

# **Independent Sentencing Review 2024 to 2025 – Call for Evidence**

## **Neurodiverse and neurodisabled offenders:**

### **A response to Theme 7**

#### **1. Introduction**

1.1. We are practising criminal law barristers (of whom one is also a part-time judge), criminologists specialising in desistance and working with senior criminal justice leaders in HM Prison and Probation Service and the third sector, one of the world's leading experts on autism, and a social entrepreneur and ex-offender who is the founder of 'User Voice', a UK charity working in criminal justice staffed mainly by and working with those with lived experience of the criminal justice system (CJS). Together we have extensive professional experience working with neurodiverse and/or neurodisabled people within the CJS and lived experience.<sup>1</sup> Our submission has the strong support of the Criminal Bar Association.<sup>2</sup>

1.2. The scope of our submission addresses the following questions posed by the Independent Sentencing Review 2024 to 2025 (Review) in respect of defendants who are neurodiverse and/or neurodisabled (this cohort may include autistic defendants/defendants with autism,<sup>3</sup> those with ADHD,

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<sup>1</sup> Some of us also have personal experience as parents of neurodiverse children. We are grateful to Dr Miranda Lickert, pupil barrister, for her research and contribution to this submission.

<sup>2</sup> See Response of the Criminal Bar Association §5.

<sup>3</sup> We do not intend to express any preference on person-first or identity-first terminology, recognising that different people may identify differently.

learning disabilities or other neurodevelopmental disorders (NDD) but can also include those with other characteristics such as acquired brain injury (ABI))<sup>4</sup>:

1.2.1. in the Terms of Reference: “*whether the sentencing framework should be amended to take into account the specific needs or vulnerabilities of specific cohorts*”;

1.2.2. in Theme 7: “*What, if any, changes are needed in sentencing to meet the individual needs of different victims and offenders and to drive better outcomes?*”

1.3. It is our view that the current sentencing framework is failing to meet the specific needs and vulnerabilities of adult neurodivergent and/or neurodisabled defendants. This view is not new or controversial. The Criminal Justice Joint Inspection’s 2021 review of neurodiversity in the criminal justice system (CJJI Review) concluded that:

[there are] serious gaps, failings and missed opportunities at every stage of the system. Such patchy and inconsistent provision represents a serious failing in a system which aspires to dispense justice fairly to all its citizens. ...‘Fair treatment, fair outcomes and equal access for all ...’ is manifestly not being achieved for all neurodivergent people.<sup>5</sup>

1.4. Our experience suggests that this remains accurate today, four years on.

1.5. To better meet the needs and vulnerabilities of neurodivergent and/or neurodisabled defendants and to achieve the current adult sentencing purposes of (i) the reduction of crime, (ii) the reform and rehabilitation of offenders, and (where relevant), (iii) the protection of the public<sup>6</sup>, we recommend that the current sentencing framework should be amended as follows below. Many of these recommendations are not new and have been

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<sup>4</sup> See Criminal Justice Joint Inspection (2021) ‘Neurodiversity in the Criminal Justice System: a review of evidence’, available at <https://www.justiceinspectorates.gov.uk/cjji/wp-content/uploads/sites/2/2021/07/Neurodiversity-evidence-review-web-2021.pdf>, §1.1 concerning neurodiversity: “There is no universally accepted definition, the range of conditions potentially falling under the banner is broad and their effects are wide-ranging. Comorbidity adds further complexity.”

<sup>5</sup> CJJI Review §1.11. Similar findings were made by the Equality and Human Rights Commission in its 2020 report, which focussed on the pre-trial experiences of defendants with cognitive impairments, mental health and neurodiverse conditions. Equality and Human Rights Commission (EHRC) (2020) *Inclusive Justice: A system designed for all*.

<sup>6</sup> Sentencing Act 2020, s.57(2)(b)-(d).

articulated in various reports by governmental and non-governmental bodies.<sup>7</sup> The recommendations below are not especially controversial although they may have implementation cost implications. Whilst Recommendation 5 may at first blush be considered more controversial, it is not: the current sentencing framework does, in theory, allow for a person-focussed rather than offence-focussed approach to sentencing of offenders with developmental disorders and neurological impairments.<sup>8</sup>

## **2. Summary recommendations**

### **2.1. Recommendation 1: Evidence gathering and implementation of previous Government commitments to research and policy reform – we urge that these are actioned urgently.** The Review should

- 2.1.1. request the final update from the Ministry of Justice and assess the effectiveness of the Action Plan in addressing the issues raised in the CJI Review;
- 2.1.2. gather evidence from the newly appointed neurodiversity leads in prisons and probation to consider the challenges posed / achievement of the purposes of sentencing for neurodiverse individuals in the CJS;
- 2.1.3. gather evidence from the CJS research referred to in the DHSC's National Strategy for Autistic Children, Young People and Adults (2021);
- 2.1.4. assess the effectiveness of Community Sentence Treatment Requirements (CSTRs) and make recommendations on how to improve their use and effectiveness; and
- 2.1.5. take positive action to obtain evidence from those with lived experience of neurodivergency and/or neurodisability within the CJS separate from

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<sup>7</sup> By way of example only, see Justice (2017) *Mental Health and Fair Trial* §§6.14-6.26; CJI Review (n.4 above).

