

Royal College of Psychiatrists Additional Submission to Justice Select Committee | Inquiry into children and young people in custody

June 2020



Introduction

The Royal College of Psychiatrists (RCPsych) is the professional medical body responsible for supporting psychiatrists throughout their careers, from training through to retirement, and in setting and raising standards of psychiatry in the United Kingdom.

The evidence for this submission was prepared by the Adolescent Forensic Psychiatry Special Interest Group (AFPSIG), composed of psychiatrists who specialise in the mental health needs of young people who are at risk of or in contact with or the criminal justice system.

1 Neurodevelopmental maturation and its implication for the youth justice system

What has led to the change in our understanding of brain development?

Our understanding of brain maturation has changed completely over the last 20 years due to the development of new brain imaging techniques, primarily Magnetic Resonance Imaging (MRI). This has enabled us to look inside the skull at the living brain and track its development across the life span.

There are 2 types of MRI technique: structural MRI – which provides us with a detailed snapshot of the living brain and functional MRI – which is akin to a video of brain activity whilst undertaking a task.

Previously, it was believed that it was the first 5-8 years of childhood that were the most critical period for brain maturation and that, once this period had passed, there was relatively little subsequent brain development. The brain development which did occur was believed to take place in a steady linear continuation from that which had previously occurred in younger childhood. It was believed that the brain had completed maturation by early adolescence.

However, MRI brain imaging studies have revealed that there is a second period of substantial brain maturation that takes place during adolescence and which follows a complex, non-linear pathway.

This second period of brain development and remodelling starts with the onset of puberty and continues into the mid-20s with some ongoing, but less dramatic development into our 30s.

What are the main changes that occur during adolescence?

a) Structural Changes

The brain is made up of grey matter and white matter. Structural MRI has demonstrated that the amounts of grey and white matter change hugely over the course of adolescence and only begin to resemble adult brains in the third decade of life.

These changes are especially dramatic in a part of the brain called the pre-frontal cortex (PFC).

The PFC is the part of the brain responsible for:

- Decision making
- Planning
- Inhibiting inappropriate behaviour
- Social interaction (understanding other people)
- Self-awareness

Two neurodevelopmental processes that are key to this re-modelling of the brain during adolescence are **synaptic pruning** and **myelination**.

The synapses are the connections between brain cells and synaptic pruning involves the removal of those that are unused or unnecessary and the strengthening of synapses that are used.

The selection of which synapses are pruned or retained is influenced by the environment and experiences of the adolescent individual.

Synaptic pruning accounts for the marked reduction in grey matter that is seen on structural MRI and occurs throughout the teenage years and well into our 20s.

Accompanying this reduction in grey matter, is a concomitant increase in white matter. This occurs due to the axons (neuronal fibres), along which electrical impulses pass from cell to cell in the brain, becoming coated in a white substance called myelin.

The consequence of this myelination process is that the signalling between cells and between brain regions speeds up and the brain becomes more efficient. However, this process takes many years to occur and consequently, adolescents have stronger short distance connections than long distance connections¹.

b) Functional changes

Functional MRI reveals how different parts of the brain are used during activities. It measures the change in blood flow in the brain. Increased blood flow occurs to the parts of the brain that are most active in the course of the activity.

Functional MRI studies have indicated that during adolescence, activation of brain regions differs from the activation that is seen in mature adults when they are both completing the same task.

This is especially true with respect to the 'social brain' which is a network of brain regions that are activated whenever we think about other people's mental states or our own ('mentalisation')².

Adolescents use the pre-frontal cortex (which, as explained above, is not fully developed) much more than adults who use their temporal lobes more when undertaking tasks that involve mentalisation.

Further differences between adults and adolescents are seen in activation of the brain's reward system. When a young person takes a risk, the brain's positive reward circuitry gets activated in a way that does not occur in the fully mature brain. This inclines them towards risk taking and makes them more prone to impulsivity³, less capable of emotional reasoning and more likely to make errors in self-regulation. This is especially true in the presence of other adolescents.

(This is why in some places restrictions are placed on individuals under the age of 25 carrying passengers when they are driving a vehicle.)

The slow maturation of a part of the brain called the amygdala means that adolescents are far more sensitive to emotional triggers than occurs with adults. This means that they are more susceptible to emotional interference and more prone to making poor decisions, even when they know better.

