

Written evidence
submitted to the
Wales Justice
Commission
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My name is David Fox and I am a Diversity Practitioner, lived-experience autistic, parent to a highly complex autistic young man, have an academic background in law (in particular equality law), have been Chair of North Wales Police's (NWP) Diversity Independent Advisory Group (IAG) for over 12 years, and am the Force Co-ordinator for the National Police Autism Association (NPAA) across North Wales and the instigator of the Force's Autism Working Group (AWG). Furthermore, I am a volunteer with North Wales Integrated Autism Service (IAS), where I am currently involved with developing and delivering training to Community Mental Health Teams and am the Vice-Chair of the IAS's lived-experience autistic group Spectrum Voices, which provides self-advocate/service user advice to the IAS. Additionally, I am a member of Betsi Cadwaladr University Health Board's (BCUHB) Equality Stakeholder Group and also currently working with BCUHB on several small projects to reduce health inequality in the autism community and have recently been accepted as a Bevan Advocate. I am also currently in discussions with Hafal regarding developing and delivering a bespoke autism-based training package for Appropriate Adults supporting detainees who are being interviewed in custody, although this is being done independently of any of the above mentioned organisations and is my own personal project. *(In the spirit of adhering to the Nolan Principles of Public Life, please keep note of this in relation to comments regarding the Appropriate Adult Scheme although I am not yet sure if any financial recompense will be forthcoming in relation to the development and delivery of said training course).*

Please also note that due to only having a very short time in which to prepare and submit the evidence below, I have been unable to produce a formal academic article and the following text is not to be seen as an academic piece of writing but merely as referenced notes that could have been used as a catalyst to produce a more professional article.

Autism as a stand-alone condition; it is not a condition of intellectual impairment nor a mental illness, although many autistic people have a co-morbid learning difficulty or mental illness. Rather than provide an in-depth explanation of what autism is or is not, below is a quote directly from Psychology Today's webpage on autism. *"Autism Spectrum Disorder (ASD) is a developmental disorder that involves impairments in social interaction and communication, challenges with sensory processing, and repetitive behaviours. The term "spectrum" reflects the fact that symptoms vary across different individuals, ranging in type and severity..... People with autism may appear indifferent and remote and can have difficulty forming emotional bonds with others. They may have unusual responses to sensory experiences.*

Symptoms

- *Persistent deficits in communication and social interaction. These may include:*
 - *a lack of responsiveness during social interactions.*
 - *abnormalities in the use of gestures, eye contact, or facial expressions.*
 - *no interest in peers or difficulty understanding relationships.*
- *Restricted and repetitive behaviours and interests, such as:*
 - *specific movements or spoken phrases.*
 - *insistence on "sameness" and routines.*
 - *intense, limited interests in particular objects.*
 - *low or high levels of sensitivity to the sensory environment, including sights, sounds, or smells.*
- *Symptoms are present early in a child's development and cause "clinically significant impairment in social, occupational, or other important areas of current functioning."*

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The CJ system in the UK does not generally work well for autistic people, whether they be victims, observer witnesses or suspects. This can be seen from research carried out by

¹ Psychology Today 2019 Autistic Spectrum Disorder

various organisations, which suggests the level of unfairness for autistic people engaging with the CJ system is serious and has a profoundly negative impact on autistic people's lives. For example, 69% of autistic people who interacted with police are dissatisfied with the service received (discrimination, needs not met, lack of explanation etc.)² (Maras et al 2016 (UOB/UOL), and even police officers themselves seem often to understand that the CJ system doesn't work well for autistic people with 21% of police officers dissatisfied with the way they handled autistic people.³ (Maras et al) 2016 UOB/UOL.) This is especially worrying when we consider that 32% of disabled people generally have experienced hate crime, while people with social or behavioural disability are four times more likely to be victim of hate crime than those with a disability that affects stamina, mobility/vision or mental health⁴ (ONS); as well as this, 65% of autistic people been the victim of a Hate Crime more than 10 times.⁵ (NAS survey 2013) Furthermore, the same National Autistic Society (NAS) study highlighted the fact that 47% of autistic people have been assaulted, 81% verbally abused, 28% subjected to exploitation, theft or fraud with the same percentage having had possessions or property damaged⁶ and, perhaps most disturbingly, 49% have been taken advantage of and or bullied by someone they thought was a friend.⁷

