Learning disabilities and criminal justice: custody sergeants’ perceptions of alleged offenders with learning disabilities

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Accessible summary
• In this study, 15 custody sergeants from Cheshire, Merseyside and Greater Manchester were interviewed regarding their opinions and attitudes towards offenders with learning disabilities.
• It became evident that there was a lot of confusion about what characterises a person with learning disabilities.
• The provision of support to offenders with learning disabilities, particularly the availability of an appropriate adult, depended on the custody sergeant’s professional identity.
• Pressure resulting from performance targets further compromised a detainee’s needs for support to be sufficiently considered by custody sergeants when processing arrestees.

Summary
Recent research demonstrates that despite increased attention and awareness by politicians and decision-makers, people with learning disabilities are still disadvantaged when engaging with the criminal justice system. It has been argued that shortcomings in providing support are because of criminal justice professionals lacking necessary skills and competencies in identifying and dealing with people who have learning disabilities. This study draws on qualitative data generated through unstructured interviews with custody sergeants from three different constabularies. It is argued that learning disability is constructed in relation to concepts of fairness and justice, which a custody sergeant may utilise in accordance with their perception of professional identity. These constructs influence custody sergeants in their decision about how individual detainees should be treated and what kind of support should be made accessible to them whilst being detained.

Keywords Detainees, disabilities, justice, offender, police, qualitative research
Introduction

During the last decade, the mental health of individuals, and to a lesser extent their intellectual functioning, has received increasing attention by the government (Valuing People 2001, Valuing People Now 2009) resulting in improved access to services and support within mainstream society as well as within the criminal justice system. PACE 1984 (Police and Criminal Evidence Act) defined for the first time that a person not able to ‘understand the significance of what is said, of questions or of their replies [...] should be treated as mentally vulnerable and an appropriate adult called’ (§1G PACE). The Mental Capacity Act (2005) and the Mental Health Act (2007) further clarified what characterises learning disabilities and what safeguards should be put in place to recognise the vulnerability of those affected. Most recently, Lord Bradley’s Review (2009) made a substantial number of recommendations regarding the treatment of arrestees when being in police custody, court or prison. The report suggests better awareness training of all criminal justice professionals, improved cooperation and exchange of information among mental health and learning disability services, and criminal justice agencies to allow early identification of offenders with special needs and more consistency in the treatment of alleged offenders with a learning disability throughout different jurisdictions in England.

In previous research, however, it has been stressed that people with learning disabilities are still overrepresented at different stages of the criminal justice system (Cockram 2005; Hayes 2005; Lyall et al. 1995; Talbot 2008). The disadvantaged position of people with learning disabilities in mainstream society (Barnes 1991) does not significantly improve within the criminal justice system (Hayes 2007). When people with learning disabilities come to the attention of criminal justice authorities, responses tend to be extreme with the offender being either acquitted or given the maximum punishment with no or little chance of rehabilitation (Cockram 2005). In addition, Chappell (1994) highlights that people with a learning disability are at greater risk of being affected by miscarriages of justice, mainly through being wrongly convicted. Furthermore, it has been stressed that although legislative changes demonstrate greater formal and official awareness of alleged offenders with special needs, a great number of them still remain undetected when engaging with the criminal justice system and may, therefore, be denied access to support and appropriate treatment (Talbot 2008). In previous research, it has been highlighted that when engaging with the criminal justice system suspects with a borderline learning disability are particularly at risk of remaining unidentified in their special needs because of their better adaptability and enhanced social competencies (Hayes 2005; Jones 2007; Talbot 2008).

These findings highlight a conflict between welfare-orientated macrolevel policies and disciplinary microlevel actions by criminal justice professionals, a contradiction that has been identified in previous research (Campbell 2002, NACRO 2002). Manders (2009), for example, reports a high number of offenders with learning disabilities who have become subjected to antisocial behaviour powers. He highlights that this population of offenders might be at greater risk of breaching their orders. Therefore, Manders stresses that despite increasing efforts to divert vulnerable groups away from the criminal justice system by using disciplinary orders against them, ‘the reversal of this process could tend to operate’ (Manders 2009: 147).

The present article focuses on attitudes and opinions shared by custody sergeants regarding how learning disabilities might be conceptualised within the context of criminal justice. In particular, attention will be paid to how the concept of learning disability is constructed in relation to justice, fairness and professional identity.