What are the implications of these brain changes?

The differences in the structure and function of the immature adolescent brain have the effect of programming adolescents:

- away from security and towards taking risks
- to become preoccupied by how they appear to their peers
- to become hypersensitive to social exclusion

¹ Supekar K, Musen M, Menon V (2009) Development of large-scale functional brain networks in children. PLoS Biol 7:e1000157

² Blakemore, S. The social brain in adolescence. Nat Rev Neurosci 9, 267–277 (2008). <https://doi.org/10.1038/nrn2353>

³ Shannon et al (2011) Premotor functional connectivity predicts impulsivity in juvenile offenders, 108, Proceedings of National Academy of Sciences of USA, July 5, 2011 108 (27) 11241–11245; <https://doi.org/10.1073/pnas.1108241108>

- to develop their self-identity

What is the relevance of this for the youth justice system?

There are two reasons why this new understanding of brain development is especially pertinent to the Youth Justice System:

a) The age of criminal responsibility

Currently children in England, Wales and Northern Ireland aged 10 or older (and in Scotland aged 12 or older) are regarded as indistinguishable from adults when being charged and tried for offences.

However, the scientific evidence regarding brain development that has been accumulated over the last 20 years has consistently and overwhelmingly demonstrated that the brains of adolescents are quite different from adult brains. Their impulsivity, vulnerability to peer influence and changeability mean that, as a group, they are meaningfully different from adults.

b) Effectiveness of interventions with adolescents

Brain imaging has demonstrated that far from being fully developed, the adolescent brain is still under construction and is malleable. The immature brain is oriented for learning and remains in this state for two decades longer than was previously believed

It is susceptible to environmental factors and this capacity for change means that positive well-targeted interventions are far more likely to be effective than has been previously believed.

The long-term negative impact of Adverse Childhood Experiences (ACEs) has become well-recognised and underpins much of the valuable early intervention work that has been undertaken with the under 5s. Reducing exposure to negative experiences and maximising the opportunities for positive ones has a demonstrable effect on life trajectory.

However, the prolonged maturation process of the human brain means that, even if things have gone wrong in the first 5 years of an individual's life, it is not too late to intervene in adolescence.

This second critical period of brain development in adolescence offers a further window to increase an individual's wellbeing and life chances both through positive interventions and minimising exposure to adverse ones.

This has implications for the interventions offered to divert and rehabilitate young people who are at risk of coming or who have come into contact with the criminal justice system.

Both of these factors are discussed in more detail below:

2. Minimum Age Criminal Responsibility

The United Nations Convention on the Rights of the Child (ratified by 190 of 192 countries in the world) stipulates that States Parties should establish an age below which children are presumed to lack the capacity to contravene penal law⁴.

Last year, Scotland increased its minimum age to 12 years from a previous age of 8 years old.

⁴ <https://www.unicef.org.uk/what-we-do/un-convention-child-rights/>

However, at 10 years old, the minimum age of criminal responsibility in England, Wales and Northern Ireland has not changed since 1963⁵, despite a greater degree of understanding of the brain's developmental capabilities and limitations throughout the course of adolescence.

Whilst an age is not specified in the United Nations Convention on the Rights of the Child, the United Nations Committee on the Rights of the Child released a General Comment in 2019 which stipulated that states should increase their minimum age of criminal responsibility to 14⁶.

England, Wales and Northern Ireland have the lowest age of criminal responsibility in Europe, with Scotland being only slightly higher.

Furthermore, there is a legislative disconnect between the designated ages of criminal responsibility across the UK jurisdictions – (10 years and 12 years capacity to commit an offence) and capacity (14-16 years) to make other health and social decisions under the relevant capacity and mental health legislation in each of the UK jurisdictions. For example, it seems implausible that one must be a minimum of 14 to make a decision about being prescribed the oral contraceptive pill (Gillick criteria) but 10 to be held responsible for an offence-related decision.

The Adolescent Forensic Psychiatry Special Interest Group (AFPSIG) asserts that, at 10 years old, the minimum age of criminal responsibility in England, Wales and Northern Ireland is incompatible with the current research understanding of brain function and the challenges facing children by dint of their developmental immaturity.

