatment (albeit with a recognition and adaptation to recognised vulnerability) was reiterated by one of the appropriate adults who also saw the need for the criminal justice system to make offenders with learning disabilities aware of the consequences of their actions. Again, it was emphasised that it is important to determine if there was an actual criminal intent when the offence was committed before the criminal justice process progresses:

I think that perhaps to a certain extent they should be treated the same as everybody else, but everyone in the criminal justice system should be very aware of their vulnerabilities and that there may have been reasons why they have offended because they've got appreciation of what they've done was inappropriate, and when looking at aspects of crime, you know, to prove things in court then you have to be shown signs that there was intent, you know, often there

wasn't any intent to commit the crime, it's just that they didn't realise that their actions were inappropriate... I think it should be more flexible towards them but I think there's an argument on the other side, if they're treated differently, it might be perceived that they're treated too lightly and some people with especially behaviour problems soon learn that if they can get away with it once they can get away with it again and they soon acquire behaviour where they know how to use the system basically. (A - 7)

### **Impeding justice**

One issue that emerged during interviews with appropriate adults was that the philosophy of normalisation may actually impede the justice process. This was because some appropriate adults explained that 'normalisation' may work in the opposite way by encouraging people not to seek out the help that they may need possibly because of the stigma that they may face from being different.

I've talked to a group of people with disabilities about this, about the thing about special help and how they saw the special help and why an appropriate adult was there for them; because there is a conflict in this because you have to admit that you've got a handicap. Now the whole thing is normality and not admitting you've got a handicap, so there's a major conflict. (A - 2)

And another appropriate adult also said that

We get that quite a bit when the police ring and say 'well he doesn't want an appropriate adult because he doesn't see why he needs one'. (A - 6)



## **7.2 Accommodation and different treatment of people within the criminal justice system**

Having questioned respondents about what their understanding of, and attitudes towards normalisation were, it was then interesting to try and gain an insight into the methods that professionals used to adapt criminal justice procedures to accommodate vulnerabilities of people with learning disabilities, and whether or not any different treatment was necessary.

### **Fairness and justice**

As may be expected, the judiciary and magistracy were all quite clear in the guiding principals of justice and fairness which they believed informed any different treatment afforded to anyone with a vulnerability:

... at all stages you're going to have to hold the scales so that you make sure there is no prejudice to one party or another. But at the same time, trying to ensure that someone that's vulnerable, isn't exploited, whether by the police, whether by advocates, or whether by the court itself I suppose. (J - 5)

This approach had the effect of making the majority of judges and magistrates willing to adapt court procedures in order to accommodate a person's vulnerabilities, as long as justice was done and seen to be done:

I would like to think that the court setting would adapt as much as possible in term of it's language and where people sit and what people wear and how people are addressed according to the individual needs of the person who is speaking at anyone time, whether it be a defendant or a witness... as long as justice is seen to

be done and people aren't advantaged by these things, you know, it's all very level and even. (M - 4)

However, this willingness to accommodate people with learning disabilities into the normal court procedures was once again dependant upon the vulnerabilities actually being recognised, especially as there was a perception held by at least one member of the judiciary that perhaps people with learning disabilities would be more likely than people with other vulnerabilities (i.e. mental illness) to be carried along with court processes and not to speak out when they did not understand something for example:

... trying to ensure that someone that's vulnerable, isn't exploited, whether by the police, whether by advocates, or whether by the court itself I suppose. And that isn't easy. It's not easy. Dealing with anybody I think with mental health difficulties isn't easy. But it's easier dealing with those I think who have got treatable mental health problems, than those who are simply vulnerable because they do not have the capacity perhaps to stand up for themselves in certain situations. (J - 5)

Compared to the judiciary and the magistracy, the over-riding approach that the police take on the surface also seems to be guided by ideals of fairness and justice, although, as is perhaps demonstrated by the following quote, this sense of fairness is also directed primarily towards victims of crime rather than people accused of crime:

We work on the side of the victim. The police tends to be victim orientated with an attitude often of 'lets get the guy at all costs', where the law allows us to do whatever we can do. (P - 1)

This quote may seem quite harsh, but as will be shown below when discussing the actual methods used by professionals to accommodate vulnerable people into the justice system, this custody sergeant had an expectation that it was her job to look after the concerns of the victim, while others should be looking out for the welfare of the vulnerable accused.

### **Special provisions**

When questioned about the methods professionals employed when dealing with people with a learning disability in the criminal justice process, it was clear that the majority of respondents were eager to be aware of any vulnerabilities that people may face and to try and accommodate them into the justice process where ever possible. In courts, there are of course special procedures that have been made available which have come about largely because of the recognition of the difficulties that child witnesses have faced when giving evidence (most notably in cases of abuse). These special procedures include measures such as the removal of wigs and giving evidence behind a screen or via a CCTV link. The majority of judges (and those magistrates who worked in child courts) had very little critique of these measures and were willing to employ them as and when necessary, and were also willing to extend these measures to anyone who was vulnerable, whether they were a witness for the prosecution or whether they were the defendant.

I don't see a problem in making provisions as long as you cross the first hurdle in a proper way, and that is are they at a disadvantage? You make special provisions for children because otherwise they would be at a disadvantage because they would find the court set-up so alien to their previous experience in life that you are careful. If somebody with learning disabilities is at a genuine disadvantage, then you should do something about it. (J - 3)



This same judge was also aware that these procedures should not be there to differentiate between categories of witnesses and/or defendants – they are there for the function of criminal justice and special measures should only be applied when necessary:

I'm anxious not to give the impression that one must treat them with kid gloves and all others should be treated robustly, you know, you should treat all witnesses with consideration, even witnesses who have done it before. Witnesses like policemen, witnesses like medical experts. Treat them with consideration, you know, if they are cocky and rude, well then you tell them 'don't be so rude', but, by and large, don't put everybody in a different category, regard them all as doing something which is difficult, be sensitive. (J - 3)

However, concern was raised by several respondents about these measures, and indeed for one judge, the vulnerabilities faced by child witnesses and adults with a learning disability are of a different nature:

The problem with children is being over-awed and frightened, but with learning disability people, the problem is communication, and I think communication is not so much the words that can be transmitted by television, but the expression on the face. (J - 4)

I think children tend to be frightened of the defendant, that's what's the problem is, the step-father, the wicked step-father is there and that just freezes them up. The idea of the television is to, is that they don't see the wicked step-father. I don't think children are often over-awed by the wearing of wigs and things like

that, not that I'm an advocate of wearing wigs, but... children I think, broadly speaking, the video thing is a good idea for children, but you can take it too far.  
(J - 6)

Others saw there being particular problems with the CCTV link:

I think that there's a curious quirk of the television watching public that we are all now members of, that we don't associate what we see on the screen with real life, I think. There's a sort of alienation. (J - 1)

I'm slightly inclined to think still that [defendants] ought to [give evidence] in open court in the presence of a jury or a bench of magistrates or whoever's trying, simply because it's much more difficult if they're doing it over a video link or a video recording, it's much more difficult really to judge their body language if you're not seeing them in the flesh. Video is all very well but you can't, you don't actually quite get the feel of the witness in the same way... when they give evidence in open court, it's a' it's difficult balance to strike... I think that, even if a witness is relatively vulnerable, they ought to give evidence in open court, there's probably a case for their being provisions in extreme cases on an application being made to the trial judge for a vulnerable witness if, you know, if there's good medical evidence or reason why they shouldn't, for them giving evidence on the video link. (J - 6)

The main problem with the application of special measures to defendants as well as witnesses was that judges and magistrates would feel uncomfortable if they were unable

to observe in person, somebody's reactions to cross-examination. Again, there was an over-riding concern that any such measures did not impede justice on any of the parties involved:

I think you've got to make sure that you're not giving too many advantages, or unjustified advantages to defendants. You mustn't make it less easy for the Crown to get a conviction or unfairly make it less easy for the Crown to get a conviction. You've got to balance it. (J - 5)

I don't have an issue with those [special procedures] as long as justice is seen to be done and people aren't advantaged by these things, you know, it's all very level and even... I can't think of any problems with that [evidence being given by CCTV] if it was done properly and appropriately and it was done in a very structured framework, that every thing had to be adhered to. I can't see a problem with that. The only problem after that might be that cross examination... It wouldn't make me feel uncomfortable. I think I would like to see somebody rather than just hear their voice and if people have more of a half way house in that they perhaps come into court but they have a friend with them or a nominated person who can help them and support them through the process, then that's absolutely fine too, I don't have an issue with that. (M - 4)

This reference to pre-court visits was brought up by several respondents when asked specifically what could be done to ease the process of a vulnerable defendant appearing in court, and this was based upon the experience of this kind of provision successfully being offered to child witnesses to make them less nervous:



... there is a scheme whereby they [children] can go and visit the court and have a look round and start to familiarise themselves with the process and with the environment that they'll be giving evidence in, and going through evidence and practising that and practising what they should do and who they should talk to. Now I think that process could be open to anybody whether you have a learning disability or not, people can come and enter the court and just have a look and watch proceedings. I would have hoped that people are being supported by professionals because they have a learning disability and that's an issue then that could happen quite easily. (M - 4)

... there are pre-court visits for children. I can't see any reason why there should not be pre-court visits for people with learning disabilities... As for defendants, it depends rather on whether they are on bail or in custody. If they are in custody it's rather tricky to have a pre-court visit... An alternative in those situations is to have the person there early and to give them the opportunity to see the court before you start. Alternatively if they are not there early, the judge can rise for ten minutes, the court will be closed so that the suspect can be brought up and shown. Nothing wrong with doing that as long as the parties know that that's happening... there could be quite simple machinery for that to be done, and no reason why it shouldn't be. (J - 3)

If a case goes to court where a defendant is seen to be vulnerable because of a learning disability, the police also did not have any objections to pre-court visits, although they saw this as the responsibility of professionals such as the defence solicitor:

I would have said that that was surely the role of a good professional solicitor. If they're going to court then surely that should be part of what they are doing. Whereas if somebody is vulnerable from my point of view, I take it upon myself

to show the vulnerable person these things. So why aren't the other side who are acting for them doing the same thing, and they ought to. (P - 1)

Other practical methods that were identified to possibly make it easier for a person to appear in court included basic things such as taking proceedings at a slower pace and trying to be sensitive to a person's needs and vulnerabilities, although it was also recognised that this sensitivity may possibly only come with training:

When you get into the court setting of course, it helps if you have a sensitive barrister and it helps if you have a sensitive judge. But a sensitive judge without training is not going to be as good as a sensitive judge with training. (J - 3)

## **Leniency**

Judges and magistrates were aware that the presence of a learning disability would also probably make them more lenient in terms of sentencing options:

If you have somebody, for instance if there was a young person who was up before you and it's clear that they have a learning disability then you would change, you would try and sentence appropriately, more leniently I think because you would feel that you would try and sentence to their actual learning age rather than the age that they actually are. (M - 1)

I think that courts are quite sensitive in how they deal with somebody if they are convicted when they have learning disabilities, and whereas a court might say to somebody 'you're an out and out villain, away you go,' somebody who has problems we actually do take it into account and think well perhaps the best way of dealing with this is probation or whatever. (J - 3)

Several of the police respondents were much clearer in their attitude that suspects with a learning disability should be treated differently to non-vulnerable suspects that are processed through the police station. This is perhaps of no surprise considering that the processes of criminal justice are markedly different between the courts and the police station, and indeed there is well established legislation under which the police must operate when dealing with such vulnerable suspects.

I think the way the criminal justice system is going which I approve of is that a suspect is only a particular type of witness in a legal sense. A suspect is a witness who is interviewed and dealt with under a specific set of rules and has legal protection against incriminating themselves because that's the way the law is structured. (P - 2)

Several custody officers did emphasise that they tried to treat every suspect in the same way, although if a vulnerability was identified, then it changed their routine in terms of them organising an appropriate adult to attend the police interview, and also possibly calling out a forensic medical examiner to ensure that a person was fit and well enough to be interviewed:

It doesn't change a phenomenal amount any different to what it would if it was a normal person. The only difference being is that you've got to bear in mind, if they have a disability, you've got to get an appropriate adult out and an appropriate adult will also ask for a solicitor. (P - 3)



This belief that the justice process should treat everyone the same (although be flexible to accommodate a disability) was also echoed by some of the appropriate adults who were interviewed:

I actually firmly believe that some service users do want taking through the law properly and not keep getting off, because I think they play on it too much. (A - 3)

I think it should be more flexible towards them but I think there's an argument on the other side, if they're treated differently, it might be perceived that they're treated too lightly and some people with especially behaviour problems soon learn that if they can get away with it once they can get away with it again and they soon acquire behaviour where they know how to use the system basically. (A - 7)

### **7.3 The Police & Criminal Evidence Act and Accompanying Codes of Practice**

Following the infamous Confait case (see Price & Caplan, 1977), guidance was developed to address the particular problems and vulnerabilities that people with a learning disability may face at the police station when they enter the criminal justice system, and it is in the Police & Criminal Evidence Act 1984 and the accompanying Codes of Practice (Home Office, 1997) where we are able to find the procedures which we may expect to be followed when mentally disordered and vulnerable suspects are interviewed by the police. Because this legislation directs the manner in which all vulnerable suspects are treated at the police station, it was interesting to question how the

police and appropriate adult respondents viewed the efficacy of this legislation and how both groups saw it working in practice.

Police and appropriate adult respondents were all in agreement in that they thought that PACE and its accompanying codes of practice provided necessary and (mainly) helpful guidelines for professionals when they came into contact with vulnerable suspects. Generally it was thought that PACE was easy to interpret:

I think it's quite clear. I don't know the exact wording of it but it seems to stick there at the back of the head and you know when someone's vulnerable and they come in and you think well they need some help. (P - 6)

I've used it a lot I have to say and I read it quite a lot whenever I'm bored at the police station. Whatever crime they're in for I get my book out and have a quick look through and I've found it OK. It could be confusing but you have to concentrate on the actual bit that you want at that particular time and I've found it OK. (A - 1)

### **Language & Terminology**

This is not to say that respondents were completely uncritical of PACE, however, as although the majority of responses given did indicate that they thought PACE to be largely effective, they were also critical of it on several grounds. Some found the terminology used to describe categories of vulnerable people to be problematic and a potential source of confusion, or indeed offence:

I would like to see PACE brought up to date in that sense with whatever term is felt the most appropriate. I think learning disability is more appropriate than

mental handicap or mental disability, or mental retardation certainly. It needs to be consistent and it needs to be a clear understanding of what it relates to. (P - 2)

The Codes of Practice are really awful. They're long over due for an overhaul. I think, right from the start I disapproved of the term appropriate adult in itself. I think it's an insult to an adult to be told that they've got to have an adult with them as though they were a child... I think it's dreadful but all the other terminology in it like mental disorder and mental handicap and so on, it's so outdated... A lot of people are confused about the various terms and use them, and kind of slip between them without any recognition of the distinction... There's no attempt to separate them. It seems that the person who wrote Code C doesn't really understand the distinction themselves. (A - 5)

Others reported that the language used complicated matters:

It's very wordy, as most statutes are, aren't they? Lots of 'ands' and 'ors' and then when you get to the end of the sentence you wonder what the start of the sentence was all about. (P - 1)

This complication also led to possible problems of interpretation:

You can interpret what's said in the Codes of Practice. There are those where it says 'must' and 'you will', but there are other areas where the guideline is that you 'should'. And we very much keep to the guidelines that if it should be then it must be. And we tend to emphasise that side of it, we'd rather provide more than less, if you like. But there are occasions when you're going to fall down, and if you do that then you've got to be prepared to put your head on the block. (P - 4)



Several other respondents also discussed problems that sometimes arose through the interpretation of the legislation, in that they thought PACE was open to interpretation on many points; for example, on how the safeguards identified (such as the use of an appropriate adult) were actually resourced. In this way one appropriate adult pointed out that PACE is unclear on who to actually use in the AA role, for example, a social worker, an appropriate adult from an established scheme, or a person recruited from off the street:

There's an in-built conflict in the people who are described as being appropriate adults,... when people were meeting at first and talking about PACE and the appropriate adult, the recommendation of the working party was that they had to be paid and they had to be totally apart from the police, and that was the only way in which you could guarantee the role of the appropriate adult, but that was lost because it had resource implications and so what came about was a fudge, a pure fudge. People were identified who were easy to get hold of and then the responsibility was put onto the police to say well you decide which is best. (A - 2)

I think a lot of it is down to interpretation. The thing about whether a social worker should be called first, you know, I think they go through the motions of that. They sort of, they ring social services knowing full well they're not going to come out, but they do it just because PACE says they should do that first... We're getting it now that when the police ring the social services they tell the police to contact us now. This is down to legislation again isn't it?, that the police feel that they should contact a social worker first before us, I mean we don't feel that actually PACE does say that. (A - 6)

There is a certain amount of discretion that maybe needs taking away from police officers sometimes, sometimes with good intent, police officers, custody officers,

can be soft or hard and could interpret quite easily a set of guidelines in a harsh manner or a soft manner, depending on how they saw it. And I'm sure that a slightly more appropriate framework could be written. (P - 2)

## **Training**

Amongst the police, there was also concern that 'ordinary' officers (i.e. non-custody) and some senior officers may not have practical working knowledge of the legislation and its potential for confusion:

It's just a question of whether all the officers know it, because a lot of them don't seem to actually know it. Even [names a police officer involved in the training of appropriate adults], that's one thing he says in our training: "don't expect the police to know PACE because most of them don't", so it would possibly work better if they knew it more. Custody sergeants know it because they've got to. They can't bluff it. They've got to know exactly what they can and can't do, so I think they're probably better at it. (A - 6)

A lot of senior officers were promoted to the rank of Inspector before 1985, pre PACE. So therefore, they don't know the function of a custody officer at this present time. One day, that will not be, that everybody at Superintendent level will have come through Sergeant rank during PACE, and at some time they will have worked in here, probably only for a short time, but I think it should be obligatory that people actually work as a custody officer 'cause I make more decisions in a day than the Chief Constable makes in a month... And on occasions, big decisions as well down here, whether we're going to rectify somebody or not. (P - 6)

## **Extension of Roles**

Appropriate adults were also asked if they would like to see their role developed in any way. Many said that they would like to be able to appear in court with their clients to offer support:

Yes, definitely, because quite often they don't have anybody to go to court with them... I think a lot of those people would probably appreciate somebody going to court with them because it's very intimidating in court isn't it? It's as bad as the police station in some ways. (A - 6)

However, concern was raised over this prospect, specifically because of a lack of training to adequately deal with this very different situation and environment:

No, basically I think what we are doing now is about right. I don't agree with going to court with them as we haven't got the experience. If we got the training to do it then yes, maybe, but not the way we are now. I could see an argument for us being at court, much in the same way that it works by us being at the police station. I get the impression that the police take things slower and generally take much more care with a suspect when there's an appropriate adult there. I suppose it would be the same in court, if there was somebody standing there with a defendant, then the judge or magistrate might also look at things a bit more closely if they realise that that person is vulnerable because they've got somebody else there to support them. But as long as we've got the training, but at the moment we haven't had anything like that. (A - 4)



#### **7.4 Witness issues and the role of the court intermediary**

At the time of interviewing respondents, moves were underway to establish measures which would make it easier for vulnerable witnesses to progress through the justice system when giving evidence in court. These measures are included in the Youth Justice and Criminal Evidence Act (1999) which makes provision for a 'Court Intermediary' to assist vulnerable witnesses through the justice (court) process. Although the idea of a Court Intermediary was initially aimed at helping vulnerable witnesses, the European Convention on Human Rights (translated into the Human Rights Act, 1998) has initiated debate around the fair and equal treatment of vulnerable defendants giving evidence, as well as vulnerable witnesses. When questioned about the possible role of a court intermediary, responses from judges and magistrates seemed to be tentatively welcoming of such a measure:

I think that [the introduction of a court intermediary] would be a good thing because I think we do get people who appear with an appropriate adult or somebody, an assistant if you like but not always, I mean 9 times out of 10 they don't. But if there was somebody like that, yes, that would be a good thing. (M - 3)

I'm certainly very much in favour of having somebody with the vulnerable witness as a supporter... as is the case when children give evidence, there's always somebody with them. And, I've certainly myself permitted somebody close to a witness to be physically with the witness - I mean sitting right behind him or her or certainly in sight of him or her when he or she is giving evidence, but that's to give moral support rather than to actually do anything. (J - 1)

## Unclear definition

This welcome was however qualified by concern over the exact nature of a court intermediary, for example, many felt that the role was inadequately defined at that time:

I'm not at all sure what is meant by a court intermediary. I rather suspect that the court intermediary is probably quite simply the usher at the moment who looks after child witnesses in child abuse cases and helps them to relax in front of the video camera and video screens and all the rest of it. I don't know, as I say I don't really know what's meant by the term court intermediary. (J - 6)

This concern with lack of definition of the role was shared by the majority of judges and magistrates, and especial concern was voiced over the role being confused with that of an interpreter for people with language and communication difficulties:

Well I'm not very comfortable with this provision because it's not defined. It depends what they mean by intermediary. What I fear they may mean, is... sort of interpreter,... I fear that the use of the word 'intermediary' may mean that they're considering allowing a sort of interpretation, in other words you would have the carer interpreting the questions. Now I would be very uncomfortable with that because I think you need to be able to monitor that kind of evidence... if it's that kind of intermediary then I'm not particularly happy about that I must say. Because what they say couldn't be independently checked... so I think the intermediary thing is much more relevant in relation to witnesses than it is in relation to defendants. (J - 2)

If the intermediary is to be analogous to an interpreter... it's very difficult for a jury to actually make an assessment of a witness if they never see the witness actually saying what he or she is wanting to say. And you have problems with

translation, you have anxiety sometimes that the translation is not necessarily accurate because you don't necessarily know that the interpreter is entirely neutral, so it's difficult... if an intermediary is to take the question from council or the court, and as it were translate it into comprehensible language for the witness to understand and then translate the answer back if that's necessary, I don't think that's necessarily a very helpful idea. (J - 1)

Others voiced concern over the intermediary if their role also enabled them to interfere with court processes:

Interpreters used to pose a problem because sometimes they'd come along as Mr. Fix-it. They wouldn't just translate, they would assist the witness, so there are always dangers aren't there with intermediaries that they will get in the way and obstruct the course of justice. I don't know sufficient about what the role of intermediaries would be and obviously I'll have to think about it when I knew what their role was, but if it's someone that's going to leap and say you can't answer that or you shouldn't ask that, I think that would be extremely difficult... if it's someone who can actually intervene in the court processes, I'd have thought there some dangers there. (J - 5)

### **Problematic implementation**

Concern was also raised over who was actually going to be recruited to fulfil this role:

Just look at the problems the police have had implementing PACE and finding people to act as appropriate adults - I don't know where they are going to find them from these days. There are less and less volunteers on the ground for things and of course you really need people who have got a certain knowledge and empathy of people with learning disabilities. (M - 1).