Method

Fourteen unstructured interviews were conducted with 12 male and two female custody sergeants from Cheshire, Merseyside and Greater Manchester. All respondents had two or more years of experience as custody sergeants. In every interview, three broad areas were addressed:

- The process by which an individual’s capacity of understanding is established
- Sergeants’ experience of suspected offenders with learning disabilities
- Preparation and training for interviewing and dealing with suspects with learning disabilities

All interviews took around 1.5 h. Using an unstructured approach allowed respondents to make comprehensive statements and give explanations at their own pace revealing the perceived importance and significance of topics, concerns and meanings (Neal 1995; Rubin & Rubin 2005).

The data were analysed using grounded theory (Glaser & Strauss 1967). However, in relation to sampling and use of literature prior to data analysis (Cutcliffe 2005; Dey 1999; Robrechts 1995), the original grounded theory approach had to be modified to make the study practicable. In each constabulary, respondents were contacted through chief inspectors who arranged interviews with individual officers on the researcher’s behalf. All interviews were arranged before commencing data analysis. The use of literature prior to data analysis was kept to a minimum so as to emphasise the originality of the present research.

The majority of interviews were fully transcribed and analysed in depth by the author immediately after they had been conducted and before the next interview took place. In line with Glaser and Strauss’ (1967) model of grounded theory, this allowed testing and amending themes with every
new interview, assuring the robustness of emerging concepts. Three themes emerged during the course of the analyses:

- Identification of people with a learning disability
- Professional identity
- Pressure and problems.

Findings and discussion

Identification of people with a learning disability

The role of custody sergeant was created 1984 within the context of PACE. Custody sergeants are legally responsible for anything involving the welfare and treatment of a detainee. To fulfil this role, the custody sergeant on duty speaks to every individual who is brought into custody and risk-assesses them. During the risk assessment, detainees are asked a range of health-related questions, for example, whether they are taking medication or if they have any addictions. In addition, a number of questions will address the mental health of a person. The intellectual functioning of an individual and their needs are indirectly determined, predominantly by the way they behave and express themselves. It is during the risk assessment that a sergeant will decide whether a medical assessment is needed to determine a detainee’s intellectual capacity and if an appropriate adult is to be provided during questioning.

With the exception of one custody sergeant, none of the police respondents had an accurate understanding of learning disabilities. The majority of sergeants referred to a person with mental health issues rather than learning disabilities, highlighting the medical nature of potential behavioural problems.

My understanding of it would be, it would have to necessarily be something that actually impairs somebody’s ability to understand or to communicate while they are here. So for instance you have the schizophrenic who is very well controlled on medication and who presents normally polite.

Custody Sergeant 1

Gendle & Woodhams (2005) argue that this confusion could have been caused by PACE where issues around mental health and learning disability are being treated as similar. This suggests that in the training of custody sergeants more attention has to be paid to potential support needs of people with a learning disability.

In addition, respondents often described a person with learning disabilities as someone who has impaired reading and writing skills and having, in general, a poor educational background.

It is not a physical disability, so they could be mentally retarded or they could be dyslexic.

Custody Sergeant 2

As a consequence, there is a higher propensity of custody sergeants failing to seek medical advice to properly assess suspects in their capacities and needs. As one sergeant mentioned:

I wouldn’t ask the doctor to see somebody who was just not bright. I would just say, is there somebody who could come over with you when you are interviewed?

Custody Sergeant 12

Apart from staff being not sufficiently trained, Hayes (2007) points out that identification of alleged offenders with a borderline learning disability is compromised further by the absence of institutional indicators that flag up an individual’s impairments as the majority have had no previous contact with specialist services. During the interviews with custody sergeants, it became clear how heavily authorities rely on such indicators. Custody sergeants use ‘markers’ that are attached to individual custody records. These markers highlight potential risks that a person may pose to themselves and others whilst being in custody, e.g. being suicidal, concealing drugs and weapons. These markers, furthermore, contain information regarding whether a person has previously needed an appropriate adult to be provided because of their level of intellectual functioning.

Respondents, in general, had confidence in the mechanisms that are in place allowing identification of people with special needs. Often it was also stressed that in the event of the police failing to correctly determine a person’s level of intellectual functioning, their solicitor should be picking it up.

The other thing, of course, is that you have got solicitors in the equation and if I don’t do my job and I say, never mind an appropriate adult we will move on without one and the a solicitor turns up and he has 5 min consultation and then says, hang on, this fellow doesn’t understand what’s going on. So there is a bit of a safety net there where a solicitor will flag that up.

Custody Sergeant 12

Chappell (1994) lists a number of cases where solicitors too have failed in identifying a learning disability. Hence, it appears doubtful to call the involvement of a solicitor a safety net.