There is also a concern that this low age of criminal responsibility may this also be disproportionately affecting BAME children and young people whose mental health issues are not recognised as such but are treated as being driven by criminality. This may be a reason behind the disproportionate numbers of young BAME within youth custody. Making Child & Adolescent Mental Health Services (CAMHS) more sensitive to the needs of BAME children and families may enable effective early intervention and diversion away from youth custodial services. The Mental Health Act has been reviewed⁷ due to concerns around BAME discrimination and we urgently call on the government to similarly review the age of criminal responsibility as this may also be discriminating against CYP who are from BAME groups.

The previously-mentioned neurodevelopmental research focuses on neurotypical children – but when we examine the brains of children in contact with the youth justice system, many of whom have experienced Adverse Childhood Experiences (ACEs) such as early life trauma and abuse, we find that brain structure abnormalities have been reported in those experiencing childhood trauma⁸, as well as functional differences⁹ which are themselves linked to violent crime, with some studies showing an 11-fold increase in the likelihood of being arrested for an aggressive offence for young people traumatised in early life¹⁰.

⁵ Children and Young Person's Act 1963

⁶ United Nations Committee on the Rights of the Child. General comment No. 24 (2019)

⁷ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/778897/Modernising_the_Mental_Health_Act_-_increasing_choice_reducing_compulsion.pdf

⁸ Lim L, Radua J, Rubia K (2014) Gray Matter Abnormalities in Childhood Maltreatment: A Voxel-Wise Meta-Analysis. *American Journal of Psychiatry*, 171(8), pp 854-863; De Brito, S. A., Viding, E., Sebastian, C. L., Kelly, P. A., Mechelli, A., Maris, H., & McCrory, E. J. (2012). Reduced orbitofrontal and temporal grey matter in a community sample of maltreated children. *Journal of Child Psychology and Psychiatry*; McLaughlin K, Sheridan M, Lambert H (2014). Childhood Adversity and Neural Development: Deprivation and Threat as Distinct Dimensions of Early Experience. *Neuroscience & Biobehavioral Reviews* Volume 47, November 2014, Pages 578-591

⁹ McCrory, E. J., De Brito, S. A., Kelly, P. A., Bird, G., Sebastian, C. L., Mechelli, A., ... Viding, E. (2013). Amygdala activation in maltreated children during pre-attentive emotional processing. *British Journal of Psychiatry*, 202(4), 269-276

¹⁰ English et al (2002), "Childhood victimization and delinquency, adult criminality, and violent criminal behaviour: a replication and extension", National Institute of Justice, Rockville, MD; Boswell (1995), "Violent Victims", Prince's Trust report

There is a certain irony in that several UK research centres have been at the forefront of research into adolescent brain development, but that England, Wales, Northern Ireland and Scotland are the last to use these discoveries to inform its management of adolescents.

This is resulting in the UK being significantly out-of-keeping both with the neuroscientific understanding of the brain and the international legal norms for children including that of Scotland.

Recommendation

- We strongly recommend that the Government undertakes an urgent review into the age of capacity but highlight that this should form part of a coordinated approach across capacity legislation (health, family, criminal and civil) towards a unified age of capacity.
- As part of this review, there needs to be consideration of the implications for service provision, rehabilitation and risk management. and include consideration of provision

How have the characteristics and needs of the children in the youth justice system changed over the last 10 years? How has the system changed to meet these needs? What more needs to be done?

As was mentioned in our original submission, an NHS England census of the mental health needs of all young people (under age 18) in the Youth Secure Estate in England took place on 14 September 2016¹¹.

It found that the mental health needs of those in the youth custodial estate differ significantly from those found in the adult estate.

Psychosis (schizophrenia-like illness) is relatively uncommon amongst detained young people, suggesting that they are now generally successfully identified and diverted from custody to the network of low and medium secure adolescent inpatient hospital beds.

However, the census found a higher prevalence of neurodevelopmental disorders (such as ADHD or Autism) in young people in custody compared with the prevalence of these disorders in the community.

- Attention Deficit Hyperactivity Disorder (ADHD) had a prevalence of 17% compared with a general prevalence of 5% in the general adolescent population
- Autism had a prevalence of 5% compared with 1-2% in the general adolescent population.

It was also found that there was a prevalence of 6% of emerging personality disorders (mostly of the emotionally unstable type) which exceeded the prevalence in the general adolescent population (0.9-3%).

