

# Mental health and fair trial: Implementation report

A Report by JUSTICE



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59 Carter Lane, London, EC4V 5AQ  
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## Status of recommendations

<b>Status</b>	
	Implemented
	Partly implemented, or substantial progress made
	Not yet implemented
<u>Introduction</u>	
1.	Accurate recording should be required of the police and courts on the number of people identified as having a vulnerability in the criminal justice system, what that vulnerability is and at what stage of the process. Outcomes for those individuals should also be recorded. This data should be regularly reported as part of policing and court statistics.
<u>Investigation stage</u>	
2.	Policing and mental health cooperation schemes should not be an ad hoc creation of dedicated professionals at a local level, but be available comprehensively and permanently across the country.
3.	Arresting officers should be assisted by a street triage scheme wherever possible to identify whether a suspect is vulnerable, and help officers decide whether a suspect should be further investigated, arrested or offered a voluntary interview.
4.	A decision to take no further action should be logged by officers as a diversion for recording purposes.
5.	Voluntary interviews must have all the safeguards that we recommend for police custody, particularly where alleged offending takes place in a hospital setting.
6.	The phrase “in the absence of any clear evidence to dispel” the suspicion that a suspect is suffering from mental disorder or is otherwise mentally vulnerable should be removed from PACE Code C as it is reducing support.
7.	L&D practitioners should screen every suspect who comes into custody. This will ensure that the accurate identification of vulnerability is not left to the police.
8.	Fitness for interview/detention and what reasonable adjustments might be needed to enable them to participate, should be assessed by an L&D practitioner if there is a mental health concern, and an approved healthcare professional for a physical condition. The assessment should apply mandatory minimum standards set by the Faculty of Forensic and Legal Medicine.
9.	Easy read versions of the notice of rights and entitlements should be provided to suspects.
10.	Appropriate adults should be re-named, for example “approved support and welfare assistants” would be more appropriate. Their role should be limited to these functions. Volunteer schemes should be available throughout the country and volunteers properly trained.
11.	Mandatory legal representation should be given to suspects assessed as vulnerable.

12.	Legal representatives should be given access to the medical assessments of the clients, which should be recorded in the custody record. L&D practitioners must make their reports available to both the police and defence.
13.	The need for intermediaries during police custody or voluntary interview must be better identified by L&D, support assistants and legal representatives.
14.	Intermediaries for defendants must be provided by the MoJ Registered Intermediary Scheme. Ideally they should be embedded in the police station on a duty scheme basis.
15.	Each force area must have a policing mental health lead who can liaise with the local clinical commissioning group, mental health services and policing staff to identify service needs and approaches for the local area.
16.	PACE and its Codes of Practice must be amended to give effect to these proposals.
17.	Officers require some training on how to respond to vulnerability. Guidance is available, such as Together's <i>A common sense approach to working with defendants and offenders with mental health problems</i> , and should be made routinely available.
18.	All professionals engaged in the investigation stage – police, lawyers, support assistants, intermediaries, and L&D practitioners – need to have incorporated into their training an introduction to the role of each other in the process, so that their benefit and availability is made clear.
<u>Decision as to charge and prosecution</u>	
19.	In cases of vulnerability, “release under investigation” should not extend a charging decision beyond two weeks.
20.	Case files sent to the CPS must be flagged where there is a vulnerability. This should be a feature of the Common Platform.
21.	A specialist prosecutor who has received mental health awareness training should be created for each CPS area.
22.	This prosecutor must make the charging decision in cases of vulnerability. To assist them in this task, CPS Guidance <i>Mentally Disordered Defendants</i> is out of date and must be urgently reviewed, in particular to explain the nature of diversion and the local options available as an alternative to prosecution.
23.	L&D assessments should travel with every case file to the specialist prosecutor to assist with their charging decision.
24.	Defence representatives must be able to make representations about charge to the specialist prosecutor.
25.	Careful consideration should be given to the establishment of a mental health diversion panel to assist specialist prosecutors, once the evidential threshold has been past, on whether a programme of support for the suspect would achieve an appropriate outcome for the case.
<u>Pre-trial and trial stage</u>	

26.	Where a defendant is vulnerable, online and virtual procedures are inappropriate and in court hearings will be necessary.
27.	Where defence practitioners are concerned about vulnerability that has not previously been identified they should be able to speak with the specialist mental health prosecutor and ask that continuation of the prosecution be reviewed.
28.	Embedding of L&D practitioners in magistrates' courts and the Crown Court should be a priority.
29.	Support assistants should be available for vulnerable defendants.
30.	Intermediaries can be crucial to enabling a defendant to understand and communicate with their legal representatives and during trial. However, the model needs revising and, as recommended above, should be part of the MoJ scheme. Intermediaries should be embedded in courts through a duty scheme. A regulatory body with training obligations should be established.
31.	Holding the trial or procedural hearings at the prison or secure hospital where a defendant is detained should be considered in particular circumstances.
32.	Easy read information on the court process should be provided, including with paper requisitions.
33.	A dedicated mental health judge should be appointed, with responsibility for ensuring that cases involving vulnerable defendants are appropriately dealt with. In magistrates' courts, this will be a district judge, in the Crown Court, the resident judge. The judge should conduct the first appearance, PTPH and GRH.
34.	The dedicated judge should have the power to direct that the CPS review a decision to prosecute and provide written reasons for continuing.
35.	A protocol should be put in place to ensure that the Criminal Practice Direction and other guidance is correctly followed and reasonable adjustments are made as necessary.
36.	Familiarisation with vulnerability should be part of core training for magistrates, judges, court staff and lawyers. The training should be about knowing how to respond to mental health needs.
<b><u>Legal Capacity Tests</u></b>	
37.	We agree with the Law Commission that there should be a capacity based test of fitness to plead and fitness to stand trial, placed on a statutory footing and applied in magistrates' courts and the Crown Court.
38.	Where the psychiatric assessment indicates that a defendant is fit to plead, this opportunity should be offered, subject to legal advice, in order to avoid an unnecessary trial.
39.	Evidential and procedural changes are needed to ensure that this process and the fact finding procedure that may follow are fair.
40.	We also agree with the Law Commission that the insanity defence should be amended to a defence of "not criminally responsible by reason of a recognised medical condition" available in magistrates' courts and the Crown Court.

41.	We consider that in a clear case, for example when the prosecution and defence are agreed that the facts are completely made out and that the expert evidence demonstrates the defendant lacked capacity at the time of the offence, the case should not proceed to trial, and a judge should be able to pronounce a special verdict.
42.	A further review should take place of what defences should be available in cases where mental capacity will be in issue, taking into account the range in degree of diminished capacity that might exist for defendants with vulnerabilities. The amended test of diminished responsibility is very similar to the proposed test for not criminally responsible – the difference being either a <i>substantial</i> or <i>complete</i> lack of capacity. It is difficult to identify which ingredients would satisfy one test and not the other.
43.	Consideration must also be given to whether the defence of diminished responsibility by substantial lack of capacity should be available for all specific intent crimes and not just murder.
44.	Primary legislation and amendment to the Crim PR will be necessary to give effect to these amended tests and their procedures.
45.	Better instructions must be provided to clinicians assessing capacity under these tests, who would benefit from a standard template to follow on preparing their reports. L&D practitioners can greatly assist with this.
<u>Disposals and Sentencing</u>	
46.	We agree with the Law Commission that the range of disposals available where a defendant lacks capacity must be broadened, and largely available in magistrates' courts and the Crown Court. In particular, supervision orders should be extended, and supervised by local authorities rather than probation services. Courts should be able to keep the order under review, including requiring reports from supervisors and medical practitioners. We are concerned about the powers that should be available upon a breach of an order, which is a complex and difficult question where a person lacks capacity.
47.	Decisions on disposal and sentence should ideally be reserved to the dedicated judge, but at a minimum be to judges that have undertaken mental health training.
48.	A Sentencing Guideline on mental health and vulnerability should be created to assist in this decision.
49.	L&D practitioners have a key role in preparing recommendations for the court on appropriate sentences and what treatment provision is realistic and available in the person's local area.
50.	The conditions of any community order must be achievable, fully comprehended by the individual and supported. Judges should be able to keep sentences under review to ensure that the person is both receiving appropriate assistance and treatment and engaging in the programme.
51.	Clinical Commissioning Groups must accept responsibility for treatment of offenders with vulnerabilities in the community.
52.	Information sharing about the offender and the circumstances of the offence must be shared with the Mental Health Tribunal to enable appropriate decisions on discharge to be made.

## I. INTRODUCTION

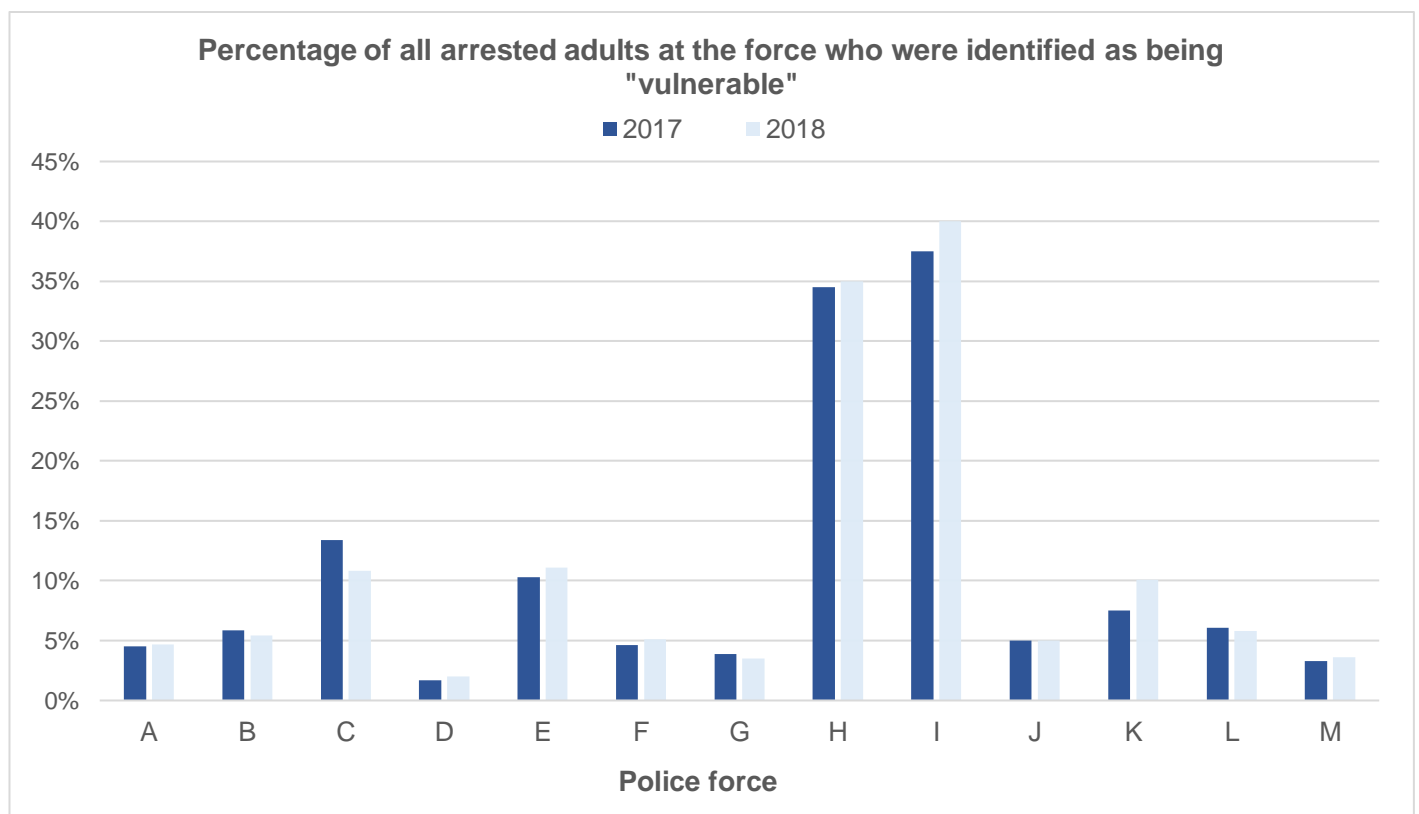
**Recommendation 1:** Accurate recording should be required of the police and courts on the number of people identified as having a vulnerability in the criminal justice system, what that vulnerability is and at what stage of the process. Outcomes for those individuals should also be recorded. This data should be regularly reported as part of policing and court statistics.

1.1 The Working Party identified gaps in the collection, monitoring and analysis of mental health-related data on defendants and accused people. There remains much uncertainty as to what the precise number of people identified as having a vulnerability in the criminal justice system is today. To get an indication of how many detainees are considered to be vulnerable, we submitted Freedom of Information requests to the 43 police forces across the UK. We asked for the following data for the calendar years 2017 and 2018:

- The proportion of adult arrestees identified as being ‘vulnerable’;
- The proportion of (vulnerable) adult arrestees for whom an appropriate adult (AA) was secured.

1.2 The average rate of identification was 10.6% and 10.9% in 2017 and 2018 respectively. The responses, which fall below the National Appropriate Adult Network (NAAN) estimate,<sup>1</sup> suggest that vulnerability still is not being identified properly in custody. There were considerable differences in the vulnerability rates from the 16 forces in the sample, with rates of 1.7 percent and 2 percent being observed by Lincolnshire Police in 2017 and 2018 respectively, in contrast to rates of 37.5 percent and 40 percent recorded by West Mercia Police in 2017 and 2018 respectively.

Figure 1. Summary of vulnerability figures across police forces<sup>2</sup> in 2017 and 2018



<sup>1</sup> The National Appropriate Adult Network estimates that between 11-22% of arrested adults are mentally vulnerable and require the assistance of an appropriate adult, and on the data available, there appears to be a significant under identification of need amongst police forces. See: NAAN, [There to help: Ensuring provision of appropriate adults for mentally vulnerable adults detained or interviewed by police](#) (2015).

<sup>2</sup> Police force from A to M: Derbyshire Constabulary (A), Dyfed-Powys Police (B), Leicestershire Police (C), Lincolnshire Police (D), Police Service of Northern Ireland (E), Northamptonshire Police (F), North Wales Police (G), Warwickshire Police (H), West Mercia Police (I), Wiltshire Police (J), Cambridgeshire Constabulary (K), Essex Police (L), Gwent Police (M).

- 1.3 The percentage of adults identified as vulnerable who had received an AA varied considerably from 6.5% to 100% in 2017, and 8% to 100% in 2018. The two forces reporting 6.5 percent told us that an adult was considered vulnerable where they had answered ‘Yes’ to the risk assessment question “Do you have any mental health problems?”, and there were details of an appropriate adult recorded on the custody record – meaning their force adopted a wide definition of vulnerability and consequently not all those identified as vulnerable were supported by an AA.
- 1.4 As an issue emerging from the data, we are concerned that there does not appear to be an accepted marker that identifies a person as vulnerable. For instance, several forces used the definition in the Police and Criminal Evidence Act 1984 (‘PACE’) Code C; on the other hand, a number of forces adopted their own definition of vulnerability based on a set of fixed questions and/or further observations. **Forces must be sure they are identifying, safeguarding and protecting vulnerable offenders with mental health problems.**
- 1.5 The lack of consistency in the recording and availability of information on vulnerability, as well as the varying approaches between forces to classifying vulnerability, make it hard to understand the prevalence of people with mental health problems and learning disabilities in the criminal justice system. It also makes it difficult to understand how well needs are being addressed and whether certain police forces should be investing in training to support custody officers and staff to identify and respond to that need. The inconsistent provision of AAs is a further concern and indicates that need is being overlooked. NAAN’s *There To Help 3* report provides much-needed insight into Appropriate Adult provision for mentally vulnerable adult suspects.<sup>3</sup>
- 1.6 The National Police Chiefs’ Council (NPCC) developed its first ever strategy for policing and mental health in February, setting out the challenges, principles and objectives for the police service in England and Wales. A key objective is to develop a more sophisticated understanding of mental health-related demands amongst forces, including gathering information on the use of legal powers and the proportion of people who contacted police who were already known to mental health services.<sup>4</sup> There has been some attempt to calculate demand. A 24-hour national snapshot of demand across all forces in England and Wales was undertaken in late 2019. We await analysis from the data, which we hope will be shared soon. We would stress that many people with mental ill health have a hidden learning disability or condition such as high-functioning autism. It is important that the police respond accurately to the needs of these individuals.
- 1.7 Additionally, Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) has been working with a pilot group of police forces to put together a database of all incidents reported to police control rooms. As part of the data collection, they asked forces to provide figures on mental health flags. The database is still being developed, but initial findings suggest that three percent of all incidents reported to police were flagged as being related to mental ill-health.<sup>5</sup> HMICFRS also found that the peak time for calls to police for support with mental health-related incidents is 3pm to 6pm, Monday to Friday. These efforts to identify the nature and scale of demand that the police face in dealing with mental ill health are encouraging, as they would seem to suggest that forces and partners are attempting to develop a clear picture of appropriate resourcing by the right professionals.
- 1.8 In their force management statements<sup>6</sup> – in which forces set out their current and future levels of demand associated with mental health – nearly all forces reported an increase in demand.<sup>7</sup> Two of the major reasons given for the rise in demand were i) an increased understanding of mental health by staff, and ii) improved recording

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<sup>3</sup> NAAN, [There to Help 3: The identification of vulnerable adult suspects and application of the appropriate adult safeguard in police investigations in 2018/19](#) (2020). The Report found that the need for an AA was recorded in just 6.2% of adult detentions in 2018/19, and that most detentions and interviews meeting the PACE Code C ‘vulnerable persons’ criteria are not being recorded as requiring an AA. The Report further noted that the presence of L&D had a positive effect on the police’s identification of the need for AAs.

