

# Use of the Mental Capacity Act in the management of risky behaviour in people with Intellectual Disabilities

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## Learning Disability and Forensic Services

- Tarentfort Centre: A 20 bed Low Secure hospital
- Brookfield Centre: A 13 bed  
Controlled Access Ward
- East Kent Community Forensic Psychology Service



## A question???

What experience do you have of working with people with Intellectual disabilities who present with risky / offending behaviour?

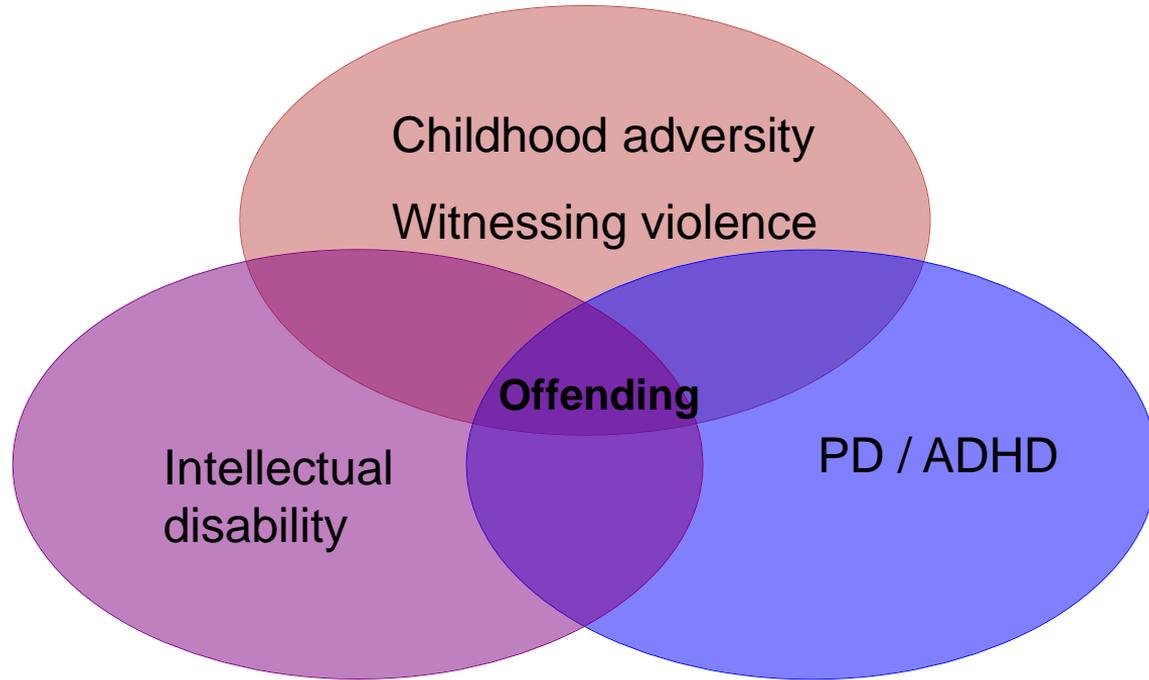
How can the mental capacity act be applied with this group?

# Offenders with ID

- Prison Reform trust *No-one Knows* initiative research indicates:
- 23% of prisoners under 18 have an IQ of less than 70 (Talbot & Riley, 2007)
- 7.1% of prisoners of all ages have a learning disability, 25.4 % borderline intellectual functioning (Hayes et al 2007)

# What does research tell us?

- Pathways into ID forensic services Lindsay et al (2013):
  - Childhood adversity
  - Witnessing violence
  - Personality disorder
  - ADHD - higher levels of aggression, substance misuse
- Historically, long term informal supervision seen as the key – thought this should be based on a sound evidence based risk assessment (Green et al, 2000)
- ID alone associated with lower levels of anti social behaviour as an adolescent (Emerson & Halpin 2013)

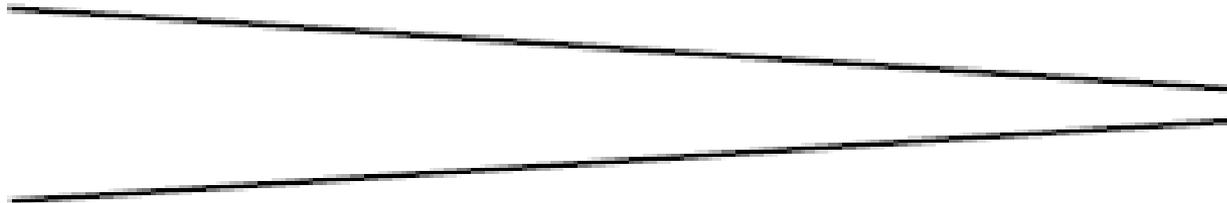


# What are our options for risk management?

- We often need to be restrictive to protect the public, i.e. 1:1 supervision in the community, so a framework is required:
  - Criminal Justice System
  - Mental health act
  - Mental capacity act?