<sup>8</sup> Sentencing Guidelines on sentencing offenders with mental disorders, developmental disorders or neurological impairments, available at <https://www.sentencingcouncil.org.uk/overarching-guides/crown-court/item/sentencing-offenders-with-mental-disorders-developmental-disorders-or-neurological-impairments/>.

its Call for Evidence, in order to inform its assessment of the current sentencing framework.

**2.2. Recommendation 2: training and increasing specialist capacity in CJS**

**service providers** – there should be sufficient practitioners with expertise in neurodivergence, neurodevelopmental disorders and other neurodisabilities within liaison and diversion court mental health services (L&D CMHS) and within the probation service to assist courts in custody decisions pre-sentencing and in sentencing options.

**2.3. Recommendation 3: judicial training and specialist capacity** – regular

training on neurodiversity and neurodisabilities for all sentencers; and specialist courts and/or ticketed judges (whether solely for sentencing or, ideally, for the entirety of the court process) for cases involving neurodisabled defendants.

**2.4. Recommendation 4: the adoption of a co-ordinated justice, health, social**

**care and education approach to sentencing neurodivergent and/or neurodisabled defendants,**<sup>9</sup> which makes greater use of non-custodial sentences. These should include accessible non-custodial sentences (including CSTRs where an offender’s disability or disorder is relevant to their offending) with the necessary accommodations/amendments and support to enable compliance with those orders, and hospital orders where appropriate.

**2.5. Recommendation 5: applicable sentencing principles should reflect an individualistic i.e. person-focused approach to sentencing neurodivergent and neurodisabled adult offenders.**

2.5.1. The starting point for the sentencing of an adult offender with an evidenced neurodisability should be a person-focused exercise in which the courts must have regard to overarching sentencing principles of reducing (re)offending and the welfare of the disabled defendant.

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<sup>9</sup> This was one of the main recommendations of the CJI Review, at p.6.

2.5.2. More specifically (and at a minimum), neurodisabled adult defendants whose neuro-developmental, cognitive, social and communication, or emotional function is impaired (and could be broadly comparable to that of a child or young person of predominant neurotype ('PNT', often referred to as neurotypical)<sup>10</sup>) should be sentenced in accordance with an approach akin to the current sentencing framework for children and young offenders.<sup>11</sup>

### **3. Evidenced-based Submission: methodology and data**

3.1. In drafting this submission, we have reviewed some of the available information and evidence on neurodiverse and/or neurodisabled defendants in the CJS<sup>12</sup> and drawn on our own experiences professionally and personally (as the case may be). Our submission does not attempt to identify the very many and often complex issues which may arise in sentencing defendants with neurodivergence and/or neurodisabilities, including the disproportionate impact that prison may have on this vulnerable cohort (although that is explored in some of the literature to which we refer). Rather, our aim is to identify some priority issues arising from the current sentencing framework and areas for further investigation and consideration by the Review as regards this specific cohort.

3.2. Our submission is not a comprehensive study or academic literature review. Additionally, as set out below, the research and policy material which is available identifies that there are significant data gaps as regards the experience of this cohort within the CJS. As noted above (in Recommendation 1), in our view these data gaps should be addressed.

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<sup>10</sup> We adopt the term 'predominant neurotype' rather than neurotypical. For an explanation of the significance of this term and reasons for using it instead of 'neurotypical', see Beardon L., *Avoiding Anxiety in Autistic Children* (2020), 2.

<sup>11</sup> <https://www.sentencingcouncil.org.uk/overarching-guides/crown-court/item/sentencing-children-and-young-people/>.

<sup>12</sup> A bibliography is provided in Appendix 2. The Neurodivergence in Criminal Justice Network (NCJN) provides a large, open access, resource collection, see [Neurodivergence in Criminal Justice Network \(NICJN\) - Global Crime Justice Security | UWE Bristol](#).

3.3. Please note that whilst our submission is informed by the lived experience of one of our number and many of the ex-offenders with whom he has worked, it does not expressly include the voices of those with lived experience as neurodivergent and/or neurodisabled defendants within the CJS.<sup>13</sup> As noted above (in Recommendation 1), in our view it is important that the Review takes positive action to obtain evidence from those with lived experience of neurodiversity and/or neurodisability and the CJS separate from its Call for Evidence.

#### *Neurodiversity data overall*

3.4. There is a lack of available, reliable data on neurodiversity in the CJS. Where it exists, there is a pronounced focus on autism specifically, rather than on neurodiversity more broadly. In particular, there remains no body of research examining sentencing practices in relation to neurodiverse and/or neurodisabled defendants.