Equally concerning is the fact that the high incidence of criminal abuse towards autistic people, along with low satisfaction rates regarding confidence in the police, leads autists and their families to suffer in silence. Such low satisfaction rates often mean that autistic victims fail to engage with the police, with 73% of autists not even bothering to report crimes committed against them (NAS 2013). Whilst it may be thought that autistic people should show more confidence in the police when considering reporting incidents, thus allowing the police to deal with suspected perpetrators who target autistic people, their experiences when they do report such crimes would seem to justify their frequent lack of confidence. In an NAS research survey, 54% of autistic respondents said crimes committed against them where they had been targeted for their disability were not recorded as a Hate Crime, 62% said the police had not taken their disability into account and 40% said the police had not acted on their report at all.⁸ (NAS 2013) When one considers the considerable and sometimes utterly debilitating effect of the anxiety that many autists feel when dealing with 'the system', talking about themselves, brightly lit environments, being asked open questions and so forth, it is hardly surprising that so few autists see the point in reporting abuse against them, merely for it to be ignored, misunderstood or dismissed.

The above-mentioned issues relate only to autistic people as victims and or witnesses; unfortunately, the situation with autistic suspects is no better. The prevalence of autism in the general population of the UK is around 1.5 percent, yet autistic people make up around

² Crane L., Maras K., Hawken T., Mulcahy S., Memon A. .p.14 Experiences of Autism Spectrum Disorder and Policing in England and Wales: Surveying Police and the Autism Community. University of Bath/University of London 2016

³ Ditto

⁴ Ditto

⁵ NAS 2013 Hate crime survey accessed via webpage Learning disability today Scale of disability hate crime shocking but not surprising

⁶ Ditto

⁷ Ditto

⁸ Ditto

15% of young people who are detained⁹ (*House of Commons Justice Committee 2017*), despite the fact that most studies suggest autistic people either commit less or no more crime than neuro-typical people¹⁰ (*King C. Murphy G. 2014*) and that “crimes that are committed by autistic people are frequently less violent in nature than those committed by their neuro-typical peers.”¹¹ (*Alley CS 2015*).

As it is obvious that autistic people are badly served by the CJ system, it is imperative that the system find ways to negate the current and frequent injustices experienced by many autistic people. One step that would perhaps help to negate the shocking figures given above would be for all police officers, PCSOs and call-handlers to receive face-to-face, role-specific autism training. As a result of pressure from the NPAA this is beginning to happen and at North Wales Police all new Officer recruits receive a half-day training course on autism, up from half an hour. However, whilst this is a positive move, it will take decades before NWP can state that all Officers, PCSOs and call-handlers are autism-aware. Some other Welsh Forces seem to be less proactive about autism training and this needs to be challenged to ensure that all Forces prioritise it.

One particular area of policing where it is vital that officers receive autism training as a matter of urgency is the custody environment. Custody suites are obviously a stressful place to be for anyone but the most hardened career criminals. However, with an environment that is both an auditory and visual ‘overload’, often leading to the debilitating anxiety which is a common symptom of autism, autistic people are disproportionately disadvantaged in custody suites compared to neuro-typical people. Some Forces in the UK have a specific protocol to deal with autistic detainees, and it is gratifying to report that, following a campaign by the Force’s NPAA Co-ordinator and joint effort from the Custody Lead, NPAA Co-ordinator and a Custody Sergeant NWP is one of those Forces, with the Custody Protocol going ‘live’ in April this year. The protocol aims to ensure that the additional anxiety that autistic people experience is reduced and that all custody officers and staff are directed to consult the guidance, crib-sheets etc. when they are aware they have an autistic detainee (copies in Appendix). However, there remains a problem that has been noted by other NPAA Force Co-ordinators: discovering if a detainee is autistic. For many years now, when detainees are booked into custody, the booking-in officer asks the new detainee to answer several questions to ensure that any needs over and above those of a ‘typical’ detainee are noted and procedures put in place so that they can be looked after as well as possible while detained. The main questions are “Do you have a disability?” and “Do you have a mental health condition?” Many autistic people do not consider themselves to have a disability, due to ignorance of the Equality Act definition of a disability and a propensity for societal institutions and parents of autistic people to define disability using the medical model.

⁹ House of Commons Justice Committee 2017: .p.10 The treatment of young adults in the criminal justice system Seventh Report of Session 2016–17

¹⁰ King C. Murphy G. 2014: p.9 A systematic review of people with Autism Spectrum Disorder and the Criminal Justice System: “All of the studies that did use a comparison group of some kind found rates of offending behaviour in the ASD group that were the same or lower than in the comparison groups without ASD.”.

¹¹ Alley CS 2015: P.1 Autism spectrum disorders in the criminal justice system: police interviewing, the courtroom and the prison environment. “Importantly, compared to the general population, follow-up studies suggest that there is no increased likelihood of committing violent crime in individuals with ASD... and in fact, they are less likely to commit violent crime”.