Concern was also raised regarding the training of such intermediaries:

I think it's an extremely difficult area and I think for anybody to act as an intermediary without having some really in-depth knowledge of how careful they should be, in the similar way that interpreters that we have in Nottingham are all trained. In the era before trained interpreters, you would find that the interpreter would not verbatim tell you what the person was saying. They'd change it so you would almost be in the situation where you would need an interpreter to check what the interpreter was saying was accurate. (M - 1)

I think they would have to have fairly strict guidelines about what they can do, so they wouldn't be able to answer on behalf of if the defendant or the witness hadn't already intimated that that's what they wanted to say. I haven't come across this but certainly I've come across people who interpret for other languages... and some of the objectivity can go because the... the interpreter has decided to flower it up a bit or make it a little more acceptable in a language that they would understand or alter the word order or something like that. So with our interpreters... you have to really train them that if I say something, then that's the sentence that they say and they don't change it in any way and that they don't add their own interpretation. I think training is important. (M - 4)

## **7.5 Diversion from custody**

'Diversion' schemes began to be established in the early 1990s after the Reed Report (Home Office, 1990) suggested that mentally disordered offenders should not be unnecessarily drawn into the criminal justice system and should instead be directed into health care provision. These early schemes often became known as court diversion

schemes because they were often based at Magistrates' courts (and sometimes at police stations), and they often involved input from a health service professional (usually a psychiatric nurse) screening defendants and detainees to try and establish if they had any mental health problems or learning disabilities which would make them better suited to be under health care provision. Because diversion from custody was recommended for detainees with learning disabilities, this was obviously an area of discussion which came up in the interviews with criminal justice workers, and so they were questioned about their perceptions of the operation of such schemes and also how they perceived such diversion may affect the justice process.

It was noted from the two criminal justice liaison officers (community forensic psychiatric nurses) interviewed for this research who organised and worked on such schemes, the term 'court diversion' had changed because they are no longer solely based at court and because the nature of the work that they undertake has evolved:

... as the services have grown and evolved, it's more of a liaison service than anything else. And we changed the name of the service to criminal justice liaison service, mental health in brackets, simply because... it was quite off putting for criminal justice people because they think that we are trying to get people off the hook when really they should be punished,... the other thing was that the main role of the job is liaison with the services, you know, inter-agency working is the key. The name is also misleading when you're not based at court for much of the time. (H - 1)

Another criminal justice liaison officer described why he saw himself based at the police station rather than at court:

I know a lot of the London based [diversion schemes] still function at court level rather than being proactive in going in and working with the police and with solicitors... by the time the person is at court the potentials for the breaching of PACE have already been established... I think at the end of the day, a police officer, part of their duties isn't to do a mental health assessment. They go to interview somebody, they don't have any understanding of whether the person has mental health problems or learning disabilities. How these difficulties present themselves are as different as the faces on different individuals... So I feel that if you are actually there at the initial point of detention before any interviewing and charging takes place, if we are given access to the individual then you can actually establish what's going on with the person and what their needs might be, and then discuss that within the bounds of confidentiality with the custody sergeant, then they are better informed to make their decisions as to what they are going to do. (H - 2)

### **Diversion assumed to occur automatically**

There was an awareness amongst both judges and magistrates that for defendants with quite severe and observable learning disabilities and/or mental health problems, they are very rarely involved with such cases where there is a need for someone to be diverted into health care provision once court proceedings had begun.

I think we are all trying not to waste court time and if you have people who are clearly unfit or have other needs, then it would make sense that you move them out of the judicial system as soon as possible. And I have to say I haven't come across any inappropriate people there at all, so I'm presuming that people are being diverted if need be and it's happening and by the time people get to face the



bench, that some of those wrinkles have already been ironed out and they've been moved on appropriately. (M - 4)

Indeed, for one judge, diversion happens before court procedures get underway:

It wouldn't really be diversion if it's got to court; usually it would be, what one thinks of in terms of diversion, is not starting criminal proceedings at all, finding some other solution. (J - 2)

### **Appropriateness of diversion**

The custody sergeants generally showed a reluctance in taking criminal proceedings further when they thought it to be unnecessary and seemed to have an approach of keeping people out of the criminal justice system as far as possible. Indeed, this approach of taking no further action was strengthened and their attitude seemed to hold with the ethos of the Reed Report that if a detainee was significantly 'mentally disordered', that it was not appropriate to keep such a person within the criminal justice service.

We don't want people to be going into the criminal justice system unnecessarily. (P - 1)

If it's a case where they [a suspect] are taken out of our role in the custody office and they're removed before being dealt with then it can't be a bad thing, because if they are not in a mental state to answer fairly what's being asked of them, then it shouldn't be asked at all and they ought to get medical help. And if that means that they're not going to be put through the legal system, then that is fair. That

has to be treated as fair as you can't expect somebody to go through the legal procedures if they're mentally unstable or have a mental deficiency which does not give them a full experience as such of being able to answer everything properly. (P - 3)

This attitude was also shared by magistrates who felt that their lack of expertise and knowledge of mental health issues and of learning disabilities meant that they felt unqualified to deal with such cases:

My concerns are that we are only lay magistrates. We've got no appreciation of people with mental health problems and it's like, in the family court, we need expert advice nearly all the way down the line and if the professionals say an accused person really needs to be in a mental hospital, I can't see as where we can sort of change that to be perfectly honest. It does concern me, but we are only lay magistrates. Mind you, I would have thought it would have been the same in Crown courts, I mean does a judge appreciate mental health problems? I have grave doubts. We may have more of an appreciation as they do. (M - 2)

It is also worth noting that all respondents were aware that the level of learning disability affecting people who commit an offence is likely to be borderline or mild, and also that diversion away from the justice system is only realistic for low index offences:

The only time that somebody actually is diverted distinctly out of the criminal justice system and direct to hospital, is if it's a low index offence and the police would be looking at either cautioning or refusing charge anyway. The only grounds that [local hospital with secure psychiatric and learning disability facilities] would take them was if the offending behaviour was very, very small and they didn't feel that that person was going to be a management problem to

them when they got to hospital. So people who are actually denied their day in court, so to speak, probably wouldn't have wound up going there anyway. But because there are no secure facilities, people with a high index offence tend to have to go through the court system and through the prison system until it's been officially recognised and the wheels have ground into identifying that there is a problem and making a secure bed available to them while the hospital order's being made and signed. (H - 2)

## **7.6 Diversion and rights**

There has been recent debate over the issue of whether the diversion of 'mentally disordered offenders' away from the criminal justice system and into health care provision may deny somebody their basic human rights (see for example, Carson, 1995 & McNally, 1995). After examining respondents' perceptions on the nature of diversion they were asked the question, 'Do you think a person may lose any rights if they are diverted away from the criminal justice system into health care provision?' Responses to this question were roughly divided into three categories of agree, disagree and unsure, although there are several arguments offered from respondents within each of these responses. Interestingly, judges and magistrates represented the majority of those respondents who believed that it was unlikely that a person's rights would be in jeopardy if involved in diversion; in opposition to this, police, appropriate adults, and community forensic psychiatric nurses made up the majority of those respondents who believed that rights were possibly lost; those who were unsure included all professional types.



## **Victim's rights**

The prime concern of several judges and magistrates were with the victim in relation to a person possibly losing their rights by not proceeding along the path of the criminal justice process to trial:

Well since it would be against the background of the case not going on ahead, going on against them, I mean it's not the sort of resounding acquittal you get if you're acquitted by a jury. I mean if anybody's deprived of their rights it is the victim who is deprived of their right to see that the person who has offended against them, convicted in the courts. No, I wouldn't see how it could deprive the defendant of any right. (J - 2)

Well I suppose it would the person who's had the crime committed against them. I suppose there are those who would want to have their day in court. (M - 3)

## **Confidence in justice**

Other judges and magistrates were confident that the appropriate action would be followed in terms of getting a vulnerable or mentally disordered person under the care and control of a hospital admissions order, and that this process would be done in a fair way with constant consideration of that person's rights, especially within the confines of Mental Health Act (1983) which dictates these procedures. There is however an inherent problem with this procedure in that someone who is unfit to plead cannot present a defence on the issue of their innocence for the crime of which they are accused.

I think they get treated very appropriately here, whether they end up at [local hospital with secure learning disability service] in the challenging behaviour unit

or not; they've got the safeguard of the Mental Health Act, after all, they can only be diverted away if they are sectioned and they have all the rights under the Mental Health Act which are pretty, I think they're pretty secure for the rights of the individual. (M - 1)

Well the law as it stands now is fairer than it was,... there was a time when if you were found not fit to plead you were then committed into psychiatric care, and there are horror stories of people who have found themselves effectively imprisoned but in the old asylums on the assumption that they had committed crime, but it was never proved that they had committed. The procedure now requires a jury to determine first of all whether they are fit to plead or not and also whether they committed the act that they were alleged to have committed, which is fairer, but of course there's an inherent problem because if there's somebody who is unfit to plead can't present a defence on the second issue, but I can't think of a better system. At least we are trying, the law is trying to ensure that those who are found not fit to plead are also people who have done what they are said to have done. And of course the range of disposals available to the court is now wider, I mean you are not now obliged to commit into effect into custody, people who are found unfit to plead. (J - 1)

One judge was confident that a person's interests and rights would be competently defended within the crown court system:

... it is a fact that the case has to be proven... before there's any question of them being made the subject of a Mental Health Act order,... the only real danger is of somebody being convicted of something they haven't done in their circumstances, that's to say they haven't been properly represented, and I don't think they would be in the Crown Court because one can rely upon, on the whole, prosecutors because they are still independent and not just part of the Crown Prosecution

Service and capable to be very careful themselves that somebody in those circumstances isn't convicted. And certainly they will be I would have thought, perfectly adequately defended, and it's a vicious circle because in the nature of these things, counsel for the defence can't challenge the prosecution's case because of the condition of his client in the same way that he could if his client were, fully comprehensive as it were. But, I don't think that there's more than a marginal possibility of an injustice, because of the provisions that now exist. (J - 6)

This judge was not quite as confident that this would also be the same if a case progressed through a magistrates' court:

I don't know much about Magistrates' court but I mean if they are anything like they were when I first went into them as a young barrister, thirty two years ago, anything could happen. It's the biggest lottery outside the football pools really, the Magistrates' Courts, and I wouldn't trust the Crown Prosecution Service to be responsible, and you know you get all levels of competence as far as solicitors are concerned, so if things are as they were, and I think they may not be a huge amount better, I wouldn't have any confidence in it at all. (J - 6)

One judge saw diversion as a way of helping a person when they have particular vulnerabilities which would render the justice system as an inappropriate path to follow, a way which did not infringe on a person's rights:

If somebody actually needs help, their rights are being maintained by getting the help that they need... but there aren't many people, quite regardless of disability, who want their day in court and don't get it... I think if they are diverted without their trial, that's not in anyway denying their rights. Again, it's not a black and



white question, it's a grey area. One has to remember that all human beings, whatever their states of mind are entitled to freedom of choice, so you can't put their arm up their back and say 'you will do this, you will do that'. But very often if help is what is needed, then they can do that without having their trial and I don't think that their rights are being infringed in that way. (J - 3)

### **Infringement of rights**

Rights were not seen to be infringed because it was believed that diversion would be beneficial to that person because they would then receive appropriate treatment and supervision. This attitude was shared by only two other respondents who were not either judges or magistrates – both these appropriate adults assumed that suspects were only diverted if they needed care:

... usually, I have seen them when they're down there [professionals involved in diversion] and they have been called out and they definitely have needed care. The sergeants or the police constables, they've had a word together and it is usually the case, you can actually tell if they do need help badly enough. (A - 4)

I think they might then tap into a better service or a better quality of life because a lot of the people that are coming and going through the courts, they're not accessing any of the services because the problem is they've either never been recognised or they've never been referred to the correct thing... They've never been referred or they've just missed those services or not taken them up perhaps when they could have done. (A - 1)

For the majority of police sergeants, appropriate adults and forensic community psychiatric nurses, responses from interviews indicated that these groups of professionals

held a concern for the possibility that diversion from the criminal justice process could infringe on a person's rights. For some, the concern was with the person's right to refute any allegations that were made against him/her with regard to an offence; for others it was a concern with the danger that a person would think they got away with an offence because of their disability:

There could be a back-handed assumption that one has saved somebody from the criminal justice system and there is the potential for suspicion of wrong-doing to hang over that person and just say, 'you got away with that because...', that would actually, in human terms, be a very negative thing to do to the individual concerned, for them to think that or be persuaded that they've done something criminally wrong and that they've got away with it because of how they were. If they hadn't done anything wrong it would be enormously frustrating to think that people were regarding me as somebody who had stolen from a shop and I've done nothing. That would add to my life angst and frustration and resentment quite considerably, and I wouldn't want to be diverted off into a diversion scheme on the assumption that it was best for me. I could get quite angry about that and I'm sure that a lot of learning disabled people would be aware of what was happening and being done to them. (P - 2)

There was also an awareness with the possibility that once an allegation had been made, people should have the right to challenge their accusers:

Not everyone that comes in here [custody suite] has actually done what we allege, so therefore, if they say 'no, I haven't done that' and [forensic psychiatric nurse working in suite] is saying 'well they say they haven't done that but I think he has', that's not for you to say. That person is entitled to a trial by jury or by magistrates. He's entitled to whatever anybody else is entitled to. If they come in

here and they chose to say nothing or they chose to say 'I haven't done it', then they get charged don't they. So I would say your man is also entitled to that as well. Whether you think he's done it or whether I think he's done it is another thing. I mean we might be able to prove he's done it. It maybe an assault or something where he's been seen to do what he's done, but I still think he's entitled to a trial like anybody else who is totally normal. (P - 6)

### **Adverse effects of diversion**

There was also concern raised that the diversion of people would send out the wrong message, and that it should be the criminal justice system's responsibility to learn how to cope with vulnerable people to ensure they enjoyed the same rights as other people who came into the system. The unnecessary diversion of a suspect on account of a learning disability was seen as patronising and seemed to shy away from the challenge of dealing with these people:

Sometimes I think that we can be extremely patronising to people and we can be almost superior and we know best,... and of course we've got no training of that. As police officers we're not equipped for that... Sometimes when we have people in custody, if they're not fit to be detained and not fit to be interviewed then it's taken out of my hands and the health care professionals will just come and take that person away... but if you've got a mental disability and just because your brain works a little bit slower, surely that's our fault for not assisting that person with a disability and failing to understand them, and making ourselves understood. Surely that's our fault, not theirs. We're the one with all the faculties, we're the one that should get ourselves educated and trained better as a whole system, police, judiciary, health care services, social services, get ourselves all educated up so that we can deal with these people. If they commit a crime, Ok, I'm not saying lets send this person to prison. Surely we should be saying to



them 'you can't do this' and getting that message through to them instead of going 'well they don't know any better'. (P - 1)

It was demonstrated by several respondents that there was a common concern held that by patronising people with a disability, there was the potential of explaining away any misdemeanour as a function of that disability. One of the forensic community psychiatric nurses neatly emphasised the point:

One of the reasons people need to stay in the system is because people who are mentally ill aren't necessarily not responsible for their actions and I think that's a dangerous road to go down. There are assumptions made that because someone has a learning disability, that crimes are always committed within the context of that and that's not always the case. (H - 1)

This nurse also goes on to explain that she thinks it is so important to keep people in the criminal justice system because otherwise we would not be able to adequately keep track of any potential progress they may make in terms of re-offending behaviour:

If people aren't actually charged with the offence and it's not recorded anywhere, such as I could get access to a criminal record for example, then we cannot see the pattern, we can't see the escalation. If you speak to police officers here they can paint a very different picture of someone's offending to what is actually on the criminal record. So they will tell you that they've been fetched into the cells, over and over and over again with increasingly bizarre or increasingly dangerous behaviour, criminal behaviour, but without being charged because they saying 'well it's being done because they've done it because of this', 'they've done it because of that'. (H - 1)

This nurse was aware that the police station was often used as a place of safety because there was no other appropriate location to take people. However, she also claimed that attitudes sometimes held by officers have in the past encouraged the use of the police station as a place of safety when this was not appropriate:

People are bought into here on a [section] 136 when they've actively committed an offence, you know? And in a sense that's not always a good idea. For their own learning as well, it's not always a good idea. But from my point of view, I think it's more about people making assumptions that because somebody's mentally ill or learning disabled, that the crime is because of that. I just think it's a dangerous road to go down. (H - 1)

There were several respondents from all groups of professional who were unsure over whether or not diversion could deny somebody any of their basic rights. Most of these were unsure on the issue of diversion undermines rights because they could understand the arguments from both points of view. Several responses also suggested that there was an awareness amongst all respondents that their every case was different and that individual decisions concerning diversion needed to be made according to the circumstances of the case and the particular experiences and motivations of the individual involved. Again, *mens rea* seems to be important in influencing peoples' attitudes towards the loss of rights:

[Diversion] very much depends on the person involved doesn't it, and to what degree their understanding is. I mean, if someone has an intent to do something

then that really looks as though they have some understanding of what they wished to do and would they repeat that action again? If someone is adamant that they didn't take part in doing something, then I think it would be up to them whether they would wish to go forward, but I think it's got to be an individualistic choice, depending on the degree of difficulty that person has, and also the back-up from the outside agencies as well as to how well they would be able to support that person, and whether anything would be achieved at the end of the day that would be advantageous for that person concerned. (P - 5)

## **7.7 The disposal of offenders with learning disabilities**

### **Mens rea**

Judges and magistrates were asked which factors behind an offence influenced the way they passed sentence on somebody who had been found guilty. The factors influencing sentencing decisions always involved considerations of the *mens rea* of each case as the prime element informing sentencing:

Any offence has got to be viewed in three ways: the intention, the action, and the result... a mental handicap plainly relates to the level of intention, the intensity of the intention, the level of planning and so forth, highly relevant. (J - 4)

### **Learning disability as mitigation**

As well as considering the *mens rea* of an offence, judges and magistrates also took other factors into consideration. These included: the 'quality' of the offence (how trivial was the nature of the offence?, and again, was there intent behind the act?); the susceptibility of the offender to treatment (if an offence can be explained because of a disability or mental disorder, how susceptible to treatment is that offender?); and the likelihood of



recidivism (is this person likely to re-offend?) All judges and magistrates did however seem to indicate, if not explicitly state, that if a defendant was identified as having a learning disability, this would operate in mitigation of a defence:

It obviously depends on the degree of learning disability and there must be a lot of people who end up in prison who are sort of borderline, you know, not very bright, to use a non-medical term, but people with clear learning disability... it's a pretty horrifying thought that they would go through the normal prison system... you do anything rather than send anybody with an obvious learning disability to prison. (J - 2)

Prison was seen to be an inappropriate disposal option for the same reasons that would bring about a reluctance to sentence any vulnerable person to a custodial sentence – mainly, the possibility that a person may be bullied, but also because of other dangers that may be faced by a person who is vulnerable and possibly suggestible:

There would be a risk of bullying in a prison situation, a risk that they might be coerced to do something that they don't want to do, a risk that they might be introduced to harmful substances which are readily available in prisons. (J - 5)

For a learning disability to operate in mitigation of sentence however, once again, it is the detection of such a disability that is the prime determinant:

Now if people knew that they had a learning disability, they are far more likely to get a discharge than if they don't know... People would make allowances for their level of understanding. (M - 1)

Both judges and magistrates were reluctant to pass a custodial sentence on somebody with a learning disability, but they did recognise that there was a continuous scale of level of disability and that equally it was not appropriate to ban prison outright for people with milder levels of disability:

I am talking of people who are learning disabled and not just the bottom end of normal. It's a very fine line and it's a very difficult line to draw, and the lower end of normal are equally very vulnerable in prison, but you have to draw the line somewhere. But I think somebody who is actually learning disabled should not be in prison but should be in a hospital unit. In prison they would be vulnerable to attack, to rape, bullying. (M - 1)

### **Lack of options**

Although there was a reluctance to pass custodial sentences, it was noted from judges and magistrates that they felt there was a lack of options available to them when passing sentence on somebody with a learning disability, as compared to the options available for somebody with mental health problems:

It would be better if there was an alternative. There's provision for people with mental health problems in special hospitals but there isn't really for people with learning disabilities, not unless they've got a mental health problem as well. (M - 3)

As one magistrate remarked after discussing a case where he had repeatedly dealt with a man with learning disability whom he had tried,

We are hoping he won't come my way again. I'm running out of ideas of how to deal with him to be honest. (J - 5)

Many of the police and appropriate adults stated that they thought it would be appropriate to use a facility specially designed for use with offenders who have learning disabilities. This would not involve the dangers associated with prison, but would involve making that person realise that they are being punished for their actions, with the opportunity for treatment as well:

There should be somewhere different for that type of person. How can you put somebody who has learning disabilities with someone who's a fully fledged criminal? You're going to get bullying and all sorts. I think they should know it's a prison, but it should be that type of offender's prison. And then sort of analyse them there, but then you're getting back to a mental home then aren't you? (P - 6)

I think it [prison] has its place but I think a lot more care should be taken when sentencing someone with disabilities, to find an appropriate placement for them and to have more than the 3 choices and have other options open to them rather than just release, prison or the health care service, and perhaps a compromise between the 3 of them. Providing support and perhaps behaviour modification is appropriate to prevent any further inappropriate behaviour. (A - 7)



## Chapter 8

### *Results from interviews:*

### *The criminal justice system and the role of professionals*

#### 8.1 Service Availability

Many of the local services which aim to assist and deal with vulnerable people within the criminal justice system have often evolved in a fragmentary and inconsistent way without structured guidance on how services should be organised. This is especially true for diversion from custody schemes and for appropriate adult schemes, and studies have shown that when these services are provided at a local level, they come in a variety of forms and are structured differently between areas (see for example: Blumenthal & Wessely, 1992 and Nemitz & Bean, 1994). This lack of comprehensive and consistent service provision naturally influences peoples' perceptions of the efficacy of such schemes, and so the attitudes and views of respondents outlined below are obviously affected by the locality in which respondents work, which may not necessarily be representative of the efficacy and the provision of services in other areas around the country.