<sup>4</sup> National Police Chiefs’ Council, [National Strategy on Policing and Mental Health](#), February 2020.

<sup>5</sup> Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services, [Policing and Mental Health: Picking Up the Pieces](#), November 2018, pp.34-36.

<sup>6</sup> HMICFRS introduced force management statements (FMS) in 2018. An FMS is a detailed self-assessment that chief constables are required to prepare and submit to HMICFRS each year. This may include a statement and explanation of current and future operational needs; current ways of working and the status of the workforce and assets; and how the force will change and improve its workforce, policies, practices and other assets to meet the demand it anticipates. See HMICFRS, [Force management statement templates and guidance - FMS 3](#), December 2019

<sup>7</sup> Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services, [Policing and Mental Health: Picking Up the Pieces](#), November 2018, p.39.



and flagging of mental health on incidents and crime reports. This is a positive step towards ensuring the accurate and timely identification of those accused who are vulnerable to criminal justice processes.

1.9 The National Police Chiefs' Council has also endorsed a major recommendation from *Picking up the Pieces*, which called for the NPCC lead and College of Policing to agree a new national definition of mental ill health for all forces to adopt.<sup>8</sup> **It is vital that in responding to vulnerability, police officers have a proper understanding of this definition and how to support and safeguard individuals, beyond focussing on immediate health risks. We believe that a universal definition of neurodivergence may help to do this.**

1.10 It is worth noting that PACE Code C has been revised to include a new functional test for vulnerability that is significantly more wide-ranging than the previous version.<sup>9</sup> While the old test focussed on one single risk, the amended version covers a broad range of risks to justice including:

- inability to exercise rights and entitlements;
- not understanding the implications of procedures and processes;
- not understanding the significance of information, questions or replies;
- ineffective communication;
- confusion;
- unintentionally self-incriminating, unreliable or misleading statements;
- high levels of suggestibility; and
- high levels of compliance.<sup>10</sup>

This revision is a welcome change. In its Report the Working Party were keen to use a sufficiently wide definition of vulnerability in order to not exclude individuals. **That said, the revised functional test is significantly more complex than the previous threshold and definition, and we consider that a practical tool must be developed to guide officers in applying the test.**

## Case Studies: Understanding demand

### Humberside Police

Humberside Police has developed a detailed mental health dashboard that displays information on demand related to mental health.<sup>11</sup> This enables the force to compile data which assists its operational planning and resource estimates. As a result, the force better understands its demand – for instance, it knows the number of mental ill health incidents increased by an average of 64 per month between April 2016 and March 2018.

### Avon and Somerset Constabulary

Avon and Somerset Constabulary has devised a system called Qlik Sense, which can identify the numbers of calls coming in by type.<sup>12</sup> The force can gauge proportions of demand that have a mental health element based on how they are graded.

<sup>8</sup> National Police Chiefs' Council, *National Strategy on Policing and Mental Health*, February 2020, see Appendix: Delivering the strategy

<sup>9</sup> The revised functional test is set out in the three sub-clauses to 1.13(d).

<sup>10</sup> Helpfully summarised by NAAN, 'PACE Update July 2018 Changes to Codes C, E, F and H', p.16, available online at <https://www.appropriateadult.org.uk/index.php/downloads/pace-updates>

<sup>11</sup> Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services, *Policing and Mental Health: Picking Up the Pieces*, November 2018, p.39.

<sup>12</sup> *Ibid.*

## Kent Police

Kent Police has a dedicated team of mental health professionals that is based in units throughout the force.<sup>13</sup> Team members assist in handling mental health-related crime reports and manage repeat callers. Their analyst collects data on repeat callers and puts together an analytical report, to help manage the problem. Consequently, services are more focussed and there is improved support for users of multiple services.

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<sup>13</sup> *Ibid*, p.41.

## II. INVESTIGATION STAGE

- 2.1 The Working Party was concerned that mental health experts, not police officers, should be recognising vulnerability and that those so identified should have access to proper support. It also made recommendations relating to: Appropriate Adult provision; access to liaison and diversion services; and the provision of mandatory legal representation and intermediaries.

### Identifying mental health needs in suspects of crime

#### A multi-agency approach

**Recommendation 2:** Policing and mental health cooperation schemes should not be an ad hoc creation of dedicated professionals at a local level, but be available comprehensively and permanently across the country.

**Recommendation 3:** Arresting officers should be assisted by a street triage scheme wherever possible to identify whether a suspect is vulnerable, and help officers decide whether a suspect should be further investigated, arrested or offered a voluntary interview.

- 2.2 Joint working between police and mental health professionals and street triage can play a significant role in intervening early, supporting the work of courts and directing people with vulnerabilities away from the justice system towards other services which can provide the individual with support to improve their circumstances. Since our Report publication, 42 out of 43 forces now have some kind of triage service.<sup>14</sup> In preparing this Update, we found innovative and excellent examples of partnership in action throughout forces. A number of recent developments with regards to triage service examples are outlined below.

#### Case Studies: Triage activities

##### Mental Health Triage: North Wales Police

Since mid-January 2020, mental health clinicians have teamed up with North Wales Police to provide a new mental health triage service based at the Force Control Centre (FCR) in St Asaph.<sup>15</sup> Six clinical Betsi-Cadwaladr University Health Board practitioners work from the police FCR to support call handlers and triage calls that are thought to involve vulnerable individuals. The mental health specialists are embedded in the FCR, providing expert, on-the-spot advice about mental health crisis and advising officers who are in contact with an individual on how to respond, leading to quicker and more informed decision-making.

##### Street Triage: Nottinghamshire Police

Nottinghamshire Police's triage system has expanded since the initial pilot project in 2014. This service now operates during the day for a trial period of six months.<sup>16</sup> The street triage model consists of four Police Officers and five community Psychiatric Nurses who provide two vehicles every day from 8am until 1am. This means the team are available to help many more people in crisis to get urgent assessment and access to the services they need.

##### Control Room Triage: Avon and Wiltshire

In February last year, Avon and Wiltshire Mental Health Partnership (AWP) NHS Trust extended the specialist mental health advice service it provides to emergency services crews across the Bristol North Somerset and South

<sup>14</sup> Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services, *Policing and Mental Health: Picking Up the Pieces*, November 2018, p.45.

<sup>15</sup> 'Mental health clinicians team up with Police to set up new triage service', North Wales Pioneer, available at <https://www.northwalespioneer.co.uk/news/18177808.mental-health-clinicians-team-police-set-new-triage-service/>

<sup>16</sup> 'Street Triage Service extended to support more people in mental health crisis', NHS Nottinghamshire Healthcare, available at <https://www.nottinghamshirehealthcare.nhs.uk/latest-news/street-triage-service-extended-to-support-more-people-in-mental-health-crisis-2466>. The pilot will be reviewed after six months and a decision will be made as to whether the extension of the service will continue.

Gloucestershire areas as part of a pilot initiative.<sup>17</sup> The new project was launched jointly with Avon and Somerset Police and includes a Control Room Triage, which provides on-site, immediate advice and offers telephone assessments to individuals; and Street Triage response, which offers face-to-face support and assessments. This joint response should result in people receiving appropriate care more quickly and help avert unnecessary detention.

#### Triage car: Merseyside Police

Merseyside Police has run a mental health triage car service since 2014, staffed by specialist officers and psychiatric nurses to attend incidents identified as mental health-related. Last year it launched a new bespoke triage car that is fitted with several features that are designed to help staff support those in crisis in a more relaxed environment – including a chair that allows the option of turning to face the rear seat and a table in between.<sup>18</sup> The triage teams in Merseyside have devised action plans to help address repeat demand using a partnership problem-solving approach.<sup>19</sup> The teams also have triage car action plans, giving them information about specific callers. The public protection unit is responsible for routinely reviewing the triage car action plans with the relevant mental health trust.

**2.3 We welcome all of these efforts to ensure that individuals are referred to health services where necessary and, where appropriate, not criminalised for their vulnerability.** Studies show that street triage teams and other integrated schemes provide a quicker and more appropriate response and can improve outcomes, such as reducing the use of formal detention or increasing use of health-based places of safety. Cooperation between organisations can also allow greater understanding of roles and responsibilities in the ‘other’ agency and lead to shared decision making and local information sharing policies.

**2.4** Peer reviewed evidence of these services is limited. There is also a dearth of literature specifically focused on control room mental health or other non-police specialist-embedded staff.<sup>20</sup> We are working to uncover reliable information about the successes of such schemes and whether outcomes for vulnerable people have actually improved as a result of these initiatives, on a local and national scale. It is obviously important that these schemes are continually monitored and evaluated and that they are adjusted if they prove not to be effective. We have been engaging with academics working in this field to discuss the need for qualitative observational research around policing and mental health cooperation schemes and street triage. In particular, we are keen to find out:

- whether offender and defendant access to mental health services has improved;
- how many individuals have been diverted away from the criminal justice system as a result of triage;
- whether providing adequate support for mental health needs has had any impact on reoffending or the perceived ‘revolving-door syndrome’, where people have repeat contact with the criminal justice system over the course of their lives.

**2.5** We understand that the College of Policing has commissioned the University of Sheffield to critically evaluate the delivery of street triage schemes in England and Wales.<sup>21</sup> We await the interim and final reports. The College has also announced its intention to put together some practice guidelines to help forces benchmark their mental

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<sup>17</sup> ‘Mental Health Trust pilots support to ambulance crews dealing with people in crisis’, Avon and Wiltshire Mental Health Partnership NHS Trust, available at <http://www.awp.nhs.uk/news-publications/trust-news/2020/february/mental-health-trust-pilots-support-to-ambulance-crews-dealing-with-people-in-crisis/>

<sup>18</sup> Merseyside Police, ‘Mersey Care NHS Foundation Trust and Merseyside Police jointly launch new bespoke mental health triage car’, May 2019, available at <http://www.mynewsdesk.com/uk/news/mersey-care-nhs-foundation-trust-and-merseyside-police-jointly-launch-new-bespoke-mental-health-triage-car-365917>

<sup>19</sup> Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services, *Policing and Mental Health: Picking Up the Pieces*, November 2018, p.44.

<sup>20</sup> As the editors noted in J McDaniel et al, *Policing and Mental Health: Theory, Policy and Practice* (Routledge, 2020).

<sup>21</sup> ‘The Street Triage project’, College of Policing, available at <https://whatworks.college.police.uk/Research/Research-Map/Pages/ResearchProject.aspx?projectId=615>. The project began in Autumn 2016 and is due to be completed in September this year. In addition to observing three schemes in two case study constabularies and attending multi agency meetings held within these force areas, the researchers will conduct semi-structured interviews with street triage stakeholders, mental health practitioners, police officers and service users.

health triage services, which we welcome.<sup>22</sup> The National Police Chiefs' Council acknowledged in its 2020 Strategy that evaluation of partnership schemes is limited and advised all forces to assess their models of triage so that leaders can be confident they are delivering a quality product.<sup>23</sup> Furthermore, it recommended that forces take measures to address any deficiencies in their triage services as soon as reasonably practicable. **Gaps in resources and operational problems will need to be addressed if these interventions are to have optimal effect on delivering appropriate diversion from the justice system, reduce reoffending and improve mental health outcomes for individuals.** Improvements to triage schemes will be supported by increasing resources for mental health, including the NHS frontline revenue budget, and investing in innovation in services.

- 2.6 Additionally, the National Police Chiefs' Council has responded to criticism that lessons learned in one constabulary do not always convert to lessons learned in all areas of the country. A key element of its Strategy is a commitment by NPCC, the College of Policing, HMICFRS and the Independent Office for Police Conduct (IOPC) to develop communications and media on policing and mental health, to maximise the potential for learning. This will be done through the National Mental Health Forum, the National Conference on Policing and Mental Health as well as via frequent formal and informal communications.<sup>24</sup> **As part of this, the NPCC should ensure that current best practice methods relating to triage activities are disseminated to other forces.**

**Recommendation 4:** A decision to take no further action should be logged by officers as a diversion for recording purposes.

- 2.7 In our Report, we raised concern that where a caution is inappropriate, diversion could only be achieved by taking "no further action". As we explained in the Report, in such circumstances there will be little incentive for the suspect to address their mental health and the behaviour it may be causing. Moreover, there is currently no obligation on mental health services to provide the necessary support to prevent reoffending. It is for precisely these reasons that prosecutors will be reluctant to discontinue the proceedings as they will want to know what support there will be available for the suspect/defendant once the proceedings have been stopped.<sup>25</sup>
- 2.8 We highlighted this issue in our response to the CPS consultation on its revised Legal Guidance for prosecutors.<sup>26</sup> In our response, we urged the CPS to consider whether, given the development of L&D services, a management plan could be made available in the community. We suggested that whether treatment is being received or not could form part of the public interest consideration. As an alternative to NFA, an 'NFA receiving treatment' disposal could be useful, where the CPS is satisfied that treatment is available. **We continue to call for this change.**

## Custody

### Voluntary interviews

**Recommendation 5:** Voluntary interviews must have all the safeguards that we recommend for police custody, particularly where alleged offending takes place in a hospital setting.

- 2.9 JUSTICE responded to the Government consultation on the revision of PACE Codes of Practice C, H, E and F in 2018. In our response, we raised concerns around voluntary interviews. We are pleased that the section in PACE Code C in relation to voluntary interviews has been bolstered – for example, by the addition of sections 3.21A, 3.21B and 3.22A, which clarify the requirement on interviewers to: inform the suspect of their right to have an AA present;<sup>27</sup> and ensure the suspect's informed agreement to be interviewed voluntarily is sought and given in

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<sup>22</sup> National Police Chiefs' Council, 'National Strategy on Policing and Mental Health', p.18, February 2020.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*, p.20.

<sup>25</sup> Page 54 of our Report.

<sup>26</sup> JUSTICE, 'CPS Public consultation on Mental Health Conditions and Disorders: Draft Legal Guidance – JUSTICE consultation response', June 2019, paras 55-58, available online at <https://justice.org.uk/wp-content/uploads/2019/06/JUSTICE-Response.pdf>

<sup>27</sup> Code C paragraph 3.21A(c).

the presence of the appropriate adult.<sup>28</sup> Although it does not create new duties and safeguards, the revised Code separates out information about voluntary interview procedures and safeguards from those in detention. The procedures for voluntary interviews are now set out in much clearer detail, which should help to increase compliance. One key change is greater clarity around the steps that must be taken when arranging an interview, as opposed to in the preamble immediately prior to the interview. For example, the AA safeguard must be applied at the time of arranging the interview, allowing officers time in turn to apply the legal advice safeguard. As NAAN has noted, this reduces the risk of interviews being delayed or proceeding without legal advice due to pressure on the day.<sup>29</sup>

- 2.10 Additionally, new note 3I underscores the importance of applying all the relevant safeguards, including the rights of suspects, where the interview is arranged on a voluntary basis. It highlights forthcoming operational guidance for police officers and staff concerning the conduct and recording of voluntary interviews which is being developed by the College of Policing and which aims to ensure the effective implementation of the safeguards in paragraphs 3.21 to 3.22B particularly concerning the rights of suspects, the location for the interview and supervision.
- 2.11 Our Report noted that the liaison and diversion (L&D) service<sup>30</sup> is organised around custody, and therefore it may be difficult to ensure access to the service where a suspect is to be voluntarily interviewed.<sup>31</sup> In most cases of vulnerability, a voluntary interview will be more appropriate than custody. We therefore recommended that the service be made available to all suspects, irrespective of whether they are detained or attending voluntarily. Although not a formal recommendation, the Working Party suggested in the body of the Report that, following a street triage which identifies vulnerability concerns, an L&D assessment could be undertaken *ahead* of interview and in a *location away from the police station* (including the suspect’s home).<sup>32</sup> This assessment would identify which services are required for interview, thereby ensuring that all relevant practitioners are present for the appointment without the need to incur delay or detention of the suspect.
- 2.12 In November 2017, an event was held to understand the challenges for the police and liaison and diversion services regarding effective management of voluntary attender interviews.<sup>33</sup> A selection of Police, NHSE Commissioners, L&D managers and practitioners attended the event as well as the Chief Executive of the National Appropriate Adult Network. Key themes discussed included “getting the timing right for L&D intervention (i.e. should this be before or after a person’s police interview)” and also “the location of L&D assessments”. It was generally felt this should be at formal premises, such as a police station, NHS building or social care premises, rather than private premises, “unless there is good reason”.
- 2.13 The main outcome of the 2017 event was a unanimous agreement that every effort should be made to ensure equal treatment and support for a Voluntary Attender compared with someone arrested and interviewed in custody.<sup>34</sup> Similarly, part of the “future vision” set out at the 2018 Liaison and Diversion National Conference was to “deliver services that provide a timely and effective response to voluntary attendees”.<sup>35</sup> It is our understanding that the information collected at the event will be used to inform the College of Policing Authorised Professional Practice

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<sup>28</sup> Code C paragraph 3.21B(d).