Furthermore, autism is not a mental health condition (although around 35% of autistic adults and 70% of autistic children have a co-morbid mental health condition);¹² (MIND 2015) it is an intrinsic and lifelong part of the person, autistic children becoming autistic adults. Furthermore, autistic people tend to interpret speech, including questions, literally, and will not usually elaborate when asked a question; the above questions will likely be answered “no”, with little likelihood of expanding that into “but I am autistic”. Although asking questions about autism is not compulsory, unlike questions about mental health and self-harm, NWP now ask the question, “Do you have a developmental condition such as autism?” Whilst this is a positive move and will, alongside the introduction of the Autism Custody Protocol, lead to many autistic people being better cared for whilst in custody, the benefits of this new approach will do little to support autistic people who have not yet been diagnosed. It is only in recent years that adult autism diagnoses have been developed, so many undiagnosed autistic people may be unaware of why they experience difficulties with everyday life are likely to be living in communities in Wales. Ensuring that all Police Forces in Wales adopt similar protocols to those outlined above would be an important step in tackling the unjust disadvantage that autistic people are placed under compared to their neuro-typical peers when detained in custody suites.

Following having been booked in to custody, many detainees will be interviewed under caution at some point. Autistic people are also disadvantaged during the interview process compared to their neuro-typical peers and it is perhaps at this time that the risk of a miscarriage of justice is greatest. One area of the interview process that concerns the NPAA is insuring that autistic interviewees have access to the non-legal support offered by the Appropriate Adults (AA) called to support vulnerable people during the interview process. The Association has called for all Forces to ensure once autism has either been declared or suspected, an AA should always be called to attend any interviews that are being conducted ‘under caution’ to cater for the non-legal needs of the detainee. On many occasions a carer or a social worker fulfils this role, as parents often will do as well. However, as researchers gain an ever-increasing understanding of autism, it is almost universally accepted that genetics has a major role in determining the occurrence of autism; as such, an autistic parent may be trying to cope with extreme anxiety for very similar reasons to their offspring and may also be vulnerable. Nevertheless, such issues should be considered against the potential benefits of having a person protecting the detainee’s welfare who, whether they are autistic or not, will likely be the most expert authority on autism generally and how it affects the detainee specifically who is available quickly.

¹² MIND 2015: Supporting people living with autism spectrum disorder and mental health problems A guide for practitioners and providers “Research indicates that 70 per cent of children with autism develop mental health problems, ...35 per cent of autistic adults have a comorbid psychiatric disorder”

One reason that the NPAA are concerned about the provision of AAs to support autistic people being interviewed is the fact that many autistic people have an impairment in the area of episodic future-thinking.¹³ (Lind S. et al 2014)

Such impairment leads to a compromised ability to understand how decisions made at the time can impact on their future lives. With custody suites being places where no-one would wish to remain longer than is necessary, autistic detainees dealing with sensory overload, extreme anxiety and a compromised ability to see their own future are in very real danger of responding to an assertion from an officer that “if you just confess, we can all go home”, in a way that implicates them in a crime they did not commit, or, equally, failing to tell officers of extenuating circumstances, such as bullying or assault, that led to the reason for their arrest.¹⁴ (NAS 2017) The provision of a suitably trained or informed AA is vital if autistic people are to avoid this pitfall.

A further reason why a suitable AA should be used for all interviews of autistic people is the tendency for autistic people, regardless of IQ or linguistic ability, to interpret speech literally.¹⁵ (Norwegian University of Science and Technology 2015) The problems this can cause are many and varied, but all can potentially prevent a successful and accurate interview. For example, an officer asking “Tell me what happened today” will likely elicit an answer along the lines of “I got up at 7pm this morning, went to the toilet, had a shower, then I got dressed, had my breakfast” etc. This response is likely to be interpreted as the detainee having ‘attitude’ or being obstreperous. An AA will be able to point out to an interviewing officer that if the question was rephrased as “what happened at around 10.30 this morning at the shopping centre?” the autistic person would give a more pertinent answer.

Problems can also arise during police interviews because of a lack of eye contact. Many autistic people struggle to make and maintain eye contact with others; whilst some autists manage to learn this behaviour or give the appearance of making eye contact, it requires conscious thought and effort and in very anxious situations or when experiencing sensory or stress overload the ability to feign eye contact will often be lost. This is problematic, as a lack of eye contact is often interpreted by neuro-typical people as a sign of guilt and officers are trained to see it in this way. Again, a well-trained AA or somebody who knows the detained person well will be able to act as an interpreter of sorts and explain this to the interviewing officer.