3.5. The CJI Review collected data as part of its call for evidence and its report emphasises the enormous challenges in collecting reliable data regarding neurodiversity in the CJS. Given that many people are not formally diagnosed, it is difficult to collect data on neurodiversity in any context. However, it suggests that, in the prison estate at least, the prevalence of neurodiversity of one form or another – from dyslexia to autism to a traumatic brain injury – **could be as high as 50%**. It sets out that 15-20% of the general population are neurodiverse, whereas some 25% of prisoners are thought to meet the diagnostic criteria for ADHD. It also cites the 2016 Coates Review which found that around a third of prisoners self-identified as having some manner of learning disability. A recent campaign by the charity Epilepsy Action highlighted

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<sup>13</sup> The Review is encouraged to consult the various publications by Revolving Doors which are informed by those with lived experiences as defendants in the CJS (e.g. ‘Judge me not: Supporting neurodiverse people in court’ (blog) May 21, 2024, available at <https://revolving-doors.org.uk/judge-me-not-supporting-neurodiverse-people-in-court/>; ‘Exploring the links between neurodiversity and the revolving door of crisis and crime’ (policy briefing) September 2022, available at <https://revolving-doors.org.uk/wp-content/uploads/2022/09/Revolving-Doors-neurodiversity-policy-position.pdf>) and User Voice, including “*Neuro-what?*” *Neurodiversity in the Criminal Justice System* (March 2021) and ‘*Not Naughty, Stupid or Bad*’ – *The Voices of Neurodiverse Service Users in the Criminal Justice System* (December 2023), available at [Consultations - User Voice](#). Our submission also does not include voices of victims of offending, and we recognise that these are important voices.

the prevalence of epilepsy (and associated neurological complications) in prisons is twice that of the general population.<sup>14</sup>

3.6. In addition to being limited, data-gathering is siloed and disjointed, with different ‘flagging’ systems being used in the Police National Computer, the OASys prison and probation system, the Delius probation case management system, and the National Offender Management System. Finally, not all prisoners will have a completed record in any, let alone, all of these systems. This hampers the accurate recording of outcomes. Neurodiversity data in the CJS outside the prison system is so limited as to make meaningful estimates extremely difficult.

3.7. As part of its recommendations, the CJI Review recommended that the Government improve and expand its data collection regarding neurodiversity within the CJS. Whilst some work on this was included in the Government’s subsequent Action Plan, we urge the Review to press Government to action this recommendation in full.

### *Autism*

3.8. Much of the literature on neurodiversity within the CJS focuses on autism specifically, rather than neurodiversity more widely. A recent review of the literature on autism within the CJS highlights the relative dearth of data in even this more widely-studied area.<sup>15</sup>

3.9. The CJI review suggests that the prevalence of autistic ‘traits’ or ‘indicators’ in prisons could be around three times as high as in the population at large, but it does not cite any diagnostic data. A written answer by the Department of Health and Social Care from April 2024 states that 3.2% of the prison population overall had a confirmed diagnosis of autism;<sup>16</sup> it is probable that undiagnosed individuals would increase this number.

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<sup>14</sup> See ‘Epilepsy Action lobbies new government for “impactful change”, 16 July 2024, available at <https://www.epilepsy.org.uk/news/epilepsy-action-lobbies-new-government-for-impactful-change>.

<sup>15</sup> Collins, J., Horton, K., Gale-St. Ives, E. *et al.* (2023) ‘A Systematic Review of Autistic People and the Criminal Justice System: An Update of King and Murphy (2014)’. *J Autism Dev Disord* 53, 3151–3179.

<sup>16</sup> <https://questions-statements.parliament.uk/written-questions/detail/2024-03-25/20482/>.

3.10. Elsewhere, a short study on the prison-reported rate of autism across the female prison estate sets it at 4.78%, which is almost 14 times higher than in the general population,<sup>17</sup> with an older study placing the prevalence of autism across the male estate at around 4 times higher than in the general population.<sup>18</sup>

*In summary – a potentially large cohort*

3.11. Whatever the accurate figures of neurodiverse and neurodisabled defendants in the CJS, this is potentially a cohort of significant size. Accordingly, it is a fair assumption that an increase in appropriate non-custodial sentences for this cohort could improve outcomes and significantly reduce the current pressure on prison places.

#### **4. Current sentencing framework relevant to neurodiverse and neurodisabled defendants**

4.1. The courts' duty to follow the sentencing guidelines does not restrict any power which enables the court to deal with an offender suffering from a mental disorder in the manner it considers most appropriate in the circumstances. Sentencing Act 2020, s.59(3):

“Nothing in this section or section 60 or 61 is to be taken as restricting any power (whether under the Mental Health Act 1983 or otherwise) which enables a court to deal with an offender suffering from a mental disorder in the manner it considers to be most appropriate in all the circumstances.”

4.2. See also Sentencing Act 2020, s.77 which specifies that the court is not prevented from taking into account any matters it considers relevant to mitigation.<sup>19</sup>

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<sup>17</sup> Payne, K-L. and Gooding, E. (2025) 'Prison-reported rates of autism in female prisons in England'. *Autism*, Vol.29(1) 265-270.

<sup>18</sup> Fazio, R. L., Pietz, C. A., and Denney, R. L. (2012) 'An estimate of the prevalence of autism-spectrum disorders in an incarcerated population'. *Open Access Journal of Forensic Psychology*, 4, 69–80.

<sup>19</sup> See also, Banks (2024) §325.48.

