



LORD CHIEF JUSTICE  
OF ENGLAND AND WALES

**THE RIGHT HON. THE LORD BURNETT OF MALDON**

**JUSTICE – MENTAL HEALTH AND FAIR TRIAL REPORT – LAUNCH**

**27 NOVEMBER 2017**

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I am delighted to welcome the Justice Mental Health and Fair Trial Report into mental health and the criminal justice system as a valuable contribution to a continuing debate over the appropriate ways to cater for mental health illness and neurological illness at all stages of investigation, prosecution and disposal of offences.

In 2001, Mind – the mental health charity – highlighted the difficulties which individuals with mental health conditions had in securing effective access to justice. Its views were recently summarised in a searching paper written by Professor Lee-Ann Fenge and others on the relationship between mental health and the criminal justice system. They said this,

‘People with mental health conditions and learning disabilities tend to experience greater difficulties in accessing justice than other groups, and are one of the most socially excluded groups within society as they experience greater discrimination, disadvantage and stigma.’<sup>1</sup>

Ministry of Justice figures from 2015 suggest that:

- approximately 29% of individuals who are detained in police custody have some form of mental health condition;
- that more than 25% of individuals resident in approved premises, previously known as bail hostels, were diagnosed with a psychiatric condition;
- around 39% of those serving community sentences had a mental health condition; and
- that over 90% of the prison population has at least one psychiatric condition.<sup>2</sup>

These figures illustrate the statistically disproportionate involvement of individuals with mental health problems in the criminal justice system and the importance of

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<sup>1</sup> L-A Fenge et al, *Mental health and the criminal justice system: The role of interagency training to promote practitioner understanding of the diversion agenda*, Journal of Social Welfare and Family Law Vol. 36, Iss. 1, 2014.

<sup>2</sup> Ministry of Justice, Offender management statistics prison population, (2015) cited in *Mental health of adults in contact with the criminal justice system - Identification and management of mental health problems and integration of care for adults in contact with the criminal justice system*, NICE Guideline Methods, evidence and recommendations (4 October 2016) at 17 <<https://www.nice.org.uk/guidance/ng66/documents/draft-guideline>>

putting in place systems that respond appropriately to the needs of such people. It should not be forgotten that there is another group of people with learning disabilities who have real vulnerability. Figures also drawn from 2015 show that, ‘7% of the prison population have a learning disability compared to 2% of the general population’<sup>3</sup>. All in all, the incidence of vulnerable people within the criminal justice system is striking.

These figures demonstrate that all professionals in the criminal justice system must be sensitive to the needs of such vulnerable individuals to ensure equality before the law, proper access to justice and a fair trial, all fundamental aspects of the rule of law. That sensitivity will include an understanding of the particular problems faced by those with mental illness, neurological impairment or similar problems.

Your report provides a very wide range of recommendations starting with the investigative stage, passing through the decisions on charge and prosecution to the pre-trial and trial stage and finishing with disposal and sentence. It comments on the work of the Law Commission which touches on legal capacity in the context of criminal law. In that way it helpfully considers the system as a whole.

My reference a moment ago to the work of Mind in 2001 demonstrates that the issues so comprehensively reviewed in this report have been of concern for many years. There have been many changes and improvements in the way those with mental health problems, whether as defendants or witnesses, are treated in the criminal justice system. They include the advent of intermediaries, the careful control of the form and nature of questions and the use of special measures to render the experience less daunting buttressed by the Criminal Procedure Rules and Criminal Practice Direction.

But experience of what has gone before and the developing insight into the difficulties vulnerable people face lead to the need constantly to review our ways of dealing with these issues.

I have little doubt that the Report’s insight, narrative and recommendations will play an important role in current and future debates about how best to treat such vulnerable people who find themselves in the criminal justice system. It deserves serious consideration by all those involved in the effective operation of the criminal justice system, whether that is government, the judiciary, the police or the legal profession.

May I highlight three areas of particular note, which touch on what we do in the courts?

The first concerns the use and availability of intermediaries. The report expresses concern about the effect of recent amendments to the Criminal Practice Direction and the Court of Appeal’s recent decision in *R v Yahya Rashid* [2017] EWCA Crim 2 (see page 67 of the report). The concern raised is that, taken together, they limit the availability of intermediaries and place too great an emphasis on the court and advocates to ensure effective participation of vulnerable defendants. It is important that concerns such as this are raised. They help ensure that guidance is kept under scrutiny to see what effect it is having in practice, and that such scrutiny is carried out on an informed basis. Your report will act as a critical friend in this respect.

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<sup>3</sup> NICE op. cit at 17.

The second concerns the introduction of sentencing guidelines on mental health and vulnerability, in order to assist courts, prosecution and defence counsel in determining appropriate outcomes for vulnerable defendants (see page 94 of the report). The Sentencing Council has played a key role in improving our approach to sentencing. The clarity of its Guidelines assisting everyone involved in the criminal justice system to approach the sentencing process on a clear and more consistent basis. Your proposal is not only interesting, it is entirely consistent with the Council's general approach and I am sure that the Sentencing Council will consider your suggestion. The whole question of how to sentence offenders whose mental illness has played a causative part in the offending deserves close attention.

Finally, underpinning these proposals is a common thread: the concern that courts and the legal profession are not being provided with sufficient training and guidance to enable them to carry out their roles effectively – whether case management, trial management or sentencing. Your report also recommends greater training, particularly of judges (see page 73). I have no doubt that the Judicial College will have regard to those proposals in formulating and revising judicial training in this important area.

I have only touched on some of the issues you raise. The report as a whole provides a rich seam of material, as do all of Justice's reports, for policy-makers and others. I am sure it will play a leading role in developing our approach to vulnerable defendants and witnesses. It is with great pleasure that I welcome its publication.

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