## **Knowledge of Services**

Although the appropriate adult scheme in Derby was one of the first formalised schemes to be established in the country, many of the appropriate adults working in this area were frustrated by the fact that many police and other criminal justice professionals working in this area often had a limited knowledge of the appropriate adult scheme and were also sometimes ignorant about the availability of the scheme and about the role that appropriate adults fulfilled. One appropriate adult who also worked in learning disability services was aware from his work in social services that some police officers working in the area were still ignorant as to which divisions of the scheme extended to the county, despite the scheme having been in operation for several years:

... only last week I had an emergency duty team referral on a Saturday afternoon when they wanted me to find somebody to act as appropriate adult... And I said... 'but why don't you contact the appropriate adult scheme? Derbyshire County Council actually pay the funding of that', and there seemed to be a lack of awareness of the scheme. There's a lack of awareness from the custody sergeant that the scheme is even run and when I gave them the number for the appropriate adult scheme, the EDT rang the police station and the custody sergeant said that 'well yes, but that doesn't include [names the area where the police station was situated]'. (A - 3)

Another appropriate adult also commented that she felt that the police were generally unaware of the role that appropriate adults fulfilled and this ignorance may sometimes lead to suspicion between the two groups of professionals:

they [the police] were very frightened that we were out to pull them to pieces, tell them they weren't doing their job properly which they've had training for and which they know backwards... The majority of the police officers don't know what we do, or at least they had no idea when the scheme first started, but still now, a lot of them haven't got much of a clue. They sort of accept us as being there but they have no idea why we're there. Or when you say something, they look at you, they seem very intimidated by the fact that somebody is there, and they don't exactly know what we are doing. They seem to think we're out to pick fault, and we're not. (A - 4)

### **Organisation of Services**

The police respondents for this research worked in a different area to the appropriate adults who were interviewed, and although the police in the Nottingham Constabulary did have a list of appropriate adults who they used on a regular basis, this was not as formalised as Derbyshire Constabulary. The Derby scheme had a more extensive and comprehensive training package for their volunteers compared to Nottingham, and Derby had a formalised rota system providing appropriate adult cover for the whole week, while Nottingham relied on a list of volunteers, none of whom were guaranteed to be available at any specific time. This less formalised system used in Nottingham often caused problems for the custody sergeants when a vulnerable detainee was arrested as an appropriate adult was not always available.

We have got a rota in the custody office which would advise us on what people are going to come in to act as appropriate adult, but what we have found in the past is you'll ring up the person on the list for that day or whatever, and they won't be available. They'll either be working or somewhere else, then what you



have to do is go and find somebody else to fill in the gaps and you go down the list until you can get somebody to attend. (P - 3)

Similarly,

It can sometimes take hours to get an appropriate adult or other person to help, by which time, the learning disabled person has already suffered a great deal more psychological trauma than any other person would have done, and therefore my contention would be that we were possibly working towards breaching section 76 and 78 of PACE in terms of unfair and oppressive treatment towards that individual... We can sometimes wait ten, twelve hours for an appropriate adult when they could have been in and out in that time so all we've done is detain them far longer than necessary. (P - 2)

However, police officers did all state that they welcomed appropriate adults and the role they fulfilled because it enabled them to do their job properly and deal with vulnerable detainees in accordance with PACE:

At the end of the day under PACE they're not supposed to be there longer than necessary to deal with the case... You're going to call an appropriate adult out to deal with the case for you, to help you out with the case, and you've complied with what's asked of you and they've been treated fairly. With that in mind I think the appropriate adult scheme is good. It assists us tremendously, and in fairness it helps the offender. (P - 3)

Although several of the police respondents stated that it was often the case that they had to wait for an appropriate adult to attend, this wait was not limited to this professional

group as it was reported by custody officers that they often had to wait for other professionals who they called out in order to comply to PACE regulations when dealing with vulnerable suspects:

We bring together the police surgeon, the approved social worker, and we will then be in contact with the duty consultant psychiatrist. Because of their work loads, because there aren't many people on the list, it is difficult to be able to get a consultant psychiatrist and sometimes the police surgeon and the ASW here, within a period of, shall we say two hours, very rare that you'd get that. We do have to wait considerable time and keep these people in custody for considerable time, in order to achieve that particular goal, which is one area that we do really need to look at in terms of speeding that up. (P - 4)

There is a recognition amongst custody sergeants that their role is one of co-ordination of other professionals when dealing with vulnerable suspects, but because these other professionals are working in their own fields on a full time basis and that the forensic aspect to their jobs is often only a small part of their occupational routine, it is also recognised that this wait for services is often inevitable.

It's a horrendous situation... we have enormous problems with that, we know when somebody's not able to respond properly but we can't get any appropriate help. (P - 2)

In light of this, custody officers often adopt strategies to deal with these waits in order to try and comply with PACE regulations, for example, when trying to contact an

appropriate adult one officer realised that flexibility in interpreting PACE often yielded more successful results for the person in detention:

I mean, I've sat down with the list of appropriate adults and rung the first to the last number to have no response... I think it depends who you are going to approach, I mean sometimes, if you go through the day centres and not through social workers, and get someone who maybe works with that person, it's sometimes easier to get people to act as appropriate adults... but we just try and look for a flexible solution. (P - 5)

Because of these difficulties encountered by officers in contacting and co-ordinating other professionals to assist with vulnerable detainees, the solution to these problems was more comprehensive access to these professionals

... we would like to have them on a 24 hour basis, to be available to us to assess people who come in here. We would like to have the facility where ASWs, police surgeons, appropriate adults, were all available to us in the hour or two hours, but until such time that they decide to put those resources to us, we've just got to continue on the basis of what we've got. (P - 6)

The facilities available to the police vary between different police stations and between divisions within a particular constabulary, but for the officers who worked in stations where a forensic liaison nurse was based, they did remark that this made it so much easier for them to be able to comply with PACE and get the appropriate help that vulnerable detainees needed:



We do have a community psychiatric nurse 'cause I've liased with her on a number of occasions when we've had people brought into the custody suite. She's not full time but obviously she's contactable and we have a good working practice and I think that when it's appropriate, then to have that resource is very, very useful. (P - 5)

### **Limited Resources**

It was acknowledged by all respondents that different professionals and services are vital to the effective processing of vulnerable detainees through the criminal justice system (or into appropriate health care provision) so as to comply with the ideals of the Reed Report (Department of Health & Home Office, 1992) and with the statutory guidance of PACE. However, respondents also recognised that these ideals and the implementation of such policies were largely reliant upon the input of sufficient resources to enable this to happen. These resources can be internal to an organisation, for example, in terms of the natural demands of the role of custody sergeant, and also with more structural limitations on an organisation such as having sufficient staffing levels to deal with detainees when they first arrive at the police station. One officer recognised that the aims of PACE were not achievable because the issues dealt with by PACE are not high on the public's agenda of importance and so it is inevitable that the necessary resources are not provided when more urgent issues take priority:

In order to conform to the requirements of PACE we should have somebody virtually on tap. PACE says you can spend a bit of time getting these people but it isn't the idea; the ethos of PACE is to get somebody dealt with, quickly, and out. That isn't possible with vulnerable people which is both frustrating and straight forwardly wrong, but it is a resource matter, and quite honestly, it's not

something that the public seems to want to spend money on, or at least their elected representatives want to spend money. (P – DH 626)

This idea that resources in this field were limited because vulnerable suspects were not a priority amongst the public was also referred to by one appropriate adult who referred to her experience of being involved with initial moves to encourage statutory and governmental bodies to take up the issues of helping vulnerable suspects at the police station.

... the voluntary agencies don't want to get too involved with it anyway because it's got resource implications, the Home Office hides away. I mean you've seen this [the Mencap Appropriate Adult guide] haven't you which I did; I was asked by various people who said 'we need to have something', and a lot of police stations have said 'Gosh this is what we need, it's really so useful'. It was sent to the Home Office who gave it to an underling who tore it to shreds, which of course was marvellous because it showed what they really thought and what they think, which is basically that it's not a priority, just keep the lid on it. (A - 2)

The same appropriate adult also commented that even when such issues do come into the public arena, there is a battle to maintain such interest and to translate this interest into the implementation of policy to deal with such issues:

... the problem about the schemes, though in an ideal world we will want schemes everywhere, that's what everybody wants, but the fact of resources, it's not going to happen, not without a lot of fighting and a lot more shit hitting the fan before resources will be put into it. (A - 2)

When talking to the community psychiatric nurses who worked as forensic liaison officers at police station about issues of the availability of services for vulnerable offenders, the prime concern for these was what actually happened with these people. These respondents (and the officers who worked in the same locations) were confident that vulnerable suspects were more likely to be identified and so the appropriate help and support could be offered to them while they were at the police station. What was of concern however was with what happened to such people once they progressed beyond the police station:

I'm in a situation where I can identify mentally disordered and learning difficulty offenders until I'm blue in the face, the major problem I have is actually getting them the care that they need. It's because of a shortage of beds. Primary care services tend to be OK getting police surgeons, GPs, that tends not to be a problem. It's actually inpatient care that tends to be the most problematic. (H - 2)

A specific problem that was identified by both forensic liaison officers was with regards to detainees who present with multiple vulnerabilities, whether they be mental health problems, learning disabilities, and/or problems of substance abuse. This causes specific problems, not in terms of working on the ground level where they feel that initial diagnoses may be made and problems can be brought to the attention of the police and courts when they deal with these people. Problems arise when they try to secure help by placing people into health care provision – which agencies are responsible for the care of such people?



There's also an increasing number of people with a co-morbid mental health and drug misuse problems. What tends to happen is you've got the drugs services and the inpatient services almost diametrically opposed in terms of how they see their roles. They're very separate and I think that's been sort of politically motivated in terms of empire building and stuff like that. I share with someone from the drugs service and that's an example of how it can work on the very local level. We have a good working relationship. Our roles blur in terms of dual diagnosis and things like that. But it's further up that it doesn't work. It's all very well connecting agencies together at the factory floor, but unless they are connected all the way up to the top, then nothing works... We're very good at identifying and agreeing that there is a problem and they need help from both agencies, but the powers that be haven't moved it on to the next stage, and I think the same thing will apply to learning disabilities as well. (H - 2)

## **Effectiveness of Roles**

One officer remarked that the culture of the police did not proactively encourage her to comply with PACE. The effectiveness of her role with regards to the safety and care of vulnerable detainees was limited because of the staffing structure and organisation of the custody suit:

The problem with our culture in the police because we have got our own culture is that it's the 'well, why worry about it, we haven't been sued yet.'... The bottom line is, sometimes I miss visits, I do miss visits, it's impossible not to. So my visits sometimes are ten minutes late. What if they're an hour late? What if I then go to the cell, and because I've been working my butt off – my detention officer's gone off sick or has annual leave - and I'm on my own, and I have six people in custody and I'm booking four fresh prisoners in. If one of them happens to be vulnerable, do you spend any more time with them as you should? And then I go to the cells when, eventually after an hour I've got these booked in

and lodged in a cell, and I go and do my visits and one of them is hanging, or they've managed to cut their wrists on something that has been left in the cell?, it's just a disaster. (P - 1)

For this respondent, and for the other custody officers, the effectiveness of their role was compromised because of resource implications. This was not apparent with appropriate adults however who were in the main happy with the role they fulfilled and the functions they were responsible for while supporting a vulnerable suspect. One appropriate adult was confident that her role was effective because of the response that she received from the police in terms of encountering little conflict or negative response from the police themselves:

This appropriate adult scheme that we belong to, this is a real step forward. I mean there isn't one everywhere is there and what we're finding is, ourselves, I mean it's rewarding because we carry on and we would have all dropped out by now if it wasn't, wouldn't we? So yeah, that's good. And I think because it's becoming so successful and obviously they're transcribing interviews and things are going off behind the scenes that perhaps we don't know about, and the police must be happy because they do welcome us now, and I don't think we seem to be giving the police any hassle and we are still managing to do our jobs, so it's a step forward. (A - 1)

Another appropriate adult was confident that he was being successful acting in this role because he managed to make a difference to what happened to suspects while they were in detention, and he felt that he was actually helping people when others may have missed an aspect of their vulnerability:

I think initially some of them were a bit sceptical but now, I mean it's the custody sergeants who call us out and I've always been made extremely welcome at all police stations and only on sort of minor occasions encountered a bit of mild hostility from a couple of the custody sergeants, but that may have been a reaction to, earlier on a previous case I raised matters where I felt things hadn't been conducted under the rules of PACE... I've always found that if I put a rational argument to a custody sergeant why I should have a psychiatrist for example, he will always listen to me. (A - 7)

Appropriate adults were in the main happy with the response that they received from the police and confident that custody sergeants did their job effectively in often adverse conditions. This was not the case however for all other professionals involved with mentally disordered and vulnerable suspects. Notable criticism was offered towards forensic medical examiners, but this criticism was based very much on individuals and not on people fulfilling the role in general:

I've only come across two police surgeons. There was one who breezed in, and he didn't take much time at all with the suspect. I don't know why he bothered – he only spent a moment talking to the person through the cell door. But the other one I've come across was really nice and he spent a reasonable amount of time talking to the person and genuinely finding out if they were OK. With the other one I just got the impression he was rushed and he didn't really want to be there. (A - 1)

Several of the appropriate adults were also critical of police surgeons from their contact with them. This was reinforced by the co-ordinator of the scheme who believed



appropriate adults functioned to effectively check any decision that was made by a police surgeon regarding a vulnerable detainee:

The problem with police surgeons is that they are just GPs. They're not specially trained in psychiatric treatment or mental disorder or anything. It's probably only bits that they pick up throughout the course of their career and yet the police often rely on their decision as to whether or not to call an appropriate adult and whether they are fit for interview... But lots of the appropriate adults, quite often when we get the referral forms back, they'll say that 'the doctor came and saw their client but I wasn't happy so I called for the doctor again', and we do get that quite often, that they're not happy with what the doctor says in that they are fit to be interviewed. They dispute that quite a lot so appropriate adults may sometimes act as safeguards against inadequately trained police surgeons. The thing is, appropriate adults usually spend a lot more time with a suspect than either the solicitor or police surgeons do, and we get much more of an insight into somebody than they do, and I think therefore the opinions of appropriate adults on whether somebody is fit to be interviewed or not are more valid often than other professionals. (A - 6)

Another reason why appropriate adults seem to be confident that they are helping people in the way PACE intended is from feedback from the people who they actually support:

I get told quite often and people even write it on their referral forms, that the person was very grateful for them being there for the support that we give them. I think we definitely doing our job and I think that judging by the feedback that I get from both the police and from the appropriate adults about what the clients have said, I think we're doing what we should be doing well. (A - 6)

One of the health care respondents seemed to accurately summarise the attitude of all respondents towards the function and effectiveness of appropriate adults:

My experience with appropriate adults have all, certainly they have been positive in terms of the sorts of people they pick, they've very much got their heads screwed on. They're sort of sensible, rational, reasonable people who do it because they want to. Most of them have got a fairly good grasp of why they're here and what their role is, so they've been clearly briefed on this. (H - 2)

### **Extension of Roles**

When asked whether or not the appropriate adults could identify any areas in which their role could be extended to support vulnerable detainees, there was a mixed response. This research was undertaken before the Youth Justice and Criminal Evidence Act (1999) came into force which introduced provision for the 'court intermediary', and although the court intermediary was primarily intended to support vulnerable witnesses, the implementation of the European Convention on Human Rights with the Human Rights Act (1998, enforced on 2nd October, 2000) may well increase the likelihood that provisions for the court intermediary role will be extended to vulnerable defendants as well as vulnerable witnesses, especially because of Article 6 of the Convention which relates to the right to a fair trial. Some of the appropriate adults pre-empted this by suggesting that the role of the appropriate adult should be extended to the court environment to support suspects when they appear in court:

Quite often they don't have anybody to go to court with them and I think a lot of those people would probably appreciate somebody going to court with them

because it's very intimidating in court isn't it? It's as bad as the police station in some ways. (A - 6)

However, several appropriate adults also disagreed with extending their role to the court. One did not think it necessary because she did not have the necessary training to do so and also because she thought there were other professionals who could take responsibility for this:

No, I don't think so. As far as your court, I really believe that it's just a solicitor who should be there and a social worker who obviously knows the person much better than you do. No, basically I think what we are doing now is about right. I don't agree with going to court with them as we haven't got the experience or training. I could see an argument for us being at court, much in the same way that it works by us being at the police station. I get the impression that the police take things slower and generally take much more care with a suspect when there's an appropriate adult there. I suppose it would be the same in court, if there was somebody standing there with a defendant, then the judge or magistrate might also look at things a bit more closely if they realise that that person is vulnerable because they've got somebody else there to support them. (A - 4)

Another appropriate adult commented that because appropriate adults are responsible for facilitating communication, this may possibly lead to them being biased in an arena where the impartiality of evidence is vital (many members of the judiciary and magistracy also commented upon this when discussing how court interpreters often proved to be problematic). Lack of any specific training to fulfil any role at court was also cited as a reason why the appropriate adult role should not be extended to the court environment:



I'm unclear as to what exactly we would be doing if it wasn't for speaking for them, and if you're going to speak for them, you need to be qualified in some way and none of our volunteers are qualified unless they're qualified through some other professional route... I mean you could go in and hold someone's hand in a sort of way, just kind of be there for them, and that might be a role, but then if you're talking about taking someone off a rota in order to do that, then I'd be saying, but what about the next person who needs support at the police station? It's much more important that we should be there for that where we've got something active to do. (A - 5)

One area in which several appropriate adults saw a vital need in extending their role was with regards to vulnerable people who gave witness statements to the police (and indeed, the police who used this appropriate adult scheme, had in fact used the appropriate adults for this purpose on several occasions):

I think we all would like to help vulnerable people give witness statements in the absence of their own social workers or key workers. In all the cases I've been asked to do that, I've always found it to be very appropriate. I thought our role there was very appropriate really, especially as it was on a bank holiday Monday when there were no other professionals around. (A - 7)

## **8.2 The Function of the Criminal Justice System**

### **Multi-functional**

The views of respondents were similar in that there was a general realisation that the criminal justice system worked towards several aims including education and rehabilitation, punishment, retribution, and crime prevention:

Because the objective of the bench is not to just punish, it's really to, there's a whole raft of things and stopping re-offending comes into it. (M - 5)

### **Educative**

Although respondents were aware of the multi-functional role of the criminal justice system, there also seemed to be a tendency to give priority to one of these functions over the others when dealing with people who have a learning disability. Some respondents implied that the criminal justice system should function in terms of an education role which could be related to moral issues:

... just teaching people right from wrong and what they can do and what they can't do. (M - 3)

Underlying this attitude seemed to be a realisation that there was a need to be constructive when dealing with offenders with learning disabilities, and that harsher forms of punishment was not as constructive as educative approaches:

There are broader issues [to criminal justice] like the educative side of the system and people going through the system, and I think we really need to convey that to the people within the criminal justice system, so rather than us being the bleeding hearts and them wanting to push people into prison, it's actually the other way round. Well we don't want to push people into prison, but we need to tell these people that probably the best course of action is for them to go down that road to feel the experience, to have the experience of it, to be able to learn from it. (H - 1)

### **Warnings / Punitive**

Otherwise the criminal justice system was thought of in terms of providing warnings on behavioural transgressions:

... on the occasions we've had before with offenders who do have learning disabilities, it's that type of thing, that point at which somebody is going to say to them 'look, we kept telling you, you couldn't go on like this. Now is the day where you have to face what the consequences of what you've done'. (M - 5)

This opinion was shared by the following custody sergeant who believed that by giving people severe warnings, the punitive function of the criminal justice system was fulfilled, although without necessarily having to resort to more draconian measures:

I think on occasions, that would suffice, a good bollocking or a good telling off from the police. (P - 6)



This belief in following the criminal justice process though the normal route (although, not necessarily to a normal punitive conclusion) seems to have been linked to attitudes towards normalisation related to criminal justice and people with learning disabilities:

I feel that the same way about when people do petty crime or other things, but I think mostly they get let off and then you ask 'why?', and it's because social workers do try very hard, they see it as part of their job, to do that, to get the people off and whatever, but where does it start? Have you just given someone the green light to do it again? So, the thing is if somebody has pinched something from a shop and they know that they've pinched it and they know that it's wrong, then they should be dealt with and the learning disability should be secondary... People want them to use their disabilities to try and get them away, and off things, or reduce something... I just think that sympathy for people with learning disability doesn't help. Practical assistance is what people require, not sympathy.