- 4.3. The Sentencing Guidelines on Sentencing offenders with mental disorders, developmental disorders, or neurological impairments (overarching guidelines).<sup>20</sup>
- 4.4. The Guidelines refer sentencers and other guideline users to the Equal Treatment Bench Book, for “guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.”<sup>21</sup>
- 4.5. There is some judicial training on neurodivergence and neurodisability although we understand this is minimal, predominantly in the context of dealing with vulnerable court users and not related to sentencing.
- 4.6. Non-custodial sentences, either by way of hospital orders or, e.g. community sentence treatment requirements, may be available for neurodisabled defendants but their use appears haphazard and limited.

## **5. Issues**

- 5.1. Despite a number of reviews, reports and action plans, there still remain significant gaps and lack of adequate provision for neurodiverse and/or neurodisabled defendants. The limited available research and experience suggests this may too often result in sentencing which is unfair, does not adequately account for the vulnerabilities of those within this cohort, and does not sufficiently further the sentencing principle of reducing the risk of reoffending.
- 5.2. Previous government commitments to research and policy reform for neurodiverse and neurodisabled defendants in the CJS appear not to have been implemented and/or have been delayed in their conclusion/implementation.

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<sup>20</sup> <https://www.sentencingcouncil.org.uk/overarching-guides/crown-court/item/sentencing-offenders-with-mental-disorders-developmental-disorders-or-neurological-impairments/>.

<sup>21</sup> <https://www.sentencingcouncil.org.uk/wp-content/uploads/Equal-Treatment-Bench-Book.pdf>.

5.2.1. The Ministry of Justice’s Neurodiversity Action Plan, in response to the CJI Review, only agreed to implement one of the CJI Review’s recommendations and the others in part only. There were commitments to further research and pilot studies, the reports of which were to be published in the MOJ’s updates.

5.2.2. The final update of the Ministry of Justice’s Neurodiversity Action Plan was due to be published in early 2024. (The last published update was September 2023 and refers to publication of the final 18-month update in early 2024<sup>22</sup>). We have found no publication of such an update.

5.2.3. The Department of Health and Social Care’s National Strategy for Autistic Children, Young People, and Adults (2021) included CJS funding and research. This National Strategy referred to work to

“find alternatives to prosecution and custody for autistic adults and those with other vulnerabilities. That is why we are funding research over 3 years (starting in 2021) about the use of out-of-court disposals. The findings from this research will enable us to review policy and practice for joint work between the police, NHS and other services, as well as produce practical advice for frontline teams and service providers. **Community Sentence Treatment Requirements (CSTRs), which are partnership programmes between NHSE/I, the MoJ, DHSC, Public Health England and HMPPS, and can be used as an alternative short custodial sentence in prison. To help ensure that treatment programmes available in CSTR sites are accessible to neurodivergent people, including any adaptations required for autistic people,** the programme will employ a national neurodiversity advisor.”<sup>23</sup>

5.3. We have found no published research or advice.

5.4. There is some evidence suggesting that a lack of specialist provision in courts relating to neurodevelopmental disorders (NDD) may be responsible for greater use of custodial sentences for defendants with NDD in circumstances in which they are not warranted. An evaluation of a pilot scheme of a specialist L&D CMHS for defendants with NDD found that it resulted in lower levels of

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<sup>22</sup> [\\*ND Update Action Plan Letter September 2023.pdf](#).

<sup>23</sup> Emphasis added.

custodial remand for those defendants.<sup>24</sup> Whilst this is research into pre-trial detention rather than post-conviction sentencing, it suggests that use of specialist NDD practitioners within probation to assist courts in sentencing options may similarly result in a lower number of custodial sentences.<sup>25</sup>

5.5. There remain issues around the timeliness of pre-sentence reports (including in circumstances in which offenders may be remanded into prison awaiting such reports), as well as their content in respect of neurodisabled defendants. By way of example, reliance on concepts such as expressions of ‘remorse’ and ‘insight’ in sentencing can unfairly disadvantage defendants with social and communication disabilities/differences.<sup>26</sup>

5.6. The current Overarching Guidelines on Sentencing offenders with mental disorders, developmental disorders, or neurological impairments are a useful starting point but, on the available evidence, we do not consider they go far enough to ensure that neurodiverse and neurodisabled defendants are sentenced fairly and in a manner best able to achieve the sentencing principle of reducing reoffending.<sup>27</sup>

5.6.1. Unlike the Sentencing for children and young people Guidelines, they do not adopt an individualistic or person-centred approach. We suggest such an approach is required for this cohort in order to fulfil the sentencing principle of reducing (re)offending and to meet their needs and vulnerabilities. In other words, such an approach would lead to sentencing which better reflects existing sentencing principles and policy.

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<sup>24</sup> Chaplin, E. et al, (2021) ‘Evaluation of a liaison and diversion court mental health service for defendants with neurodevelopmental disorders’ *Research in Developmental Disabilities*, 119 (Dec 2021) 104103.

<sup>25</sup> See also Allely et al, ‘Autistic Defendants in Court’ in Smith, T (ed) *Autism and Criminal Justice: The experience of suspects, defendants and offenders in England and Wales* (2023) (“Smith (2023)”, 47.

<sup>26</sup> See, e.g., Revolving Doors ‘Remorse: what is it good for?’ available at <https://revolving-doors.org.uk/remorse-what-is-it-good-for/>.