<sup>29</sup> NAAN, ‘PACE Update July 2018 Changes to Codes C, E, F and H’, p.46, available online at <https://www.appropriateadult.org.uk/index.php/downloads/pace-updates>.

<sup>30</sup> The purpose of liaison and diversion services is to identify and assess individuals suspected of having, amongst other conditions, mental ill health or learning disabilities, to ensure support, and to help inform criminal justice decision-making. See <https://www.england.nhs.uk/commissioning/health-just/liason-and-diversion/about/>

<sup>31</sup> *Mental health and fair trial*, para 2.31.

<sup>32</sup> *Ibid.*

<sup>33</sup> NHS England, ‘Police and Courts: Autism awareness training for police custody staff’, available at <https://www.england.nhs.uk/commissioning/health-just/liason-and-diversion/news/police-and-courts/>

<sup>34</sup> *Ibid.*

<sup>35</sup> Slides from the 2018 Liaison and Diversion National Conference, slide 25, available at <https://www.policecare.scot.nhs.uk/wp-content/uploads/2019/02/Session-7-Liaison-and-Diversion.pdf>

(APP) guidance on Voluntary Attendance as well as future versions of the national L&D Operating Model.<sup>36</sup> The APP guidance on investigative interviewing produced by the College of Policing now includes the following:

*As with all police interventions, voluntary interviews should explore the opportunity to address and mitigate apparent risks and/or explore opportunities to prevent further offending, examples include referral to Liaison and Diversion schemes, Common Law Police Disclosure, foreign national offender checks, and post interview risk assessment.*<sup>37</sup>

- 2.14 Therefore, it seems there has been positive change to the way in which L&D services are provided to voluntary attendees, albeit that the Working Party's suggestion that screening should take place before the interview and in the attendee's home (following referral via street triage) has not yet been agreed upon or implemented.

## Custody officers' identification of vulnerability

**Recommendation 6:** The phrase "in the absence of any clear evidence to dispel" the suspicion that a suspect is suffering from mental disorder or is otherwise mentally vulnerable should be removed from PACE Code C as it is reducing support.

- 2.15 In our response to the Government consultation on the revision of PACE Code of Practice C, we recommended that the phrase in paragraph 1.4 – which suggests that if an officer is presented with "clear evidence to dispel that suspicion" they can designate the individual as not being vulnerable – be removed from the Code since it is reducing access to support.<sup>38</sup> Unfortunately, this phrase has not been removed from the Code. Since the public consultation period ended, we have raised our concerns again with a member of the PACE Review Board. We continue to call for this change.

## Liaison and diversion

**Recommendation 7:** L&D practitioners should screen every suspect who comes into custody. This will ensure that the accurate identification of vulnerability is not left to the police.

**Recommendation 8:** Fitness for interview/detention and what reasonable adjustments might be needed to enable them to participate, should be assessed by an L&D practitioner if there is a mental health concern, and an approved healthcare professional for a physical condition. The assessment should apply mandatory minimum standards set by the Faculty of Forensic and Legal Medicine.

- 2.16 The number of cases seen by liaison and diversion services have been steadily increasing since 2014.<sup>39</sup> In March 2020, NHS England achieved 100% coverage of L&D services operating in community, police custody and at courts across the country.<sup>40</sup> **Though more suspects are probably being screened across England and Wales, there unfortunately has been no public move towards screening all suspects in custody.**<sup>41</sup> We remain concerned about the wide variation in the provision of mental health care support to those in police custody. No

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<sup>36</sup> NHS England, 'Police and Courts: National NHS England and Police joint 'Voluntary Attender' Workshop', available at <https://www.england.nhs.uk/commissioning/health-just/liaison-and-diversion/news/police-and-courts/>

<sup>37</sup> College of Policing, '[Authorised Professional Practice content: Investigation](#)', last modified July 2020.

<sup>38</sup> Paragraph 8 of our response.

<sup>39</sup> Slides from the 2018 Liaison and Diversion National Conference, particularly slide 6, available at <https://www.policecare.scot.nhs.uk/wp-content/uploads/2019/02/Session-7-Liaison-and-Diversion.pdf>

<sup>40</sup> NHS England, 'About liaison and diversion', available at <https://www.england.nhs.uk/commissioning/health-just/liaison-and-diversion/about/>

<sup>41</sup> It does seem that that certain categories of suspect are currently being automatically screened. A [September 2017 update](#) on the L&D webpages says that in Leicestershire, in recognition of the particular challenges faced by veterans, "police ask all those arrested whether they have served in the Forces and those who have are automatically offered a referral to L&D services". Moreover, in recognition of the fact that veterans often do not engage with health services, and particularly mental health services, the update states that "the Nottingham L&D service works to ensure that those initially opting to not engage with L&D or to accept referrals are given multiple chances to change their mind and receive the support they need. The service also provides leaflets and advice on local agencies that can help for when someone feels ready."

explicit reference is made in PACE Code C to liaison and diversion practitioners in respect of fitness for interview. There does not appear to be any change in the approach to fitness for detention either.<sup>42</sup>

- 2.17 We have contacted NHS England to discuss the healthcare response to vulnerable suspects and, more specifically, our recommendations on liaison and diversion schemes. Work has had to give way, for a substantial period, to other pressing issues for the NHS. The organisation's current focus is on dealing with the severe health crisis, which has unfortunately inhibited our ability to influence change in this area.
- 2.18 We met with the Equality and Human Rights Commission on a number of occasions as it considered how to respond to our Report. It set up an inquiry last year into whether the criminal justice system treats disabled people – those with mental health conditions, cognitive impairments or neuro-diverse conditions who have been accused and charged with a crime – fairly.<sup>43</sup> JUSTICE was invited to sit on its External Reference Group and give evidence. The inquiry focussed on the experiences of defendants at the 'pre-trial' stage – after they are charged, but before a trial begins. It looked at whether their needs are properly identified, and the types of adjustments being put in place to accommodate those needs, so defendants are able to participate effectively in court processes and understand the charges they face. The EHRC published its final Inquiry Report last June. The report reiterated JUSTICE's concerns regarding identifying whether a defendant or accused person has any impairments. Amongst its recommendations was that "NHS England should consider introducing universal screening by NHS L&D services, building on existing best practice and learning from current pilots."<sup>44</sup> This adds to the arguments for ensuring all individuals entering the custody environment are screened by health professionals.<sup>45</sup>
- 2.19 We sought to identify which areas were exhibiting some measure of best practice. Cheshire and Kent were two such areas.

## Case Study: Liaison and diversion

### Cheshire

L&D practitioners are working proactively in police custody suites in Cheshire. The service has introduced a new electronic referral system (SUMs), and a clinical assessment system that allows all individuals entering the custody environment to gain access to and screening by health practitioners covering a wide range of vulnerabilities, including mental ill health and learning disability.<sup>46</sup> The service aims to screen all adults in police custody by 2021; performance has remained consistently above target, achieving over 90% in October 2018.<sup>47</sup> The service leads and professionals within the custody environment are working hard to promote the referral pathways and interface with ranking police staff at every opportunity. The service is also embedded within courts across Cheshire, screening, assessing and supporting individuals. Relevant vulnerability information is conveyed to magistrates and other court staff, to support the most effective court disposal route or diversion away from the criminal justice system.

### Kent

The Kent mental health L&D team launched a new model in September 2019 which involves assessing all detainees for a broader range of conditions – including mental health conditions, learning disabilities and autism

<sup>42</sup> See section 15, particularly para 15.2A.

<sup>43</sup> Equality and Human Rights Commission, 'Does the criminal justice system treat disabled people fairly?', 18 June 2020, available at <https://www.equalityhumanrights.com/en/ymchwiliadau-ac-archwiliadau/does-criminal-justice-system-treat-disabled-people-fairly>

<sup>44</sup> Equality and Human Rights Commission, *Findings and recommendations – Inclusive justice: a system designed for all*, June 2020, p.20. The document was also published in Easy Ready format: Equality and Human Rights Commission, *Making sure the police, courts and prisons work in a fair way for everyone: What we found out about this and what we want to happen next*, March 2020.

<sup>45</sup> There are other organisations that are working in this area. For example, the Prison Reform Trust in an earlier report made recommendations around special measures for vulnerable defendants. Those included a proposal that liaison and diversion services should have a greater role in facilitating reasonable adjustments for vulnerable defendants. See: Prison Reform Trust, 'Fair Access to Justice? Support for vulnerable defendants in the criminal courts,' (2012), p.19.

<sup>46</sup> Cheshire and Wirral Partnership NHS Foundation Trust, *Liaison and Diversion input Cheshire (CWP)*, January 2019, p.5

<sup>47</sup> *Ibid*, p.9.



spectrum disorder.<sup>48</sup> All information collected is fed directly into a detainee's NHS medical history and, if they are charged, this data will routinely be passed onto their defence team and the courts. The courts will also receive advice on any recommended adaptations for a hearing. Early evidence from the scheme is encouraging, suggesting that universal screening by health professionals feasibly identifies more people who have a disability than referrals by the police.

- 2.20 HM Inspectorate of Prisons and HM Inspectorate of Probation are conducting an independent review on neurodiversity in the criminal justice system, with support from HM Inspectorate of Constabulary and Fire & Rescue Services. The scope of the review includes the whole criminal justice journey for adults, from first contact with police through to disposal. A national 'Call for Evidence' shows a clear intention to explore how screening methods or tools are being used to identify people with neurodiverse needs in the criminal justice system, which we welcome. Such a review offers promise in developing more effective identification of vulnerability. The inspectorates plan to publish a report of their findings this summer.<sup>49</sup>
- 2.21 Furthermore, the National Strategy on Policing and Mental Health accepts the need for further examination of how liaison and diversion teams can support pre-arrest decision-making as well as their role during voluntary interviews.<sup>50</sup> **We are pleased that the national strategy references L&D, and hope to see closer working arrangements between these services and the police as the strategy is implemented.**
- 2.22 Anecdotally, we understand that a new NHS England phone line has begun operating nationwide, following its success in Newcastle. From April 2020, mental health clinicians are offering 24/7 telephone advice and guidance to vulnerable suspects, their family and friends, and the police. Custody and police officers are now able to seek and obtain clinical advice when they have queries in relation to individuals who are detained in custody and who are suspected to be vulnerable where L&D staff are not available. We very much welcome this round-the-clock point of access.
- 2.23 Various studies suggest that L&D interventions have a positive impact on criminogenic outcomes, including a reduction in arrests and time spent in prison as well as primary health outcomes, such as the identification of illness and contact with appropriate services. However, most of the existing literature is based on a combination of expert opinion and descriptive work rather than properly designed quantitative or qualitative evaluation studies.<sup>51</sup> Few studies evaluate the impact of these schemes on mental health or re-offending. **We consider that high quality evidence for its effectiveness, using robust research methods and quantified measures of outcomes, is urgently required to secure additional funding.** In November 2018, The Department for Health and Social Care commissioned RAND Europe to undertake a second study on the UK's model for Liaison and Diversion schemes.<sup>52</sup> The expected completion date was late 2019, however, this has been delayed until March of this year. This study aims to investigate whether the new model has an impact on reoffending, the length of court processes, diversion from the criminal justice system, and the use of A&E and mental health services.<sup>53</sup> Additionally, the examination will consider how the service can be designed to optimise benefits and facilitate integration between the criminal justice system and the health system. This report will no doubt be very useful in tracking the implementation of our recommendations.

## Responding to mental health needs in custody

**Recommendation 9:** Easy read versions of the notice of rights and entitlements should be provided to suspects.

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<sup>48</sup> Equality and Human Rights Commission, *Findings and recommendations – Inclusive justice: a system designed for all*, June 2020, p.20

<sup>49</sup> Her Majesty's Inspectorate of Probation, 'Consultations: Evidence review on neurodiversity in the criminal justice system', available at <https://www.justiceinspectores.gov.uk/hmiprobation/about-hmi-probation/consultations/>

<sup>50</sup> National Police Chiefs' Council, *National Strategy on Policing and Mental Health*, February 2020, p.19.

<sup>51</sup> J McDaniel et al, *Policing and Mental Health: Theory, Policy and Practice* (Routledge, 2020).

<sup>52</sup> RAND Corporation, 'Follow-up evaluation of the health and justice outcomes of Liaison and Diversion services,' available at <https://www.rand.org/randeurope/research/projects/second-evaluation-offender-liaison-diversion-trial-schemes.html>

<sup>53</sup> *Ibid.*

- 2.24 The easy read notice of rights and entitlements booklet was developed following consultation with specialists to help vulnerable people understand their rights more easily, using short, simple sentences and pictures. In the past 12 months, we submitted Freedom of Information requests to all 43 constabularies to determine how frequently the easy read booklet is requested and/or provided. The responses suggest that very little data is collected on the use of this booklet, therefore it was hard to assess whether easy read versions are in fact being used in practice – and how often. More information needs to be made available on this. **The document should be given to all suspects entering custody, as otherwise it is hard to determine who should receive the easy read version and who should not.**
- 2.25 In the meantime, JUSTICE asked a linguistic expert to examine the easy read booklet. Based on the recommendations of the expert, we made specific proposals that would clarify the process and the roles and responsibilities of the solicitor and police. We hope our proposals will be taken up in the next review of the document.

## Appropriate adults

**Recommendation 10:** Appropriate adults should be re-named, for example “approved support and welfare assistants” would be more appropriate. Their role should be limited to these functions. Volunteer schemes should be available throughout the country and volunteers properly trained.

- 2.26 The Working Party expressed concern about the term “Appropriate Adult”, which in its view is meaningless and potentially patronising. The Working Party suggested that this be changed to “Approved Support and Welfare Assistant” – in order to better delineate the role, and for suspects and police officers to understand their role.<sup>54</sup> The term “appropriate adult” unfortunately has not been replaced with a more suitable name such as that proposed by the Working Party.
- 2.27 While this is disappointing, a more detailed description of the AA role has for the first time been inserted into the body of PACE Code of Practice C.<sup>55</sup> The Code now lists the expectations upon people acting in the role. The Code further highlights that AAs must be independent of the police as their role is to safeguard the person’s rights and entitlements.<sup>56</sup> This is a helpful reinforcement.
- 2.28 As the National Appropriate Adult Network states:

*Previous versions of the Code have not included a full definition. The responsibilities, activities and powers of AAs are spread across multiple PACE Codes, sections and paragraphs. This has made it challenging to grasp the role’s purpose and scope. A clear summary, early in the Code, is particularly helpful for untrained AAs (e.g. parents). Though not comprehensive, this is a clear and accurate description of the AA role. As such, it is of value to police, AAs, suspects and the wider system.*

*While the guidance has existed for 15 years, its inclusion in the Code is a positive step. Firstly, it gives the description significantly greater legal weight (though of course it is still not in legislation). Secondly, while the Home Office guidance was for AAs, the Codes are for a broader audience. This should assist in building a shared understanding of the role, reducing misunderstandings and conflict. It is a positive step towards ensuring the safeguard is effectively applied.*<sup>57</sup>

- 2.29 We raised the issue of proper training of AAs in our response to the public consultation on the revision of PACE Code C.<sup>58</sup> We continue to engage with NAAN to improve training for volunteers.

<sup>54</sup> Paragraph 22 of our response.

<sup>55</sup> Home Office, *Code C Revised* (August 2019), para 1.7A, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/893064/PACE-Code-C\\_2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/893064/PACE-Code-C_2019.pdf)

<sup>56</sup> PACE Code C note for guidance 1F.