(A - 3)

## **Crime Prevention**

For one police officer, the increased community integration of people with learning disabilities made it imperative that the police should be involved in this kind of punitive function, largely because other services were not addressing the problem of offending behaviour by people with learning disabilities, but also because of the police's wider responsibility towards crime prevention:

Well, that's what I'm talking about, care in the community, there should be more of an educative process into acceptable and non-acceptable behaviour in the same way that we launch initiatives to combat crime and to reduce it, so therefore you're putting a problem solving solution out before you get the problem, which

you have to solve then, so you should be catching it before it grows into anything. It's very difficult, you know, we don't want to have to go out and deal with these sort of people because we know that we are not really providing an answer but we have to do something. People won't tolerate that type of behaviour often. (P - 5)

Perhaps the key to this line of thinking is that the criminal justice system should intimidate people and thus prevent recidivism:

I think there's a very, very strong call from our CID at Headquarters were saying, 'well actually, we want people to feel intimidated when they come into custody so that they are on the metal and they know that this is an austere environment, we don't want to make it user friendly'... You want it to be a business sort of environment so we can get down to concentrating on the facts of what they're there for. (P - 1)

### **(Nearly) Normal Punishment**

Many respondents said that they felt the criminal justice system should treat people with learning disabilities in a normal manner, but also that the system should remain flexible and sensitive to a person's particular vulnerabilities:

I think it should be more flexible towards them but if they're treated differently, it might be perceived that they're treated too lightly, and some people, especially with behaviour problems, soon learn that if they can get away with it once they can get away with it again and they soon acquire behaviour where they know how to use the system basically. [Someone known to the respondent] had committed some minor offences and if he'd have had warnings in the earlier stages perhaps he would have stopped doing what he did. But because his social workers had the attitude of 'well, we'll just put it down to his learning disability', but the

behaviour just gets worse and worse and worse and it reaches the point where he might be arrested and the crime might be a lot more serious than very petty crimes. (A - 7)

One of the forensic liaison nurses also believed that the criminal justice system may contribute to the escalation of offending behaviour by not addressing transgressions if the offender has a learning disability. This belief was related to the experience of working with one particular offender who had learning disabilities:

the criminal justice system in it's attempts to be kind, was really not doing him any service because they kept letting him off all the time and the behaviour was becoming worse and worse, and it wasn't until he did something really quite bad that he ended up getting... I mean I went into court a couple of times to watch the proceedings just to see how he carried on in court and to see what peoples' reactions to him were, and it was very much that Group 4 would kind of stand in the dock with him which they wouldn't normally do, they wouldn't necessarily stand with him, holding him like a child, and even the stipendiary magistrate, they are normally quite detached, they don't get involved emotionally, particularly, less so than the lay magistrates, the stipendiary magistrate became kind of paternalistic. (H - 1)

There was evidence of a belief that this punitive aspect of criminal justice should ultimately aim towards providing education and preventing recidivism:

I do think though that the people within the criminal justice system such as the police, defence solicitors are the worst culprits because they see their role, they don't see the broader picture and just want to get their clients off and you know,



they sound on and on about how cruel it is that these people are in the system at all, and they don't look at the broader issues. (H - 1)

Echoing this opinion, one custody sergeant implied that this was, for him, the appropriate way of deal with people who display challenging or criminal behaviour. To take them through the normal procedure and allow them time to reflect on their actions with the possibility of further legal action being taken:

So long as you can get over to them that they've done wrong, not the fact that they are going to walk out without a charge, but the fact that they've done wrong and go through the motions with them and then make the decision afterwards. (P - 6)

### **8.3 Professional roles**

During interviews, some respondents made reference to the function of professional roles and how such roles may influence criminal justice. These comments are included here to give an indication of how the professional roles as well as how relations with, and perceptions of other professional groups, may possibly influence the treatment of people with learning disabilities within the criminal justice system.

#### **Magistrates**

Very little was mentioned by any of the respondents about the professional roles of Judges or Magistrates. The exception to this was with regards to the role that magistrates fulfil when they sit as a bench panel of three. For many of the magistrates themselves, this was important in that it meant that they were able to check each other's ideas and

perceptions about a defendant and his or her case. For many, it was important that they were guided by a common sense approach that may not be evident in other, more formally trained legal professionals:

Well magistrates are not professionals. Quite often we have been in court when we have come to a conclusion which, in common sense terms, has seemed to us to be entirely the right conclusion, but at the dismay quite often of our clerks who say that we have not followed the precepts of the law in coming to that conclusion and sometimes we've had quite fierce arguments... and this often applies to people who you have in court who you think are, how shall I put it, disadvantaged in society for one reason or another. Quite often because you think they're of low IQ, that you then actually take a very lenient course, so you find a way around the law,... to find holes in the law so that we can treat people who we think are disadvantaged in what we think is a fair and humane way, despite the fact that the law says that we shouldn't. (M - 7)

For another magistrate, it was important that they came to the criminal justice arena with their own experience because this enabled them to bring their own expertise which enhanced the justice process:

Magistrates are just like me and you and so they bring everything with them that their life experience and their own cultural issues and their own prejudices, and I think having a bench of three, you can police each other really nicely and in my experience it hasn't got ugly at all, and if you feel something has been said that could be slightly offensive or you're not sure what they mean, you have to question them and it's important that we do. It's quite a safe environment to do that in and sometimes you might need to have a chat with the court clerk just to sort things out, and if you do feel somebody's got a blind spot or is a bit

prejudiced about whatever, you may ask that person to sit out and not be involved in the decisions around that case, so it's really important that we all feel comfortable about what's going on and what's been said. There isn't much training on learning disability but it's hoped that because the bench is so mixed and made up of people from everyday life that we all bring our own skills and we can influence the bench in whatever way we can and bring our professional skills in as well. (M - 4)

The value that lay magistrates had in the panel system where they worked alongside two other magistrates was invaluable in enabling a common sense approach to justice. Alternatively, several lay magistrates did question the role of the Stipendiary Magistrate who sits alone. For them, this solitary role of judge and jury rolled into one was potentially dangerous when combined with an ever-increasing case load at court - it may decrease the likelihood of spotting a person's vulnerability in the court setting:

You've got a lot of people coming before stipendiary magistrates, not just lay magistrates and one sometimes feels that they are, well, a little inclined to rush on and not give the time that perhaps a lay magistrates might. There's a huge amount of pressure to get through the work quickly. Clearly one person can get through the work more quickly than three however well they've trained or however badly they've trained, so they're still going to get through the work more quickly, it just doesn't mean that they 're going to get through the work as well. Because there are three lay magistrates on the bench we can discuss things amongst each other in the retiring room, so even if just one person has spotted that there may be something unusual happening in the court, including that one of the witnesses may be of a low IQ, that's likely to be brought out. If you were sitting by yourself, you might not spot it and there's be nobody to tell you or tip you off. (M - 7)



The only dissenting opinion concerning the role of magistrates and justice received from a magistrates' court was offered from a judge. He indicated that he was concerned that the justice offered from a magistrates' court may be demeaned because defendants were not necessarily guaranteed the same legal safeguards that may, for example, be found in Crown Courts:

I don't know much about Magistrates' Court but I mean if they are anything like they were when I first went into them as a young barrister, thirty two years ago, anything could happen. I wouldn't, you know, it's the biggest lottery outside the football pools really, the Magistrates' Courts, and I wouldn't, I wouldn't trust the Crown Prosecution Service to be responsible, and you know you get all levels of competence as far as solicitors are concerned, so there's, if things are as they were, and I, I think they may not be a huge amount better, I wouldn't have any confidence in it at all. (J - 6)

## **Police**

The custody sergeants interviewed for this research revealed that they thought their job was stressful and demanding because of the client group they dealt with in adverse conditions:

It's not an easy job; it's hard work because you can't say 'well we had this category in' because it would make life very easy for us. You find people come in and they're horrible, they're not nice by any means – they will kick and bang and scream and shout 'I want a fag, I want a drink and I want it yesterday!' And they expect you to run down, you know, with it on a plate for them, and it's ridiculous because at the same time you've got buzzers ringing in your ear,

you've got them banging and kicking and screaming and shouting, and you're still dealing with people at the counter. You've got phones ringing. Until you've experienced it you don't realise how stressful it is. You just have to switch off to it all and say 'well, I can only do one job at a time'. (P - 3)

The same officer welcomed opportunities to have a brief chat with prisoners, especially as this was one of the main methods he used to assess if anybody needed any extra attention or if anybody had a vulnerability. The problem with this is that this extra attention and concern that custody sergeants would like to be able to give all detainees is often the first thing that has to be sacrificed when the custody suite does become busy.

There was concern amongst some custody sergeants that the complexities and demands of their role may possibly be misunderstood by senior officers. It was perceived that this may be the case with some officers because they lack the experience of working within the role:

A lot of senior officers were promoted to the rank of Inspector before 1985, pre PACE so therefore they don't know the function of a custody officer at this present time... but I think it should be obligatory that people actually work as a custody officer 'cause I make more decisions in a day than the Chief Constable makes in a month. His might be on a higher scale than mine, as to what to spend or what vehicles to buy etc., but I make more decisions in a day than he makes in a month. And on occasion, big decisions as well down here, whether we're going to rectify somebody or not. (P - 6)

The way custody officers operate is based on a common sense approach, but this may also influence how they interpret the guidelines of PACE when dealing with a vulnerable person:

We suffer greatly from lack of staff. Really, to be able to deal with each individual prisoner to the letter of the law in the PACE Act is very, very difficult. You have to use your common sense. You work within the spirit of the Act but occasionally there may be omissions or mistakes which really could be alleviated by more training, better co-ordination and also the number of staff. (P - 4)

Appropriate adults work closely with and in the same environments as the custody sergeants. Because of this, some of the appropriate adults interviewed for this research also commented on how the stressful situation of the custody suite may sometimes mean that the treatment of vulnerable detainees may not fully follow the directions of PACE:

It can be bedlam down there at times and I don't know how they remember what's going on with who, and then it must be very frustrating when they are having to wait hours for doctors, social workers, solicitors, etc. When they do get really busy down there as well, I don't think they'd flout PACE but I suppose that's when they could cut corners, with things like not visiting vulnerable suspects in their cells as often as they should. (A - 1)

Despite the stressful conditions of the job, custody officers also made it clear that they fulfilled their role to the best of their capabilities with a high level of professionalism:



The fact is, once that person comes through that door, you are responsible for their welfare until such time that they are released, you control their lives and your responsibility is such that you make sure that they go out of here in a better state than they came in. (P - 4)

Officers perceived that the increase in the number of people with learning disabilities and other vulnerabilities who they dealt with was largely the result of care in the community policies. Although several officers thought that this vulnerable population should ideally be dealt with by other agencies of care in society (for example social services, health care, etc.), they did not resent the work they did with these people:

For all their classy statements and definitions of what we should be doing as a police service these days, our first and foremost and paramount job is the protection of life and that goes from saving life and maintaining life at the other end of the scale and the maintenance of the Queen's peace if you like; they are our first and foremost priorities as far as I'm concerned. So anybody that comes through those doors, they are treated in that way. We will do whatever we can for them. Unfortunately , sometimes, there isn't a great deal that we can do, but the fact is there isn't anybody else. If nobody else can deal with it, if nobody else wants them, we get them. The buck stops here, but then we can only do so much. (P - 4)

### **Appropriate Adults**

When discussing the role of appropriate adults, one magistrate remarked that their very presence during a police interview serves to notify her that there may be a vulnerability of some sort when the defendant appears before court:

If I was sitting and I read that a defendant had an appropriate adult present during their police interview it would make me wonder why they were there. Because I work in adult courts, if there was an appropriate adult present during statements, then it would make me think why is that? Have they got some vulnerability, have they got a disability, etc. etc. and I would ask about that and what the implications are for the evidence that we're hearing. (M - 4)

The police also agreed that vulnerable suspects needed the support of an appropriate adults because their role served an important purpose that could not necessarily be fulfilled by a solicitor:

Lawyers are no better trained than we are... I should think it quite likely that a learning disabled suspect would be just as intimidated and confused and worried about the authority figure of a solicitor, even if they were supposed to be on their side, as anybody else. So yeah, I think it would be necessary for safety's sake for a person to feel that they had someone who is just there to support them as an individual. (P - 2)

Indeed, custody sergeants recognised that appropriate adults assisted the police in their role as well as providing support to vulnerable detainees:

We do need them [appropriate adults]. I don't think in any way they hinder us or do anything which is untoward. They are a help, they assist us in dealing with the person as quickly as we can, not only for our benefit but for their benefit. It's like I pointed out, they are something which I don't see how we'd change at the moment. Certainly from my experience, yes, they are very, very welcome and they help us. They are a good help and they work with us which is good. (P - 3)

The appropriate adults reported that they also felt that their experience of working alongside the police was a positive one with relationships based on mutual trust, respect and courtesy. They also welcomed the fact that the police had used them as a regular and reliable service to help deal with vulnerable detainees. However, several of the appropriate adults did comment on how they sometimes felt that their presence at the police station was not actually necessary, especially with regards to suspects who are unable to read and write. There was also a suspicion that the police may sometimes become accustomed to having the services of appropriate adults on hand and perhaps not always remember that the appropriate adult is there on a voluntary basis, primarily for the benefits of the detained person, and their role is not an extension of the police service:

I've not had any bad experiences with the police. I think they find us very useful but I do think, I mean I've had experiences where they've kept me there all day for their convenience and depending who it is I think they use us if you like. They'll let you wait 2 and a half hours for whoever. They wouldn't do that to solicitors but they'll do it to us because we're not going to get up and shout much. I think they're a bit naughty with us some times and now I'd probably be a bit more assertive now... I've had a lot of wasted time ones where it's been people who can't read or write and they haven't needed me at all and I've really felt surplus to requirements. (A - 1)

This was perhaps supported by one custody sergeant who remarked that he used appropriate adults

... I'll call an appropriate adult to sit in the interview, just as a failsafe really. (P - 1)



Many of the appropriate adults and the police officers remarked that it was right that a designated (and hopefully fully trained) appropriate adult be used to support a suspect, especially during police interview. This was because they thought that when family members or social workers were drafted into that role, the needs of the vulnerable detainee may not be fully addressed, and in some cases, the family member, carer or even social worker may actual be of detriment to the person's rights:

Parents may encourage their kids to make a guilty plea. (P - 1)

and

In several occasions we've discussed, where it's really damning for the service user, and the service user's rights are not being met at all really. They [the carers] go, 'well he does this', or 'he does that', you know what I mean? And God, that's making it worse in some cases... And some social workers say they are not just helping to communicate [when they act as appropriate adults]; they're trying also to give more background information. Not really acting as an appropriate adult, more as a social worker trying to get somebody off, if you like, than an appropriate adult, in terms of, you know, just going through the process of PACE. (A - 3)

The appropriate adults all reported that they found their work to be value to their clients as well as being rewarding for themselves. They also reported that they had built up good working relations with other professionals with whom they were involved, most especially the police. In general the appropriate adults reported that they felt competent

and able to fulfil the role and offer the support that vulnerable detainees may require, as well as being able to assist the police with communication. This was not to say that they necessarily found the role easy to fill, in fact many told of how they found certain aspects of the role very challenging, most notably, knowing when to intervene and having to deal with sometimes very distressing things:

I think one of the hardest things is to know when to intervene during an interview and when not to. That's something I find very hard. The other thing is dealing with your own emotions. You're sitting there and you're looking at them and you're trying not to imagine whether or not they've done it because that doesn't matter as regard the appropriate adult role. But I think it's just natural that you do that, and dealing with your own feelings afterwards, especially if the case that you're dealing with isn't particularly nice. (A - 6)

Difficulties in knowing when to intervene were also accompanied by appropriate adults also reporting that they sometimes found it difficult to be assertive when dealing with the police:

The hardest part of being an appropriate adult is being assertive when all the pressure is against you. All the pressure is to shut up and not say anything and you've got to make something happen which is going to inconvenience everybody and slow everything down. And make it even possibly worse for the vulnerable person as well, but you know you're going to have to do it. It is those sorts of things where you remember that a procedure hasn't been gone through, or the sort of thing where you think that even though up to that point you've allowed it to get that far, nevertheless this person isn't fit to be interviewed and you should be calling an FME again. You know, it's those sorts of things and all the pressure is,

you know the interviewing officer is trying to drive you along and the custody sergeant will be totally pissed off, it's all that sort of feeling and yet you've got to, you know, that's what I find difficult and I think that's what most people find difficult. (A - 5)

Many of the appropriate adults had had previous experience of working with people with learning disabilities, and this experience may encourage appropriate adults to perhaps confuse roles:

Every instinct and every training is to protect, now that's where I come from and that's what I've done all the way along, well twenty odd years of my working life, you're there to fight for, advocate for, but actually this is different and you actually have to fight with that, you have to control that, and you begin to feel responsible for this person; you're not. (A - 2)

This point was echoed by others who also found it sometimes difficult to draw boundaries with the people they worked with. This was perhaps most evident with one of the appropriate adults who acted in that role to support a fairly notorious defendant who had learning disabilities and who was involved in murder and sexual abuse of children. This case was exceptional in that it went on for over a year and involved the appropriate adult supporting the person for a very high number of interviews:

The awful thing is in a funny way that we became his family, this group because it was going on for such a long time and the same people were meeting and going through this. It's very strange the dynamics that actually happen. I felt very angry, and then you feel the vulnerability of the person because then you begin to see the person apart from all the ghastliness of all of it. And then he was murdered



in prison about a year or so afterwards. I'll never forget it, I was coming back, driving back and I heard it on the news. It was devastating. Devastating. Devastating. I felt that I should go to his funeral at the end, but I didn't, I kept my boundaries just. Just. I kept my boundaries but only just because I knew he had nobody, totally alienated. The reason I could deal with it or did deal with it just was that I had years of experience behind me. (A - 2)

For many it was important to keep boundaries with the person they were supporting at the police station, but some appropriate adults also thought that it was important to bear in mind how their relationships with the police affected their client's perceptions of them:

When you've had people who have been doing it for a long, long time they can get chummy with the police, because it's very easy to get chummy with the police. You get to know them and they get to know you, and the signals that you are giving out to the person is that you're on their, the polices' side. (A - 2)

#### **8.4 Training Issues**

With the exception of the appropriate adults, none of the respondents reported that they had received any general training with regards to learning disabilities, nor any specific training relating to learning disabilities and criminal justice. Any knowledge about such issues was usually obtained because respondents had had personal contact with someone with a learning disability, or because a previous career had given them such experience.