# Factors influencing progress through CJS (from Holland et al 2003)

## Discretion



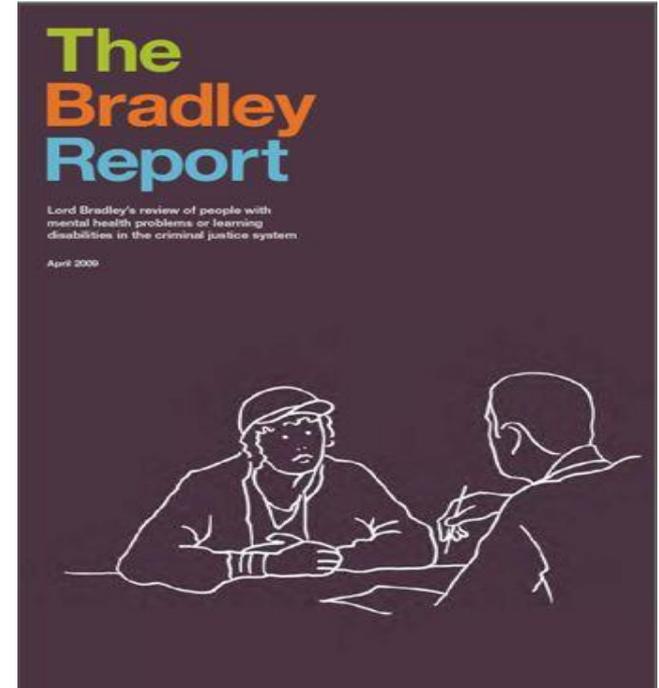
Carers	Police	Crown Prosecution Service	Courts	Post-court
Blame	Paternalism	Public interest	Treatment	
Protection	Mad/bad Not responsible	Evidence or not	Mitigation	

# Problems....

- PWID are vulnerable in the CJS:
  - Inadequate understanding of caution and legal rights
  - Susceptibility to acquiescence, compliance, interrogative suggestibility and confabulation
  - Lack of knowledge relevant to decision-making in police interviews
  - Poor access to treatment
  - Vulnerable to bullying in prison
- However - Civil Sexual Risk Orders (SROs) are now available – no need for convictions

# Bradley report 2009

- Advocates:
  - More Mental Health Act diversion / signposting to services
  - Early intervention
  - Conditional cautions
  - Training for CJS
  - Better screening
  - Specialist courts / procedures
- **Some impact in Kent (liaison and diversion, MH court, SLA for assessment), but not nationally**



# Mental health act

- Need an AMHP and a psychiatrist to agree to the detention
- Degree and nature of mental disorder / risk to self or others must be severe
- Seriously irresponsible conduct
- Least restrictive option?
- Much more difficult Post Winterbourne View / Transforming Care?

## Case study – Mr A

- 40 year old male, mild ID
- Placed in residential home
- Strong sexual arousal towards children
- Exposing self through window
- Taking photographs of children
- Dropping notes with his phone number in a local playpark

# Risk management

- Due to risk, he requires 1:1 supervision in the community
- Difficult to provide via CJS, as no convictions
- MCA assessment indicated he lacked capacity (unable to weigh up the decision *not* to have supervision)
- 1:1 supervision provided via DOLS – rationale was that he was at risk of assault from parents of children he approached
- Also argued that he lost capacity when faced with children in the community
- He challenged via court of protection – DOLS was upheld.

- Is it OK to use DOLS for risk management?

# Use of DOLS

- Deprivation or restriction?
- Designed to protect vulnerable individuals, rather than manage risky individuals (although maybe protecting him from himself? Or retribution from victim / families?)
- Hard to say he lacks capacity – maybe loses capacity when aroused?
- Must be decision specific, so which decisions?
- Only lasts for 6 months
- Need to go to court of protection for long term deprivation - expensive and time consuming

## Case study 2 – Mr B

- 35 year old male – previously detained in hospital under s37 of MHA for child sexual offences
- Discharged on Community Treatment Order, 1:1 supervision under DOLS
- Mounted a legal challenge, which was successful, as it was deemed that DOLS should not be used for risk management
- DOLS removed
- Within 4 weeks, he had reoffended and was remanded in prison

- Was it in this man's best interests to remove support and supervision?