A recently published international meta-analysis of mental health disorders in young people in custody¹² found similarly high rates of ADHD and low rates of psychosis, but noted higher rates of depression and PTSD, especially in girls. However, symptoms of depression and PTSD overlap somewhat with the symptoms of emotionally unstable personality disorder, so this could suggest some conflation of these disorders.

¹¹ <https://www.england.nhs.uk/publication/secure-settings-for-young-people-a-national-scoping-exercise/>

¹² Beaudry G, Yu R, Långström N, Fazel FRCPsych S. An Updated Systematic Review and Meta-regression Analysis: Mental Disorders Among Adolescents in Juvenile Detention and Correctional Facilities [published online ahead of print, 2020 Feb 5]. J Am Acad Child Adolesc Psychiatry. 2020;S0890-8567(20)30061-7. doi:10.1016/j.jaac.2020.01.015

Although effective pharmacological and psychological interventions exist for managing ADHD and have been demonstrated to reduce the risk of re-offending substantially¹³, many individuals are not identified and offered treatment¹⁴¹⁵.

Failing to recognise and manage ADHD is likely to impair a young person's ability to engage effectively in many processes across the criminal justice system including Police interviews, attending court and rehabilitation. There is a risk that instead of recognising their difficulties as being the result of a disorder, an unfair pejorative interpretation will be used.

Similarly, although those with autistic spectrum conditions often come to staff attention because of their presentation, the reason for their behaviour is often not recognised and they are at risk of being viewed as being intentionally problematic and sanctioned rather than helped. Equally, rehabilitation efforts may be less effective if emphasis is put on empathy related work, when this is an area that should be recognised as likely to be disproportionately difficult for someone on the autistic spectrum. Alternative rehabilitation approaches (eg stress management) are likely to be more effective approaches for this group of young people.

The failure to identify young people with autism is disappointing, as it has been demonstrated that relatively minor adjustments to a custodial environment can make a significant difference to their wellbeing and functioning of individuals with autism¹⁶. Two Young Offender Institutions (HMYOI Feltham & HMYOI Parc) have received Autism Accreditation status from the National Autistic Society as a result of undertaking a programme of adjustments to make their environments more sensitive to the needs of individuals with autism. However, the majority of youth custodial establishments have no embedded special provision to help them meet the needs of individuals with autism.

A third area of impairment that occurs commonly amongst young people within the youth custodial estate relates to communication difficulties. These too are commonly overlooked or misidentified as behavioural problems.

Research has consistently found that at least 60% of young people in the youth justice system have speech, language and communication needs (compared with a rate of around 10% in the general population)¹⁷. Yet often, these impairments are not recognised and specialist provision is variable across the youth custodial estate¹⁸, with profound implications. If the needs of these young people are not supported there can be profound implications in terms of ability to understand and engage across all parts of the criminal justice service, engage in work and educational opportunities and maintain supportive networks.

ADHD, Autism and communications difficulties are all developmental disorders that are usually evident from early childhood. However, in this population of young people, they have often been overlooked (with presentations erroneously labelled as being due to poor behaviour) or have required a degree of

¹³ Lichtenstein P, Halldner L, Zetterqvist J, Sjolander A, Serlachius E, Fazel S, Langstrom N, Larsson H. Medication for attention deficit-hyperactivity disorder and criminality. *N Engl J Med*. 2012;367(21):2006–14.

¹⁴ Young S, Gudjonsson GH, Goodwin EJ, Jotangia A, Farooq R, Haddrick D, Adamou M. Beyond the gates: identifying and managing offenders with attention deficit hyperactivity disorder in community probation services. *AIMS Public Health*. 2014;1(1):33–42.

¹⁵ Ginsberg Y, Quintero J, Anand E, Casillas M, Upadhyaya HP. Underdiagnosis of attention-deficit/hyperactivity disorder in adult patients: a review of the literature. *Prim Care Companion CNS Disord*. 2014;16(3):PCC.13r01600.

¹⁶ Lewis A, Foster M, Hughes C & Turner K (2016) Improving the management of prisoners with autistic spectrum disorders *Prison Service Journal* 226, 22-26

¹⁷ Bryan, K., Garvani, G., Gregory, J., & Kilner, K. (2015). Language difficulties and criminal justice: the need for earlier identification. *International Journal of Language & Communication Disorders*, 50(6), 763-775.