##### **Identification**

When asked about their attitudes towards training issues relating to learning disabilities and the criminal justice system, all respondents reported that they thought such issues

should be included within their own professional training, as well as within the training of other criminal justice professional groups who may possibly encounter somebody with a disability. For all respondents, such training should ideally be geared towards allowing them to do their job effectively, whilst also being able to identify a learning disability and be knowledgeable about how this may affect a person's behaviour and understanding:

... to give perhaps some general training on, if you can, recognising the likely symptoms from the bench, so that you can be pro-active in getting reports or commissioning reports if you think that they are necessary, and obviously some general training I think from a psychologist or a psychiatrist as to exactly what learning disabilities mean to those and the effect it has on those who do have learning disabilities. So at least there's some ability perhaps more to put oneself in their shoes to see it through their eyes, to understand what the problems are. (J - 5)

When asked if they would like anything to be included in training, the most common response from judges, magistrates and the police was that they would like to be shown how to identify the presence of a learning disability:

With regards to suspects with learning disabilities, I don't think there is anything that we could change in the system to make it better than what it is, apart from perhaps training people to recognise and look out for a disability, especially as it's harder now with so many people coming in on drugs. (P - 3)

And,

There must be behavioural symptoms which are quite easily recognised in people with learning disabilities, which we at the moment just don't know how to identify. And I would have thought it ought to be possible for... psychiatrists to tell us if there are, or what are symptoms of moderate or severe learning disabilities in the way a witness or defendant behaves, and that's, I think that's the most one would hope for. It would be extremely valuable... because one can easily be in court and somebody can go into the witness box and you could think there's something wrong here but not have the slightest idea what it is. (J - 6)

This recognition for the need to be trained on learning disability issues was also usually accompanied by the realisation that 'learning disabilities' was similar to 'mental illness' in that they are both widely-encompassing terms that include a variety of conditions which may affect people differently. Because of this there was a realisation that any training with regards to such issues would inevitably be limited. However, this did not mean that training should not be provided:

I think it's very difficult as I said before, to encompass all that you would come along in everyday life. I certainly think that if there was a facility then people would benefit from this. Yes, I think to introduce it into the training scheme would be a good idea because people may not necessarily have come across anyone with a learning disability before, so certainly I think it would be a good means of addressing it at the training stage. But you cannot cater for every eventuality in our job. It's different everyday. (P - 5)

### **Limited resources**

There was also a realisation by respondents that limited resources meant that it is inevitable that some issues cannot be included in general training packages. This was



especially relevant for those people whose involvement with the criminal justice system was voluntary (i.e. magistrates and appropriate adults):

Lots and lots of people want to get involved in magistrates' training but there's a limit to what you can do in magistrates' training because these people are volunteers, they don't get paid for it, they sit part time, they give their time voluntarily. (M - 5)

Likewise with appropriate adults:

I think there are things that we don't deal with sufficiently... really you can't on a voluntary service have any more than eight sessions. I don't think it's fair, it's too much to ask really... The more you add on, the more unattractive it becomes for someone who's wanting to be a volunteer. So I think we've probably hit it about right basically in terms of the amount of time, but I certainly don't feel that we've covered everything sufficiently and thoroughly... If you were going to make a career as an appropriate adult, just supposing there were such a thing, it'd be three years of training wouldn't it? But I'm not able to do that in eight two-hour sessions. (A - 5)

## **Equal Treatment**

Although respondents were generally aware of such limitations on training provision, there was also an acknowledgement that such issues should and could possibly be addressed within existing frameworks. For magistrates, this was equal treatment and 'focus on fairness', a course which they were all required to do:

I think it's more an equal treatment issue. I think in equal treatment you could bring in the awareness that's required to recognise disability. (M - 1)

Well, there are a swathe of training - focus on fairness is a thing which all magistrates have and it may drop within something like that. It needs to have it's right perspective. (M - 5)

This was echoed by one custody sergeant who was involved with the training of officers in the North of the country. For him, the crux of the matter was that existing police training deals with various disadvantages and vulnerabilities as separate entities and so the structure of training programs limits the content of issues that can be realistically dealt with. For him, the whole approach of training that encouraged topics to be dealt with as distinct themes was wrong because this approach somehow missed addressing the whole spectrum of the human condition:

Its annoying from my perspective that the police force is a narrow and literal organisation and we have to have equality in pieces: issues like race, gender and sexuality all separate. What we should be doing is human relations training. I would love to see the whole spectrum of human response being looked at, taught as part of a psychological course for police officers. We shouldn't be dealing with things in boxes of equality. We should be willing to deal with the whole spectrum of people which deals with all issues including disability. Human relations and sensitivity, use of appropriate agencies to help deal with these people, and communication training with learning disability included. Include issues like the ability to recognise disability, how to respond to an individual, how to reassure them. (P - 2)

## Chapter 9

### *Summary of Findings*

#### **Chapter 4 – Survey of Psychiatric Contact with the Criminal Justice System**

The main focus of contact for the sample of general psychiatrists in this survey was with the police; and while forensic psychiatrists have regular contact with all criminal justice agencies this was most frequently reported to be with prisons and with the probation service. Both child and learning disability psychiatrists reported frequent (if irregular) levels of contact with the police, the probation service and with courts, although it was unclear if this contact was with regards to criminal or civil cases.

James & Hamilton (1991) and Joseph (1992) suggested that diversion schemes were more appropriately the concern of local care offered by general psychiatrists as opposed to secure care offered by specialist forensic psychiatrists. However, results from this research suggest that forensic psychiatrists remain the group who are predominantly concerned with both the running and co-ordination of diversion schemes, although there was also evidence that there are some general psychiatrists who are also involved with the running and co-ordination of such schemes.



Response was roughly divided from psychiatrists who were involved with diversion as to whether or not current arrangements in their area were satisfactory. Overall, the greatest dissatisfactions were with regards to resources, most notably with bed shortages and lack of staff.

## **Chapter 5 – Attitude Survey of Criminal Justice Professionals**

No significant difference was found in the group responses from Australian professionals, compared with the current responses of professionals from the UK who also completed the attitude survey. Likewise, there was also no significant difference found between the group responses of the four groups of UK professionals who participated in the current survey.

Responses to the attitude survey indicated that criminal justice workers viewed people with learning disabilities as having characteristics which would disadvantage them in the criminal justice system, and that they may also have characteristics that possibly pre-dispose them to criminal behaviour.

There was some agreement amongst respondents that criminal professionals are ignorant about the particular needs of people with learning disabilities and so they may well be disadvantaged and vulnerable in the justice system. Alongside this however was an indication that offenders with learning disabilities should progress through the normal justice process.

There was little consensus among respondents on the role of the court and sentencing people with disabilities, although there was agreement that offenders with learning disabilities would be extremely disadvantaged and vulnerable in a prison setting.

There was general agreement that services for people with learning disabilities are inadequate, although it was thought that these services should be involved in the sentencing of offenders who have a disability. Responses also indicated that even if people with learning disabilities were supported in the criminal justice system, they were possibly still disadvantaged in spite of such assistance. Respondents also indicated that they believed that legal representation to be inadequate for people with learning disabilities.

## **Chapter 6 – Perceptions of People with Learning Disabilities**

There was confusion between the term *learning disability* and *learning difficulty*, and many respondents identified the word ‘learning’ as being a source of potential confusion. ‘Learning disability’ was thought to be influenced by ideas of political correctness and was also seen to be too broad a term that confused because it referred to a multiplicity of conditions. The usage of the term was also seen to encourage generalisation of conditions which was not helpful, and there was also concern that the terminology used was not constant in the fields of medicine and law. The term was seen to have some positive benefit in the way that it was less likely to lead to link learning disabilities with mental health issues.

The absence of 'normal' interpersonal behaviour and effective communication were commonly identified as being things that were looked for to detect the presence of a learning disability. There was also an awareness that there is strong social pressure for people with learning disabilities to appear 'normal' and that some people (especially with mild disabilities) may use sophisticated ways of hiding their condition. There was some concern that the environment of the custody suite and pressures put on the police increased the likelihood that a disability may not be detected; police did however identify tactics that they used to identify vulnerabilities. Drugs were also mentioned as causing problems in the detection of learning disabilities and mental illness. There was also an assumption (especially by judges) that by the time someone had got to court, other professionals would have identified a disability.

It was acknowledged that people with learning disabilities may be more disadvantaged in many areas of life and that people with disabilities were also likely to be vulnerable within the criminal justice system. Respondents were divided on whether they thought that people with learning disabilities shared traits common to children, although there was also a belief that it is inappropriate to treat the two groups in the same way. There was a belief amongst some respondents that people with learning disabilities could be more suggestible than other people as well as being more honest with less of an ability to lie. The criminal justice system was seen to be intimidating, although positive views were offered with regards to special provisions, procedures and support for vulnerable people. However this was also often accompanied by a belief that the process of law (as well as the reality of limited resources) does not always easily enable these to happen.



Many respondents believed community care to be generally inadequate leading to the police dealing with people who should be more appropriately cared for by other services. People with mild learning disabilities were believed to be isolated with little community support. In fact they were viewed as being actively discriminated against, and their offending behaviour was sometimes believed to be a result of this and was considered as being 'a cry for help'.

The inability to communicate was seen by some as causing frustration, in turn causing challenging behaviour. For others, there was a belief that people with learning disabilities were pre-disposed to such behaviour, and so it may be easier to sometimes not apportion blame to such behaviour and so disabilities could sometimes be seen to operate to mitigate offending behaviour. This attitude was not unanimous however as some respondents stated the importance of taking offenders with disabilities through the normal process of law.

## **Chapter 7 – How Professionals Perceive People with Learning Disabilities in the Justice System.**

The majority of respondents believed that the philosophy of normalisation was linked with care in the community. There was a shared belief amongst some that offenders with learning disabilities should not progress through the usual justice system as their vulnerabilities may be ignored. However there was also opinion that the *mens rea* or intent behind an offence should be the over-riding determinant of what course of action is taken. When respondents believed that people should progress through the normal process of law, it was reasoned that this would serve as an educative tool to show people

the error of their ways. This belief was also often accompanied by a fear that learning disability may be used as a potential excuse by others wishing to avoid the justice process. Normalisation was seen by some to possibly encourage people to hide their learning disability so as to appear 'normal', and this would prevent extra support being provided.

Fairness was a guiding principal for the majority of respondents when they were asked how the justice system should accommodate people with vulnerabilities, and this was evident with peoples' attitudes towards special provisions that aimed to acknowledge such vulnerabilities. Several respondents also said that the presence of a learning disability would also make them more lenient when dealing with an offender, although this was also often qualified by an awareness of the need for justice to be seen to be done.

The provisions outlined in the Police & Criminal Evidence Act and the accompanying Codes of Practice were widely welcomed by all respondents who acknowledged that they were needed when people with disabilities entered the criminal justice process; however, there was also concern that PACE contained confusing language with directions that were sometimes ambiguous, and there was also some concern with regards to the training received by other officers. There was disagreement amongst appropriate adults as to whether their role should be extended to support people in the later stages of the criminal justice system (e.g. when vulnerable people appeared at court), although it was acknowledged by several people that they had not received adequate training to accomplish this.

Issues of the extension of roles of appropriate adults led to discussion of the court intermediary, and many respondents said that they were uncertain with this provision

because they perceived it to be vaguely defined and it was believed that there would be future problems in implementing such provisions on a nation-wide scale.

There was an assumption amongst many respondents that diversion from the justice system occurred automatically because of the safeguards in place that enable this to happen early in the justice process. Generally, there was confidence with other peoples' professional decisions to enable diversion to occur, although there was some unease that diversion from custody may not always be the most appropriate course of action. For example, there was also some unease that diversion may possibly deny a person their right to have their case heard in open court, although this anxiety was also voiced with regards to the rights of the victim as well as those of the accused. Some respondents were concerned that some people may view diversion as being an easy option where offenders may possibly avoid normal routes of punishment. Others however were concerned that diversion shied away from the challenge of dealing with offenders with learning disabilities in the normal justice process, and also that diverting people possibly encouraged people to explain offending behaviour as a function of a person's disability. Many of the police, judges and magistrates felt frustration with the lack of options available to them when dealing with an offender who has a learning disability.

## **Chapter 8 – The Criminal Justice System and the Role of Professionals**

Concern was raised among some respondents that when services (diversion and appropriate adult schemes) for vulnerable disorders were operational, there was sometimes an ignorance of these services, especially in rural areas. Likewise, the



efficacy of existing schemes was also seen to be dependant upon the differing levels of formal organisation and amounts of resources allocated to services, as well as the relationships (personal and organisational) that services have with the agencies where they operate. Despite such obstacles professionals were confident (with exceptions) that they were effective in their role and good working relationships were reported with other professionals. Although there was a belief that support was needed for vulnerable suspects at court, attitudes also revealed an expectation of limited training and lack of funds to properly finance court intermediary support.

With the exception of appropriate adults, many respondents were concerned that they had not received adequate training to enable them to effectively deal with people with learning disabilities and the particular problems they may face in the criminal justice system. Identification of a learning disability at the early stages of the justice process was seen to be crucial in enabling appropriate support and so respondents thought that tactics to enable them to make such identifications would be extremely useful in their training. There was also a realisation that limited resources necessarily constrain training packages, but regardless of this respondents believed that such training could be included under the rubric of existing packages, for example, Judicial Studies Board training that deals with equal treatment.

All respondents showed an awareness that the criminal justice system operates to achieve several different aims, although attitudes did differ towards which role was offered primacy. For some education was the key, especially with regards to people with intellectual impairments who may be taught right from wrong. For others, the justice system also acted to provide warnings to offenders with learning disabilities and so may

also sometimes act as a deterrent. A majority of responses indicated that the people with learning disabilities should progress through the normal processes of the law wherever possible and appropriate, although it was also stressed that the system should remain flexible to peoples' personal needs and vulnerabilities.

## Chapter 10

### *Discussion*

In this final chapter I would like to draw out some of the findings of this research and refer back to issues of rights and normalisation that were first discussed in the introduction and literature review. Next, issues surrounding the services for offenders with learning disabilities will also be raised and discussed in relation to some of these research findings. Following this, methodological issues will be briefly revisited in order to assess how the research methods and methods of analysis may have had an effect on the results, before ending the chapter with some concluding remarks. Before this however, it might be of use to return to some of the original questions that were raised in the introduction to see if the findings of this research provide any answers to these.

First, it was questioned whether or not people with learning disabilities are protected by the various safeguards that are available for when they enter the criminal justice system. Evidence gained from those respondents in this research who had experience of working with such provisions (either at court or in the police station) suggests that their experience is that such systems of protection do generally protect vulnerable people and do provide the safeguards for which they were designed. Evidence



also suggests that criminal justice professionals welcome the use of such provisions for vulnerable people in whatever capacity, whether they are witnesses or defendants in court, or whether they are participants in police interviews. A concern held amongst many respondents was that they had not received (any) adequate training to give them the skills to identify any vulnerability. Because such identification is essential to enable the implementation of these special provisions, respondents confidence in their ability to do this is an obvious cause for concern, especially as respondents were anxious that vulnerable people may be 'slipping through the net' and not receiving the extra support they might need.

The question that was next posed followed the one above was regarding whether or not justice was achieved when such safeguards were adopted. It was noted that for many of the respondents, justice was guiding principle in their work, and in this study , several respondents were concerned that justice was obtained by victims of crime, as well as by those people accused of such offences. Respondents were generally in agreement that justice is achieved when such safeguards are adopted by the criminal justice system; but again, a major cause for concern amongst respondents was that they didn't perceive themselves as being able to easily identify a learning disability which could jeopardise the achieving justice.

The above question led onto another question posed which asked do offenders with learning disabilities have the right to full access to the criminal justice system? (and for example, do we deny a person their rights by diverting them out of the justice system into health care provision?) All respondents concurred with the opinion that people with a learning disability should have full and equal access to the criminal justice system.

Respondents were in agreement that if people were diverted out of the criminal justice system, this was assumed to be a correct decision made by those professionals responsible in response to a person's vulnerability. This right to access was generally not considered an extra right, but rather a basic human right. Indeed, respondents generally did not agree that extra rights would be useful for people with learning disabilities, and this attitude coincides with Stainton's argument (1994 – see below) that we should be cautious in extending rights to people just because they are seen to have a learning disability. This line of argument reasons that rights and citizenship are not delimitable concepts – people either have rights or they do not.

The final question that was posed in the introduction asked whether people with a learning disability have the right to differential treatment from the criminal justice system because of their particular vulnerabilities? (for example, should a close circuit link be used in courts to enable people with learning disabilities to give evidence?) Evidence from this research indicates that all respondents thought that vulnerable people should have access to safeguards within the justice system. This attitude was prominent because respondents reasoned that such special provisions were defined in law, and that such provisions were appropriate. Respondents did however agree that there should be no automatic use of such provisions because they thought that each case should be considered on its own individual merits as to whether a person is vulnerable or not. If people were seen to be vulnerable within the justice system, it was thought that they have the right to differential treatment, but that a person's learning disability is irrelevant to this, except as means of indicating that a person may be vulnerable.

## 10.1 Implications of Findings

- **Rights**

There was evidence from the responses given to the attitude survey that criminal justice professionals believe that people with learning disabilities would be disadvantaged in the criminal justice system. Because of this disadvantage there was also agreement that extra help and support should be given and that other special provisions should be made available to overcome any vulnerabilities. The semi-structured interviews confirmed these findings and qualified them by showing that for many respondents this willingness to adapt the judicial procedure and provide extra support is guided by the principals of fairness and justice. Although there was an acceptance of making special arrangements and providing extra support, there was also evidence to suggest that the 'normal' justice process should be followed wherever possible with adaptations when necessary, and that if people were diverted away from the criminal justice system, there was a belief held by many (although not all) that this decision was likely to be a correct and appropriate one made by the professionals (usually medical) who were involved.

There was some evidence to suggest that respondents did not agree with giving specific rights or distinct legal statuses (such as those accorded to children) to people with learning disabilities above and beyond those measures already in existence which are able to adapt the existing justice process. An example of this may be seen in the responses to the attitude survey where respondents indicated that prison *per se* should not be banned for people with learning disabilities, although they also indicated that such



offenders should be sent to a specialised prison (or part of a prison). This latter response may be explained with reference to beliefs that people with disabilities may be more likely to be victimised and bullied in a prison, but even if that is the case, it does demonstrate and reflect the belief that people with learning disabilities should experience the same consequences of their actions as other people albeit with vulnerabilities taken into consideration.

Thus there seemed to be an attitude amongst many respondents that the criminal justice system and the law were effective in dealing with a person with a learning disability and that large-scale and fundamental changes to the law or the processes of law were not necessary. This is because existing legislation (e.g. PACE) and the willingness of criminal justice professionals to accommodate people with learning disabilities into the 'normal' justice agencies meant that any disadvantages could, and hopefully would, be overcome. In this way there was no need to afford people extra rights because of the presence of learning disabilities.

Attitudes that indicate that people should not be afforded special rights because of a learning disability may be considered in light of interview data that showed several respondents to be unclear and uncertain of the meaning and definition of 'learning disability'. Even when respondents did demonstrate a fuller understanding of learning disability, they were also often very cautious of viewing this group as unified and cohesive and instead thought of people with learning disabilities as belonging to a heterogeneous and divergent group with a spectrum of abilities, behaviours and characteristics that are as varied as amongst the general population.

Perhaps this unease of some respondents to classify people into vague categories is reflected by criticisms that have been levelled at attempts to define 'learning disability'. The category of 'learning disability' been criticised by various writers who have demonstrated that the various definitions and classifications (of learning disability, mental handicap, retardation, sub-normality, etc.) have changed over time and have made such classifications in relation to inconsistent factors (see for example Ryan, 1987; Oliver, 1990; Spicker, 1990; and Stainton, 1994). Some writers have even gone so far as to argue that the various attempts to classify learning disability in history have been so inconsistent and varied and so indicate that the category is a social construct or a myth (see Bogdan & Taylor, 1982). Contemporary definitions of learning disability usually rely on an assessment of intelligence but this is problematic when considering the criticisms of IQ tests as at best, crude measures with methodological biases and at worse, ways of measuring characteristics that might not be related to intelligence. Even if IQ testing is seen as valid, Wikler (1979) argues that the difference between normal and subnormal intelligence is inevitably relativistic because there is no universal definition of 'normal' (Stainton, 1994, p. 95). Stainton goes on to suggests that it is "... dangerous to ascribe rights on the basis of some real or constructed identity as this can just as easily legitimate oppression and the denial of rights." (p. 121) Rights and citizenship are not delimitable concepts – people either have rights or they do not, and people are either citizens or they are not. Stainton thus agrees with Murphy (1984a) that we should be cautious in extending rights to people just because they are seen to have a learning disability, real or otherwise. But this is not to say that we should not be concerned with

ensuring that the rights of people with learning disabilities are enforced and not demeaned:

This however does not mean to imply that it is not useful and indeed essential to consider how rights are to be respected and secured for a particular group who, through historical and social disadvantage, negative social attitudes, or false beliefs, have not been accorded the same rights or potential to exercise their rights as other citizens. (Stainton, 1994, p. 121)

For Spicker too, people with learning disabilities need rights like everyone else, but not separate rights because they are disabled:

... there are reasons why mentally handicapped people need to have rights, both to protect them against limitations and abuses, and to offer scope for their personal development. The 'right to have rights' is central to many mechanisms by which vulnerable individuals can be protected in society. (Spicker, 1990, p. 139)

The attitudes of respondents in this research indicate that they think that the present legal system should remain flexible to the needs of vulnerable people (but without recourse to extra laws or structural change). This attitude may or may not be explicitly or overtly linked to theories of specific rights being afforded to people with disabilities, but like Spicker (1990) and Stainton (1994), respondents did indicate that they resisted tendencies towards absolute categories due to the potential dangers involved in either generalisation or in thinking in terms of 'black and white categories'. Respondents also indicated that they believed the present legal system should be flexible and accommodate people whilst



recognising their vulnerabilities. The main factor that could be seen to compromise this willingness to deal fairly with vulnerable people is the self-avowed admission that criminal justice professionals do not feel themselves to have received (any) sufficient training to deal with the particular problems that a person with a learning disability may encounter in the legal system.

In light of the attitudes of criminal justice respondents and the criticisms offered by Spicker and by Stainton, perhaps the rights of people with disabilities with regards to criminal justice may be best encapsulated in Article 6 of the European Convention on Humans Rights which makes provisions for the right to a fair trial. This argument would go against calls for a separate (or sub) legal system as is suggested by Carson (1995) which is also an attitude that was evident amongst the responses offered from the interview respondents.