Identifying a person with learning disabilities is, however, just one aspect of a complex situation. It appears to rather simplify matters when limiting the debate to processes of detection. To develop a more comprehensive understanding of how decisions are being made within the criminal justice system regarding offenders with learning disabilities, it is important to uncover how learning disabilities are constructed. In this context, attitudes and opinions have to be discussed in relation to the distinct aims of the different criminal justice agencies.
Although pursuing similar aims, criminal justice institutions such as the police, prosecution and probation service have varying interests and employ diverse strategies to achieve their targets. A person’s special needs vary in their meaning for the different criminal justice professionals depending on their role within the overall criminal justice system. For example, specialist advice is not coherently integrated into criminal justice procedures but is incorporated according to the distinct interests of criminal justice agencies. When interviewing an alleged offender, police officers need to assess the suspect’s capacity to understand the questions as well as the nature of the situation. Only then will evidence secured during an interview be valid in court. Thus, expert advice will determine what support has to be made accessible to the suspect. Conversely, the prosecution is mainly concerned with an individual’s fitness to plead, upon which the concept of ‘the guilty mind’ is based. Accordingly, depending on the expert’s assessment of an offender’s intelligence, a charging decision will be made by the prosecution. Eventually, the probation service concentrates on an offender’s capacity to comply with their court orders. This involves an individual’s ability to keep appointments, to be able to attend supervision meetings and to come to an understanding of their wrong doing as well as demonstrating remorse and a willingness to change. Hence, the construction of learning disabilities by criminal justice professionals has to be studied within the context of the agency of which the professional is a representative.

Professional identity

As mentioned earlier, according to PACE, under certain circumstances, an intellectually impaired person needs to be provided with an appropriate adult. Consequently, when this form of support is made accessible to an individual, the needs of this person have been identified and acknowledged. This is not a clear-cut assessment because the way in which a custody sergeant assesses such situations is related to their professional identity.

In their specific role, custody sergeants are not supposed to get involved in any investigative matters but to stay neutral. Most custody sergeants, however, will have had many years of policing experience before being promoted into the role of custody sergeant. Having worked as an officer for many years and thus having gained comprehensive experience of how the police functions, the procedures of dealing with suspects is a prerequisite for being promoted to the rank of sergeant. The majority of interviewed custody sergeants used to be with crime investigating units. Hence, many of them had extensive expertise in the nature of evidence needed by the prosecution service to take an alleged offender to court. Custody sergeants, in relation to how this knowledge was used, were influenced by two different perspectives on their professional role. One group of sergeants claimed that they act autonomously from the mainstream police and its aims and targets. Those sergeants would perceive their role as being solely about protecting the welfare of a detainee. The concept of fairness that these sergeants expressed was inseparably linked with uncompromisingly applying PACE. The second group of custody sergeants saw their role as being a specialised one within the mainstream force. The following analysis will concentrate on the latter group of custody sergeants although it remains uncertain, the extent to which either of these groups dominates the police force. In this study, this group will be discussed to gain a comprehensive understanding of why people with learning disabilities remain at risk of being disadvantaged within the criminal justice system despite greater awareness by professionals and improved methods of identification.

For custody sergeants who expressed a strong affiliation with mainstream police, experiences and knowledge gained when being a police officer had a strong influence on their decision-making. It also impacted on attitudes towards criminals in general and alleged offenders with intellectual impairments in particular. Reality was negotiated by these respondents as a compromise between legal role expectations and informal obligations rooted in police culture. At the core of the latter was a determination to maintain public safety on the one hand whilst facilitating justice on the other hand.

I have a specialised role within the police. I mean foremost I am a police officer. If a riot kicks off I would go out and work on the riot.

Custody Sergeant 1

You can’t get away from the fact that you are still a police officer and you are, you would be negligent if you didn’t, you know, identify certain issues including that whilst you are booking them in they will make unsolicited comments.

Custody Sergeant 3

The concept of justice was almost exclusively victim-orientated with a focus on severe and immediate punishment of convicted offenders. Often learning disabilities were perceived to be an illegitimate mitigation of a suspected offender’s wrong doing and a potential defence strategy, allowing the individual with the disability to avoid legal sanctions.

A criminal, in this context, was perceived in relation to mens rea, a person’s ability to distinguish between right and wrong. In this view, when engaging in an act of criminal behaviour the individual purposefully, deliberately and, most importantly, voluntarily decides not to comply with society’s norms and values and, therefore, deserves to be punished.
learning disabilities and criminal justice

If they have been assessed, if they have committed a crime and they have been assessed if they have been criminally responsible then of course they should be punished. They should go to prison like anyone else. You can’t commit a crime and get away with it because you have a learning disability. As long as they know the difference between right and wrong and they understood the process, and the evidence has been secured and preserved.