<sup>57</sup> NAAN, ‘PACE Update July 2018 Changes to Codes C, E, F and H’, p.23, available online at <https://www.appropriateadult.org.uk/index.php/downloads/pace-updates>

<sup>58</sup> Paras 15-16 of our response.

2.30 JUSTICE welcomes the efforts made by West Yorkshire Police to improve Appropriate Adult support across the region. In April 2018, the force shifted from separate district based arrangements to a single point of contact (The Appropriate Adult Service, or TAAS) for the police when requesting AA support. This enables officers to turn to one provider like TAAS for booking an appropriate adult, and rely on that company to provide an AA.<sup>59</sup> We believe that this approach potentially could help address some of the significant gaps and variations in provision. Additionally, where there is a high-quality, reliable, quick-response AA scheme to call on, there is an incentive for custody sergeants to recognise that an individual might be mentally vulnerable. We are hopeful that the West Yorkshire scheme will increase AA call out rates, minimise detention times in the region and allow effective participation by vulnerable adults during police interview. JUSTICE awaits the forthcoming evaluation of the contract with TAAS, which is being undertaken by the Office of the Police and Crime Commissioner. In the meantime, the constabulary provided us with its interim findings – including the finding that average response times (i.e. the time taken for an AA to attend custody from the initial request) were down to 50 minutes. **Similar schemes should be established in other force areas.**

## Legal representation

**Recommendation 11:** Mandatory legal representation should be given to suspects assessed as vulnerable.

2.31 This Recommendation requires primary legislation, which has not been introduced. We continue to call for legislative change. In Scotland, there is now mandatory legal representation for children and vulnerable adults under the Criminal Procedure (Scotland) Act 2016.<sup>60</sup> **We recommend that equivalent provision be made in the rest of the UK.**

2.32 PACE provides detainees in England and Wales with an almost absolute right to legal advice at any time. Despite this important safeguard, the Working Party found that take-up of legal assistance was far from comprehensive. To get a clearer picture of the proportion of vulnerable adults who were represented, we requested information from all police forces on the rate at which solicitors were requested for detainees assessed as vulnerable. We found substantial differences in advice request rates between constabularies, with requests ranging from 57% in one police station to 83% in another in 2017 (80 percent on average). 2018 requests ranged between 56% and 86% (77 percent on average).

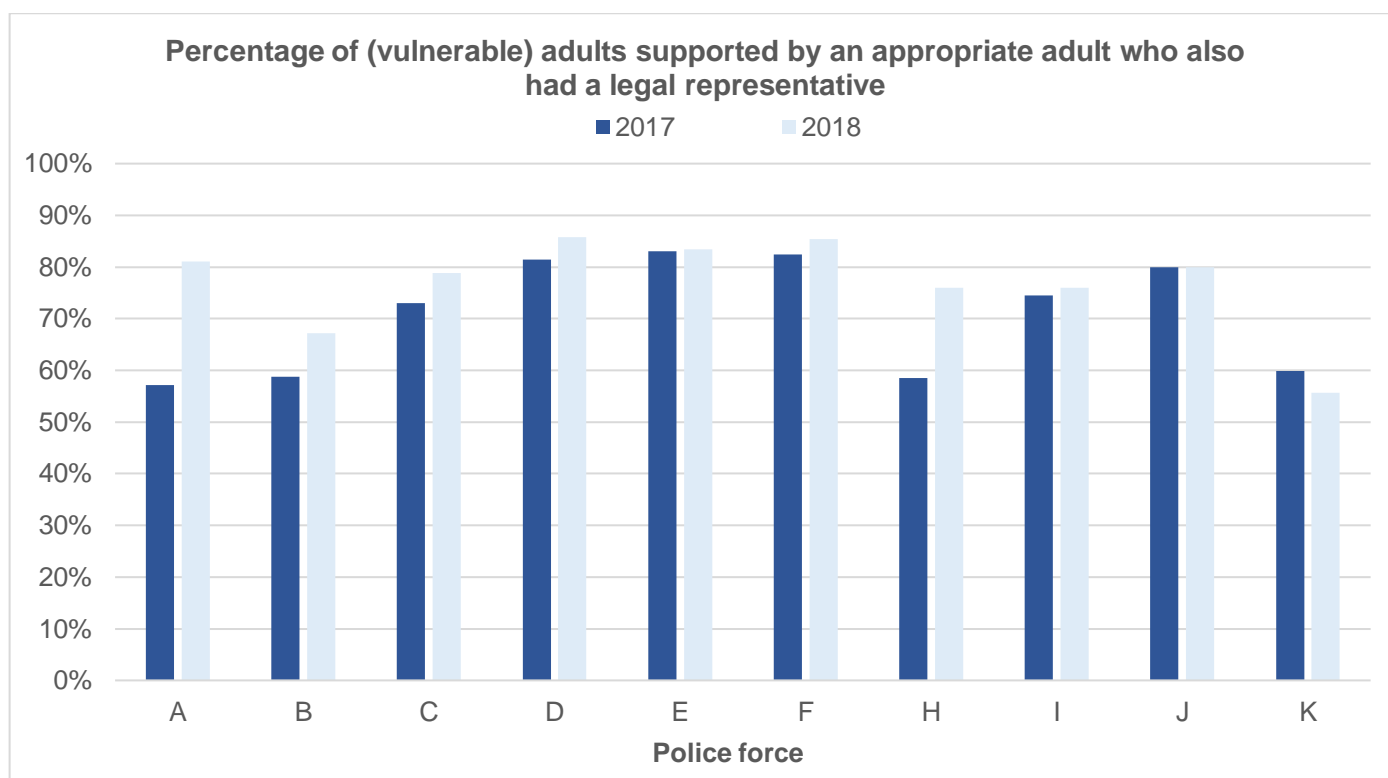
Figure 2. Summary of legal representation figures across police forces<sup>61</sup> in 2017 and 2018

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<sup>59</sup> We are told that TAAS volunteers and paid AAs both receive the same training, which we welcome.

<sup>60</sup> Following The Carloway Review, [Report and Recommendations](#) (2011) and The Bonomy Review, [The Post-Corroborator Safeguards Review](#) (Final Report: April 2015).

<sup>61</sup> Police force from A to M: Derbyshire Constabulary (A), Dyfed-Powys Police (B), Leicestershire Police (C), Lincolnshire Police (D), Police Service of Northern Ireland (E), Northamptonshire Police (F), Warwickshire Police (H), West Mercia Police (I), Wiltshire Police (J), West Midlands Police (K).



**2.33** We also wanted to know to what extent detainees *requesting* legal advice actually *received* such advice. The majority of forces were not able to provide data on this, meaning it was not possible for us to properly assess the differences between solicitor request and provision rates, or draw any conclusions in this regard. This undermines our ability to properly understand barriers to the provision of legal advice.

**2.34** Our finding that roughly 76 percent of vulnerable police station detainees requested a solicitor is not very encouraging. **Ways to increase the take-up of legal advice among detainees need to be explored.** One exciting development in this area is the recent creation of a prototype Police Station App, which followed up on detainees who declined legal assistance.<sup>62</sup> Additionally, NAAN training advises appropriate adults to request legal assistance for vulnerable people. We also understand that the Scottish Government is reviewing and considering the production of a short and clear video which can be viewed by suspects during or after the booking in process or at any event before the suspect is asked whether legal assistance is wished. The thought is that the video could be played on a screen in the custody area or on a robust hand-held device for in the cell. All of these developments offer the potential to inspire detainees to seek legal advice.

**2.35** **There also needs to be a deeper exploration into why solicitor request rates vary considerably between police stations.** The findings could help inform how to encourage greater take-up of legal representation.

**Recommendation 12:** Legal representatives should be given access to the medical assessments of their clients, which should be recorded in the custody record. L&D practitioners must make their reports available to both the police and defence.

**2.36** The most recent Standard Service Specification for liaison and diversion services, dated November 2019, explicitly states that information must be passed in a timely and secure manner to “key decision makers in criminal

<sup>62</sup> This App was developed in partnership by Vicky Kemp, a Principal Research Fellow in the School of Law, and co-director of the Criminal Justice Research Centre, and Drs Elvira Perez and Ben Bedwell, from Horizon Digital Economy Research (University of Nottingham). With approval from the police, the prototype App was tested on 100 detainees held in two large custody suites. Research participants were asked questions about their legal rights, including their right to legal advice. If the suspect did not wish to instruct a solicitor, when pressing ‘No’ a number of options appear as to why they turned down legal advice. The relevant option is then picked and information is provided which comments on the reason given. If the suspect indicated that they could not afford a solicitor, for example, they are told that this is free. If they click they ‘do not need a solicitor’, they are told that the law is complex and that it could help them to speak to a solicitor. It is also highlighted that they can speak to a solicitor over the telephone. See: University of Nottingham, ‘[Digital Legal Rights – User-Testing a Prototype App with Detainees in Police Custody](#)’.

justice agencies” including “defence lawyers”.<sup>63</sup> It does seem that this is happening in practice, at least on an ad hoc basis. An update about the L&D service in Birmingham Magistrates’ Court highlighted that the timely sharing of information had been key to the service’s success.<sup>64</sup> The L&D service is a “direct and vital link between the courts and support services ranging from mental health, housing, benefits and addiction support”. Since the launch of the service, they have seen a significant increase in the application and delivery of mental health treatment requirements, for example. A further update posted to the L&D webpages explaining the role of “Support-Time Recovery” workers within an L&D service mentioned that “the STR worker supported him through when attending both magistrates’ court and Crown Court. They shared relevant information with his legal defence.”<sup>65</sup> However, it remains unclear whether L&D reports are routinely supplied to the clients’ lawyers.

2.37 When we met with this CPS this year, we mentioned that defence representatives were being denied access by the CPS to a client’s L&D report in the Crown Court. We suggested that both liaison and diversion services and prosecutors should be made aware that L&D reports can be disclosed to the defence representatives. We were assured that this difficulty would be raised with the Single Point of Contact (see paragraph 3.8 below).

2.38 The inquiry by the Equality and Human Rights Commission cited the absence of processes to identify, log and share information about impairments as a reason for why adjustments are not always made. To ensure information is passed on in a timely manner, ECHR recommended that NHS England should establish a mechanism to facilitate appropriate sharing of case-specific information with HMCTS’s case management IT systems on identified needs and recommended adjustments.<sup>66</sup> This should be possible through the Common Platform, and would greatly improve lawyers’ access to medical assessments and L&D reports.

## Intermediaries

**Recommendation 13:** The need for intermediaries during police custody or voluntary interview must be better identified by L&D, support assistants and legal representatives.

**Recommendation 14:** Intermediaries for defendants must be provided by the MoJ Registered Intermediary Scheme. Ideally they should be embedded in the police station on a duty scheme basis.

2.39 Our Report examined in some depth the place of intermediaries<sup>67</sup> within the criminal justice system.<sup>68</sup> In particular, we expressed concern about the ongoing low appointment of intermediaries when compared with the number of criminal cases passing through the courts.<sup>69</sup>

2.40 With regard to Recommendation 13, an update on the L&D webpages about expansion across the Crown Court stated that some of the essential elements of the liaison and diversion service include “support and advice regarding the appointment of intermediaries”.<sup>70</sup> Therefore, although there is not a formal indication of this being part of the role of the L&D service, it seems like it is something they are probably doing in practice.

2.41 In our response to the CPS consultation on its revised Legal Guidance for prosecutors, we highlighted the need for greater reference to intermediaries to prompt representatives and the police to identify whether the suspect has learning and/or communication difficulties and might therefore require the assistance of an intermediary. The

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<sup>63</sup> NHS England, *Liaison and Diversion Standard Service Specification 2019* (November 2019), section 2.7

<sup>64</sup> NHS England, ‘Police and Courts: Working well in Magistrates’ Court’ available at <https://www.england.nhs.uk/commissioning/health-just/liaison-and-diversion/news/police-and-courts/>

<sup>65</sup> NHS England, ‘Workforce: The role of Support Time Recovery workers in Liaison and Diversion (L&D)’ available at <https://www.england.nhs.uk/commissioning/health-just/liaison-and-diversion/news/workforce/>

<sup>66</sup> Equality and Human Rights Commission, *Findings and recommendations – Inclusive justice: a system designed for all*, June 2020, p.23

<sup>67</sup> Intermediaries are communication specialists with particular speech and language skills for assisting a range of needs, such as very young children and people with autism to give their evidence and understand court proceedings.

<sup>68</sup> *Mental health and fair trial*, paras 2.52-2.63 and 4.19-4.26.

<sup>69</sup> *Ibid*, para 4.20-4.21.

<sup>70</sup> NHS England, ‘Programme updates: Liaison and Diversion services extend to Crown Courts’, available at <https://www.england.nhs.uk/commissioning/health-just/liaison-and-diversion/news/programme-updates/>

Advocate's Gateway (TAG) has produced a number of Toolkits on how to identify and respond to vulnerability.<sup>71</sup> JUSTICE recommended that the CPS Legal Guidance should include a reference to the Toolkit on using an intermediary. We were pleased to see that a link to the TAG website has been added to the CPS guidance. We hope that this will increase familiarity with these valuable aids.

- 2.42 Over the time since publication of the JUSTICE report, we have been instrumental in brokering pragmatic dialogue between intermediaries, the criminal justice sector and the Ministry of Justice (MoJ)<sup>72</sup> through a series of papers to the Criminal Procedure Rule Committee, discussion with intermediaries<sup>73</sup> and meetings between the Criminal Procedure Rule Committee, intermediaries and the Ministry of Justice.
- 2.43 The MoJ is conducting a review to determine the demand for the expansion of the Registered Intermediary scheme to defendants. JUSTICE made representations in person, in writing and at the Criminal Procedure Rule Committee about the need for consultation as to the scope of that review, given that the need was already clearly demonstrated. We will keep the review under close scrutiny as it develops.
- 2.44 More recently, the Criminal Procedure Rule Committee has drafted rules on the appointment of intermediaries – including when an intermediary might be necessary and what an intermediary report should contain. The draft rules will be promulgated in October. Additionally, we are optimistic that the recent case of *TI v Bromley Youth Court*,<sup>74</sup> which quashed a judge's decision not to appoint an intermediary, may result in a sea change in appointing an intermediary where they are necessary.
- 2.45 We are told that some force areas have speech and language therapists in custody, helping officers recognise and support communication needs. In certain circumstances (for example, where an individual is exhibiting significant language difficulties), therapists advise the appointment of an intermediary to support the person in court.<sup>75</sup> This is a welcome development.
- 2.46 A possible next step might be identifying a constabulary that can pilot embedding intermediaries for defendants in the police station on a duty scheme basis. It first needs to be determined whether such a pilot scheme is best located in the police station or court.

## Police leads

**Recommendation 15:** Each force area must have a policing mental health lead who can liaise with the local clinical commissioning group, mental health services and policing staff to identify service needs and approaches for the local area.

**Recommendation 16:** PACE and its Codes of Practice must be amended to give effect to these proposals.

- 2.47 Local policies and procedures are key to making sure the police and partner agencies know what steps to take when dealing with cases with a mental health aspect. Officers and staff need to know which senior police leader they should direct queries to or contact to escalate a critical issue.

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<sup>71</sup> There are 17 toolkits around identification, case management and questioning of witnesses and defendants, some of which are checklists, see <http://www.theadvocatesgateway.org/toolkits>. See in particular, TAG, Identifying vulnerability in witnesses and parties and making adjustments, Toolkit 10, (20 March 2017)

<sup>72</sup> The MoJ operates a registered intermediaries scheme for witnesses, but not for defendants. As such, there is a two-tier system. Procedure rules and concerns about cost have led judges to be reluctant to allow intermediary support for defendants. JUSTICE is concerned that this risks an unfair trial, with which Intermediaries for Justice (IFJ) agrees.

<sup>73</sup> Including Intermediaries for Justice, companies Triangle and Communicourt and also with individual intermediaries to better understand their experiences.

<sup>74</sup> [2020] EWHC 1204 (Admin). In this case, the Divisional Court found that a District Judge erred in refusing to appoint an intermediary in the Youth Court because the judge did not elaborate on how the claimant would be able to engage with the trial process generally, given his accepted inability to engage and concentrate as set out by the intermediary and a psychologist.

<sup>75</sup> The Association for Child and Adolescent Mental Health, 'Christian Boakye: What it's like to be a Speech and Language Therapist,' available at <https://www.acamh.org/blog/speech-language-therapist-christian/>

- 2.48 We are told that 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 and the appropriate response. We very much welcome this development. Additionally, twenty forces (as of 2018) have a comprehensive local mental health protocol that meets the requirements set out in the College of Policing’s Authorised Professional Practice (APP) on mental health.<sup>76</sup> The College of Policing has also invested in a ‘mental health subject matter expert’.<sup>77</sup> This is a seconded officer, who organises quarterly meetings, assists with legislation changes and has devised a two-day mental health training package that forces can adapt to meet their own needs.