- **Normalisation**

The work of Wolfensberger (1983, 1991) argued that people with learning disabilities are de-valued in our society and may be likely to behave badly as a result of this, which in turn leads to further de-valuation. If this is the case then it can perhaps be argued that people with learning disabilities may be treated badly within the criminal justice system which may in turn increase the likelihood of them receiving extra-negative treatment within the criminal justice system. This was proposed by Cockram *et al.* (1994b) as a possible explanation for the over-representation of people with learning disabilities in the Australian prison system, although they found little evidence in support of this because their study revealed that Australian criminal justice personnel did not tend to believe that

people with disabilities were more likely to offend than the general population, or that people with disabilities were likely to be attributed negative roles such as 'eternal child' or 'menace'. Responses from the present attitude study indicate that criminal justice professionals in the UK are less certain with regards to whether people with learning disabilities are more likely to offend than others. The mean group response was that respondents were neutral on this issue, although inspection of individual group responses reveals that judges thought they were more likely to offend while appropriate adults were more inclined to think the opposite. The results of Cockram *et al.* (1994) do however provide some support for the 'different treatment' hypothesis of Wolfensberger (1983, 1991) that people with disabilities are de-valued in our society. Cockram *et al.* found that Australian respondents were likely to view people with learning disabilities as having characteristics that would disadvantage them if they came into contact with the criminal justice system, and they continue that because Australian respondents

... also did not strongly believe they were more likely to offend than the general population, then it logically follows that over-representation in the prisons has something to do with how people with an intellectual disability are treated in that system. (Cockram *et al.*, 1994b, p. 20)

As stated above, UK responses were less certain with regards to whether people with disabilities were more susceptible to criminal behaviour. UK respondents did however agree that people with disabilities do have characteristics that are likely to disadvantage them in the justice system and so although there is no similar over-representation in UK prisons, criminal justice professionals and agencies must remain aware of the

disadvantages and vulnerabilities that they may face. Results from the semi-structured interviews revealed that there was wide-spread acknowledgement among respondents that people with learning disabilities were likely to be disadvantaged in the justice system, although there was also a belief evident that such disadvantages were widely acknowledged. There was also evidence that many professionals only responded this way because there were institutional mechanisms already in place (especially the provision of the appropriate adult and diversion) and their presence did reinforce respondents' opinions that they were in fact needed. Of major concern however to many of the respondents was that although they were conscious of these disadvantages, they had little knowledge and had received little or no training with regards to how these disadvantages may affect the justice process.

If we once again briefly compare the argument that there is no rational or effective pursuit in the formulation of rights to people specifically because of their learning disability (Spicker, 1990, and Stainton, 1994) with theories of normalisation, we may reconsider the argument that it is "... dangerous to ascribe rights on the basis of some real or constructed identity as this can just as easily legitimate oppression and the denial of rights." (Stainton, 1994, p. 121) If this is the case, is there a possibility that the ascription of normalisation may work in this way? Impressive evidence for this is provided from Glaser & Deane (1999) who provide strong evidence from a comparative study of two groups of offenders with learning disabilities – one in a main-stream prison and one within the secure facilities on the grounds of an institution. They concluded that the latter was better equipped to deal with this category of offenders, and were critical of the attitude of normalisation which in an extreme form may encourage normalisation to



be taken to its ultimate conclusion where prisoners with disabilities are afforded citizenship but with the responsibilities that go with this:

For offenders with an intellectual disability... Even if their differences from other offenders are recognised, they are still to be portrayed as rational actors who have failed to accept the responsibilities associated with newly bestowed citizenship. If conformity is portrayed as the trade-off for acceptance, then the community feels justified in punishing those who fail to live up to their side of the bargain. As a result, there has developed a myth of equality that stands in stark contrast to the discrimination and disadvantage this is so much a part of the experience of people with intellectual disability. (Glaser & Deane, 1999, p. 353)

Likewise, Barton argues that

Disabled people will be increasingly faced with a fundamental dilemma. That is the extent to which they are willing to take up the responsibilities of being a citizen in a world in which they are being systematically denied their basic entitlements. (Barton, 1993, p. 246)

Rockowitz (1986) and Glaser & Deane (1999) argue that there may be consequences of this: that professionals lose any discretionary power they may have had, and that normalisation may become 'an ideology of convenience'. Although they refer to the New Zealand penal system which may have implemented normalisation philosophy in a much more stringent manner, it is worth quoting Glaser & Deane at length to fully illustrate their conclusions:

The relatively minor nature of many of the offences committed by a number of the offenders [with learning disabilities]... and the inadequate responses to their ongoing maladaptive behaviour in prison suggests that the police, the courts, and contractual authorities are unable and/or unwilling to take the impact of a disability into account when dealing with offenders. It appears that the criminal justice system is doing its utmost to ensure that 'normalised' individuals are not provided with excuses or justifications for their behaviour, even to the extent of excluding the consideration of traditional mitigating factors such as poverty, childhood difficulties, psychiatric disorders, and substance abuse... [Normalisation has also] indirectly become an ideology of convenience. It has allowed the human sector to rid itself of its most difficult clients. Service providers feel less of an obligation to deal with challenging behaviours if they can assert the client is in full control or that the client has deliberately failed to take advantage of the services offered. Correctional facilities become simply an appropriate way of resolving difficult behavioural problem. (Glaser & Deane, 1999, p. 353)

#### • Services

Responses from the survey of consultant psychiatrists indicates that the majority of contact that psychiatrists have with the criminal justice system is between forensic psychiatrists and the probation service, prisons and the police. The next greatest levels of contact were reported between general psychiatrists with the police and the probation service (high levels of contact were also reported from child psychiatrists and the courts, although it is speculated that this is probably in relation to care and custody cases). The levels of reported contact that general psychiatrists had with all five criminal justice agencies had decreased since the original survey of Blumenthal & Wessely (1993) and so there was little evidence for the recommendations of James & Hamilton (1991) and Joseph (1992) that service users of diversion schemes were more appropriately suited to

the local care offered by general psychiatrists rather than to (the usually) secure care that was offered by forensic psychiatrists. However, it is important to note that this present survey and that conducted by Blumenthal & Wessely differed significantly in terms of the sample groups and sizes, and so comparisons may not be a valid reflection of real changes in diversion services. Perhaps of more concern is that roughly half of the psychiatrists who were involved with diversion reported that they was dissatisfaction with the current arrangements for diversion in their area. Reasons behind this satisfaction were in the main related to issues of funding (i.e. shortage of beds and lack of staff) and demonstrate that services for mentally disordered offenders do need adequate resources if they are to function effectively and that the goodwill and organisation of key members of staff are not adequate on their own to provide high quality services.

Although responses from the semi-structured interviews did reveal that criminal justice workers were generally satisfied with the diversion of mentally disordered offenders from the justice system, several of the police and appropriate adults did voice concern that there was a danger in a person being denied their right to 'have their day in court' and to publicly refute any allegations made against them. What was of concern amongst all respondents was that professionals working in diversion were trained primarily in relation to mental health issues and that they lacked any significant training with regards to other forms of mental disorder (especially learning disabilities and substance misuse). The nurses working in the custody suite reported that although they had little training in either of these areas they often had to deal with detainees as best they could if there was no other colleagues available to offer advice. It was often the case that these nurses referred such clients to other services which in turn could cause extra delays.



Respondents agreed that people with learning disabilities are likely to have characteristics that would make them vulnerable and disadvantaged within the criminal justice system, and there are recognised and established services (such as diversion and the appropriate adult) in the UK that are designed to help combat such disadvantages and vulnerabilities. However, the existence of these services may perhaps lead criminal justice professionals to think that the existence and operation of such services means that any disadvantages are acknowledged and taken into consideration so as to make the justice system more fair when dealing with people who are vulnerable. However, it may alternatively be the case that such services give a cloak of fairness to a system that does in fact disadvantage them. For example, responses from the attitude survey revealed that the police generally responded that the lack of legal representation was not a significant issue for people with learning disabilities. A possible explanation for this confidence may be that the police are responsible for ensuring the support of an appropriate adult for vulnerable suspects at the police station, and they may also recommend that a solicitor represents a suspect during interview. This confidence may however be diminished when we take into account the response that the police do not think that such vulnerabilities are easily identifiable. Because of this a situation may possibly arise where the police call out an appropriate adult regularly for detainees who are obviously distressed or vulnerable in some way. However, when this practice has become established is it possible that the regular use of this service may lead to complacency amongst the police that the service was being used appropriately for detainees who did actually require an appropriate adult? The answer to this question becomes uncertain when we consider

the fact that the police responded that they were not confident in their own ability to identify a person with a learning disability who may be vulnerable.

## **10.2 Methodological Reflexivity**

### **• Sample Issues**

The sample groups of respondents in the two surveys may have had a bearing upon the research result. The survey of psychiatrists consisted of all of the psychiatrists of consultant grade who appeared on the Royal College of Psychiatry's mailing list and so was not a random sample. Psychiatrists have a choice of whether they wish to appear upon this register or not and several factors may come into play with this including: personal choice, the stage a person has reached in their career, and personal interest in particular psychiatric specialisms. For these reasons the sample was also not a complete sample and so caution must be heeded before any generalisations are made about the survey's results when we remain uncertain as to the validity of the sample group. Also, the participation of psychiatrists with this study was entirely voluntary and because they were under no compulsion to respond, it may be that this was partly responsible for the low response rate. Questions must be asked such as 'Did those psychiatrists who responded to the questionnaire have a special interest in issues relating to either criminal justice and/or forensic psychiatry that would increase the likelihood that they would respond?', and because of this, 'Do the survey results fail to indicate true and accurate levels of contact that psychiatrists may actually have with the criminal justice system?' It

is difficult to establish these answers and so generalisations and conclusion must once again be made with caution.

The attitude survey of criminal justice workers was slightly different in that all groups of respondents were self-selecting in that they all volunteered to participate after being asked to consider participation from their various professional organising bodies. This was with the exception of the police who were asked to complete the surveys as part of their police duties. Similarly, all respondents who participated with the semi-structured interviews did so voluntarily after completing the attitude survey. Again, important methodological questions are raised from these sample groups: 'Does voluntary participation in this research mean that these participants have an existing interest in the subject?'; 'Will they already be knowledgeable about such issues?'; and 'Do respondents wish to appear in agreement with the researcher and so offer liberal opinions of the matters in hand?' Again, there is no way of ultimately knowing the answers to these questions. However, even if it were the case that respondents were generally stating what they think the researcher would want them to hear, responses were nevertheless given that did reveal attitudes and beliefs that went against this explanation. Even if people did want to appear to have liberal attitudes in relation to learning disabilities, respondents did still sometimes exhibit uneducated and ill-informed opinions that revealed common misunderstandings and perceptions that may not have been in accordance with liberal or politically correct ideas.

Criminal justice professionals who participated in the attitude survey and the semi-structured interviews for this research were drawn from different locations, and so worked in different parts of the country. This is an important consideration because the



structure and organisation of 'appropriate adult' and 'diversion from custody' schemes are dependant upon the different constabularies, health authorities and court services that are involved in the provision of these services. While these services are theoretically available to the majority of police forces and courts, such services are by no means uniform and equally accessible in different parts of the country. Accessibility depends upon the individual arrangements for service provision that are made in different localities, and so for example, appropriate adults who volunteer for the very formal and structured scheme that is operational in Derby, may have very different perspectives and attitudes to appropriate adults who volunteer for other police constabularies around the country where no such formalised provision is available. It is thus worth considering the different sample groups who responded to the attitude survey, and who participated in the semi-structured interviews to see if their locality might have influenced the findings and subsequent interpretation of data.

The sample of judges were recruited from the Oxford and Midland circuit, and all of these presided in Crown Courts situated in city centre locations. Although there is a certain amount of uniformity about courts around the country, the actual services that are available to different courts depend on the physical structure of courts, as well as on the local authorities that are responsible for the providing such services. For example, the physical layout of older court buildings may not easily enable the provision of special court provisions (such as close circuit links etc.), whereas more modern court buildings are likely to be better equipped to make such provisions. It might be possible that a judge presiding over a more modern court may have had more experience of the use of such provisions because they are more readily available than in older courts; and so

differential exposure to the use of special provisions may have influenced the attitudes of respondents towards them.

Similarly, the samples of magistrates for the two studies were recruited from the Nottingham Magistrates' Association, and so the majority of their experience was gained from sitting in the comparatively modern surroundings of the Magistrates' courts in Nottingham. Although these courts are well equipped to provide special measures, they are also in receipt of services that may be unique to this locality in terms of the structure of the services that are provided. Because of this, the attitudes and perceptions of the magistrates are likely to be influenced by the particular services they have experience of, including court welfare services, drug services, provisions for the diversion from custody, and provision of appropriate adults, and such services may be markedly different to those that are provided in other locations.

The sample groups of police officers and appropriate adults were also recruited from specific areas that may have influenced their perceptions of services for people with learning disabilities in the criminal justice system. Although the sample of police officers were recruited to represent the attitudes and experiences of officers working in rural and inner-city areas; all of these officers did work for Nottinghamshire Constabulary and so their views may have been a product of their own experience gained from working for that particular force. As was noted above, the availability of appropriate adults and the provision for diversion from custody are both largely dependant upon the local authorities that provide these services, and so their structure and modes of operation may differ from other areas. A specific example of this can be demonstrated between the availability of appropriate adults for the Derbyshire and Nottinghamshire Constabularies. Derbyshire

has a formalised appropriate adult scheme where volunteers receive a well developed and comprehensive period of training, and this scheme has an established form of organisation where appropriate adults are readily available to police when they are needed because of the assistance of a rota system and a paid co-ordinator who organises and contacts volunteers. In contrast to this is Nottinghamshire Constabulary who also use volunteer appropriate adults, although this force differs because it relies on a more ad hoc system of organisation where appropriate adults are called from lists of volunteers that are kept in different custody suites. This difference in organisation between the schemes is likely to have coloured the attitudes and perceptions of both police and appropriate adult responses. An example of this may be found in the attitudes of the police towards the availability of appropriate adults to attend interviews, because several of the custody sergeants stated frustrations over the long periods they often had to wait for an appropriate adult to attend a police station, and because their lists of volunteers were also often inaccurate and out of date. By only interviewing officers from the Nottinghamshire area, the findings of this research may not be representative of the experience of officers from other forces who have a more effective and successful method of calling out appropriate adults such as is found in Derby. Likewise, the attitudes of the appropriate adults from Derby may well be different from people acting in this capacity elsewhere in the country who may not have received the type and quality of training that Derby respondents perceived themselves to have received. This difference in experience according to locality may thus also have influenced the data of this research and so caution must be taken before generalising these experiences and attitudes towards appropriate adult services in different parts of the country.



- **My personal involvement with the CJS**

Because I had had experience of working as an appropriate adult in the criminal justice system before the majority of this present research was conducted, I was able to ask the other appropriate adults working on the same scheme to participate in both the attitude survey and the interviews. Because of my association with the sample it may be worth asking how my familiarity (and in some cases friendship) with them may have influenced the interactive process of research; for example, 'Did the appropriate adult respondents provide me with opinions that they thought I would want to hear, especially because they would already be familiar with my own opinions from regular group meetings and interaction?' Maybe the answer to this would be in the affirmative, but perhaps this may not necessarily be the case when we consider that the opinions of the appropriate adults did often disagree with my own. It may however be equally reasonable to suggest that because these respondents were already known to me, they were much more willing to open up during the interview process and were less likely to inhibit their responses.

Another aspect of my personal involvement and familiarity with criminal justice agencies meant that I was not particularly intimidated by environments where the interviews were conducted (judges chambers, police custody suites) which are intended to intimidate the general population. This was commented on by one custody sergeant who said that he noticed an air of confidence in my behaviour when we were introduced that he only detected in professionals who were used to working in the custody suite. During this interview, this officer made several remarks that implied that I could relate to his opinions and beliefs (for example, he responded to a few questions by beginning his

answers with 'You know what it can get like down here...', and 'I'm sure you understand how hard it can be to get hold of an appropriate adult'. Although it may be possible that this attitude could have plausibly affected the nature of responses, it may also be argued that such experience functioned to open up the interactive process and ease channels of communication because there as a higher level of understanding and empathy with responses that may not have been evident if interviewees were under the impression that I was a university researcher with little experience of the workings of the justice system.

- **My beliefs and attitudes**

Because I had had previous experience of working in the criminal justice system before I met many of the respondents during the interview stage of the research, my own attitudes and beliefs about the criminal justice system are likely to have been influenced by this experience. Also, because I had also previously worked with people with learning disabilities for several years, this is also likely to have had a bearing on my own opinions of matters in hand. Because of this consideration, it is legitimate to ask whether my own opinions had an influence on: a) people's responses to me, or b) my interpretations of their responses?

The answer to a) is inevitably 'yes' – any form of research is a social process, and qualitative research inevitably increases the interaction between researcher and those people being researched. Initially my own personal interests must have been a factor in deciding not only how the research should progress but also which topics and issues were to be addressed as well as which questions were going to be asked. However, it may perhaps also be argued that my own experience gave me an excellent basis of knowledge

on which to base my questions and so it may be that I was perhaps better able to earlier identify relevant issues than other researchers who may not have had similar experiences.

Perhaps of more relevance to issues of researcher bias are considerations of the actual research process and how the interviews were conducted. For example, I was conscious throughout the interviews of attempting to appear open to peoples' responses in a non-judgemental way and so I was also conscious of trying to encourage people to relax and qualify their answers, more in the style of a discussion than in the manner of a formalised interview. In this way I was conscious of often agreeing with responses when in truth I didn't share their views, but even if this was the case, it may be that I did not tend to significantly influence or change respondents' attitudes to suit my own.

An important consideration in any qualitative research is to what extent does the researcher's own history and background influence the interpretation of data. When we consider this, issues relating to the validity and reliability of findings come to the fore. Because the attitudes of respondents were investigated using both a quantitative and qualitative methodology, the validity of the findings may possibly be increased by making reference to the same issues from the different perspectives that alternate methodologies offer. In a sense this is the case because the results of the interviews do supplement the findings of attitude survey, for example, the survey revealed that respondents believed that offenders with learning disabilities would be disadvantaged and vulnerable in a prison setting, whereas the interviews supplemented this information by providing possible reasons why respondents thought this (e.g. sex abuse, bullying, etc.).

With regards to interpretations of interview transcripts, it may have been possible to increase reliability by asking other people to similarly code samples of the



transcriptions so as to ensure that my codings and interpretations did have some external validity. I would argue that this is debatable however as I was confident that the internal validity of codings was strong because I was the person who conducted the interviews, completed the transcription, and coded the issues which involved repeated visits to the text with endless revisions of the coding categories. Although the interests and interpretations of other people were not my main interest in the analysis of this data, longer quotes have often been presented in the hope that these will enable readers to have a fuller insight into the responses that people gave, rather than just presenting one line responses that may have been ambiguous and more open to interpretation. By presenting data in this way it was also hoped that my own methods of analysis would appear less arcane.

### **10.3 Concluding Remarks**

It was found that the main focus of regular contact that general psychiatrists had with criminal justice agencies was with the police, while forensic psychiatrists had most regular contact with the probation service and prisons. There was limited evidence to show that previous recommendations (that general psychiatrists should be increasingly involved with the care of mentally disordered offenders and their diversion away from the penal system) had been achieved.

Respondents did provide evidence that justice and fairness were the guiding principles that informed the way they treated people with a learning disability when they entered the criminal justice system. Because of this, many respondents reported that they

were eager for the criminal justice system to be flexible in meeting a person's needs and in attempting to overcome any disadvantages and/or vulnerabilities that they may face in the judicial process. However, this was also accompanied by a reluctance by some to make any major changes to either the justice system or to the law which was also accompanied by a reluctance to apply special rights to people just because of their learning disabled status. It was suggested that this unwillingness of professionals to ascribe such rights would also be evident in any calls to establish a separate (or sub-) legal system that would be intended to deal with offenders with a learning disability. This may be viewed as a rejection of normalisation philosophy as applied to criminal justice because there was evidence that although criminal justice professionals did see the value of pursuing the 'normal' routes of justice, they also recognised that a person with a learning disability does have special needs and vulnerabilities which would probably be ignored if they were placed in mainstream penal institutions.

Respondents agreed that people with learning disabilities do have characteristics that would make them disadvantaged and vulnerable within a criminal justice setting. There was little evidence from these findings to support the hypothesis that people with disabilities are susceptible to criminality because of their characteristics, although there was limited support for the hypothesis that people with disabilities are de-valued because of their characteristics and thus may be treated differently to others.

The over-riding finding and impression achieved from this research is that people with learning disabilities are disadvantaged within the criminal justice system, but there was evidence to show that criminal justice personnel are eager to ensure that the existing system can adapt and accommodate these peoples' vulnerabilities without recourse to

major structural or procedural change. However, before such accommodation can occur, it was also acknowledged that extra training is needed to ensure that all professionals feel competent to deal with this group of offenders and help them overcome any vulnerabilities and disadvantages whilst still maintaining standards of justice fairness.

- Contributions to, and advancements of current knowledge

This thesis contributes to and advances current knowledge in the following ways. There has been a tradition in social and psychological research that has tended to contribute to the continued historic oppression of people with learning disabilities. This research has instead attempted to provide an opportunity to scrutinise people in positions of power – people who have not traditionally been subject to a great amount of research and by doing so it has attempted to provide an interesting contribution to current knowledge regarding the involvement of professionals towards offenders with learning disabilities.

One of the most pertinent issues of this research was that although arrangements are available to support vulnerable people with learning disabilities, such arrangements rely on the identification of a learning disability, and this is of major cause for continued concern because professional respondents stated that they felt they needed training around these issues to ensure that such provisions are implemented when necessary.

- Key implications for practice and policy

The results of this study have certain key implications for practice and policy for offenders with learning disabilities. First, as has been outlined above, respondents thought that they required training around learning disability issues. It was thought that



this training would more easily enable the identification of learning disability which would in turn have the effect of ensuring that any special provisions could be implemented when they were needed. It is further argued that any special provisions do need to be made available to all vulnerable people in the criminal justice system wherever they are in the country.