Custody Sergeant 2

During the interviews, it transpired that police provide an appropriate adult mainly to secure valid evidence. Sergeants were determined to ensure that evidence to be gathered allowed a person to be taken to court.

If somebody comes in and has a mental health issue and they don’t have an appropriate adult then potentially when the case goes to court the evidence can be thrown out because they weren’t treated right. So why running that risk? Have your appropriate adult, do things correctly and then the evidence, the case is watertight

Custody Sergeant 1

The above-mentioned statement highlights an attitude that was shared by all the interviewed sergeants; facilitating a successful prosecution requires the rights of an individual to be respected. At this point, it becomes clear that under the umbrella of protecting a detainee’s welfare, a custody sergeant plays an important part in constructing a discourse of truth towards prosecution and, ultimately conviction, which establishes the factual guilt of the individual, demonstrating success of the criminal justice system (Sung 2006). As the above-mentioned quote outlines, this interpretation of their role has also been internalised by sergeants themselves and impacts on how reality is negotiated.

Here, a question arises, how can we explain that on average it appears that less than a third of alleged offenders with learning disabilities are being provided with an appropriate adult (Talbot 2008)? The fact that access to an appropriate adult is not made out of sympathy but for reasons of law enforcement makes the problem even more puzzling.

It has been noted previously (Gudjonsson 1992; Jones & Talbot 2010) that appropriate adults are recruited by police officers rather inconsistently and only when being absolutely certain that the suspect has mental health issues or severe intellectual impairments. One might suggest that officers are reluctant to provide an appropriate adult as it means allowing special treatment of a person. When Cant (2007) interviewed criminal justice professionals in relation to the ways in which convicted offenders with learning disabilities should be dealt with, many of his respondents strictly rejected the idea of changing the law or any essential processes because this would compromise the fairness of the system as it undermines its universal character. In particular, it would give people the chance ‘to get away with it’. Thus, the concept of fairness becomes incorporated into the concept of justice, which is mainly justice for the victim.

If he has done it and just because he is not bright enough to have an intelligent argument about whether he is guilty or not. Does it matter? If he is guilty and he has done it and he couldn’t defend himself cause he wasn’t bright enough to. OK you did it, go to prison. While the next person might be able to argue their way out of it because they were brighter. I haven’t got much sympathy really. As opposed to people who are very bright and dream up all sorts of excuses, defences that are fictional and then get away with things.

Custody Sergeant 12

The above-mentioned quote describes a situation in which a suspect might not be able to fully understand the consequences of their statements. Nevertheless, the officer legitimises denying support for the suspect to be made accessible even if such decision is a violation of PACE. The quote also exemplifies that the disadvantaged position of an alleged offender appears to be negotiated in relation to the extent to which an individual engages with the criminal justice system and the evidence that the police was able to secure prior to an interview taking place. As the same custody sergeant mentioned a bit later:

You know that if you don’t get an appropriate adult and it is a serious job[offence], you will lose the job and nobody wants to see that. Nobody wants to have a job thrown out because you didn’t do your job. So that’s the balance. I think that with experience you get to know which one you can get away with not bothering and which ones you can’t.

Custody Sergeant 12

In the aforementioned statement, the sergeant expresses a conflict of interest, whereby addressing a suspect’s welfare might potentially compromise the investigating officers in their work, especially in their attempts ‘to win the psychological war over the suspects’ Chappell (1994: 28). The aforementioned quote also refers indirectly to the sergeant’s professional identity, who defines their role in terms of facilitating investigations and assuring the value of any evidence that is gathered through interactions between police officers and the alleged offender. The conflict between a detainee’s welfare and police investigation appears to be particularly strong when there is little doubt about a person’s guilt.

If somebody knows it is wrong to steal, has not had a good education at school but still knows that you go into shops and you buy things but stole something, they have been witnessed stealing something, having an adult won’t really sort of
change that situation. So they are interviewed with an adult they admit the offence they are interviewed without an adult they admit the offence. There is not a lot of a difference in that.

Custody Sergeant 6

Interestingly, the custody sergeant not only refers to the evidence that proves the person’s guilt but also highlights the individual’s accountability. Thus, it seems justifiable not to recruit an appropriate adult, even if the person might be eligible for one. This suggests two areas of concern. First, as Kassin et al. (2003) highlights, interviewing officers have a higher propensity to assume a person’s guilt as otherwise they would not have been picked up by the police in the first place. Hence, there is a risk of a sergeant’s objectivity being compromised regarding a suspect’s involvement in an offence as well as what support should be made available. Second, as mentioned above, as part of filling in a custody record, sergeants attach markers flagging up that a person was in need of an appropriate adult when having been previously in custody. If a custody sergeant fails to highlight that an individual’s incapacities required an appropriate adult to be provided, there is a greater risk of no support being put into place when the same person comes to the attention of the police again. In addition, the presence of an appropriate adult during police interview highlights the special needs of a person to other agencies that might become involved at a later stage of criminal justice proceedings. As it is largely the responsibility of the police to provide an appropriate adult, custody sergeants have a gate-keeping function surrounding the availability of additional services and the support provided to the arrestee. It has been highlighted previously (Gudjonsson et al. 1993; Talbot 2008) that it is likely for a person with a learning disability to remain entirely unidentified within the criminal justice system if not recognised early by the police.