<sup>27</sup> See e.g., McCarthy J et al, ‘Defendants with intellectual disability and autism spectrum conditions: the perspective of clinicians working across three jurisdictions’ (2021) *Psychiatr Psychol Law*, Nov 3;29(5):698-717: “Poor understanding of ID or ASC can nevertheless lead to an increased likelihood of being remanded to prison, or to inappropriate sentencing.”

5.6.2. In sentencing, we treat children and young people differently from adults, in recognition that their cognitive or emotional development is different from that of PNT adults over the age of 25. This raises a fundamental question of principle which the current Guidelines do not address namely, why should we not treat neurodisabled adults, i.e. those with cognitive, developmental, social and communication, or emotional functions assessed as broadly equivalent to those of PNT children or young people, as we would those children and young people? This is not a question which is restricted to issues of culpability for offending behaviour but also engages questions of neurodiverse and neurodisabled adults' experience of the CJS and, in particular, of prison and non-custodial sentences. This Review is an important opportunity to address these fundamental questions of principle and approach, and we invite the Review to do so. Put simply we submit that, as is the case when sentencing children and young people, sentencing of neurodiverse and/or neurodisabled defendants should be individualistic and focused on the person, as opposed to offence focused.<sup>28</sup>

5.6.3. The high-profile case of Auriol Grey, convicted of unlawful act manslaughter following the horrific and tragic death of Mrs Ward,<sup>29</sup> demonstrates two distinct issues, including the question of principle identified above: first, the limitations of considering the sentencing of neurodisabled defendants in isolation to other changes in the CJS; and, secondly, that the current sentencing framework can result in the imprisonment of neurodisabled defendants assessed to have extremely low culpability and risk of reoffending, where the only purpose in a prison sentence was punishment and social signalling. Ms Grey's original application for leave to appeal against 3-year custodial sentence was refused, reportedly on the basis that despite her individual circumstances custody was warranted "to mark the gravity of the

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<sup>28</sup> Sentencing Guideline: sentencing children and young people, s.1 General Approach, available at <https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/sentencing-children-and-young-people/> (see, in particular, §1.2).

<sup>29</sup> *R v Grey* [2024] EWCA Crim 487 §35.

unlawful killing”.<sup>30</sup> Although her conviction was ultimately quashed, her general experience (aside from the specific legal errors made by the trial judge in his directions to the jury) is one which appears common amongst this cohort of vulnerable defendants.<sup>31</sup> A later appeal against conviction was upheld: See R v Grey (Auriol) [2024] EWCA Crim 487.

5.7. There appears to be relatively limited use of hospital orders and community sentences with treatment requirements for neurodisabled defendants. This is notwithstanding that the Court of Appeal has now confirmed that hospital orders may be the appropriate disposal for defendants whose neurodisability is lifelong and not “*treatable*’ in the sense that there is a cure which will bring it to an end” (in this case Autism): R v Cleland [2020] EWCA Crim 906. In contrast, as highlighted in the commentary by Nicola Padfield KC on the Court of Appeal’s judgment in R v Selby [2023] EWCA Crim 284,<sup>32</sup> the Court did not explore why a hospital order was not available where at least two experts concluded that specialist input to facilitate an improvement in the defendant’s mental health and emotional and interpersonal functioning was available in a hospital but not in a prison setting.

5.8. There remains a lack of sufficient training for judicial decision-makers and legal professionals. This contributes to failures adequately to identify and understand the needs and vulnerabilities of neurodivergent and/or neurodisabled defendants throughout the CJS process, including within a prison environment.<sup>33</sup>

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<sup>30</sup> See news coverage: <https://www.bbc.co.uk/news/uk-england-cambridgeshire-65645364>.

<sup>31</sup> See generally, Smith, (2023). See also Slavny-Cross, R. et al ‘Autism and the criminal justice system: An analysis of 93 cases’ Autism Res. 2022 May;15(5):904-914, in addition to the CJJI Review and EHRC (2020).

<sup>32</sup> CLW/23/30/5.

<sup>33</sup> EHRC (2020), 26. See also Revolving Doors (2022), 4, 10. The UN Convention on the Rights of Persons with Disabilities requires States Parties to “promote appropriate training for those working the field of administration of justice, including police and prison staff” (art 13) and “take all effective legislative, administrative, judicial and other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment” (art 15).

## **6. Recommendations**

### **6.1. Recommendation 1: Evidence gathering**

6.1.1. The Review should request the final update from the Ministry of Justice and assess the effectiveness of the Action Plan in addressing the issues raised in the CJI Review of 'Neurodiversity in the criminal justice system' 2021, in particular relating to the identification/screening and sentencing of neurodivergent and/or neurodisabled defendants.<sup>34</sup>

6.1.2. The Review should also seek to gather evidence from the newly appointed neurodiversity leads in prisons and probation to consider the challenges posed to and achievement of the purposes of sentencing for neurodiverse individuals in the CJS.

6.1.3. The Review should gather evidence from the CJS research referred to in the DHSC's National Strategy for Autistic Children, Young People and Adults (2021), assess the effectiveness of CSTRs and make recommendations on how to improve their use and effectiveness.