One of the problems with the provision of special measures of assistance outlined in the Police & Criminal Evidence Act 1984, is that there has not been uniform or constant provision around the country. The provision of appropriate adults for detainees has been sporadic and patchy around the country, and the forms that such schemes have been largely determined by individual police constabularies which have used different methods of organisation. This history of sporadic service provision should be noted with caution, and lessons may be learnt for the future provision of other means of supporting vulnerable people in the justice system. The Youth Justice & Criminal Evidence Act 1999 makes provision for special measures for vulnerable people in court and the provision of an intermediary may well offer opportunities to effectively support vulnerable witnesses and/or defendants. However, little attention has so far been paid towards how such intermediaries are to be trained, or towards providing facilities and funds so that such measures can be effective in their operation. Several years have now passed since the Police & Criminal Evidence Act came into force, and there are still problems associated with different geographical locations being serviced by different forms of appropriate adult schemes. Such inconsistencies in service provision may well occur with the provisions made in the Youth Justice & Criminal Evidence Act 1999, because (so far) there has been little attention nationwide as to how such provisions are to

be properly implemented. Where systems of protection and support were in operation around the country, these were seen to be largely successful and effective in assisting people with learning disabilities in the criminal justice system. Such systems of support were often staffed by very committed and talented individuals, but again, to be truly successful, such systems need to be comprehensively available to all people who require them wherever they are in the country.

- Directions for future research

It would be valuable to undertake some further research that would address the process of the criminal justice system from the perspective and experiences of people with learning disabilities from the moment of their entry into it. All parties need to be consulted on their opinions towards the efficacy of safeguards for people with vulnerabilities, and as service uses, people with learning disabilities should be included to determine whether they believe such assistance and intervention is of use. However, in light of the ethical concerns raised in Chapter 3, any such research must also address issues of exploitation and oppression to see if such studies are morally acceptable so to ensure that any oppression of this group of people does not result from such research.

This research has primarily looked at the attitudes and experiences of criminal justice professionals. Another possible area of investigation would be to study how such professionals operate when dealing with vulnerable people. This observational based study would have the benefit of highlighting any areas where current practice may be failing without having to rely on the expressed opinions of respondents. Such observations would check whether there is a correspondence between the attitudes and

behaviours of criminal justice professionals, as well as focussing attention on the efficacy of current arrangements. In light of the difficulties and problems associated with gaining access to professionals who hold power in the legal system, it is unclear as to how any such research would occur as many difficulties would probably be encountered when seeking to gain intimate access to people working in such an environment.

Finally, further investigation into the attitudes of criminal justice professionals might also be a valid avenue for future research. This would have the effect of comparing the attitudes displayed by respondents in this study with other professionals, and so would perhaps enable an investigation into the attitudes of other people working in different parts of the country, and this would perhaps overcome some of the geographical limitations that were encountered from the present sample groups. By following this course of study however, it may also provide an opportunity of assessing the attitudes of professionals towards the special measures that have been introduced by the Youth Justice & Criminal Evidence Act 1999, especially because many criminal justice workers may not have had experience of such provisions in operation at the time of this study.



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# National Survey of the Involvement of Psychiatrists with the Criminal Justice System: Current Arrangements for Diversion from Custody in England & Wales

## Section 1: Psychiatric Involvement with the Criminal Justice System

Please tick appropriate answers  
N.B. 'Regular' is defined as at least once a month

	No.	No, but considering it.	Yes.	If Yes, is this in connection with a diversion scheme?
1. Do you have regular contact with the police?				
2. Do you regularly attend court?				
3. Do you have regular contact with the probation service?				
4. Do you have regular contact with the Crown Prosecution Service?				
5. Do you regularly attend a prison?				

6. Although you may not have regular contact with the criminal justice system, have you had any professional contact with the following groups?

	No	Yes – in the last 6 months	Yes – in the last 12 months
Police Services			
Court Services			
Probation Services			
Crown Prosecution Services			
Prison Services			

## Section 2: Diversion from Custody Schemes

A 'Diversion Scheme' is defined as: "... an arrangement between a magistrates' court and a psychiatrist whereby the psychiatrist attends the court regularly (or is on call and can be available rapidly) to assess defendants who are suspected of being mentally disordered and to advise the court on alternatives to custody if appropriate. This definition includes the use of a panel scheme whereby a community psychiatric nurse or approved social worker attends the court regularly and brings mentally abnormal defendants to the attention of other mental health professionals working in a multi-agency team that jointly arranges diversion and management." (Blumenthal & Wessely, 1992, p. 1323)

7. Are you involved with a diversion scheme?

Yes \_\_\_\_\_

No \_\_\_\_\_

7a. If you answered Yes to question 7, in what capacity are you involved?

\_\_\_\_\_

If you are involved with a diversion scheme, please answer questions 8 – 10 below

8. Which of the following professionals are:

- responsible for the co-ordination of the scheme?
- Involved with the running of the scheme?

	Co-ordinating the diversion scheme	Running the diversion scheme
Forensic Psychiatrists		
General / Community Psychiatrists		
Child / Adolescent Psychiatrists		
Learning Disability Psychiatrists		
Clinical Psychologists		
Forensic Clinical Psychologists		
Psychiatric & Community Psychiatric Nurses		
Social Workers / Approved Social Workers		
Police		
Probation Officers		
Crown Prosecution Service		
Court Personnel		
Managers of Mental Health Provider Units		
Other (please stipulate in space below)		



Please use this space if you ticked **Other**, and to further expand on your answers for question 8 if you wish.

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9. Are the arrangements in your area effective for the diversion from custody of mentally disordered offenders?

Yes \_\_\_\_\_

No \_\_\_\_\_

9a. If you answered No to question 9, which of the following cause you practical difficulties with the running of the diversion scheme? (Please tick appropriate boxes; N.B. 'Regular' is defined as contact at least once a month)

Regular attendance by psychiatric services	
Regular attendance by a community psychiatric nurse	
Regular attendance by an approved social worker	
The running of the scheme is dependant on one key person	
The scheme is at risk of closure should key person leave	
Inadequate transport arrangements	
Shortage of beds	
Shortage of mental health staff	
Unsatisfactory arrangements for outpatient treatment	
Unsatisfactory arrangements for informal admissions	
Unsatisfactory arrangements for hospital orders	
Other (please specify below)	

Other: \_\_\_\_\_

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10. Are there any ways which you can identify to improve the running of the diversion scheme?

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- Thank you for taking the time to complete this short questionnaire. Please use the reverse of this sheet of paper to qualify your answers if you wish, or to include any other information which you feel may be of relevance to a national survey of psychiatric involvement with the criminal justice system and/or diversion schemes. Thank you once again for your help.

Would you now please return the completed questionnaire using the enclosed pre-paid envelope to:

**Richard Cant,  
Behavioural Sciences Section,  
Division of Psychiatry,  
'A' Floor – South Block,  
University Hospital,  
Nottingham,  
NG7 2UH.**

Telephone: (0115) 970 9247  
E-mail: [Richard.Cant@Nottingham.ac.uk](mailto:Richard.Cant@Nottingham.ac.uk)

**N.B.** This is an update and adaptation of two previous studies undertaken by Stephen Blumenthall & Simon Wessely:

- Blumenthall, S. & Wessely, S. (1992) 'National Survey of Current Arrangements for Diversion from Custody in England and Wales', *British Medical Journal*, 305: 1322-5.
- Blumenthall, S. & Wessely, S. (1993) 'Psychiatry and the criminal justice system: the involvement of general and forensic psychiatrists', *Journal of Forensic Psychiatry*, 4 (3): 569-74.

# **Questionnaire to Determine Attitudes of C.J.S. Personnel** **Towards People with a Learning Disability** **(Mental Handicap)\***

**Instructions:** Please circle the answer with which you most agree.

<b><u>KEY:</u></b>				
Strongly agree	Agree	Neutral	Disagree	Strongly disagree
SA	A	N	D	SD

- |  |    |   |   |   |    |
|--|----|---|---|---|----|
| 1. Service agencies should be involved in planning sentencing options.   | SA | A | N | D | SD |
| 2. Special provisions should be made available in court when a case involves a person with a learning disability (e.g. removal of wigs, pre-court visits, evidence given by C.C.T.V., etc.). | SA | A | N | D | SD |
| 3. Lawyers should have the person with a learning disability present when taking instructions from parents or guardians.   | SA | A | N | D | SD |
| 4. People with learning disabilities need more education about the criminal justice system.  | SA | A | N | D | SD |
| 5. Community service orders should be used more frequently by courts.  | SA | A | N | D | SD |
| 6. Lack of legal representation is a significant issue for people with disabilities.   | SA | A | N | D | SD |
| 7. Guardianship legislation will benefit people with learning disabilities who offend.   | SA | A | N | D | SD |
| 8. It is generally easy to determine if a person has a learning disability.  | SA | A | N | D | SD |
| 9. People with learning disabilities are treated the same as other people.   | SA | A | N | D | SD |

Originally devised by: Cockram, J., Jackson, R. & Underwood, R. (1994) Attitudes Towards People with an Intellectual Disability: Is There Justice?; Paper presented at the First International Congress on Mental Retardation in the 2000's Society, Rome, March, 1994.



10.	It is not necessary to interview people with a learning disability in front of an appropriate adult.	SA	A	N	D	SD
11.	Prison should be banned for people with learning disabilities.	SA	A	N	D	SD
12.	There shouldn't be more sentencing options for people with learning disabilities.	SA	A	N	D	SD
13.	Adults with a learning disability should have the same legal status as children within the criminal justice system.	SA	A	N	D	SD
14.	People with learning disabilities who go to prison are no more likely to be victimised than other prisoners.	SA	A	N	D	SD
15.	The courts' role is to determine solutions rather than sentences for people with learning disabilities.	SA	A	N	D	SD
16.	People with learning disabilities should not experience the same consequences of action as other people.	SA	A	N	D	SD
17.	Police should be trained to have a greater understanding of people with learning disabilities who offend.	SA	A	N	D	SD
18.	It is difficult to be consistent when deciding whether to charge a person with a learning disability.	SA	A	N	D	SD
19.	The police will take action against people with learning disabilities only if they think they can gain a conviction.	SA	A	N	D	SD
20.	Staff responsibility is primarily to ensure that the legal rights of people with learning disabilities are protected.	SA	A	N	D	SD
21.	People with learning disabilities who go to prison are no more likely to be sexually assaulted than other prisoners.	SA	A	N	D	SD
22.	The police are not adequately trained in interview techniques with people with learning disabilities.	SA	A	N	D	SD
23.	A specialised prison (or specialised part) is required for people with learning disabilities.	SA	A	N	D	SD
24.	The number of people with learning disabilities interacting with the law will probably increase with care in the community.	SA	A	N	D	SD
25.	People with a learning disability are likely to want to appear competent and not disabled when confronting criminal justice system personnel.	SA	A	N	D	SD

26. The criminal justice system is not an effective way for people with a learning disability to learn the consequences of their actions.	SA	A	N	D	SD
27. People with a learning disability are less likely to offend than the general population.	SA	A	N	D	SD
28. In addition to the Police and Criminal Evidence Act (1984), special guidelines should be issued for the police when dealing with people with learning disabilities.	SA	A	N	D	SD
29. A 24 hour on-call central liaison officer is needed to co-ordinate court and psychiatric services.	SA	A	N	D	SD
30. Criminal justice system personnel are not clear on the distinction between mental illness and learning disability.	SA	A	N	D	SD
31. Lawyers require training in interview techniques with people with a learning disability.	SA	A	N	D	SD
32. Offenders with a learning disability are sufficiently informed of the seriousness of their actions by criminal justice system staff.	SA	A	N	D	SD
33. I believe that boredom and emptiness are not prime reasons for people with learning disabilities offending.	SA	A	N	D	SD
34. People with learning disabilities need support as soon as they come into contact with the police.	SA	A	N	D	SD
35. People with learning disabilities are not likely to be more susceptible to leading questions than others.	SA	A	N	D	SD
36. People with learning disabilities are likely to be aware of the importance of the right to remain silent.	SA	A	N	D	SD
37. Cases involving a learning disabled person should be 'fast-tracked'.	SA	A	N	D	SD
38. Staff may be too ready to assist the police in assuring a conviction.	SA	A	N	D	SD
39. People with learning disabilities are not likely to be let off by courts.	SA	A	N	D	SD
40. People with learning disabilities have different needs to other marginalised groups.	SA	A	N	D	SD
41. It is better for people with learning disabilities to be found unfit to plead.	SA	A	N	D	SD

42. People with learning disabilities who repeatedly offend will not be treated harshly.	SA	A	N	D	SD
43. People with severe learning disabilities are less likely to offend because they are likely to receive more supervision.	SA	A	N	D	SD
44. People with learning disabilities don't understand sentencing options.	SA	A	N	D	SD
45. People with learning disabilities are less sensitive to non-verbal cues than others.	SA	A	N	D	SD
46. People with learning disabilities are likely to have a desire to please.	SA	A	N	D	SD
47. People with a mild/borderline level of learning disability are less likely to offend than those with a severe learning disability.	SA	A	N	D	SD
48. The segregated upbringing of many people with learning disabilities means that the learning of acceptable behaviour is deficient.	SA	A	N	D	SD
49. People with learning disabilities are likely to have a poorly developed moral foundation.	SA	A	N	D	SD
50. People with learning disabilities are likely to have a fear of authority.	SA	A	N	D	SD
51. Services should be more directed towards people with learning disabilities gaining community friends than with assisting them with the criminal justice system.	SA	A	N	D	SD
52. People with learning disabilities are less easily led into committing offences than other people.	SA	A	N	D	SD
53. Services are inadequate for offenders with learning disabilities.	SA	A	N	D	SD
54. People with learning disabilities should not be convicted on confession alone.	SA	A	N	D	SD

Please answer the questions on the final page.



Thank you for taking the time to complete this questionnaire. The next stage of this research will consist of interviewing a selection of the people who have completed this questionnaire at a later date. This is so a variety of opinions may be further examined in more depth, and thus respondents will be given the opportunity to qualify their answers and to discuss any issues they feel to be of particular importance.

**Instructions:** Please tick appropriate answers.

Are you willing to be interviewed in person at a later stage concerning offenders who have a learning disability?

Yes      \_\_\_\_\_

No      \_\_\_\_\_

If you are willing to take part in the personal interviews, you may be contacted at a later date to organize a time and place convenient to yourself

**Thank you for completing this questionnaire. Would you please now return it in the S.A.E. provided to:**

**Richard Cant,  
Department of Learning Disabilities  
Division of Psychiatry  
E Floor - South Block  
University Hospital  
Nottingham  
NG7 2UH.**

## **Question Agenda for Magistrates**

### **Knowledge of Learning Disabilities**

#### **Learning Disability Characteristics**

1. Can you tell me what the term 'learning disability' means to you?
2. In your opinion, is this term satisfactory? (i.e. 'learning disability' as opposed to 'mental handicap', 'retardation' and 'learning difficulty').
3. Can you tell me what you think the main difference between mental illness and learning disability is?
4. Do you think there are any obvious signs or characteristics which would indicate to you that a person has a learning disability?
5. What methods would a magistrates' court use to determine if a suspect has a learning disability?
6. Do you think that people with learning disabilities are vulnerable at all in everyday life?
7. Do you think that a suspect who has a learning disability would be disadvantaged in a court?
8. Would a person with learning disabilities be disadvantaged in any other C.J.S. agency?
9. In the court setting, do you think there is an overlap between the vulnerabilities and disadvantages experienced by a person with a learning disability with those experienced by: (a) children and (b) people with a mental illness?
10. How does this compare to possible disadvantage faced in other C.J.S. agencies?

### **Training Issues**

11. Do you think there should be specific training provided for the magistracy to highlight issues regarding learning disabilities and any possible associated characteristics & vulnerabilities?
12. In your opinion, what would be the best / most effective form for this training to take?
13. Who should: (a) provide this training? (b) be involved in the training?
14. What are the important issues you think should be included in such training? (e.g. NSW Law Commission highlighted: identification of learning disabilities by C.J.S. personnel, effective communication, awareness of disadvantages faced by PWLDs such as suggestibility, knowledge of available services for offenders with LDs).

### **Court Procedures**

#### **Diversion & Rights**

15. How does a court determine if a defendant is fit to plead?
16. Which professionals are involved in this process?
17. Have you heard of the term 'Diversion from custody'? If so, can you give me a brief outline of your understanding of the term?



18. Diversion away from custody usually happens at magistrates' court or at the police station. Have you had any experience of this? If so, were services and professionals co-ordinated effectively?
19. Do you think that such diversion may possibly deny a defendant their right to a fair trial? I.e. do you think that a person's rights may be demeaned by not having the opportunity to have their case heard in court (and thus a fair trial)?

### **Special Arrangements in Court**

20. It is generally acknowledged that child witnesses are vulnerable within the criminal justice system, and special provisions are now made for this group (e.g. removal of wigs, use of screens & C.C.T.V., pre-court visits, pre-trial recording of evidence, etc.). The current Youth Justice & Criminal Evidence Bill is an example of current attempts to advance these provisions to adult witnesses who are vulnerable.
21. Have you had any experience of such special provisions in court for both child witnesses and learning disabled witnesses? (If yes, were there any problems in making such provisions?)
22. How is it determined if special provisions are needed?
23. If special provisions are needed, do you think that this would possibly indicate a need for the case to be heard in Crown, rather than Magistrates' court?
24. Do you see any problems in extending any special provisions in court for defendants (rather than witnesses) who may be vulnerable?
25. Are there any other ways you can identify to make it easier for a learning disabled defendant to appear in court? (e.g. a court intermediary?)
26. How do you think a defendant with a learning disability may be disadvantaged during cross-examination in court? (prompt: suggestibility, not understand questions, appear evasive, inadvertently say something which unfairly prejudices the defence). Are there any other ways in which a court may possibly overcome such disadvantages?

### **Expert Evidence**

27. When a defendant is identified as having a learning disability, does a magistrates' court require expert evidence on the reliability that person's evidence?
28. Have you had any experience of a case where expert evidence was required? (If so, expand).

### **Sentencing Issues**

29. If an offender is identified as having a learning disability, do you think that this would operate in mitigation of a sentence you would give?
30. Do you think that a learning disabled offender should be directed into (secure) health care provision rather than face a prison sentence? Is this dependant on the severity of disability (i.e. borderline, mild, moderate?)
31. When passing a sentence on a learning disabled offender, would you see any potential difficulties in balancing the needs of the community with those of the offender? (e.g. which takes priority: the welfare of the offender or safety of the community?)
32. What role do you think pre-sentence reports play in achieving a balance between the needs of an offender and the needs of the community?
33. How important do you think the role of the probation service is in dealing with this group of offenders? Are other social services important?



### **Normalisation**

34. What do you understand by the term 'normalisation' when applied to people with learning disabilities? (Prompt with following definition: )
35. Do you agree with this philosophy?
36. How applicable do you think the philosophy of normalisation is to learning disabled offenders?