### Case Study: Guidance for police

#### The Metropolitan Police Service

The Met Police has an impressive toolkit policy for officers and staff, which gives clear direction with flowcharts for each stage that officers are likely to encounter in a mental health situation.<sup>78</sup> The force has a central mental health team that delivers training and communicates legislative changes through a network of borough-based mental health liaison officers of all ranks and grades.

- 2.49 Recommendation 16 is of course consequential on our earlier recommendations being taken up.

## Training

**Recommendation 17:** Officers require some training on how to respond to vulnerability. Guidance is available, such as *Together’s A common sense approach to working with defendants and offenders with mental health problems*, and should be made routinely available.

- 2.50 The decision whether to seek the assessment of a clinician will still require an initial street identification by a police officer as to whether a suspect may be vulnerable. High-quality training on possible symptoms and how to react to them is therefore crucial.
- 2.51 The *Picking Up the Pieces* report contains examples of excellent training schemes which can be emulated to ensure good practice towards mental health is rooted and routine in all police force areas. It has been notable, from our discussions with staff, that forces are investing in training to support their officers and staff to identify and respond to people with mental health problems. At least 21 forces are checking the content and quality of their training against College of Policing APP.<sup>79</sup> Multiple forces have devised handbooks, checklists or cards for officers to complement their training.<sup>80</sup> This helps them understand the often-challenging nature of mental ill-health and types of vulnerability they might encounter. Some of these have been designed with partner agencies and include helpful local information, local policies and contact details for other organisations and charities. Several forces have developed apps that officers can access on their phones while out on patrol. This gives them immediate access to help and advice.

### Case Studies: Training

#### RESPOND training: Northumbria Police

Northumbria Police has developed an ambitious multi-agency simulation training package for police officers and medical staff involved in mental health crisis care. RESPOND brings together Northumbria Police, its partner

<sup>76</sup> Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services, *Policing and Mental Health: Picking Up the Pieces*, November 2018, p.47.

<sup>77</sup> *Ibid*, p.48.

<sup>78</sup> *Ibid*.

<sup>79</sup> *Ibid*, p.20.

<sup>80</sup> *Ibid*, p.30.

organisations and ‘experts by experience’ to create hypothetical scenarios for professionals involved in mental health crisis care to respond to.<sup>81</sup> This might include mental health professionals, paramedics, psychiatric doctors, police officers or crisis nurses. RESPOND-trained professionals take their learning forward with a clear understanding of each other’s roles and responsibilities, so that every actor in the crisis pathway can respond quickly and appropriately – without the tensions and time delays that can arise from uncertainty about who should do what. The scheme has been independently evaluated and the findings published.<sup>82</sup> The College of Policing told us that this multi-agency training will be rolled out to other policing areas, including London, and we welcome this move.

#### Training for new staff: Nottinghamshire Police

Newly recruited probationary officers in Nottinghamshire Police now work for one day in a mental health setting.<sup>83</sup> This could be on an in-patient ward, community work with an approved mental health professional or supplementing the street triage team. This gives them first-hand experience of the complex nature of mental ill health. They then undergo mental health training to reinforce their understanding.

#### Connect Partnership: North Yorkshire Police

North Yorkshire Police has devised a collaborative approach with the University of York and the College of Policing on policing and mental health known as ‘Connect Partnership’. The purpose of the tailored multi-agency training is to increase knowledge and identification of mental health vulnerabilities, enhance the recording of incidences involving people with mental ill-health, improve skills in communicating with people in mental distress, provide a clearer understanding of referral pathways into mental health services, and assist multi-agency working.<sup>84</sup> Connect is delivered by mental health professionals from the local NHS Trust, based on College of Policing learning objectives. Evaluation and feedback showed that this training is effective, and it was subsequently rolled out to all officers and staff.

- 2.52 The quality of training, and the extent to which other services are involved in planning and providing it, varies between forces. **It is vital that training is consistent, accurate and up to date with any legislative changes.**

**Recommendation 18:** All professionals engaged in the investigation stage – police, lawyers, support assistants, intermediaries, and L&D practitioners – need to have incorporated into their training an introduction to the role of each other in the process, so that their benefit and availability is made clear.

- 2.53 We have been working to determine whether training for professionals has been explicitly altered to cover an introduction to the role of other experts engaged in the investigation stage, as per the Working Party’s recommendation.<sup>85</sup>
- 2.54 Several forces have told us that police officer training includes an introduction to the roles of other professionals as standard practice. For instance, many forces invite partners to training sessions or use role play scenarios, which are designed to increase knowledge and awareness of the ‘other’ professional’s duties. Additionally, we have been assured that there is a greater understanding of liaison and diversion services amongst prosecutors. We are trying to gather more anecdotal evidence on this. During an update meeting on the CPS revised guidance, we suggested that the CPS also invite an intermediary to training sessions, an idea that the CPS supported.
- 2.55 In our meetings with the legal profession we have stressed that interagency relationships are key to ensuring early diagnosis, treatment, appropriate sentencing or diversion of vulnerable individuals from the criminal justice

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<sup>81</sup> NHS, ‘[Respond: Multi-agency mental health simulation training](#)’

<sup>82</sup> Academic Health Science Network, *Post impact and summary of findings following the evaluation of the RESPOND multi-agency mental health simulation training November 2016 – March 2017*, 2017.

<sup>83</sup> Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services, [Policing and Mental Health: Picking Up the Pieces](#), November 2018, p.30.

<sup>84</sup> North Yorkshire Police, ‘New mental health training for all front-line staff and officers’, available at <https://northyorkshire.police.uk/news/mentalhealthtraining/>

<sup>85</sup> *Mental Health and Fair Trial*, para 2.68.



system into mental health services. We understand that Court User Group meetings now include an explanation of the L&D role. We are engaging with the SRA with the aim of improving guidance and training for solicitors on how to respond to vulnerability. **Training needs to be provided for lawyers that would help them understand the different roles, responsibilities and expertise of mental health (and other) professionals engaged in the investigation stage.** This would ultimately assist with their response to mentally ill offenders.

### III. DECISION AS TO CHARGE AND PROSECUTION

#### Introduction

- 3.1 The Working Party felt that the public interest element of a charging decision requires a better assessment of vulnerability. It considered that cases where vulnerability is an issue should be flagged. Additionally, the Working Party proposed the creation of a specialist mental health prosecutor and recommended that further, detailed consideration should be given to the establishment of a mental health diversion panel.

#### Police charging decision

**Recommendation 19:** In cases of vulnerability, “release under investigation” should not extend a charging decision beyond two weeks.

- 3.2 The “release under investigation” policy can lead to a lengthy delay between arrest, charge and first appearance at court. For any suspect and complainant of crime, this adds to the uncertainty about whether a criminal charge will be brought. However, the Working Party noted that for vulnerable suspects this uncertainty frustrates and exacerbates their situation in a way that was not contemplated by the legislators. They recommended that in cases of vulnerability, there should be a charging decision within two weeks, with narrow scope for extension.
- 3.3 The Home Office has committed to reviewing the pre-charge bail process under PACE.<sup>86</sup> This provides an opportunity for Recommendation 19 to be implemented and we hope the Government will consider this as a matter of urgency.

#### Decision to prosecute

**Recommendation 20:** Case files sent to the CPS must be flagged where there is a vulnerability. This should be a feature of the Common Platform.

- 3.4 Our Report stressed that vulnerability must be flagged on the file so that appropriate information is known when deciding whether to prosecute and for when the case arrives at court.
- 3.5 We have proposed the idea of police officers ‘flagging’ case files to the CPS during meetings on the new CPS guidance. We suggested that a tick box could be added to the MG3 form (report to CPS for charging decision), instructing officers to record whether there is any mental health concern before sending documents on to the CPS. Prosecutors would then have a clear indication of vulnerability when reviewing the file. The CPS assured us that the police are skilled at highlighting vulnerability cases on the MG3 form or other documentation. However, the guidance implementation lawyers we spoke to agreed that adding a tick box could be helpful and a potential way of facilitating early assessment and identification of mental health issues.
- 3.6 In our Report, we identified the Common Platform<sup>87</sup> as potentially being a valuable tool to ensure that vulnerability is marked on the case file, not only for the CPS but once the case arrives at court.<sup>88</sup> We understand that the CPS is in ongoing discussions with the designers of the Common Platform Programme to make sure a range of flags are in place. We were assured that a ‘mental health’ flag remains a priority as the new management system comes online. Crucially, because the defence team will have access to the common platform, this would mean that the defendant’s lawyers also could signal any mental health problems.

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<sup>86</sup> See Home Office, ‘Police Powers: Pre-charge Bail. Government response’ (2021) available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/951847/2020-01-14\\_Response\\_to\\_PCB\\_consultation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/951847/2020-01-14_Response_to_PCB_consultation.pdf)

<sup>87</sup> The Common Platform is a digital infrastructure system shared between the police, HMCTS and the Crown Prosecution Service and accessible by the wider participants in the criminal case management process.

<sup>88</sup> *Mental health and fair trial*, para 4.14.

## Specialist prosecutor

**Recommendation 21:** A specialist prosecutor who has received mental health awareness training should be created for each CPS area.

- 3.7 Our Report recommended that a specialist prosecutor be created for each CPS area, who has received mental health awareness training and is in a better position to make the charging decision in cases of vulnerability. This specialist prosecutor would have conduct of the case, assisted by up-to-date guidance.<sup>89</sup> This kind of role is essential to ensuring that appropriate charges are brought and the case is properly managed throughout.
- 3.8 **We were pleased to hear that a single point of contact (SPOC) was established in each CPS area to provide advice, as opposed to conduct of cases.** We understand that there are resourcing problems that would make it very difficult for specialists to have conduct of all cases with mental health concerns, and welcome this advisory role as an alternative.
- 3.9 We met with the CPS last year, which provided us with an update about how this new role is operating. We were assured that the SPOC is in place across the country, and that these prosecutors are qualified by experience to deal with queries on cases with a mental health aspect. Each SPOC communicates regularly (on a monthly basis) with other points of contact about best practice and shares information where it relates to vulnerability.
- 3.10 It is our understanding that this new role will:
- encourage regular local liaison on issues around vulnerability;
  - provide access to effective channels of communication and an avenue for the provision of CPS expertise;
  - allow strategic/force/area-wide problems to be identified, discussed and resolved;
  - enable prosecutors to be kept informed of mental health-related developments in cases being prosecuted by the CPS;
  - promote a consistent approach and encourage adherence to a national standard approach.
- 3.11 **We wholeheartedly endorse the creation of this single point of contact.** In addition, the CPS informed us that training for prosecutors is increasingly covering vulnerability, which is a welcome result for Recommendation 21.

## Guidance

**Recommendation 22:** CPS Guidance Mentally Disordered Defendants is out of date and must be urgently reviewed, in particular to explain the nature of diversion and the local options available as an alternative to prosecution.

- 3.12 Our Report recommended that CPS guidance for prosecutors, *Mentally disordered defendants*, be urgently updated, in particular to explain the nature of diversion and the local options available as an alternative to prosecution. The CPS put out an updated version for consultation in the spring of 2019. We met with the CPS mental health lead about the need for practical guidance and to also raise our recommendation for targeted training, which we were assured is being taken forward.
- 3.13 We reconvened the JUSTICE working party to discuss the updated Guidance, at our corporate partner, Linklater's offices and with the former Director of Public Prosecutions, Alison Saunders, joining us to respond to the consultation. The CPS published the final version in October 2019, and several of the amendments that we proposed were taken up. Briefly, these include:
- The addition of a 'Context' section, giving prominence to the duties held by prosecutors towards defendants with disabilities under the Human Rights Act 1998 and the Equality Act 2010, as well as the underpinning provisions in the European Convention on Human Rights and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD);

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<sup>89</sup> Pages 7 and 59 of our [Mental Health and Fair Trial](#) Report.

- Reference earlier in the guidance to the possibility of diversion as an outcome, as well as greater reference to the assistance provided by liaison and diversion schemes;
- The addition of ‘Case Management’ and ‘Effective Participation’ sections, which provide further clarity and practical guidance on each stage of the process;
- More detail on the special measures available to enable a defendant to participate effectively.

3.14 We were told there are plans to roll out training on the new Guidance, which will ultimately support the delivery of its contents.

3.15 JUSTICE is impressed by the attention that the CPS is giving to mental health. **We hope that efforts will be made to assess the impact of the new guidelines and single point of contact on outcomes for vulnerable people.**

**Recommendation 23:** L&D assessments<sup>90</sup> should travel with every case file to the specialist prosecutor to assist with their charging decision.

3.16 A number of documents from NHS England underscore that L&D services should assist criminal justice agencies and decision makers with the transfer of information to ensure appropriate and effective outcomes for people with mental health problems, learning disabilities or other vulnerabilities.<sup>91</sup> For example, the Standard Service Specification, published in November 2019, states that “timely, relevant information” must be passed to “key decision makers in criminal justice agencies to inform outcomes along the youth and criminal justice pathways”.<sup>92</sup> The ‘police (or other prosecuting authority),’ ‘Crown Prosecution Service’ and ‘defence lawyers’ are all named as an agency which should be provided with information. The most recent publication online – *Liaison and Diversion Manager and Practitioner Resources* for the Police and Courts – lists the following as information that should be provided by Liaison and Diversion services to the police and courts to assist decisions about charging, bail, disposal and sentencing:

- the reasons for the referral
- the mental health concerns, learning disabilities or other vulnerabilities
- current or previous contact with health and care services including details of the individual’s care coordinator and other relevant professionals
- any treatment or ongoing care plan where relevant to the case and disposal in question
- the risk assessment including information about the risk that the person poses to themselves and/or others
- health and care options
- the individual’s ability to engage with criminal justice processes including the need for any reasonable adjustments.<sup>93</sup>

3.17 Further, a series of slides from the 2018 Liaison and Diversion National Conference say that NHS England’s overarching strategy includes “better information flow from health service to CJS decision makers”, albeit with no indication of the extent to which this aim is being met.<sup>94</sup>

3.18 We are trying to determine whether effective information flow is actually occurring in practice. We recently met with CPS lawyers, who told us that they had not experienced any problems in the sharing of information between L&D services and prosecutors. They also told us that they were not aware of any problems with the flow of

<sup>90</sup> The assessment by Liaison and Diversion services records a vulnerable individual’s needs and whether they should be referred on for treatment or further support.

<sup>91</sup> See: NHS England, *Liaison and Diversion Standard Service Specification 2019* (November 2019) section 2.7; NHS England and NHS Improvement, *Police and Courts – Liaison and Diversion Manager and Practitioner Resources* (January 2020) p.14; NHS England, *Operating Model for the Liaison and Diversion service* (2014) pp.28-29.

<sup>92</sup> NHS England, *Liaison and Diversion Standard Service Specification 2019* (November 2019) section 2.7.

<sup>93</sup> NHS England and NHS Improvement, *Police and Courts – Liaison and Diversion Manager and Practitioner Resources* (January 2020) p.14.

<sup>94</sup> Slides from the 2018 Liaison and Diversion National Conference, particularly slide 3, available at <https://www.policecare.scot.nhs.uk/wp-content/uploads/2019/02/Session-7-Liaison-and-Diversion.pdf>

information between liaison and diversion and defence lawyers. We are consulting with defence representatives to gain an accurate understanding of their experiences.

**Recommendation 24:** Defence representatives must be able to make representations about charge to the specialist prosecutor.

- 3.19 The Working Party suggested that defence legal representatives should have the opportunity to make representations to prosecutors as to whether it is appropriate to charge in the circumstances – taking into account information provided about the nature of the vulnerability that the suspect has, or whether this has any connection with the suspected offence. With fuller information about the suspect’s mental health available, the prosecutor will be better placed than the custody officer to decide if the suspect should be charged.<sup>95</sup>
- 3.20 **The Code for Crown Prosecutors was revised in October 2018. Unlike the previous iteration, the new Code 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.**<sup>96</sup> This is a significant and welcome development.
- 3.21 Further, the new Annex to the revised Attorney General’s Guidelines on Disclosure and the CPIA Code of Practice emphasises early engagement between prosecutors and defence lawyers.<sup>97</sup> In our meeting with the CPS, we pointed to those Guidelines and suggested that discussions should take place at the pre-charge stage which would allow defence lawyers to raise concerns about a suspect’s mental health. Both sides could share observations out of court. We proposed that the CPS could initiate, or at least facilitate, this engagement. The CPS was receptive to this suggestion. The MoJ is currently undertaking a wide-ranging review of criminal legal aid.<sup>98</sup> We understand that this will include consideration of whether it may be appropriate to cover the costs for pre-charge discussions between prosecutors and representatives. Its recommendations are due this year.