In general, sergeants who implicitly outlined a conflict between police investigations and a detainee’s welfare also emphasised the problems and inconveniences that recruiting an appropriate adult can involve. As a consequence, these problems can interfere with a sergeant’s performance targets.

Pressure and problems

A custody sergeant is not only accountable for individual detainees but has an overall responsibility for the custody suite. This also involves ‘managerial’ tasks such as keeping cells free to reduce the time of an individual in custody to an absolute necessary minimum and to expeditiously deal with people when they are brought into the custody suite. Custody sergeants are measured and evaluated in their performance, which can put intense pressure on the individual sergeant. Some of the performance indicators are contradictory, which puts additional pressure on custody sergeants and forces them to negotiate a compromise between various targets.

They push us on from the Government all the time and the chief constable here just to make arrests, arrests, arrests. Whether we are ready to interview the person or not, the push is on to arrest them, lodge them in the custody suite and then maybe go and get the rest of the evidence.

Custody Sergeant 4

Thus, if a person is kept in custody whilst the evidence is being secured, the custody time will increase which will result in an increased average time a person spends in custody. If the suspect is bailed to allow the evidence to be collected, it will negatively impact on the sergeant’s arrest rate. These constraints, especially time restrictions in which custody sergeants have to deal with detainees, limit the extent to which a sergeant can assess a person in their intellectual capabilities.

Someone who for example who has been drinking quite a bit and you would usually give a good 8 h period for them to clear the alcohol from the system. And I get a phone call from the inspector who is managing custody facilities saying, listen up, you have really got to push these people through now and dispose of them somewhere because we have got far more serious offences coming through. And that sergeant might have been pushed to move people out maybe not with a full assessment of what’s going on or what’s wrong with them. And then that person is out and we have got the cell free.

Custody Sergeant 10

Thus, a setting is created in which sergeants are under constant pressure to process detainees through the system as quickly as possible.

It is all pressures on you which can make you cut corners or lead you to cut corners if you wanted to and making mistakes.

Custody Sergeant 10

Conclusions

Cant (2007) argues that with significant alterations in the law, people’s attitudes might correspondingly change. This appears to be doubtful. The findings of the present study suggest that, on the contrary, modifications in law do not automatically result in changes of professionals’ attitudes. It is not a question that changes in law as well as improved mechanisms of detection are positive developments. At present, though, changes appear to concentrate on performance measures and targets only. Criminal justice pro-
ceedings will remain impaired in their efficiency if attitudes of criminal justice professionals are not addressed. Attitudes of officers are crucial in how they make decisions regarding their strategic behaviour in relation to people with disabilities in general (Sobsey 1994) and people with a learning disability in particular (Fitzsimons & Barr 1997; Rosser 1990). As Bailey et al. stress ‘favourable attitudes to people with intellectual disability are essential in meeting the police code of ethics, which stresses impartiality and respect for human dignity’ (Baily et al. 2001: 344).

In this context, offenders with learning disabilities need to be acknowledged in terms of their needs, whereby abilities have to be appreciated without neglecting incapacities. Research needs to focus more intensively on attitudes and opinions shared by criminal justice professionals who are involved in securing evidence, determining charges and, ultimately, making decisions as to the best fitting sentence. A conceptual change of both fairness and justice might be useful, whereby mechanisms of help and support are not perceived as loopholes in the system and a possible path to freedom for potential offenders.

Finally, there needs to be more consistency in how professionals in different criminal justice institutions are trained. This will help in establishing consensus in guidelines among the various agencies in line with the Bradley Report (2009).

By analysing decision-making processes around vulnerable detainees in the microsetting of a custody suite, two conflicting views could be identified that influence custody sergeants in their strategic behaviour, protecting an arrestee’s rights vs. crime-control issues. Future research needs to focus on how custody sergeants perceive their role and role boundaries. In this context, data are needed that allow for measuring dominating views, opinions and attitudes that guide custody sergeants in their decision-making when dealing with people with learning disabilities who are suspected of having committed an offence.

References


