

# Mental health and fair trial: Implementation report

## Executive Summary



Established in 1957 by a group of leading jurists, 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. We are a membership organisation, composed largely of legal professionals, ranging from law students to the senior judiciary.

Our vision is of fair, accessible and efficient legal processes, in which the individual's rights are protected, and which reflect the country's international reputation for upholding and promoting the rule of law. To this end:

- We carry out research and analysis to generate, develop and evaluate ideas for law reform, drawing on the experience and insights of our members.
- We intervene in superior domestic and international courts, sharing our legal research, analysis and arguments to promote strong and effective judgments.
- We promote a better understanding of the fair administration of justice among political decision-makers and public servants.
- We bring people together to discuss critical issues relating to the justice system, and to provide a thoughtful legal framework to inform policy debate.

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## EXECUTIVE SUMMARY

In 2017, JUSTICE published its *Mental Health and Fair Trial Working Party Report*<sup>1</sup>, which expressed concern about the treatment of defendants with mental health conditions and learning disabilities in the criminal justice system. Through the Working Party, 52 recommendations were made for the better identification of vulnerability<sup>2</sup> among people accused of crime and those subsequently prosecuted through the courts; and once identified, for appropriate responses to the needs of those people and their capacity to effectively participate in the proceedings.

We have continued to make noteworthy and substantial progress in the implementation of the Working Party's recommendations. We have met with all actors concerned in the administration of the criminal justice system to reiterate our concerns and promote our recommendations, including: the police, prosecution service, the courts, the professional regulators (SRA and BSB), members of the judiciary and the legal profession, academics and others. The JUSTICE Report is well known in the criminal justice sector and professionals are aware of the need to address the problems that it raises.

We are impressed by the level of support and engagement shown by many stakeholders. It is apparent that key actors are increasingly mindful that mental health is an important issue that needs careful thought and a practical approach. We welcome the Lord Chancellor's recent commitment to support people with mental illness, learning disabilities and/or autism within the criminal justice system.<sup>3</sup> There have been significant advances in the way that the criminal justice system responds to vulnerable individuals.

We are pleased to present our Implementation Report, which describes our progress to date in addressing each of the Working Party's recommendations. The report documents our proposals that have been implemented since the publication of *Mental Health and Fair Trial*; proposals in the process of implementation; and proposals that have not yet been implemented, but sets out our plans toward this end. Almost two thirds of our recommendations have been put in train. However, there is much yet to be achieved before we can be confident that the criminal justice system operates fairly for all defendants with neurodivergent conditions. JUSTICE looks forward to working with the Government in order to improve further the protection of vulnerable individuals in line with the recommendations of the Working Party.

The *Mental Health and Fair Trial* report made 52 recommendations. In the chapters of the Implementation Report each recommendation is reported on, with an update on the work carried out in respect of the recommendation and our proposed next steps towards implementation.

### Proposals that have been implemented

We are pleased to report on the following key successes:

#### The police

- **Street triage** schemes to help arresting officers identify whether a suspect is vulnerable, and help officers decide whether a suspect should be further investigated, arrested or offered a voluntary interview are available comprehensively across the country – 42 out of 43 forces now have some kind of triage service.
- All force areas in England and Wales have a **lead for mental health**, both at the operational and strategic levels, who is responsible for making sure policing staff have a clearer understanding of the mental health-related demand in the area.

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<sup>1</sup> Available on the [JUSTICE website](#)

<sup>2</sup> We adopted the phrase “vulnerable” throughout the report to refer to any person, of any age, who can be considered to have any impairment that may have caused them to commit potentially criminal conduct, and/or which may affect their capacity to effectively participate in the criminal justice process. This includes neurological (physical) as well as psychiatric (mental) conditions, which may fluctuate over time. L&D services and the PACE Codes of Practice and Criminal Procedure Rules have adopted the term “vulnerable”, which indicates that its meaning is understood across all healthcare and criminal justice agencies. See page 15 of our report.

<sup>3</sup> Ministry of Justice, ‘Lord Chancellor: It’s time for action on mental health in prisons’, available at <https://www.gov.uk/government/speeches/lord-chancellor-its-time-for-action-on-mental-health-in-prisons>

- The National Police Chiefs Council has developed its first ever **strategy for policing and mental health**, setting out the challenges, principles and objectives for the police service in England and Wales, which will go some way towards improving outcomes for people with mental health problems.
- PACE Code of Practice C has been amended to provide greater clarity on the safeguards for **voluntary interviews** in police custody and a more detailed description of the Appropriate Adult role. A new functional test has been added to the Code – meaning a ‘vulnerable adult’ is now defined in the context of their ability to understand the implications of police procedures and processes connected with their detention and their rights and entitlements.