## Diversion and public interest considerations

### Diversion panel

**Recommendation 25:** Careful consideration should be given to the establishment of a mental health diversion panel to assist specialist prosecutors, once the evidential threshold has been passed, on whether a programme of support for the suspect would achieve an appropriate outcome for the case.

- 3.22 Although it did not come to a final conclusion, the Working Party considered that a mental health diversion or advisory panel might be better equipped to consider whether it is in the public interest to prosecute than a single prosecutor. Such an arrangement would formally bring together a range of local professionals – from, for example, mental health and social services, the police and crime commissioner’s office, the youth offending team, housing, employment and other services where appropriate – to put forward a co-ordinated package of care for the CPS to consider post-charge or when deciding upon whether or not to discontinue a prosecution.
- 3.23 The need for such a Panel has been echoed in subsequent stakeholder studies and reports. For example, the Law Society, in its response to the CPS consultation on its revised Legal Guidance for prosecutors, noted that a multi-agency panel, consisting of experts in mental health and psychiatry, could assist in the assessment of a mentally disordered person’s mental health, culpability, capacity and a prediction of future behaviour. This would help the CPS to deliver more effective diversion and suitable treatment for mental health disorders and conditions.<sup>99</sup>

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<sup>95</sup> *Mental health and fair trial*, para 3.7. Our Report acknowledged that, should our recommendations for the police station stage be followed – in particular, triage of all suspects by L&D officers; mandatory legal assistance; and intermediary assistance where necessary – there should be much more accurate information available concerning the appropriateness of charge for each suspect.

<sup>96</sup> CPS, *The Code for Crown Prosecutors*, 2018, para 3.4.

<sup>97</sup> Attorney General’s Office, *Attorney General’s Guidelines on Disclosure and the CPIA Code of Practice*, 2020, p.31 (Annex B).

<sup>98</sup> Ministry of Justice, Independent Review of Criminal Legal Aid, <https://www.gov.uk/government/groups/independent-review-of-criminal-legal-aid>

<sup>99</sup> The Law Society, ‘Response of the Law Society of England and Wales to the Crown Prosecution Service consultation on legal guidance on mental health conditions and disorders’, June 2019, p.13.

- 3.24 The JUSTICE Working Party did not propose how the Panel should operate, but acknowledged that consideration would need to be given to: whether it would only convene following an admission of guilt (so as to avoid a delayed trial were the programme not complied with); or whether admissions should not be required given that a suspect may not fully comprehend their behaviour and/or not wish to admit an offence, and it may not be appropriate to exclude them from the opportunity of diversion; and the appropriate length of the programme offered and whether any sanctions might be suitable were the person not to engage with it.<sup>100</sup> These issues need further exploration.

### Case Study: Mental Health Diversion Panel

#### Greater Manchester Police

It is worth noting that Bolton has a well-established Mental Health Diversion Panel. This Panel is a multidisciplinary collaboration between local mental health practitioners, the National Probation Service and Bolton CCG and SEND departments to carefully consider diversion and to ensure that those who ought not to be prosecuted obtain meaningful support and avoid the criminal justice system in the future. The standing team meets on a routine basis to consider cases and invites others to comment on particular aspects of the person's needs. It then prepares a report for the CPS, detailing the individual's clinical history and setting out the Panel's opinion on whether the offence was committed as a consequence of the mental health condition or disorder, often advising on a specific outcome. From our outreach, we understand that the Bolton Panel has moved towards proactively engaging with individuals who are suspected by the police or other professional of having a vulnerability but who are not known to mental health services, so as to ensure these suspects are not excluded from the opportunity of diversion. We were told this was introduced in response to worries that cases of mental ill health or learning disability were not being detected. **We believe this standardised Panel could serve as a model for other CPS areas.**

- 3.25 As part of the implementation of our recent *Prosecuting Sexual Offences* Working Party report,<sup>101</sup> JUSTICE has developed, in conjunction with experts in the field, a proposal for a police force to pilot a new Conditional Diversion Scheme for individuals found in possession of indecent images of children.<sup>102</sup> If the proposed scheme is successful, a similar model could be developed to divert people with mental illness who have committed low-level offending away from the criminal justice system. This is in line with the shift towards problem-solving courts used in some other jurisdictions,<sup>103</sup> which use treatment and rehabilitation programmes, as well as regularly reviewing the progress of the individual involved. **Due to the renewed interest in pre-court diversion, we are hopeful that diversion could be more widely practiced in cases involving mental health.** Possible next steps include consideration of which diversion models and strategies are most effective.<sup>104</sup>

### Case Study: Mental Health Court

#### Northern Ireland

Northern Ireland is in the initial stages of piloting a Mental Health Court (MHC) as part of its Problem-Solving Justice approach aimed at tackling the root causes of offending. This special jurisdiction court follows on from

<sup>100</sup> *Mental Health and Fair Trial*, para 3.25.

<sup>101</sup> JUSTICE, *Prosecuting Sexual Offences* (2019) chaired by HH Peter Rook QC. This Report underlined the need for effective rehabilitation programmes for those convicted of sexual offences to ensure that the risk of reoffending is minimised.

<sup>102</sup> The programme would be offered to those who commit first time sexual offences or who have no relevant convictions. There would be no prosecution if the participant successfully engages with and completes the scheme, to be assessed by the facilitators and reported to the police if necessary. We believe that this measure has the capacity to take a substantial number of cases out of the criminal justice system, thereby lightening the overall load upon the CPS and the courts.

<sup>103</sup> Problem solving courts are used in some US jurisdictions, New Zealand, Canada, Norway, Scotland for a range of specific issues, Centre for Justice Innovation, *Problem-solving courts: an evidence review* (2016), p.3, and a dedicated mental health court operates in Queensland, Australia.

<sup>104</sup> Possible issues to consider include: eligibility criteria (including whether participants must meet the criteria for serious and persistent mental illness or have only "demonstrable mental health problems"); the kinds of programmes offered via diversion (including devising appropriate responses to the risks and needs of the individual); and outcomes and monitoring (i.e. reporting back on engagement and/or recidivism). Consideration would also need to be given to whether programmes should be open to accept defendants charged with more serious/violent offences if it is determined that symptoms of mental illness played a substantial role in the offence.

the success of the Belfast Substance Misuse Court.<sup>105</sup> We were told the MHC will operate in a similar way to the Substance Misuse Court. Following an initial screening for the presence of mental illness, individuals are assessed to determine suitability for treatment in the community. If unsuitable, the judge passes sentence. If suitable, the offender proceeds to a special jurisdiction court. Diversion programmes would then negotiate with prosecutors, defence lawyers and community-based treatment providers, with the goal of developing community-based treatment disposition in lieu of prosecution or as a condition of a reduction in charges. The individual's treatment in the community would be overseen by the relevant services – for instance, health. Depending on completion of the programme, charges would either be dropped or reduced, or the initial conviction reconsidered. This court-based diversion would therefore take place prior to sentencing. We remain in ongoing discussions with the NI Department of Justice as the courts develop following the scoping stage.<sup>106</sup>

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<sup>105</sup> Centre for Justice Innovation, 'Substance Misuse Court', available at <https://justiceinnovation.org/project/substance-misuse-court>

<sup>106</sup> We understand from our discussions that the Departments of Justice and Health, the NI Courts and Tribunals Service and Probation Board NI are currently collecting data to support decisions on how the Mental Health Court will operate – including whether specialised judges will preside over these cases and what sentencing and treatment options should be available.<sup>106</sup> This scoping exercise is due to be completed by March 2022, with the courts expected to be introduced 12 months after, once resources and training are in place, although timescales are being reviewed in light of the impacts of COVID-19. The pilot will run for two years, with the possibility for it to be extended. The Department of Justice told us that Northern Ireland has commissioned statisticians to evaluate its Mental Health Court pilot once it is implemented. These analyses could provide helpful information on short-term mental health outcomes as well as on measures such as reconviction, re-arrest and breach rates. The evidence from Northern Ireland may show that, when implemented properly, pre-court diversion for those with mental health illnesses can reduce reoffending. The results of this appraisal could be used to inform decision making on whether to pilot MHCs in England and Wales or explore other arrangements that would offer credible alternatives to a prison sentence to support an offender with mental health/learning disability needs.

## IV. PRE-TRIAL AND TRIAL STAGE

4.1 This chapter considers trial processes. The Working Party concluded that all advocates must receive core training on the consequences of vulnerability and the procedures that should be followed where this is suspected to be present. It also called for greater provision of trained support assistants during the trial stage to reduce the anxiety and distress criminal proceedings cause for those who are vulnerable.

**Recommendation 26:** Where a defendant is vulnerable, online and virtual procedures are inappropriate and in court hearings will be necessary.

4.2 Our Report considered vulnerability and online justice processes in the context of the ongoing HMCTS digital reform programme. The Working Party was concerned that certain vulnerabilities, such as learning difficulties and autism, may be more difficult to identify over a video link than in person. Even where vulnerabilities and disabilities are known, at the time of our Report, there was no guidance available as to what criteria should be used to assess whether video is suitable for that person and/or what reasonable adjustments should be made to facilitate their participation.

4.3 We have continued to raise our concerns around the use of remote hearings where there is a mental health element. In our response to the Government consultation on PACE Code C we stated that “there should be no circumstances where it is appropriate for a vulnerable individual to be required to appear on live link” and that should a live link be deemed necessary, at any stage, then “a L&D practitioner should either be present, or be asked to make recommendations for what reasonable adjustments must be met.”<sup>107</sup> We further recommended, “the live link session must only go ahead with at least an AA present.”

4.4 The Code still allows for vulnerable individuals to appear on live link. However, new Note 12ZB makes clear that:

*In considering whether the use of the live link is appropriate in a particular case, the custody officer, in consultation with the interviewer, should make an assessment of the detainee’s ability to understand and take part in the interviewing process and make a record of the outcome. If the suspect has asked for legal advice, their solicitor should be involved in the assessment and in the case of a juvenile or vulnerable person, the appropriate adult should be involved.*

4.5 To reduce the number of face-to-face hearings across courts and tribunals amid the COVID-19 pandemic, the Ministry of Justice in March announced a significant expansion in the use of remote hearings, including in the criminal courts. JUSTICE has been advising and assisting HMCTS in producing guidance documents for courts and tribunals on phone and video hearings during the public health crisis on how to enable effective participation of all participants. We have contributed to HMCTS thinking on principles for conducting fair video hearings, for example, by assisting in the design of questions for a consultation exercise and preparing a comprehensive response to that consultation. This was fed into cross jurisdictional plans for AV research, guidance and design of the technical solution. In particular, we stressed that careful consideration must be given to ensure that people who are vulnerable by disability are not disadvantaged in remote hearings. In guidance issued in the early stages of the outbreak, HMCTS encouraged court users to alert staff if there are any circumstances that may affect or impair their ability to participate effectively in an audio or video hearing. It also confirmed that reasonable adjustments will be made.<sup>108</sup> This guidance has been published recognising that phone and video hearings may not be appropriate for everyone. However, it ultimately counts on defendants’ self-identification of impairments. We highlighted the need to consider and identify vulnerability within online justice processes and advised that judges and court staff should regularly check whether anything might inhibit a person’s ability to participate and necessitate assistance or an adjustment.

4.6 Furthermore, we pointed out in our briefing on the Coronavirus Bill that formal and informal mechanisms of support and advice for vulnerable individuals (from friends, their representatives or other professionals) must

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<sup>107</sup> Paragraph 35 of our response.

<sup>108</sup> HM Courts & Tribunals Service, ‘HMCTS telephone and video hearings during coronavirus outbreak’, last updated 30 June 2020, available at <https://www.gov.uk/guidance/hmcts-telephone-and-video-hearings-during-coronavirus-outbreak#communication-between-legal-professionals-and-clients>



continue to be accessible when parties appear via video link.<sup>109</sup> We met with Communicourt this spring for an update on how intermediaries were working under the Covid-19 restrictions. They had highlighted the serious problem for intermediaries of not being able to assess users over video or telephone to HMCTS.<sup>110</sup> They also sent us to some guidance that they have produced on how to try doing an assessment over video.

- 4.7 We have called for further research on how the use of video impacts the participation of court users with disabilities and vulnerabilities.<sup>111</sup> **We welcome the independent evaluation carried out by the University of Surrey on the impact of participating in a remand hearing by video.**<sup>112</sup> The Final Report, published in March, provides helpful insight into the experience of appearing over a link.<sup>113</sup> The researchers noted that clear guidance on the acceptance criteria for video court (i.e. the suitability of defendants to appear via video link) was essential to ensure the efficient running of the court.<sup>114</sup> **Additionally, the recently published independent evaluation of the Video Hearings service by the London School of Economics shows that HMCTS and partners are attempting to develop best practices for video hearings.**<sup>115</sup>
- 4.8 To examine current, pre-coronavirus understandings of vulnerability and suitability, we requested information from Norfolk and Suffolk constabularies on the criteria used to determine whether it is appropriate for a defendant to have their case heard over the link. We were told that youths, multiple defendant cases and “detainees whose understanding of proceedings would be significantly inhibited by video remand hearing appearance” are all deemed unsuitable for a video hearing. In relation to the latter, custody officers are required to detail the reasons for their genuinely held belief that a detainee would have considerable reduced capacity to grasp proceedings if they were to appear via Video Remand Hearing compared to a physical ‘in person’ appearance. The determination on mode of appearance under these criteria must be based on the balance of the best interests of justice and the best interests of the detainee/defendant. Custody officers are required to avail themselves of available medical and mental health care practitioner opinion when considering exception under these criteria. We are concerned that this threshold is too high and will keep this under review.
- 4.9 We have been working through our Legal Director’s position on the Criminal Procedure Rule Committee to produce guidance on when video links will be inappropriate to be included in the rules and practice directions. We will continue to raise our concerns about the impact that the expansion of video and phone hearings can have on justice for vulnerable defendants. This is all the more pressing as coronavirus-related measures remain in place and also as the Reform Programme is delivered.

**Recommendation 27:** Where defence practitioners are concerned about vulnerability that has not previously been identified they should be able to speak with the specialist mental health prosecutor and ask that continuation of the prosecution be reviewed.

- 4.10 As mentioned previously, the CPS is alert to the issue of the need for greater pre-charge dialogue. **We hope that the new Legal Guidance and planned training on the document will improve out-of-court communication between prosecutors and defence lawyers,** and have flagged this as a matter to review as the Guidance is put into practice.

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<sup>109</sup> JUSTICE, [Coronavirus Bill House of Commons Second Reading](#), March 2020.

<sup>110</sup> JUSTICE, [Response to HMCTS Survey on Conducting Video Hearings](#), April 2020.

<sup>111</sup> The Lord Chief Justice has appointed Professor David Ormerod and Professor Cheryl Thomas to evaluate the impact of Covid-19 on criminal courts, which may include consideration of this issue.

<sup>112</sup> University of Surrey, [Video Enabled Justice Evaluation: Final Report](#) (March 2020).

<sup>113</sup> For example, participants suggested that determining the suitability of defendants for video court was more easily done face-to-face.

<sup>114</sup> p.115.

<sup>115</sup> HMCTS, [Video Hearings Process Evaluation \(Phase 2\) Final Report](#), July 2020. This evaluation assessed party-to-party hearings and party-to-state hearings in civil, family and tax jurisdictions.

## Support at court

### Liaison and diversion

**Recommendation 28:** Embedding of L&D practitioners in magistrates' courts and the Crown Court should be a priority.

- 4.11 This recommendation is progressing well. Liaison and diversion services are now established in every magistrates' court and plans are in place to develop enhanced L&D services across Crown Court centres.<sup>116</sup> This vital development means many more people will have their mental health needs identified and met at the earliest opportunity when they appear at court.
- 4.12 To ensure efficient use of staff and resources, NHS England has been working with the MoJ and HMCTS to identify potential levels of demand at individual Crown Court centres.<sup>117</sup> If screening is comprehensively conducted at the police station and magistrates' court stages, Crown Courts will be alert to the needs of defendants well in advance of their attendance and can be directed to centres where full L&D provision is available.

#### Case Study: Liaison and diversion at court

##### Bolton

Members of the Bolton Mental Health Criminal Justice Team attend Bolton Magistrates' Court three times a week providing a screening and assessment service, in addition to information and advice for magistrates and probation officers.<sup>118</sup> The Team also runs a weekly mental health clinic at Bolton probation offices, offering guidance and acting as a point of referral into mainstream mental health services.