6.1.4. The Review should take positive action to obtain evidence from those with lived experience of neurodivergency and/or neurodisability separate from its Call for Evidence, in order to inform its assessment of the current sentencing framework.

### **6.2. Recommendation 2: training and increasing specialist capacity in CJS support services**

6.2.1. Professionals working within the CJS should receive regular training on neurodiversity and neurodisabilities.

6.2.2. There should be specialist capacity within L&D CMHS and within the probation service with expertise in neurodivergence, neurodevelopmental disorders and other neurodisabilities, to provide

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<sup>34</sup> [Neurodiversity in the criminal justice system: A review of evidence.](#)

timely assistance to courts in custody decisions, both pre-sentencing and in sentencing options.

### **6.3. Recommendation 3: training and specialist capacity for judicial and professional court users**

6.3.1. Given the potential prevalence of neurodivergences in the CJS, there should be widespread training for all judges (including lay justices) and professional court users on neurodiversity and neurodisabilities.

6.3.2. The Review should consider establishing specialist courts or specifically authorised ('ticketed') judges (whether potentially solely for sentencing but, ideally, for the entirety of the court process) for cases involving neurodisabled defendants. Youth courts provide a current example of specialist courts for a vulnerable cohort and, by way of example, cases involving serious sexual offences may only be tried by authorised judges who have completed specific training.

### **6.4. Recommendation 4: a co-ordinated justice, health, social care and education approach to sentencing**

6.4.1. The Review should call for the adoption of a co-ordinated justice, health, social care and education approach to sentencing neurodivergent and/or neurodisabled defendants, which makes greater use of non-custodial sentences. These would include hospital orders (where appropriate) and accessible non-custodial sentences (including CSTRs where an offender's disability or disorder is relevant to their offending) with the necessary accommodations/amendments and support to enable compliance with those orders. In this way, the general overarching principles of sentencing would be properly applied to this cohort.

### **6.5. Recommendation 5: applicable sentencing principles should reflect a person-focussed approach to sentencing**

6.5.1. The starting point should be that a neurodiverse or neurodisabled adult should be sentenced according to the overarching sentencing principles

of reducing (re)offending and having regard to the welfare of the defendant.

6.5.2. More specifically (and at a minimum), neurodisabled adult defendants whose developmental, cognitive, social and communication, or emotional function is comparable to that of a child or young person of predominant neurotype ('PNT', often referred to as neurotypical),<sup>35</sup> should be sentenced in accordance with an approach akin to the current sentencing framework for children and young offenders, which recognises that their cognitive or emotional development is different from that of PNT adults over the age of 25.<sup>36</sup>

**Dr Ruth Armstrong** (Director, Justice Matters)

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**Dr Rachel Barnes KC** (Barrister, Bar Council Disability Panel member)

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16 January 2025

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<sup>35</sup> See n.10 above.

<sup>36</sup> <https://www.sentencingcouncil.org.uk/overarching-guides/crown-court/item/sentencing-children-and-young-people/>.

## **APPENDIX 1 - AUTHORS**

### **Dr Ruth Armstrong** (Director, Justice Matters)

Dr Ruth Armstrong directs Justice Matters, a consultancy supporting systems change through building cross sector justice senior leadership relationships and capabilities. Ruth has extensive experience working in criminal justice systems globally and has published widely on criminal justice related matters. She has received multiple awards for her scholarship and practice including the Nigel Walker prize and the award for impact through research from the University of Cambridge, and the Butler Trust Award for her work in the criminal justice sector.

### **Stephen Bailey** (Barrister)

Stephen Bailey is a barrister at Three Raymond Buildings. He acts across the full range of criminal law matters. Stephen is appointed to the Crown Prosecution Service (General Crime) Panel and the Serious Fraud Office Trial Counsel Panel. Stephen's criminal law practice is complemented by his wider practice in sanctions, public law, public international law and extradition, as well as his expertise in INTERPOL. Prior to commencing practice at the Bar, Stephen taught criminal law, public international law and public law at the University of Edinburgh and contract law at the University of Cambridge.

### **Dr Rachel Barnes KC** (Barrister, Bar Council Disability Panel member)

Dr Rachel Barnes KC is a practising barrister (Three Raymond Buildings) specialising in criminal law (domestic, extradition and international) and criminal justice related public law, human rights and international law. She has appeared in all levels of criminal courts in England and Wales as prosecution and defence counsel, the High Court (in public law, extradition and civil cases), the Court of Appeal (criminal and civil divisions) and the Supreme Court. Rachel is also a US qualified attorney, having practised in New York, USA after graduating from Harvard Law School (LL.M). Rachel previously taught criminal law at Cambridge University (Ph.D, M.A.) and was a visiting lecturer at the London School of Economics. Rachel is a member of the Judicial Appointments Commission's Advisory Group, the Bar Council's Disability Panel and Fair Trials International's Legal Experts Advisory Panel.

**Professor Sir Simon Baron-Cohen FBA FMedSci FRSM** (Director, Autism Research Centre, Cambridge University)

Simon Baron-Cohen is a Professor in the Departments of Psychology and Psychiatry University of Cambridge and Fellow at Trinity College, Cambridge. He is Director of the Autism Research Centre in Cambridge. He is author of *Mindblindness*, *The Essential Difference*, *Prenatal Testosterone in Mind*, and *Zero Degrees of Empathy*. He has edited scholarly anthologies including *Understanding Other Minds*. He has published over 600 peer reviewed scientific articles, which have made contributions to many aspects of autism research, including in relation to criminal justice (one of the applied research programmes within the Cambridge Autism Research Centre).

