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People with mental illness and learning disabilities let down by England's criminal justice system

27 November 2017 – Suspects and defendants with mental ill health or learning disabilities need to be better identified and supported, in order to ensure their right to a fair trial, argues a report published today by the law reform charity JUSTICE.

Around one in four adults in the UK are diagnosed with a mental illness during their lifetime and many more will experience changes in their mental well-being. Three quarters of people with mental health problems receive no support at all. The available evidence suggests that people in the criminal justice system are far more likely to suffer from mental health problems than the general population.

Mental Health and Fair Trial, the result a JUSTICE working party which started work in September 2016, argues that from first contact with the police through to sentence, there remain fundamental problems with the English justice system's response to mental health. Left unaddressed the fair trial rights of many defendants may be undermined.

Sir David Latham, Chair of the Working Party, said, “*The broad theme of our work has been to ensure that vulnerability is properly identified, and where identified, properly approached so that the person either receives reasonable adjustments to give them the capacity to effectively participate in their defence, or if appropriate, is not prosecuted. As Lord Bradley and others have identified, this requires the criminal justice and health systems to work together. Where a person is diverted from prosecution or prison, suitable and effective treatment and support must be available to ensure that the person remains outside of the criminal justice system.*”

Mental Health and Fair Trial makes 52 recommendations on the following aspects of the criminal justice process:

- 1. The investigative stage** – Mental health experts, not police officers, should be identifying people with vulnerability as a result of mental ill health or learning disability and those identified should have access to proper support.
- 2. Decision as to charge or prosecution** – A specialist prosecutor should be appointed for each Crown Prosecution Service area who must make the charging decision in cases of vulnerability, assisted by up-to-date guidance and assessments.
- 3. Pre-trial and trial hearings** – Trial processes can be bewildering and incomprehensible for those with mental ill health and learning disabilities. Magistrates' courts, youth courts and the Crown Court should have a dedicated mental health judge with enhanced case management powers and responsibility for a case progression protocol.
- 4. Legal capacity tests** – A capacity based test of fitness to plead and fitness to stand trial, placed on a statutory footing should be available in all courts and the “insanity” defence should be amended to a defence of ‘not criminally responsible by reason of a recognised medical condition’.
- 5. Disposal and sentencing** – A Sentencing Guideline on mental health and vulnerability should be created and a broader range of disposals made available to sentencers to meet the needs of the case.

Director of JUSTICE, Andrea Coomber, said, ‘*JUSTICE has long been concerned that the criminal justice system is not suitably designed to accommodate people with mental health or learning difficulties.*

‘There are still fundamental problems with the criminal justice system’s response to vulnerability and too few people receive reasonable adjustments to enable them to effectively participate in their defence. But that is not to say that practitioners in the criminal justice system are not aware of the problem. We are impressed by the efforts being made to create an integrated criminal justice and

mental health sector. We hope that this report will build on that and bring about change for some of the country's most vulnerable people.'

This Working Party was generously supported throughout by Linklaters LLP. The *Mental Health and Fair Trial* report will be available on the JUSTICE website following our launch event on Monday 27 November 2017 at Linklaters LLP in London. Chair of the Working Party, Sir David Latham, will present the report's conclusions, followed by thoughts from the Lord Chief Justice, Lord Burnett of Maldon.

Notes for editors

1. JUSTICE has a long and rich history of using working parties of its membership to effect systematic and vital changes within the legal system. The Ombudsman system and Criminal Injuries Compensation Board, for example, were set up on the recommendation of previous JUSTICE working party reports. In 2016, the ground-breaking [What is a Court?](#) informed the HMCTS reform programme to maximise access to justice. Upon the request of Lord Justice Ryder and the Lord Chief Justice, HMCTS has set up a working party to follow up on the report's recommendations. The report has also been discussed at a number of other high level meetings and events.
2. This latest [Working Party](#), set up and supported by JUSTICE and drawn from its membership, features a wealth of expertise from across the criminal and medical professions. The Working party was chaired by Sir David Latham, with the assistance of Linklaters' pro bono team and 12 members: John Briant, Inspector Michael Brown OBE, Anthony Burton CBE; Professor Nigel Eastman; HHJ Sean Enright; Jan Jones, Registered Intermediary; Julia Krish; Natasha Lloyd-Owen; Dr Kulvinder Manik; Jennifer McDermott; Carolyn Taylor; Kris Venkatasami, Deputy Chief Crown Prosecutor; and Dr Eileen Vizard CBE. JUSTICE staff Jodie Blackstock and Zoë Chapman supported the Working Party.
3. JUSTICE is an all-party law reform and human rights organisation working to strengthen the justice system – administrative, civil and criminal – in the United Kingdom. For more information about JUSTICE visit www.justice.org.uk.
4. Please direct all queries to Jodie Blackstock, Legal Director at JUSTICE on jblackstock@justice.org.uk and 0207 7626436.