# Valuing people

- Government white paper from 2001, updated by “Valuing people Now” in 2007, aimed at improving lives of people with LD
- Key principles:
  - Rights
  - Independence
  - Choice
  - Inclusion
- Advocates greater inclusion in employment, better quality services for people with LD, person centred planning
- However, may lead to services and health professionals not wanting to detain or restrict or “disempower” people with LD, and view any offending behaviour as reflective of lack of skills, choices or opportunities.
- **“Counterfeit deviance”?**

 HM Government

**Valuing People Now:**  
a new three-year strategy  
for people with learning  
disabilities

*‘Making it happen for everyone’*



# Valuing people vs managing risk

- What if empowerment leads to offending?
- Is it not more empowering to
  - Offer treatment and support
  - Help develop insight into the risk they present to others, and
  - Get them to “sign up” to a risk management plan that protects them from re-offending, even if it means restrictions in the short term?

# Case study 3 – Mr C

- 24 year old male, mild ID / ASD
- H/O risky sexual behaviour to children and vulnerable adults
- Had engaged in an adapted CBT program for risky sexual behaviour
- DOLS in place - 1:1 supervision, ensuring he remains in residential placement
- Wanted a sexual relationship with his girlfriend (vulnerable adult)
- Assessed as lacking capacity to make decisions about his treatment and level of support
- However, threshold lower for capacity to consent to sexual relationship , was considered to have capacity in this area.

- How do we safely manage this relationship?

# The solution?

- Greater links with CJS, more training and consultation
- More outreach support to develop robust community services
- More creative use of legal frameworks, such as DOLS?
- Use robust, evidence based risk assessments , i.e. HCR-20
- More adapted treatment

# References

- Care Services Improvement Partnership (2007) *Positive Practice Positive Outcomes: A handbook for professionals in the the Criminal Justice System working with offenders with learning disabilities*. Available from:  
[www.valuingpeople.gov.uk/echo/filedownload.jsp?action=dFile&key=2816](http://www.valuingpeople.gov.uk/echo/filedownload.jsp?action=dFile&key=2816)
- Craig et al (2006) Treating sexual offenders with learning disabilities in the community: a critical review. *International Journal of Offender Therapy & Comparative Criminology*, 50, 369-390.
- Hayes, S., Shackell, P., Mottram, P. & Lancaster, R. (2007) The prevalence of intellectual disability in a major UK prison. *British Journal of learning disabilities*. Volume 35; pp 162-167.
- Holland, T., Clare, I.C.H. & Mukhopadhyah, T. (2002) Prevalence of 'criminal offending' by men and women with intellectual disability and the characteristics of 'offenders': implications for research and service development. *Journal of Intellectual Disability Research*, Vol 46, supplement 1, pp6-20.
- Lindsay W. R. & Smith A. H. W. (1998) Responses to treatment for sex offenders with intellectual disability: a comparison of men with one and two year probation sentences. *Journal of Intellectual Disability Research* 42, 346–353.
- Lindsay W. R., Marshall L., Neilson C., Quinn K. & Smith A.H. W. (1998b) The treatment of men with a learning disability convicted of exhibitionism. *Research in Developmental Disabilities* 19, 295–316.
- Lindsay, W.R., Elliot, S.F. & Astell, A. (2004) Predictors of sexual offence recidivism in offenders with intellectual disabilities. *Journal of applied research in intellectual disabilities*, 17; pp299-305.

# References

- Lindsay W. R., Steele L., Smith A. H. W., Quinn K. & Allan R. (2006) A community forensic intellectual disability service: twelve year follow up of referrals, analysis of referral patterns and assessment of harm reduction. *Legal & Criminological Psychology* 11, 113–130.
- Magill, C. & Rivers, V. (2010) *Prosecution of Offenders with mental health problems or learning disabilities*. Available from:  
[http://www.cps.gov.uk/publications/research/offenders\\_with\\_mental\\_health\\_problems.html](http://www.cps.gov.uk/publications/research/offenders_with_mental_health_problems.html)
- McArdle, I (2010) Learning disabilities and access to offender behaviour programmes in prison: a High Court Decision. *Journal of Learning Disabilities and Offending Behaviour* 1 (2) 27-29
- Rose J., Jenkins R., O'Connor C., Jones C. & Felce D. (2002) A group treatment for men with intellectual disabilities who sexually offend or abuse. *Journal of Applied Research in Intellectual Disabilities* 15, 138–150.
- Sex Offender Treatment Services Collaborative – Intellectual Disabilities (SOTSEC-ID) (2010) Effectiveness of a group cognitive behavioural treatment for men with intellectual disabilities at risk of sexual offending. *Journal of applied research in intellectual disabilities*. Article first published online: 10 JUN 2010. DOI: 10.1111/j.1468-3148.2010.00560.x
- Talbot, J. & Riley, C. (2007) No one knows: offenders with learning difficulties and learning disabilities. *British Journal of learning disabilities*. Vol 35; pp. 154-161.