- 4.13 Furthermore, it seems that the liaison and diversion service is actively seeking to enhance professional understanding of its role.<sup>119</sup> The success of the liaison and diversion service in the Birmingham Magistrates' Court was stated to be partly due to the "initial awareness training" the L&D service conducted with probation teams and court legal advisers. They also were proactively raising awareness of how their service can improve court proceedings, especially with the magistrates. In February last year the Bedfordshire and Luton L&D service, based within the East London NHS Foundation Trust, welcomed court ushers to shadow the team during its Magistrate and Crown Court work.<sup>120</sup> The ushers reported that the shadowing opportunity was "valuable in understanding the 'bigger picture' and the core work of the liaison and diversion service, reducing the mystery or any misunderstanding surrounding working with people with mental health conditions and other vulnerabilities." As a result, the ushers who participated felt more confident in making referrals directly to the L&D team. The liaison and diversion service plans to continue offering this shadowing opportunity to new court ushers who are wanting to learn more, as well as planning to continue developing and promoting its inter-agency work more generally.
- 4.14 In the winter of 2019 we visited Isleworth Crown Court, which has a liaison and diversion specialist shared with Harrow Crown Court. Isleworth is the only London Crown Court with disabled access into the cells. Cell staff and all court staff are familiar with the Liaison and Diversion service, regularly making use of it where they or

<sup>116</sup> The enhanced Crown Court L&D service is currently being trialled at eight Crown Court centres – Birmingham, Bristol, Leeds, Liverpool, Nottingham, Preston, Reading and Sheffield. A further 16 Crown Court centres are due to receive services by 2021. This service would screen and assess defendants; provide advice to the Judiciary, counsel and probation to reduce adjournments for full medical reports; provide support and advice regarding the appointment of intermediaries; and assist with probation reports. See the slides from the 2018 Liaison and Diversion National Conference, slide 16, available at <https://www.policecare.scot.nhs.uk/wp-content/uploads/2019/02/Session-7-Liaison-and-Diversion.pdf>; and NHS England, 'Programme updates: Liaison and Diversion services extend to Crown Courts', available at <https://www.england.nhs.uk/commissioning/health-just/liaison-and-diversion/news/programme-updates/>

<sup>117</sup> NHS England, 'Programme updates: Liaison and Diversion services extend to Crown Courts', available at <https://www.england.nhs.uk/commissioning/health-just/liaison-and-diversion/news/programme-updates/>

<sup>118</sup> Greater Manchester Mental Health, 'Criminal Justice Teams and Resources', available at <https://www.gmmh.nhs.uk/cjt/>

<sup>119</sup> See, for example: <https://www.england.nhs.uk/commissioning/health-just/liaison-and-diversion/news/police-and-courts/>

<sup>120</sup> 'Working with partner agencies: Court ushers shadowing a liaison and diversion service', February 2019, available at <https://www.england.nhs.uk/commissioning/health-just/liaison-and-diversion/news/police-and-courts/>

lawyers have concerns. The Liaison and Diversion practitioner considered that there was sufficient work to be at one court permanently and would like to see greater resource for their services.

## Support assistants

**Recommendation 29:** Support assistants should be available for vulnerable defendants.

- 4.15 Through the Criminal Procedure Rule Committee, we successfully agreed that reference should be made to the use of support assistants. The Criminal Practice Direction now includes reference to a supporter role at the court stage. We raised with NAAN whether such a role might be created, as there currently is no formal service available. This is, unfortunately, outside its current capacity.
- 4.16 Support Through Court is a charity that provides free and independent support for litigants and witnesses in courts in England and Wales.<sup>121</sup> Following a successful pilot last year, it recently launched a national telephone helpline to provide practical information about the court process, as well as emotional support to help individuals feel more confident when appearing in court. Volunteers and staff are trained in areas of Civil and Family law. HMCTS is working closely with Support Through Court to expand the court base and increase the number of phone lines. We have been engaging with the charity regarding our subsequent Working Party Report *Understanding Courts*<sup>122</sup>, which identified a lack of information for all lay users on how the court process operates. **Given that support assistants are still not available for vulnerable defendants, we consider the provision of a similar support scheme for those going through the criminal courts as a key priority.**

## Intermediaries

**Recommendation 30:** Intermediaries can be crucial to enabling a defendant to understand and communicate with their legal representatives and during trial. However, the model needs revising and, as recommended above, should be part of the MoJ scheme. Intermediaries should be embedded in courts through a duty scheme. A regulatory body with training obligations should be established.

- 4.17 As mentioned previously, **we continue to call for the Ministry of Justice to look at the availability, use and funding of intermediaries for all parties in criminal cases.**
- 4.18 The Equality and Human Rights Commission Inquiry found that the current framework to provide adjustments to ensure effective participation for disabled defendants and accused people is inadequate. The Commission recommended that the Government should give defendants a statutory entitlement to special measures, including intermediaries.<sup>123</sup> We wholeheartedly endorse this recommendation. Given the growing calls for revisions to the intermediary model, we are keen to see how the Government responds to the EHRC report and hope that our recommendation relating to the professionalisation of intermediaries is also progressed.<sup>124</sup>

## Venue

**Recommendation 31:** Holding the trial or procedural hearings at the prison or secure hospital where a defendant is detained should be considered in particular circumstances.

- 4.19 The Working Party acknowledged that the volume and range of people with vulnerabilities once properly identified would make the introduction of specialist mental health courts unfeasible. Instead, it suggested moving the venue for the hearing to the hospital or prison where a defendant with particular difficulties is detained – rather than transporting the patient or prisoner to court. Mental health tribunal and parole board hearings already take

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<sup>121</sup> See <https://www.supportthroughcourt.org>

<sup>122</sup> JUSTICE Working Party Report *Understanding Courts* (2019), available at <https://justice.org.uk/wp-content/uploads/2019/01/Understanding-Courts.pdf>

<sup>123</sup> Equality and Human Rights Commission, *Findings and recommendations – Inclusive justice: a system designed for all*, June 2020, p.28.

<sup>124</sup> There are now many universities where you can study to be a speech and language therapist. Thereafter the SLT quality assurance is governed by the Health and Care Professions Council. It may be worth considering whether a number of providers of the intermediary training could be added as a module to for example, SLT and psychology degree courses.

place at the secure venue – the Working Party proposed this could occur for magistrates’ court trials and procedural hearings. We have yet to implement this recommendation.

## Information

**Recommendation 32:** Easy read information on the court process should be provided, including with paper requisitions.

- 4.20 Our Report called for the provision of easy read information to enable vulnerable defendants to understand the court process better. Through the Criminal Procedure Rule Committee and the Defendant’s Voice Engagement Panel (as part of the HMCTS Reform Programme) we have raised our concerns that court forms are not clear enough for people with learning disabilities and neuro-diverse conditions, and we have been assisting to produce clear and simple, easy read forms for commencement through to appeal.
- 4.21 **We are impressed by the development of information leaflets about going to court.**<sup>125</sup> These include four Easy Read guidance documents, designed to help defendants understand the different stages of the criminal court system, from the point of charge through to attending a magistrates’ or Crown Court. The second guide, titled ‘Understanding the legal terms used in court’, is particularly helpful as it explains specific expressions utilised during a hearing. We have reviewed the proposed documents and made suggestions that would further help clarify the process. This piece of work is informed by our *Understanding Courts* report.
- 4.22 The National Police Chiefs’ Council, jointly with the Criminal Procedure Rule Committee, developed an Easy Read Postal Requisition Form, which has replaced the previous form. The Single Justice Procedure for summary non-imprisonable matters form and accompanying letter have also been revised in light of our recommendations. These make clear that people can go to court if they wish to defend the case against them rather than simply plead guilty by post or online.
- 4.23 We are further progressing Recommendation 32 as we implement our *Understanding Courts* Report.

## **Case management**

**Recommendation 33:** A dedicated mental health judge should be appointed, with responsibility for ensuring that cases involving vulnerable defendants are appropriately dealt with. In magistrates’ courts, this will be a district judge, in the Crown Court, the resident judge. The judge should conduct the first appearance, PTPH and GRH.

**Recommendation 34:** The dedicated judge should have the power to direct that the CPS review a decision to prosecute and provide written reasons for continuing.

- 4.24 The Working Party recommended that a dedicated judge (akin to those sitting in the mental health courts in Canada) should be appointed. Unfortunately, due to resource constraints in the criminal justice system, such a judicial role has not been created across court centres. However, at Isleworth Crown Court dedicated mental health judges have been appointed for defendants, and complainants and witnesses respectively, who have devised procedures for ensuring that needs are identified and steps taken to make appropriate adaptations for court hearings, in conjunction with the liaison and diversion practitioner. We were also able to make some progress regarding judicial training around responding to mental health needs (see paragraph 4.29 below).
- 4.25 As set out in **Chapter 3** of this Report, Northern Ireland is in the initial stages of piloting a Mental Health Court (MHC). This will include an assessment of who should preside over these cases – i.e. dedicated mental health judges, or regular judges who have undergone special mental health training. The Departments of Justice and Health, the NI Courts and Tribunals Service and Probation Board NI have commissioned research into the operation of the MHCs and will share its findings with us this year. This research could inform discussions on this matter going forward, acknowledging that there may be a strong case for specialist judges.

**Recommendation 35:** A protocol should be put in place to ensure that the Criminal Practice Direction and other guidance is correctly followed and reasonable adjustments are made as necessary.

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<sup>125</sup> See: HM Courts & Tribunals Service, ‘Going to a criminal court - support for defendants’, December 2019, available at <https://www.gov.uk/government/publications/going-to-a-criminal-court-support-for-defendants>

- 4.26 We have been working through the Criminal Procedure Rule Committee to improve identification of mental health and responses to it. 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 to enable their effective participation from a drop-down menu. As a result of the Sentencing Guidelines consultation, we met with the Lord Chief Justice and the Chair of the Sentencing Council, Lord Justice Holroyde, in 2019. The judges were receptive to considering a protocol or checklist for judges that would cover how to respond to vulnerability at each stage of a case.
- 4.27 The Advocate’s Gateway Toolkit on *Case management in criminal cases when a witness or a defendant is vulnerable*, may be a suitable guide to adopt.<sup>126</sup> The presentation of that toolkit is helpfully designed to reflect the normal stages of the pre-trial and trial process. Additionally, the toolkit is accompanied by a checklist of ‘essential questions’ to prompt lawyers to reflect on, for example, whether the defendant might benefit from the help of an intermediary and what steps the court should take if an intermediary cannot be appointed for a defendant.<sup>127</sup> **If courts do not adopt their own checklist, they should be familiar with the TAG toolkit.**

## Training

**Recommendation 36:** Familiarisation with vulnerability should be part of core training for magistrates, judges, court staff and lawyers. The training should be about knowing how to respond to mental health needs.

- 4.28 A range of guidance is available to assist practitioners in relation to vulnerable parties.<sup>128</sup> Whilst these are vital materials, they still require a lawyer or judge to recognise that an issue has arisen in the case which needs to be addressed, something which we believe can only properly be achieved after appropriate training.
- 4.29 We have discussed with the Judicial College the need for training for judges in dealing with cases that involve mental health issues. As mentioned above in relation to Recommendation 35, we also met with the Lord Chief Justice and Lord Justice Holroyde to discuss the need for judicial training. The judges were receptive to this need and we are delighted that training about identifying and responding to defendants with mental health difficulties has been made available to judges.<sup>129</sup>
- 4.30 In March, we prepared a paper for the Solicitors Regulation Authority on guidance and training for solicitors – towards improving how solicitors respond to (defendant) clients who have vulnerabilities. The SRA responded favourably to our proposals and recently consulted us on how to take these recommendations forward. The recent EHRC Inquiry found that legal professionals do not consistently have the guidance or training they need to be able to identify impairments, their impact, or how adjustments can be made. It recommended that disability awareness should form a mandatory part of training for new and practising lawyers, and that all relevant codes of conduct and standards should explicitly include disability awareness as a professional specification.<sup>130</sup> This adds to the argument for mental health training to be provided to those who handle cases with a mental health element.
- 4.31 A Civil Justice Council Working Group last year investigated how the civil courts can better help vulnerable individuals to participate in civil litigation and give their best evidence. Foremost amongst its priorities was that HMCTS should enhance staff training to detect and assist vulnerable parties and consider making this training mandatory.<sup>131</sup> **It is crucial that HMCTS court staff who handle criminal cases receive similar training.**

<sup>126</sup> TAG, *Case management in criminal cases when a witness or a defendant is vulnerable*, Toolkit 1A, (2 September 2019), available at <https://www.theadvocatesgateway.org/images/toolkits/1a-case-management-in-criminal-cases-when-a-witness-or-a-defendant-is-vulnerable-2019.pdf>

<sup>127</sup> TAG, *Case management in criminal cases when a witness or a defendant is vulnerable: essential questions* on Toolkit 1a, (10 April 2017), available at <https://www.theadvocatesgateway.org/images/toolkits/essential-questions-checklist-2017.pdf>

<sup>128</sup> [The Equal Treatment Bench Book](#), [The Advocates Gateway](#) and [toolkits](#), and training through the Judicial College.

<sup>129</sup> Judicial College, *Prospectus: April 2020 – March 2021* (2019). See the ‘Crime: Some Technical & Technological Issues’ and ‘Sentencing and Confiscation’ seminars.

<sup>130</sup> Equality and Human Rights Commission, *Findings and recommendations – Inclusive justice: a system designed for all*, June 2020, p.32.

<sup>131</sup> Civil Justice Council, *Vulnerable witnesses and parties within civil proceedings: current position and recommendations for change*, (February 2020).

## V. LEGAL CAPACITY TESTS

### Introduction

5.1 The Law Commission has written extensively on the reform of three legal capacity tests: fitness to plead, insanity and diminished responsibility.<sup>132</sup> The Working Party largely adopted their recommendations, which would bring the processes in line with contemporary psychiatric and psychological thinking and prioritise effective participation under article 6 ECHR. The current legal test for fitness to plead still derives from the 1836 case, *R v Prichard*,<sup>133</sup> and there is general agreement among psychiatrists and legal professionals that the presently accepted requirements are far from adequate.

### Fitness to plead and stand trial

**Recommendation 37:** We agree with the Law Commission that there should be a capacity based test of fitness to plead and fitness to stand trial, placed on a statutory footing and applied in magistrates' courts and the Crown Court.

**Recommendation 38:** Where the psychiatric assessment indicates that a defendant is fit to plead, this opportunity should be offered, subject to legal advice, in order to avoid an unnecessary trial.

**Recommendation 39:** Evidential and procedural changes are needed to ensure that this process and the fact-finding procedure that may follow are fair.

5.2 JUSTICE met with the Law Commission in May 2020 to discuss the Working Party's proposals around reforming the legal capacity tests. We were pleased to learn that the Government properly considered and welcomed the recommendations in the Law Commission's *Unfitness to Plead* report. The Ministry of Justice is currently working on draft legislation that, if brought forward, would address our recommendations on the unfitness to plead procedure – including placing a capacity-based test of fitness to plead and stand trial on a statutory footing, as well as making amendments to the fact-finding process. We are delighted that the Government supports the proposed reform and await its formal response to the Commission's report, which should be published in due course. **We consider that the majority of the comprehensive and compelling recommendations that the Law Commission makes must be put onto the statute book as soon as possible.**

### Defences

**Recommendation 40:** We also agree with the Law Commission that the insanity defence should be amended to a defence of “not criminally responsible by reason of a recognised medical condition” available in magistrates' courts and the Crown Court.

**Recommendation 41:** We consider that in a clear case, for example when the prosecution and defence are agreed that the facts are completely made out and that the expert evidence demonstrates the defendant lacked capacity at the time of the offence, the case should not proceed to trial, and a judge should be able to pronounce a special verdict.

**Recommendation 42:** A further review should take place of what defences should be available in cases where mental capacity will be in issue, taking into account the range in degree of diminished capacity that might exist for defendants with vulnerabilities. The amended test of diminished responsibility is very similar to the proposed test for not criminally responsible – the difference being either a substantial or complete lack of capacity. It is difficult to identify which ingredients would satisfy one test and not the other.

**Recommendation 43:** Consideration must also be given to whether the defence of diminished responsibility by substantial lack of capacity should be available for all specific intent crimes and not just murder.

**Recommendation 44:** Primary legislation and amendment to the Criminal Procedure Rules will be necessary to give effect to these amended tests and their procedures.

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<sup>132</sup> Law Commission, *Unfitness to Plead, Volume 1: Report*, (House of Commons, 12 January 2016).

<sup>133</sup> *R v Prichard* (1836) 7 C & P 303.