*Appendix D: Frequency Tables of Responses from Attitude Survey*

**N.B. All percentages are rounded up to one decimal place.**

**Q. 1 Service agencies should be involved in planning sentencing options.**

	<b>Total</b>	<b>Judges</b>	<b>Magistrates</b>	<b>Police</b>	<b>Appropriate Adults</b>
<b>Agree</b>	75 85.2 %	11 78.6 %	17 94.4 %	30 81.1 %	17 89.5 %
<b>Neutral</b>	9 10.2 %	3 21.4 %	0	5 13.5 %	1 5.3 %
<b>Disagree</b>	4 4.5 %	0	1 5.6 %	2 5.4 %	1 5.3 %

**Q. 2 Special provisions should be made available in court when a case involves a person with a learning disability (e.g. removal of wigs, pre-court visits, evidence given by C.C.T.V., etc.).**

	<b>Total</b>	<b>Judges</b>	<b>Magistrates</b>	<b>Police</b>	<b>Appropriate Adults</b>
<b>Agree</b>	69 75.8 %	9 56.3 %	13 72.2 %	30 78.9 %	17 89.5 %
<b>Neutral</b>	12 13.2 %	4 25.0 %	4 22.2 %	4 10.5 %	0
<b>Disagree</b>	10 11.0 %	3 18.8 %	1 5.6 %	4 10.5 %	2 10.5 %

**Q. 3 Lawyers should have the person with a learning disability present when taking instructions from parents or guardians.**

	<b>Total</b>	<b>Judges</b>	<b>Magistrates</b>	<b>Police</b>	<b>Appropriate Adults</b>
<b>Agree</b>	69 78.4 %	8 53.3 %	17 94.4 %	29 78.4 %	15 83.3 %
<b>Neutral</b>	13 14.8 %	3 20.0 %	1 5.6 %	6 16.2 %	3 16.7 %
<b>Disagree</b>	6 6.8 %	4 26.7 %	0	2 5.4 %	0

Q. 4 People with learning disabilities need more education about the criminal justice system.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	49 54.4 %	6 37.5 %	11 61.1 %	21 56.8 %	11 57.9 %
Neutral	32 35.6 %	8 50.0 %	7 38.9 %	12 32.4 %	5 26.3 %
Disagree	9 10.0 %	2 12.5 %	0	4 10.8 %	3 15.8 %

Q. 5 Community service orders should be used more frequently by courts.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	32 36.0 %	10 62.5 %	5 27.8 %	7 18.9 %	10 55.6 %
Neutral	39 43.8 %	3 18.8 %	10 55.6 %	20 54.1 %	6 33.3 %
Disagree	18 20.2 %	3 15.8 %	3 16.7 %	10 27.0 %	2 11.1 %

Q. 6 Lack of legal representation is a significant issue for people with disabilities.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	49 55.1 %	8 50.0 %	15 83.3 %	13 35.1 %	13 72.2 %
Neutral	11 12.4 %	1 6.3 %	0	9 24.3 %	1 5.6 %
Disagree	29 32.6 %	7 43.8 %	3 16.7 %	15 40.5 %	4 22.2 %

Q. 7 Guardianship legislation will benefit people with learning disabilities who offend.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	44 50.6 %	8 50.0 %	11 61.1 %	13 36.1 %	12 70.6 %
Neutral	37 42.5 %	7 43.8 %	6 33.3 %	20 55.6 %	4 23.5 %
Disagree	6 6.9 %	1 6.3 %	1 5.6 %	3 8.3 %	1 5.9 %



Q. 8 It is generally easy to determine if a person has a learning disability.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	15 16.7 %	1 6.7 %	4 22.2 %	9 23.7 %	1 5.3 %
Neutral	7 7.8 %	1 6.7 %	2 11.1 %	0	4 21.1 %
Disagree	68 75.6 %	13 86.7 %	12 66.7 %	29 76.3 %	14 73.7 %

Q. 9 People with learning disabilities are treated the same as other people.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	9 9.9 %	3 18.8 %	2 11.1 %	4 10.5 %	0
Neutral	12 13.2 %	0	2 11.1 %	6 15.8 %	4 21.1 %
Disagree	70 76.9 %	13 81.3 %	14 77.8 %	28 73.7 %	15 78.9 %

Q. 10 It is not necessary to interview people with a learning disability in front of an appropriate adult.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	3 3.3 %	1 6.7 %	0	2 5.3 %	0
Neutral	5 5.0 %	0	1 5.6 %	4 10.5 %	0
Disagree	82 91.1 %	14 93.3 %	17 94.4 %	32 84.2 %	19 100.0 %

Q. 11 Prison should be banned for people with learning disabilities.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	6 6.6 %	0	2 11.1 %	1 2.6 %	3 15.8 %
Neutral	15 16.5 %	0	4 22.2 %	5 13.2 %	6 31.6 %
Disagree	70 76.9 %	16 100.0 %	12 66.7 %	32 84.2 %	10 52.6 %

Q. 12 There shouldn't be more sentencing options for people with learning disabilities.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	14 15.4 %	5 31.3 %	2 11.1 %	5 13.2 %	2 10.5 %
Neutral	13 14.3 %	1 6.3 %	3 16.7 %	7 18.4 %	2 10.5 %
Disagree	64 70.3 %	10 62.5 %	13 72.2 %	26 68.4 %	15 78.9 %

Q. 13 Adults with a learning disability should have the same legal status as children within the criminal justice system.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	22 24.2 %	1 6.3 %	4 22.2 %	12 31.6 %	5 26.3 %
Neutral	18 19.8 %	3 18.8 %	4 22.2 %	8 21.1 %	3 15.8 %
Disagree	51 56.0 %	12 75.0 %	10 55.6 %	18 47.4 %	11 57.9 %

Q. 14 People with learning disabilities who go to prison are no more likely to be victimised than other prisoners.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	3 3.3 %	1 6.3 %	1 5.6 %	1 2.6 %	0
Neutral	12 13.2 %	0	1 5.6 %	10 26.3 %	1 5.3 %
Disagree	76 83.5 %	15 93.8 %	16 88.9 %	27 71.1 %	18 94.7 %

Q. 15 The courts' role is to determine solutions rather than sentences for people with learning disabilities.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	30 33.0 %	5 31.3 %	7 38.9 %	10 26.3 %	8 42.1 %
Neutral	28 30.8 %	7 43.8 %	4 22.2 %	12 31.6 %	5 26.3 %
Disagree	33 36.3 %	4 25.0 %	7 38.9 %	16 42.1 %	6 31.6 %

Q. 16 People with learning disabilities should not experience the same consequences of action as other people.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	18 20.7 %	3 20.0 %	5 27.8 %	8 22.2 %	2 11.1 %
Neutral	20 23.0 %	6 40.0 %	4 22.2 %	4 11.1 %	6 33.3 %
Disagree	49 56.3 %	6 40.0 %	9 50.0 %	24 66.7 %	10 55.6 %

Q. 17 Police should be trained to have a greater understanding of people with learning disabilities who offend.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	81 89.0 %	14 87.5 %	18 100.0 %	30 78.9 %	19 100.0 %
Neutral	7 7.7 %	2 12.5 %	0	5 13.2 %	0
Disagree	3 3.3 %	0	0	3 7.9 %	0

Q. 18 It is difficult to be consistent when deciding whether to charge a person with a learning disability.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	60 67.4 %	10 66.7 %	12 70.6 %	24 63.2 %	14 73.7 %
Neutral	17 19.1 %	3 20.0 %	4 23.5 %	8 21.1 %	2 10.5 %
Disagree	12 13.5 %	2 13.3 %	1 5.9 %	6 15.8 %	3 15.8 %

Q. 19 The police will take action against people with learning disabilities only if they think they can gain a conviction.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	19 21.3 %	4 26.7 %	5 27.8 %	4 10.5 %	6 33.3 %
Neutral	24 27.0 %	4 26.7 %	10 55.6 %	6 15.8 %	4 22.2 %
Disagree	46 51.7 %	7 46.7 %	3 16.7 %	28 73.7 %	8 44.4 %



Q. 20 Staff responsibility is primarily to ensure that the legal rights of people with learning disabilities are protected.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	54 64.3 %	4 36.4 %	15 83.3 %	19 51.4 %	16 88.9 %
Neutral	22 26.2 %	6 54.5 %	3 16.7 %	12 32.4 %	1 5.6 %
Disagree	8 9.5 %	1 9.1 %	0	6 16.2 %	1 5.6 %

Q. 21 People with learning disabilities who go to prison are no more likely to be sexually assaulted than other prisoners.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	4 4.5 %	2 12.5 %	6 33.3 %	1 2.7 %	1 5.6 %
Neutral	31 34.8 %	4 25.0 %	0	18 48.6 %	3 16.7 %
Disagree	54 60.7 %	10 62.5 %	12 66.7 %	18 48.6 %	14 77.8 %

Q. 22 The police are not adequately trained in interview techniques with people with learning disabilities.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	69 75.8 %	9 56.3 %	13 72.2 %	29 76.3 %	18 94.7 %
Neutral	16 17.6 %	6 37.5 %	5 27.8 %	4 10.5 %	1 5.3 %
Disagree	6 6.6 %	1 6.3 %	0	5 13.2 %	0

Q. 23 A specialised prison (or specialised part) is required for people with learning disabilities.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	57 62.6 %	11 68.8 %	17 94.4 %	21 55.3 %	8 42.1 %
Neutral	22 24.2 %	2 12.5 %	1 5.6 %	11 28.9 %	8 42.1 %
Disagree	12 13.2 %	3 18.8 %	0	6 15.8 %	3 15.8 %

Q. 24 The number of people with learning disabilities interacting with the law will probably increase with care in the community.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	65 73.9 %	14 93.3 %	13 72.2 %	22 59.5 %	16 88.9 %
Neutral	19 21.6 %	1 6.7 %	3 16.7 %	14 37.8 %	1 5.6 %
Disagree	4 4.5 %	0	2 11.1 %	1 2.7 %	1 5.6 %

Q. 25 People with a learning disability are likely to want to appear competent and not disabled when confronting criminal justice system personnel.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	43 48.9 %	9 60.0 %	11 61.1 %	14 37.8 %	9 50.0 %
Neutral	32 36.4 %	4 26.7 %	5 27.8 %	17 45.9 %	6 33.3 %
Disagree	13 14.8 %	2 13.3 %	2 11.1 %	6 16.2 %	3 16.7 %

Q. 26 The criminal justice system is not an effective way for people with a learning disability to learn the consequences of their actions.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	37 41.1 %	6 37.5 %	8 44.4 %	14 37.8 %	9 47.4 %
Neutral	16 17.8 %	0	3 16.7 %	7 18.9 %	6 31.6 %
Disagree	37 41.1 %	10 62.5 %	7 38.9 %	16 43.2 %	4 21.1 %

Q. 27 People with a learning disability are less likely to offend than the general population.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	19 21.3 %	2 12.5 %	2 11.1 %	8 21.6 %	7 38.9 %
Neutral	43 48.3 %	6 37.5 %	11 61.1 %	19 51.4 %	7 38.9 %
Disagree	27 30.3 %	8 50.0 %	5 27.8 %	10 27.0 %	4 22.2 %

Q. 28 In addition to the Police and Criminal Evidence Act (1984), special guidelines should be issued for the police when dealing with people with learning disabilities.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	61 67.8 %	8 53.3 %	18 100.0 %	18 47.4 %	17 89.5 %
Neutral	10 11.1 %	2 13.3 %	0	7 18.4 %	1 5.3 %
Disagree	19 21.1 %	5 33.3 %	0	13 34.2 %	1 5.3 %

Q. 29 A 24 hour on-call central liaison officer is needed to co-ordinate court and psychiatric services.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	52 57.8 %	4 25.0 %	14 66.7 %	20 54.1 %	14 73.7 %
Neutral	31 34.4 %	9 56.3 %	4 22.2 %	13 35.1 %	5 26.3 %
Disagree	7 7.8 %	3 18.8 %	0	4 10.8 %	0

Q. 30 Criminal justice system personnel are not clear on the distinction between mental illness and learning disability

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	67 74.4 %	7 46.7 %	15 83.3 %	29 76.3 %	16 84.2 %
Neutral	12 13.3 %	2 13.3 %	2 11.1 %	7 18.4 %	1 5.3 %
Disagree	11 12.2 %	6 40.0 %	1 5.6 %	2 5.3 %	2 10.5 %

Q. 31 Lawyers require training in interview techniques with people with a learning disability.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	67 73.6 %	9 56.3 %	17 94.4 %	23 60.5 %	18 94.7 %
Neutral	20 22.0 %	4 25.0 %	1 5.6 %	14 36.8 %	1 5.3 %
Disagree	4 4.4 %	3 18.8 %	0	1 2.6 %	0



Q. 32 Offenders with a learning disability are sufficiently informed of the seriousness of their actions by criminal justice system staff.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	20 22.2 %	3 20.0 %	2 11.1 %	10 26.3 %	5 26.3 %
Neutral	43 47.8 %	8 53.3 %	8 44.4 %	21 55.3 %	6 31.6 %
Disagree	27 30.0 %	4 26.7 %	8 44.4 %	7 18.4 %	8 42.1 %

Q. 33 I believe that boredom and emptiness are not prime reasons for people with learning disabilities offending.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	32 35.6 %	4 25.0 %	9 50.0 %	10 27.0 %	9 47.4 %
Neutral	45 50.0 %	9 56.3 %	7 38.9 %	21 56.8 %	7 36.8 %
Disagree	13 14.4 %	3 18.8 %	1 5.6 %	6 16.2 %	3 15.8 %

Q. 34 People with learning disabilities need support as soon as they come into contact with the police.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	80 87.9 %	15 93.8 %	18 100.0 %	29 76.3 %	18 94.7 %
Neutral	6 6.6 %	1 6.3 %	0	4 10.5 %	1 5.3 %
Disagree	5 5.5 %	0	0	5 13.2 %	0

Q. 35 People with learning disabilities are not likely to be more susceptible to leading questions than others.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	3 3.3 %	0	1 5.6 %	2 5.3 %	0
Neutral	7 7.7 %	1 6.3 %	0	6 15.8 %	0
Disagree	81 89.0 %	15 93.8 %	17 94.4 %	30 78.9 %	19 100.0 %

Q. 36 People with learning disabilities are likely to be aware of the importance of the right to remain silent.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	3 3.3 %	1 6.3 %	0	2 5.3 %	0
Neutral	11 12.1 %	2 12.5 %	0	8 21.1 %	1 5.3 % %
Disagree	77 84.6 %	13 81.3 %	18 100.0 %	28 73.7 %	18 94.7 %

Q. 37 Cases involving a learning disabled person should be 'fast-tracked'.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	38 42.2 %	4 25.0 %	11 61.1 %	12 32.4 %	11 57.9 %
Neutral	30 33.3 %	9 56.3 %	4 22.2 %	13 35.1 %	4 21.1 %
Disagree	22 24.4 %	3 18.8 %	3 16.7 %	12 32.4 %	4 21.1 %

Q. 38 Staff may be too ready to assist the police in assuring a conviction.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	3 3.4 %	0	1 5.6 %	0	2 10.5 %
Neutral	45 51.1 %	9 64.3 %	8 44.4 %	21 56.8 %	7 36.8 %
Disagree	40 45.5 %	5 35.7 %	9 50.0 %	16 43.2 %	10 52.6 %

Q. 39 People with learning disabilities are not likely to be let off by courts.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	19 21.3 %	6 37.5 %	6 33.3 %	2 5.4 %	5 27.8 %
Neutral	43 48.3 %	5 31.3 %	7 38.9 %	20 54.1 %	11 61.1 %
Disagree	27 30.3 %	5 31.3 %	5 27.8 %	15 40.5 %	2 11.1 %

Q. 40 People with learning disabilities have different needs to other marginalised groups.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	75 83.3 %	12 80.0 %	16 88.9 %	29 76.3 %	18 94.7 %
Neutral	10 11.1 %	3 20.0 %	2 11.1 %	4 10.5 %	1 5.3 %
Disagree	5 5.6 %	0	0	5 13.2 %	0

Q. 41 It is better for people with learning disabilities to be found unfit to plead.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	5 5.6 %	0	3 16.7 %	2 5.4 %	0
Neutral	29 32.2 %	2 12.5 %	8 44.4 %	10 27.0 %	9 47.4 %
Disagree	56 62.2 %	14 87.5 %	7 38.9 %	25 67.6 %	10 52.6 %

Q. 42 People with learning disabilities who repeatedly offend will not be treated harshly.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	18 20.2 %	4 25.0 %	4 22.2 %	8 21.6 %	2 11.1 %
Neutral	27 30.3 %	3 18.8 %	3 16.7 %	18 48.6 %	3 16.7 %
Disagree	44 49.4 %	9 56.3 %	11 61.1 %	11 29.7 %	13 72.2 %

Q. 43 People with severe learning disabilities are less likely to offend because they are likely to receive more supervision.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	23 25.6 %	2 12.5 %	3 16.7 %	10 27.0 %	8 42.1 %
Neutral	34 37.8 %	6 37.5 %	10 55.6 %	14 37.8 %	4 21.1 %
Disagree	33 36.7 %	8 50.0 %	5 27.8 %	13 35.1 %	7 36.8 %



Q. 44    People with learning disabilities don't understand sentencing options.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	44 50.0 %	8 57.1 %	14 77.8 %	12 32.4 %	10 52.6 %
Neutral	27 30.7 %	3 21.4 %	2 11.1 %	17 45.9 %	5 26.3 %
Disagree	17 19.3 %	3 21.4 %	2 11.1 %	8 21.6 %	4 21.1 %

Q. 45    People with learning disabilities are less sensitive to non-verbal cues than others.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	40 44.4 %	11 68.8 %	12 66.7 %	9 24.3 %	8 42.1 %
Neutral	30 33.3 %	4 25.0 %	3 16.7 %	17 45.9 %	6 31.6 %
Disagree	20 22.2 %	1 6.3 %	3 16.7 %	11 29.7 %	5 26.3 %

Q. 46    People with learning disabilities are likely to have a desire to please.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	53 59.6 %	12 75.0 %	10 55.6 %	16 43.2 %	15 83.3 %
Neutral	26 29.2 %	3 18.8 %	6 33.3 %	15 40.5 %	2 11.1 %
Disagree	10 11.2 %	1 6.3 %	2 11.1 %	6 16.2 %	1 5.6 %

Q. 47    People with a mild/borderline level of learning disability are less likely to offend than those with a severe learning disability.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	7 7.9 %	2 13.3 %	1 5.6 %	1 2.7 %	3 15.8 %
Neutral	40 44.9 %	9 60.0 %	7 38.9 %	18 48.6 %	6 31.6 %
Disagree	42 47.2 %	4 26.7 %	10 55.6 %	18 48.6 %	10 52.6 %

Q. 48 The segregated upbringing of many people with learning disabilities means that the learning of acceptable behaviour is deficient.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	30 34.1 %	5 33.3 %	2 11.1 %	12 32.4 %	11 61.1 %
Neutral	35 39.8 %	7 46.7 %	10 55.6 %	14 37.8 %	4 22.2 %
Disagree	23 26.1 %	3 20.0 %	6 33.3 %	11 29.7 %	3 16.7 %

Q. 49 People with learning disabilities are likely to have a poorly developed moral foundation.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	12 13.6 %	4 26.7 %	2 11.1 %	3 8.1 %	3 16.7 %
Neutral	28 31.8 %	4 26.7 %	9 50.0 %	10 27.0 %	5 27.8 %
Disagree	48 54.5 %	7 46.7 %	7 38.9 %	24 64.9 %	10 55.6 %

Q. 50 People with learning disabilities are likely to have a fear of authority.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	46 51.7 %	8 50.0 %	10 55.6 %	19 51.4 %	9 50.0 %
Neutral	26 29.2 %	6 37.5 %	5 27.8 %	9 24.3 %	6 33.3 %
Disagree	17 19.1 %	2 12.5 %	3 16.7 %	9 24.3 %	3 16.7 %

Q. 51 Services should be more directed towards people with learning disabilities gaining community friends than with assisting them with the criminal justice system.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	30 33.7 %	8 50.0 %	8 44.4 %	9 24.3 %	5 27.8 %
Neutral	42 47.2 %	7 43.8 %	5 27.8 %	22 59.5 %	8 44.4 %
Disagree	17 19.1 %	1 6.3 %	5 27.8 %	6 16.2 %	5 27.8 %

Q. 52 People with learning disabilities are less easily led into committing offences than other people.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	8 8.9 %	2 12.5 %	1 5.6 %	2 5.4 %	3 15.8 %
Neutral	15 16.7 %	2 12.5 %	1 5.6 %	10 27.0 %	2 10.5 %
Disagree	67 74.4 %	12 75.0 %	16 88.9 %	25 67.6 %	14 73.7 %

Q. 53 Services are inadequate for offenders with learning disabilities.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	54 61.4 %	5 35.7 %	14 77.8 %	21 56.8 %	14 73.7 %
Neutral	31 35.2 %	9 64.3 %	4 22.2 %	15 40.5 %	3 15.8 %
Disagree	3 3.4 %	0	0	1 2.7 %	2 10.5 %

Q. 54 People with learning disabilities should not be convicted on confession alone.

	Total	Judges	Magistrates	Police	Appropriate Adults
Agree	71 78.9 %	8 50.0 %	18 100.0 %	26 70.3 %	19 100.0 %
Neutral	11 12.2 %	5 31.3 %	0	6 16.2 %	0
Disagree	8 8.9 %	3 18.8 %	0	5 13.5 %	0



# Perceptions of People with Learning Disabilities

<u>Issues</u>		<u>Emerging Themes</u>
6.2    Classification	→	Confusion
	→	Unclear categories
	→	Legal definitions
	→	Political correctness
	→	Benefit
6.3    Detection	→	‘Feeling’
	→	‘Normal’ behaviour
	→	Ability to communication
	→	Difficult to detect
	→	Environment
	→	Drugs
	→	Person’s history
	→	Other professionals
6.4    Disadvantages & vulnerabilities	→	Recognition of disability
	→	Socio-economic background
	→	Child-like
	→	Honesty
	→	Ability to communicate
	→	Suggestibility
	→	Intimidating environment
	→	Lack of support
6.5    Care in the community	→	No support & isolation
	→	Cry for help
	→	Discrimination
	→	Police not social workers
6.6    Challenging & criminal behaviour	→	Frustration
	→	Predisposition
	→	Leniency & toleration
	→	Reprimand

# People with Learning Disabilities and Criminal Justice

<u>Issues</u>		<u>Emerging Themes</u>
7.1	Normalisation	→ Care in the community → Vulnerability → Mens rea → Educative function → Fairness → Impeding justice
7.2	Accommodation & different treatment	→ Fairness → Special provisions → Leniency
7.3	PACE	→ Confusing language → Training → Extension of roles
7.4	Witness issues & the Court Intermediary	→ Unclear definition → Problematic implementation
7.5	Diversion from custody	→ Assumed to be automatic → Appropriateness
7.6	Diversion and rights	→ Victim's rights → Confidence in justice → Infringement of rights → Adverse effects of diversion
7.7	Disposal	→ Mens rea → Learning disability as mitigation → Lack of options

# Criminal Justice, Professional Roles and Service Provision

<u>Issues</u>		<u>Emerging Themes</u>	
8.1	Service availability	→	Knowledge of services
		→	Organisation of services
		→	Limited resources
		→	Effectiveness of roles
		→	Extension of roles
8.2	Function of the criminal justice system	→	Multi-functional
		→	Educative
		→	Warnings / Punitive
		→	Crime prevention
		→	(Nearly) normal punishment
8.3	Professional roles	→	Magistrates
		→	Police
		→	Appropriate adults
8.4	Training issues	→	Identification
		→	Limited resources
		→	Equal treatment