Professor Baron-Cohen created the first UK clinic for adults with suspected Asperger Syndrome (1999), now simply called autism, that has helped over 1,000 patients to have their disability recognized. He gave a keynote address to the United Nations in New York on Autism Awareness Day 2017 on the topic of Autism and Human Rights. He serves as Founding Trustee and Director of the charity the Autism Centre of Excellence (ACE) at Cambridge, and is scientific advisor to the company Auticon, which only employs autistic people. He is a Fellow of many academies and professional bodies, such as the British Psychological Society, the British Academy, the Academy of Medical Sciences, and the American Psychological Association. He is Vice-President of the National Autistic Society and was President of the International Society for Autism Research (INSAR). He was Chair of the NICE Guideline Development Group for Autism (Adults) and was Chair of the Psychology Section of the British Academy.

**Jodie Blackstock** (Barrister, former Legal Director of JUSTICE)

Jodie Blackstock is a barrister (Garden Court Chambers) practising in human rights and public law cases concerning the criminal justice system. She is the former Legal Director of JUSTICE and former member of the Criminal Procedure Rule Committee.

**Mark Johnson, MBE** (founder of User Voice and Lived Expert)

Mark Johnson is a leading social entrepreneur (founding User Voice and Lived Expert), author and regular commentator on crime, addiction, mental health, neurodiversity and homelessness. He is an Ashoka Fellow, the international network of social entrepreneurs, and was awarded an MBE for services to vulnerable people. He has led over 100 consultation and peer research projects, including [Neuro... What?](#), a report into people's lived experience of neurodiversity in the justice system as part of the Criminal Justice Joint Inspection's Review 2021.

**Professor Shadd Maruna** (Head of Sociology, Social Policy and Criminology, School of Law and Social Justice, Liverpool University)

Professor Shadd Maruna is the Chair of Sociology, Social Policy and Criminology at the University of Liverpool and the Past President of the American Society of Criminology (2022-2024). Previously he has worked at Queen's University Belfast, the University of Cambridge, and Rutgers University where he was the Dean of the School of Criminal Justice. His book *Making Good: How Ex-Convicts Reform and Rebuild Their Lives* was named the Outstanding Contribution to Criminology by the American Society of Criminology. He is a long-term member of the Correctional Services Advice and Accreditation and Panel for HMPPS, and the recipient of the inaugural Research Medal from the Howard League for Penal Reform.

**Amanda Pinto KC** (Barrister and Recorder, former Chair of the Bar Council of England and Wales)

Amanda Pinto KC is a leading criminal barrister (Three Raymond Buildings). As a Recorder of the Crown Court since 2005, Amanda is also a part-time judge, trying and sentencing serious crime. In 2020 Amanda was elected Chair of the Bar Council of England and Wales, with an agenda that promoted diversity and equality in the justice system and beyond. She was shortlisted for Chambers & Partners Outstanding Contribution to Diversity and Inclusion Award 2020 and for the International Leader Award 2021 by The Women in Law Justitia Awards. She is a Bencher of Middle Temple and a committee member of the Inns of Court Alliance for Women. Amongst other appointments, Amanda is a Trustee of the Race Equality Foundation.

## APPENDIX 2 - BIBLIOGRAPHY

### Books

Banks on Sentence (2024) 325.56 Mentally disordered defendants – Autism Spectrum Disorder (including Asperger’s syndrome)

Beardon L., *Avoiding Anxiety in Autistic Children* (2020).

Smith, T. (eds) *Autism and Criminal Justice: The experience of suspects, defendants and offenders in England and Wales* (2023).

### Academic Articles

Allely et al, ‘Autistic Defendants in Court’ in Smith, T (ed) *Autism and Criminal Justice: The experience of suspects, defendants and offenders in England and Wales* (2023) (“Smith (2023)”, 47.

Bowden, N. *et al* (2022) ‘Criminal justice system interactions among young adults with and without autism: A national birth cohort study in New Zealand’. *Autism*, Vol. 26(7) 1783-1794.

Chaplin, E. et al, (2021) ‘Evaluation of a liaison and diversion court mental health service for defendants with neurodevelopmental disorders’ *Research in Developmental Disabilities*, 119 (Dec 2021) 104103.

Collins, J., Horton, K., Gale-St. Ives, E. *et al.* (2023) ‘A Systematic Review of Autistic People and the Criminal Justice System: An Update of King and Murphy (2014)’. *J Autism Dev Disord* 53, 3151–3179.

Fazio, R. L., Pietz, C. A., and Denney, R. L. (2012) ‘An estimate of the prevalence of autism-spectrum disorders in an incarcerated population’. *Open Access Journal of Forensic Psychology*, 4, 69–80.

McCarthy J. *et al* (2021) ‘Defendants with intellectual disability and autism spectrum conditions: the perspective of clinicians working across three jurisdictions.’ *Psychiatr Psychol Law*. Vol. 29(5):698-717.