There is also a problem regarding the interview technique used when interviewing autistic people, whether they be suspects, victims or witnesses. Generally, the police use a Home Office-recommended technique known as Cognitive Interviewing (CI). Such a style is dependent on asking open questions and issuing verbal instructions to assist memory recall,

¹³ Lind, S., Williams D., and Peel A., Bowler D., (2014) p.64 Episodic Memory and Episodic Future Thinking Impairments in High-Functioning Autism Spectrum Disorder: An Underlying Difficulty With Scene Construction or Self-Projection? “...the current results arguably provide the clearest evidence to date, regarding episodic future thinking abilities among people with ASD and they suggest that this ability is, indeed, diminished”

¹⁴ NAS 2017: National Autistic Society 2017 Criminal Justice “Indeed, some of the interrogation techniques used by interviewers could inadvertently elicit false confessions from an autistic person”.

¹⁵ Norwegian University of Science and Technology 2015: How people with autism spectrum disorders understand idioms and other figures of speech “Individuals at the higher end of the autism spectrum are very good linguistically,”because they can perceive the regularities of language better. In spite of this, people with ASD tend to understand language literally. ...” web article accessed 15/03/2019

but studies have highlighted the fact that CI techniques lead to a poorer-quality interview when used with autistic interviewees.¹⁶ (Alley C. 2015)

It has been found, however, that some alternative interview techniques work very well when interviewing autistic people and with the correct technique and an understanding of autism, studies show that autistic people can recall events as well as neuro-typical people.¹⁷ (Maras K Bowler D 2014) It has been suggested that these issues regarding the suitability of standard interview techniques for autistic people may be partially responsible for the above-mentioned lack of Hate Crimes being recorded as such. Therefore, the NWP Co-ordinator for the NPAA has recently been attempting to convince the Force that the issue of interviewing-officers being trained specifically in interview techniques suitable for autistic interviewees is something to be considered. Such attempts have thus far been met with some resistance, with defensive comments such as “officers are very professional and well trained so there is no real need to consider this issue”. It is vital, however, that this issue is considered by all Forces in Wales and steps taken to train all police interviewers in these autism-appropriate techniques so that injustices can be avoided and accurate testimonies given.

Another issue surrounding Hate Crime committed against autists is seen in the criteria that need to be met for a Hate Crime sentencing-uplift to be applied when sentencing those who have targeted autistic people. For the uplift to be applied, a convicted perpetrator must have decided to target the person specifically because of their protected characteristic. This can, however be problematic in the case of so-called ‘invisible disabilities’ such as autism, as identifying a person as autistic is often difficult for psychologists and psychiatrists.¹⁸ (Centres for Disease Control and Prevention 2018) It is therefore obvious that when questioning a suspected perpetrator of a Hate Crime against an autistic person, they are unlikely to say they knew they were attacking an autistic person. It is likely they simply targeted a person who appeared odd, nervous and anxious and therefore presented an obvious easy victim. Being seen as ‘odd, nervous and anxious’ is not a protected characteristic, however, an issue that would require a change across the English and Welsh legal system. It will be difficult to close this loophole, but the change is urgently required. A further problem relating to Hate Crime against autistic people is the fact that autists have impaired ‘theory of mind’, so are less able to determine the intent behind an action committed against them. The same impairment also means they will be less able to describe the emotions they felt at the time and afterwards, so the quality of any Victim Personal Statement is compromised, with the result that autistic victims are less able to feel that ‘justice has been served’ following an injustice against them.

¹⁶ Alley C 2015: p.4 Autism spectrum disorders in the criminal justice system : police interviewing, the courtroom and the prison environment “...the ASD group was significantly less accurate (reporting more incorrect details) and failed to increase the number of correct details when interviewed with a CI when compared to their typical counterparts”.

¹⁷ Maras K Bowler D 2014: P.23 The cognitive interview for witnesses with autism spectrum disorder “On a positive note, that the ASD group did not differ from typical individuals when interviewed with a SI is encouraging, and suggests that when interviewed appropriately, are just as valuable as witnesses as are typical individuals”

¹⁸ Centres for Disease Control and Prevention 2018. Screening and Diagnosis of Autism Spectrum Disorder “Diagnosing autism spectrum disorder (ASD) can be difficult, since there is no medical test, like a blood test, to diagnose the disorders”.