## Prosecution

- A **single point of contact** has been established in each CPS area to provide advice on cases with a mental health aspect.
- The **CPS Legal Guidance** for prosecuting suspects and defendants with mental ill health issues or learning disabilities has been updated, in particular to include more information on Liaison and Diversion (L&D) schemes and special measures, as well as more practical guidance on each stage of the process.
- The new Code for Crown Prosecutors suggests that in appropriate cases the prosecutor may invite **representations from a suspect or their legal representative** as to why a suspect should not be prosecuted.

## The courts

- **New Criminal Procedure Rules** set out the factors for courts to consider when deciding whether to appoint an intermediary and clarify their role.
- HMCTS has provided **easy read information** to enable vulnerable defendants to understand the court process better. Additionally, an Easy Read Postal Requisition Form was developed by the National Police Chiefs’ Council jointly with the Criminal Procedure Rule Committee.
- A **new Sentencing Guideline** on sentencing offenders with mental disorders, developmental disorders, or neurological impairments has been published to assist judges in decisions on disposal and sentencing.
- Plans are in place to develop ‘**enhanced**’ **L&D services** across Crown Court centres.

## **Proposals in the process of implementation**

Considerable progress has been made in taking forward many of the Working Party’s recommendations. In summary:

- There is overwhelming support amongst the CPS and police for our suggestion of **flagging files** where there is a vulnerability. It is hoped this will be a feature of the Common Platform now that the platform is being rolled out.
- HM Inspector of Prisons is consulting on the **screening processes** used to identify neurodiverse conditions at each stage of the criminal justice system to see if these can be improved.
- **Court case progression forms** have been amended to prompt courts and legal representatives to consider whether a defendant is vulnerable and to identify what support they might need from a drop-down menu. These will be introduced once emergency Covid procedures have ceased.
- The Ministry of Justice is conducting a review into the intermediary model, which includes consideration of a **Registered Intermediary Scheme for defendants**.
- The Government has welcomed the Law Commission’s ‘Unfitness to Plead’ report and is currently working on draft legislation. If brought forward, this would address our proposals around the unfitness to plead procedure, including placing a **capacity-based test of fitness to plead** on statutory footing, and would prioritise effective participation under article 6 ECHR.

- **Mental health training for judges**, for both case management and applying the new Sentencing Guideline.

## Proposals that have not yet been implemented

It has unfortunately not been possible to complete the implementation of several of the Working Party's proposals at this stage. Our attention will be on these aspects of the report over the coming year.

Our priorities include:

- Support of screening by L&D practitioners every suspect who comes into custody;
- Exploring ways to increase the take-up of legal representation among detainees;
- Further consideration of a pilot scheme that would embed intermediaries for defendants in the police station on a duty scheme basis;
- Encouraging support assistants to be made available for vulnerable defendants in criminal courts to provide general information and support regarding court processes and procedures.
- Continuing to promote training on mental health for lawyers and HMCTS court staff who handle criminal cases.

## Further recommendations

Our Implementation Report also highlights a number of further recommendations to help improve the identification of and response to vulnerability among those accused of crime and subsequently prosecuted through the courts.

We believe that the following significant steps are needed to achieve real progress in this respect:

- Police officers need to have a proper understanding of mental ill health and how to support and safeguard individuals, beyond focussing on immediate health risks;
- Evaluation of street triage schemes so that forces can be confident that they are delivering the best ways of responding to mental health needs and any gaps in resources and operational problems are addressed;
- Greater provision of Appropriate Adults for vulnerable adults in all areas;
- Wider use of diversion from charge and prosecution in appropriate cases involving a lack of capacity.

## Methodology

The *Mental Health and Fair Trial* report made 52 recommendations. To track the progress of each recommendation, we carried out qualitative evidence gathering which involved interviewing and corresponding with a broad range of individuals, professionals and organisations, including the College of Policing, the National Appropriate Adult Network, the Crown Prosecution Service, NHS England, the Ministry of Justice, the Bar Standards Board, the Solicitors Regulation Authority, the Law Society, the Inns of Court College of Advocacy, the Criminal Procedure Rule Committee, Intermediaries for Justice, the Law Commission and the Sentencing Council.

We also analysed **data obtained by JUSTICE** under the Freedom of Information Act (FOIA) relating to police station recording of vulnerability, use of the appropriate adult safeguard and solicitor requests. In addition, we looked at **materials and reports** published by individual police forces, NHS trusts and other organisations, as well as **academic literature**, to assist our analysis of the progress that has been made since 2017.