O’Nions, E. *et al* (2023) ‘Autism in England: assessing underdiagnosis in a population-based cohort study of prospectively collected primary care data’. *The Lancet Regional Health - Europe*, Vol. 29.

Payne, K-L., and Gooding, E. (2025) ‘Prison-reported rates of autism in female prisons in England’. *Autism*, Vol.29(1) 265-270.

Slavny-Cross, R. et al ‘Autism and the criminal justice system: An analysis of 93 cases’ *Autism Res.* 2022 May;15(5):904-914.

Ward, J. (2023) ‘Criminal Court Sentencing: The Case for Specialist ‘Young Adult’ Courts. *The British Journal of Criminology*, Vol. 63(4):1041-1057.

## Reports

Children's Commissioner (2012) 'Nobody Made the Connection: the Prevalence of Neurodisability in Young People Who Offend'.

Criminal Justice Joint Inspection (2021) 'Neurodiversity in the Criminal Justice System: a review of evidence.' Available at <https://www.justiceinspectores.gov.uk/cjii/media/press-releases/2021/07/neurodiversity-in-criminal-justice-system-more-effective-support-needed-say-inspectorates/>

Equality and Human Rights Commission (2020) Inclusive Justice: A system designed for all. Available at [https://www.equalityhumanrights.com/sites/default/files/ehrc\\_inclusive\\_justice\\_a\\_system\\_designed\\_for\\_all\\_june\\_2020.pdf](https://www.equalityhumanrights.com/sites/default/files/ehrc_inclusive_justice_a_system_designed_for_all_june_2020.pdf)

Fair Trials International (2022) 'Study on Procedural Adjustments for Defendants with Cognitive Impairments, Neuro-Diverse Conditions, Mental Health Conditions'. Available at: <https://www.fairtrials.org/app/uploads/2022/01/Study-on-Procedural-Adjustments-for-Defendants-with-Cognitive-Impairments-Neuro-Diverse-Conditions-Mental-Health-Conditions.pdf>

*JUSTICE, Mental Health and Fair Trial* (2017), available at <https://files.justice.org.uk/wp-content/uploads/2017/11/06170615/JUSTICE-Mental-Health-and-Fair-Trial-Report-2.pdf>

HM Prison and Probation Service and Ministry of Justice (2022) 'A Response to the Criminal Justice Joint Evidence Review: Neurodiversity in the Criminal Justice System action plan'. Available at: <https://www.gov.uk/government/publications/a-response-to-the-criminal-justice-joint-inspection-neurodiversity-in-the-criminal-justice-system-action-plan>

Revolving Doors 'Exploring the links between neurodiversity and the revolving door of crisis and crime' (policy briefing) September 2022, available at <https://revolving-doors.org.uk/wp-content/uploads/2022/09/Revolving-Doors-neurodiversity-policy-position.pdf>.

For other resources published by Revolving Doors, see <https://revolving-doors.org.uk/>

User Voice, "*Neuro-what?*" *Neurodiversity in the Criminal Justice System* (March 2021), available at [Neurodiversity-in-the-Criminal-Justice-System.pdf](https://www.user-voice.org.uk/wp-content/uploads/2021/03/Neurodiversity-in-the-Criminal-Justice-System.pdf)

*'Not Naughty, Stupid or Bad' – The Voices of Neurodiverse Service Users in the Criminal Justice System* (December 2023), available at [Consultations - User Voice](https://www.user-voice.org.uk/wp-content/uploads/2023/12/Consultations-User-Voice-Not-Naughty-Stupid-or-Bad.pdf)

## Sentencing Guidelines

Judicial College (2024) Equal Treatment Bench Book. Available at: <https://www.sentencingcouncil.org.uk/wp-content/uploads/Equal-Treatment-Bench-Book.pdf>

Sentencing Advisory Council, (Unknown) 'Mental Impairment and Sentencing'. Available at: <https://www.sentencingcouncil.vic.gov.au/about-sentencing/mental-impairment-and-sentencing>

Sentencing Council (2017) Sentencing Guideline: sentencing children and young people. Available at <https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/sentencing-children-and-young-people/>

Sentencing Council (2020) Sentencing offenders with mental disorders, developmental disorders, or neurological impairments. Available at: <https://www.sentencingcouncil.org.uk/overarching-guides/crown-court/item/sentencing-offenders-with-mental-disorders-developmental-disorders-or-neurological-impairments/>

### Case Law

R v Cleland [2020] EWCA Crim 906

R v Grey (Auriol) [2024] EWCA Crim 487

R v Selby [2023] EWCA Crim 284

R v Vowles and Others [2015] EWCA Crim 45

R (Cusworth) v Secretary of State for Justice [2023] EWHC 1281 (Admin)

### Other

Question for Department of Health and Social Care, 15 April 2024: Prisoners: Mental Illness and Neurodiversity. Available at: <https://questions-statements.parliament.uk/written-questions/detail/2024-03-25/20482/>

BBC News, 19 May 2023, 'Auriol Grey: Huntingdon cyclist killer fails in appeal bid'. Available at: <https://www.bbc.co.uk/news/uk-england-cambridgeshire-65645364>