- 5.3 In 2013 the Law Commission put forward provisional proposals for reform of the defences of insanity and automatism,<sup>134</sup> based on lack of capacity. The JUSTICE Working Party, while endorsing the proposed test of “not criminally responsible by reason of a recognised medical condition”, raised concerns around the coherency of the psychiatric defences.
- 5.4 As mentioned previously, the Ministry of Justice has begun preliminary work on examining the feasibility of the Law Commission’s proposals. We have communicated our above concerns to the MoJ and we hope that our suggestions will be taken into account during the early scoping stages. We continue to call for a consultation on insanity. We ask the Government to consider such a review as a priority.

## Framework for clinicians

**Recommendation 45:** Better instructions must be provided to clinicians assessing capacity under these tests, who would benefit from a standard template to follow on preparing their reports. L&D practitioners can greatly assist with this.

- 5.5 One of the problems that the Working Party highlighted was the absence of an agreed framework with which clinicians can assess the capacity of the defendant.<sup>135</sup> Our report also stated that the Royal College of Psychiatrists, along with the British Psychological Society, should put together a guide for lawyers and clinicians to follow on the assessment of capacity in criminal proceedings to ensure that both sets of professionals fully understand their role – lawyers in instructing on the specific legal capacities that need addressing, and clinicians on how to word their responses to the letter of instruction so that they can be applied in the criminal justice system.<sup>136</sup> The Working Party suggested that a template should also be developed to ensure that all assessments of competence are carried out using the same approach by clinicians and produce clear, evidence based reports, and that L&D practitioners could offer assistance to defence lawyers in instructing clinicians.<sup>137</sup>
- 5.6 We have been working through the Criminal Procedure Rule Committee to clarify the process for psychiatric reports. A new form<sup>138</sup> was prepared in October 2018, as a result of the delays and inconsistency and our recommendation. In preparing this Update, we were not able to find any relevant guides prepared by the Royal College of Psychiatrists or any other body. Equally no template exists for the assessments. Addressing this recommendation remains a priority.

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<sup>134</sup> Law Commission, [Criminal Liability: Insanity and Automatism discussion paper](#) (2013) p.4.

<sup>135</sup> *Mental health and fair trial*, para 5.30.

<sup>136</sup> *Ibid*, para 5.31.

<sup>137</sup> *Ibid*.

<sup>138</sup> Ministry of Justice, [Directions for commissioning pre-trial medical report, CrimPR 3.28](#)

## VI. DISPOSAL AND SENTENCING

- 6.1 The Working Party's recommendations in this chapter are about improved cooperation – for example, information sharing between hospitals and Mental Health Tribunals – as well as the need for a broader range of disposals.

### Disposals for fitness to plead and lack of capacity

**Recommendation 46:** We agree with the Law Commission that the range of disposals available where a defendant lacks capacity must be broadened, and largely available in magistrates' courts and the Crown Court. In particular, supervision orders should be extended, and supervised by local authorities rather than probation services. Courts should be able to keep the order under review, including requiring reports from supervisors and medical practitioners. We are concerned about the powers that should be available upon a breach of an order, which is a complex and difficult question where a person lacks capacity.

- 6.2 Our Report emphasised the need to widen the range of disposals available where a defendant lacks capacity. It is hoped that the above recommendation will be adopted as part of the Ministry of Justice's law reform programme on unfitness to plead. We will continue to monitor the progress of the implementation of the Law Commission's report.

### Sentencing

**Recommendation 47:** Decisions on disposal and sentence should ideally be reserved to the dedicated judge, but at a minimum to judges that have undertaken mental health training.

- 6.3 Unfortunately, as explained in **Chapter 5**, due to resource constraints in the criminal justice system, it has not been possible for dedicated judges to conduct the sentencing exercise. Instead, JUSTICE focussed on mental health awareness training undertaken by sentencers. As mentioned previously (para 4.29), training has been made available for judges in dealing with cases that involve mental health issues.

**Recommendation 48:** A Sentencing Guideline on mental health and vulnerability should be created to assist in this decision.

- 6.4 Our Report recommended a new sentencing guideline on mental health and vulnerability to help judges determine the appropriate outcome for vulnerable defendants. In direct response to our recommendation, the Sentencing Council published a draft guideline for consultation on sentencing offenders with mental health conditions or disorders, which closed in July 2019. With the assistance of the reconvened Working Party members, we responded to the Sentencing Council.

- 6.5 In our response, we underlined that appropriate medical assessment is necessary before sentencing a defendant with mental health difficulties; we urged clarification on the approach to causation with regard to the relevance of a mental health condition; and highlighted practical inaccuracies as to diagnosis, the process of sentencing in this context and the range of mental health conditions and disorders. We also observed in our response that, while a sentencing guideline will assist, the lack of suitable mental health treatment for offenders in the community as well as resource constraints in the criminal justice system, make responding appropriately to mental health among defendants a continuing problem.

- 6.6 The definitive version of the Guideline was published in July 2020.<sup>139</sup> The final version included several of our proposals,<sup>140</sup> including:

- Clarification around the role of experts and use of non-expert information.

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<sup>139</sup> Sentencing Council, [Definitive Guideline: Sentencing offenders with mental disorders, developmental disorders, or neurological impairments](#) (Effective from 1 October 2020).

<sup>140</sup> Sentencing Council, [Overarching Principles: Sentencing offenders with mental disorders, developmental disorders, or neurological impairments: Response to consultation](#), July 2020.



- Changes to language, such as the replacement of the word ‘responsibility’ with the word ‘culpability’, which is a more appropriate term. The Council has also reworded the text on the assessment of causation and expert evidence to add much-needed clarity.
- The addition of a new paragraph (Paragraph 23) making it clear that the list of questions to help decide the level of culpability is non-exhaustive, and that the applicability of the questions will vary in individual cases – to help guard against the list turning into a template.
- Reference in Annex A to ICD-11 (International Classification of Diseases) as well as the DSM (Diagnostic and Statistical Manual of Mental Disorders). There has also been some rewording in the sections on acquired brain injury, delusional disorders, and substance misuse disorders.
- Attempts have also been made to align the guidance in Annex B of the Guideline with the Criminal Procedure Rule Committee’s existing form ‘Directions for commissioning a psychiatric or other medical report for sentencing purposes’.

6.7 Overall, we have been encouraged by the Guideline’s contents. **We hope the document will be helpful in ensuring that sufficient regard is paid to mental health disorders at the sentencing stage and in providing a structured approach to sentence in these cases.**

## Liaison and diversion

**Recommendation 49:** L&D practitioners have a key role in preparing recommendations for the court on appropriate sentences and what treatment provision is realistic and available in the person’s local area.

6.8 Our Report recognised that the role of L&D practitioners in preparing recommendations for the court on appropriate sentences and what treatment provision is feasible is crucial, given the difficulties in getting Clinical Commissioning Groups to accept responsibility for offenders with vulnerabilities.<sup>141</sup> The Working Party noted that if medical services are not available to give individuals access to the treatment they need, no amount of improvement in the criminal justice system will prevent their risk of re-offending.<sup>142</sup>

6.9 As mentioned previously, we have experienced difficulties engaging with NHS England, therefore it has been hard to get an idea of what progress, if any, has been made in effecting this recommendation.

6.10 It seems that there may have been some positive change. The NHS webpage recognises, “The provision of timely specifically focussed L&D assessments in supporting magistrates and judges in consideration of their remand and sentencing decisions can limit the number of court hearings, avoiding costly adjournments and periods on remand.”<sup>143</sup> Furthermore, examples of L&D services in operation indicate that L&D practitioners are having an input in this space. One example is the following:

*Mick Lambert, a learning disabilities nurse in the Wakefield L&D service, is currently training criminal justice colleagues on learning disabilities awareness, having recently trained probation officers based at Leeds Crown Court. He is also working with the Leeds community learning disability team to develop on a mutually beneficial two-way process to support people with learning disabilities in the criminal justice system. This will involve sharing information, making referrals, advising the courts and preparing support for people with learning disabilities already known to services who will be coming through the courts and/or working with probation. It will also facilitate potential referrals back to the local learning disability services where needed and allow for advice on appropriate sentencing.<sup>144</sup>*

6.11 This would seem to indicate that sentencing recommendations made by L&D practitioners are specific to the geographic area in which they operate. Similarly, in a separate update about Birmingham Magistrates Court, the

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<sup>141</sup> para 6.19.

<sup>142</sup> *Ibid.*

<sup>143</sup> NHS, ‘Frequently Asked Questions: How will L&D services help the courts’ system?’, available at <https://www.england.nhs.uk/commissioning/health-just/liaison-and-diversion/ld-faqs/>. See also the section on ‘How will L&D help offender management?’

<sup>144</sup> NHS England, ‘Supporting suspects and defendants with Learning Disabilities’, April 2018, available at <https://www.england.nhs.uk/commissioning/health-just/liaison-and-diversion/news/vulnerable-groups/>

Senior Probation Officer explained that “before the L&D service was in place often certain sentencing options were not being fully utilised as they required more mental health expertise. Now that L&D services are in place at court the right sentencing options are being reached quickly, sometimes even within one day. Having information on an individual’s needs or vulnerabilities then allows probation staff to develop plans to address these needs as part of the sentencing process.”<sup>145</sup> We also saw this in action at Isleworth Crown Court, where the Liaison and Diversion Practitioner presented information regarding community treatment options during a sentencing hearing.

- 6.12 It is rather disappointing that the new Sentencing Guideline does not refer to the role of liaison and diversion at the sentencing stage. We communicated these concerns to the Sentencing Council and stressed that L&D practitioners can provide appropriate and timely specialist advice to the court and therefore facilitate appropriate sentencing outcomes.

## Community orders

**Recommendation 50:** The conditions of any community order must be achievable, fully comprehended by the individual and supported. Judges should be able to keep sentences under review to ensure that the person is both receiving appropriate assistance and treatment and engaging in the programme.

- 6.13 This recommendation is yet to be implemented but may now be supported by the new Sentencing Guideline. In addition, the government’s Sentencing Reform White Paper proposes expanding the use of treatment requirements in community orders to improve access to mental health and substance misuse treatment in the community.<sup>146</sup> The proposed reforms offer promise in delivering tailored interventions to help support those with mental health needs.
- 6.14 It is worth highlighting that Northern Ireland piloted Enhanced Combination Orders (ECOs) from October 2015 to November 2018. ECOs are a form of intensive, community-based sentence that use a multi-disciplinary, collaborative approach with contributions from the Probation Board and a range of partners. During the three-year pilot, a personal plan was put together for each offender following input from support services. Those with mental health problems were assessed by psychologists, with a treatment plan or referral to an appropriate health provider then forming part of the intervention. An independent evaluation undertaken by the Northern Ireland Statistics and Research Agency found that Enhanced Combination Orders have the potential to reduce reoffending rates, decrease the likelihood of reoffending, and improve outcomes for those who participate in programmes.<sup>147</sup> An Economic Impact Assessment was also carried out last year by the Ulster University Economic Police Centre.<sup>148</sup> This identified significant monetary benefits and suggested ECOs were cost-effective. Given these encouraging results, it is worth reviewing whether a similar model could be piloted in England and Wales.

## Clinical Commissioning Groups

**Recommendation 51:** Clinical Commissioning Groups must accept responsibility for treatment of offenders with vulnerabilities in the community.

- 6.15 Clinical Commissioning Groups (CCGs) play a key role in the provision of mental health services in the community. However, CCGs are reluctant to accept responsibility for individuals leaving police custody or prison, or who are diverted from the criminal justice system. The most recent NHS England strategy for health services in the justice system underscores the need to ensure effective links with CCGs and Local Authorities to support

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<sup>145</sup> NHS England, ‘Working well in Magistrates’ Court’, available at <https://www.england.nhs.uk/commissioning/health-just/liaison-and-diversion/news/police-and-courts/>

<sup>146</sup> Ministry of Justice, *A Smarter Approach to Sentencing*, 2020.

<sup>147</sup> Northern Ireland Statistics and Research Agency, *Evaluation of the Enhanced Combination Order Pilot* (June 2017) available at <https://nisc.info/storage/events/eco-evaluation-final-report-041217.pdf>; Probation Board for Northern Ireland, *The Enhanced Combination Order: October 2015 to November 2018*, (March 2019) available at <https://www.pbni.org.uk/wp-content/uploads/2019/06/2019-ECO-Evaluation-Final-Report.pdf>

<sup>148</sup> The Department of Justice, *Problem Solving Justice - The Economic Impact of Enhanced Combination Orders (ECOs)* (May 2019).

continuity of care for adults serving community sentences or receiving treatment in the community.<sup>149</sup> This suggests that good practice in commissioning is being seen as a priority. We consider it a priority that NHS England addresses this recommendation as soon as possible post-pandemic.

## Mental Health Tribunals

**Recommendation 52:** Information about the offender and the circumstances of the offence must be shared with the Mental Health Tribunal to enable appropriate decisions on discharge to be made.

- 6.16 Where a hospital order is made, the Mental Health Tribunal will be responsible for determining if the person should be discharged. We understand that often the Tribunal does not have the original court papers relating to the offence when making this decision. This is unsatisfactory, as the Tribunal does not then have the full information upon which to base its decision. The Working Party called for closer information sharing between courts, Mental Health Tribunals and hospitals.
- 6.17 The proposed reforms to the Mental Health Act 1983 include an expanded role for the Mental Health Tribunal when considering applications for discharge. Given the government's broader aim of improving the transparency of decision making, we hope that the above recommendation will be adopted as part of the programme of reform.<sup>150</sup>
- 6.18 The Administrative Justice Council (AJC) last year invited suggestions from all stakeholders (including organisations, academics, Government departments, the judiciary, adjudicators and regulators) for possible new areas of focus. The consultation exercise highlighted very real concerns about the current level of disclosure of information relating to offenders and their offences to Mental Health Tribunals, and also the accountability and safety of decision-making by the tribunal, adding to the arguments for greater information sharing between the health and justice systems. This Proposal was not taken forward by the AJC. However, we engaged with the consultees who raised this issue to see how our recommendation could be taken forward. Furthermore, we understand that Tribunals should now receive judge's sentencing remarks (as is the case with parole hearings), whereas previously they were given only a short paragraph from the Mental Health Casework Section of the MoJ.<sup>151</sup> This is a positive step.

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<sup>149</sup> NHS England, 'Strategic direction for health services in the justice system: 2016-2020', p.28, available at <https://www.england.nhs.uk/wp-content/uploads/2016/10/hlth-justice-directions-v11.pdf>

<sup>150</sup> Department of Health & Social Care, *Reforming the Mental Health Act* (2021).

<sup>151</sup> This change was as a result of efforts by the Hundred Families charity.

## VII. CONCLUSION

- 7.1 This Report demonstrates that progress is being made to implement the recommendations of the Working Party – an ambitious programme of reform that continues to be necessary to ensure vulnerable defendants are treated fairly in the criminal justice system. In particular, the police are working to ensure a response that is effective and focussed on vulnerable individuals. The revised CPS Legal Guidance and new Sentencing Council Guideline, both of which clarify the procedures which need to be followed in cases of vulnerability, will support decision-making and go some way towards improving outcomes for people with mental health problems. The Report has also been able to highlight a number of innovations and changes which have been implemented at a local level. Stakeholders continue to hold the excellent work of the Working Party in very high regard and remain committed to law reform projects. The input of partners cannot be understated, and it is especially pleasing that the Report is able to show a significant number of examples of engagement with JUSTICE’s work and support for the Working Party’s proposals.
- 7.2 There is still work to do in further developing and implementing the recommendations of the Working Party to ensure that the criminal justice system operates fairly for all suspects and defendants. We recognise that criminal justice agencies currently face unprecedented challenges and the overriding concern is to protect public health. Yet, we will continue to liaise with professionals and organisations working in the sector to implement our proposals.

## VIII. ACKNOWLEDGEMENTS

We would like to thank all those individuals and professionals who helped to inform our Update Report. We took evidence from various organisations, agencies, governmental bodies, police forces, lawyers, and academics about their experiences of the criminal justice system. We are grateful for their expertise, insight and knowledge about the challenges of the system and opportunities and scope for improvement.

We thank the original members of the Working Party for their continued support, as well as Dame Alison Saunders CB for joining to consider CPS updated guidance and the new Sentencing Guideline.

Our particular thanks go to Natalie O’Connell, JUSTICE Senior Legal Fellow for carrying out the vast array of follow-up work documented here and drafting this update report.

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**David Connolly**, Law Commission

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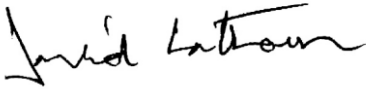
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**Insp. Mark Woodward**, Metropolitan Police Service

A handwritten signature in black ink, reading "David Latham". The signature is written in a cursive style with a large initial 'D' and a long, sweeping underline.

Sir David Latham, Chair of the Working Party