Further injustices for autistic people can occur in the courtroom. Of particular concern is the issue of the *mens rea* or 'guilty mind' component of a crime. The famed McNaughton rules allow for a person who, at the time of the action that led to them being charged, was so "affected by a disease of the mind" that they were not responsible for carrying out said action, and are thus not guilty. This is problematic for autistic people whose criminal actions are directly attributable to their autism, as autism is not a disease of the mind but an intrinsic part of the person.¹⁹ (NHS 2019) Autistic people often have a reduced or non-existent ability to control their impulses and leads them to commit acts without an understanding of the possible ramifications of said act.²⁰ (Alley C. 2015) Nonetheless, autistic people are usually considered 'fit to plead' and stand trial, even though it could be argued that often, they are not.²¹ (Alley C. 2015)

Another problem for autists in a courtroom is the way their non-verbal language is interpreted by neuro-typical people, with lack of eye contact, looking down at the floor, constant fidgeting, speaking in a monotone voice and many other common autistic traits often interpreted by both jurors and judges as signs of guilt, lack of remorse, lack of respect etc.²² (Alley CS 2015) Further problems in this area relate to literal interpretation of language, episodic future-thinking deficit, tendency not to elaborate or explain circumstances behind a particular action and the use of Cognitive Interview techniques, all alluded to above; these have similar ramifications for autistic people in the courtroom to those that occur in police custody suites. Training for all judges, lawyers and magistrates to help them better understand autism and the its effect on the behaviour of autistic people, as well as explanations about a defendant's demeanour given to jurors at the beginning of Crown Court trials would help reduce the current injustices many autistic people endure when embroiled in the CJ system.

Having been subjected to a custody and court process that is far more arduous and anxiety-inducing than it is for their neuro-typical peers, likely resulting in a reduced chance of being able to defend oneself, a sentence of imprisonment is often the outcome for autistic offenders who are found guilty. Prison can also be more difficult for autistic people to endure than it is for neuro-typical inmates. Autists are at greater risk of being abused both sexually and physically in prison than other groups due to a variety of reasons including coming across as 'odd', looking up to authority figures, the oft-mentioned avoidance of eye contact, unusual interests, and many other typically autistic traits.²³ (Waltz M. Dr 2015) Thankfully,

¹⁹ NHS 2019: What is Autism? *being autistic does not mean you have an illness or disease. It means your brain works in a different way from other people. It's something you're born with...*

²⁰Alley C. 2015: p,5/6 Autism Spectrum Disorders in the Criminal Justice System: Police Interviewing, the Courtroom and the Prison Environment. "Individuals with ASD can have impaired impulse control which results in the individual failing to appreciate the consequences of their behaviour and act "without thinking". *Autistic spectrum disorders in the criminal justice system : police interviewing, the courtroom and the prison environment*"

²¹ Alley C. 2015: p.5 Ditto.

²²Alley C. 2015: p5 Ditto

²³ Waltz M. Dr 2015 (NAS). Autism: A basic guide for Prison Officers "Individuals with autism can be more vulnerable than others, and may therefore need additional support. "Areas of particular concern in prison include: May be more easily led and manipulated than other prisoners. More vulnerable to physical and sexual abuse. Less likely to understand and respond to facial expressions and body language, which can lead to not understanding place in prisoner hierarchies or being the target of bullying and violence. Problems with self-care. Mental health problems Heightened suicide risk"

some prisons and in particular Youth Offender Institutions are starting to take the issue of autistic inmates seriously and some have even gained National Autistic Society Accredited Status. The first institution to achieve this was Feltham Young Offender Institute, which achieved the status in 2016. Since then other prisons, including Wakefield Category-A Prison and Parc YOI in Bridgend have managed to achieve NAS Accredited status and it is regrettable that a similar approach has not yet been adopted at the UK's newest prison, Berwyn Prison in Wrexham.

The text in this article is predominantly about autism and policing due to the work experience and knowledge-base of the author. It is clear, however, that the CJ system as a whole needs to fundamentally alter the way it deals with autistic people as victims, witnesses and offenders if the unacceptable inequality endured by autists in relation to justice is to be rectified. It is clear, both from this article and a great many research papers, that the most significant single way to improve the lives of autistic people is to raise awareness and understanding through training. However, it is worth noting that this is also the case with service-providers who specialise in employment, health, social services and education and that these services often fail autistic people, having even worse statistics in relation to equality than the CJ system. These issues are intersectional in nature and improving the lives of autistic people requires a system-wide overhaul in recognition of this. Quality autism training and awareness-raising designed and delivered with input from 'lived-experience' autists across all sectors and at all levels of service provision in Wales is key and it is hoped that the Welsh Government's soon-to-be-published Autism Code of Practice and the Wales-wide roll-out of the Integrated Autism Service will reduce inequality and improve lives for autistic people across Wales.

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