¹⁸ Turner, Kim and Clegg, Judy and Spencer, Sarah (2019) Speech-language pathology service provision in English Youth Offending Institutions. *Journal of Clinical Practice in Speech-Language Pathology*, 12 (1). pp. 11-17. ISSN 2200-0259

engagement with specialist services that the care networks around them have been unable to manage or sustain.

Early intervention with neurodevelopmental disorders offers the opportunity to divert young people away from a criminal justice trajectory, however, it is also not uncommon for waiting lists for young people to be assessed by Child & Adolescent Mental Health Services (CAMHS) for assessments for neurodevelopmental disorders like ADHD and Autism to be up to 2 years long. This delay is due to a mismatch between resource and demand. It is likely to have been worsened as a result of COVID, as many neurodevelopmental clinics have been 'paused' and staff redeployed to work in other areas.

It is also important that neurodevelopmental difficulties are identified at an early point if young people enter the youth justice system, as their presence may diminish their ability to engage adequately in any criminal proceedings and thus runs the risk of unfairness.

Registered Intermediaries¹⁹ have been facilitating communication with vulnerable witnesses in the Criminal Justice System (CJS) in England and Wales since 2004. However, vulnerable defendants do not have the same automatic access to Registered Intermediary and instead, access is decided on a case by case basis. Vulnerability is vulnerability and we strongly recommend that defendants who have communication impairments receive the same support as vulnerable witnesses.

The evidence regarding differences in the prevalence of neurodevelopmental and communication disorders across cultural and ethnic backgrounds is somewhat ambiguous²⁰. However, a study by the National Autistic Society found that autism is often overlooked in BAME²¹ populations. If correct, this unfairly disadvantages young BAME people.

Contact with any part of the youth custodial services should provide an opportunity for mental health and developmental disorders to be recognised and appropriate interventions provided. Interventions are likely to improve outcomes for affected young people across many domains of wellbeing and enable them to reach their potential.

There has been a significant contraction in the number of young people within youth custodial services over the past decade and the young people currently within the youth custodial estate have more and more complex needs than those present a decade ago. There has been a recognition that services need to adjust their offering in response to this change in population. This is the thinking behind the 2018 partnership agreement²² which aims to enable a more fully integrated approach to the commissioning and delivery of excellent health services, and through this, to improve the health and wellbeing of those within the children and young people secure estate in England.

This commitment to a more integrated approach, is reflected in the implementation of a Framework for Integrated Care (SECURE STAIRS). The implementation of this Framework affects and includes staff across the whole secure setting in their intervention with children and young people. It will be achieved through the provision of an environment where the day to day care of children and young people is underpinned by a focus on their relationship with staff and an understanding of trauma/attachment principles. All interventions will be driven by a 'formulation' approach, which takes into account the child or young person's life experience, rather than concentrating on labels, categories or diagnoses, settings, and the quality of health services delivered to children and young people in this environment. This new approach is being rolled out in a phased way across the youth estate. Within the plans are the development of Enhanced Needs Units which seek to provide more intensive care for those whose needs require more intensive support. However, there are only 2 of these units within the YCS and both are in young offenders institutions. Early reports suggest that more may be required and these should have a wider geographic distribution.

¹⁹ <https://www.theadvocatesgateway.org/images/procedures/registered-intermediary-procedural-guidance-manual.pdf>

²⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/219628/DFE-RR247-BCRP15.pdf

²¹ <https://www.autism.org.uk/~media/nas/about-autism/nas-diverse-perspectives-report.ashx?la=en-gb>

²² <https://www.england.nhs.uk/wp-content/uploads/2018/09/the-cyp-secure-estate-national-partnership-agreement.pdf>

Recommendation

- We recommend that there needs to be effective training of frontline staff about the presenting features of common neurodevelopmental and communication disorders so that they are better able to identify and support young people who might be affected.
- There also needs to be better and more uniform provision of specialist clinical pathways to which frontline staff can refer young people for assessment and interventions. Specialist services should also be able to provide consultation and advice to front line staff so that they are better equipped to address young people's needs.
- We recommend that defendants who have communication impairments receive the same support as vulnerable witnesses and have automatic access to support from Registered Intermediaries.

Community services and pathways into and out of custody

Youth Liaison & Diversion Services

Youth Liaison and Diversion services have become well-established, but their effectiveness is hard to evaluate due to the different ways in which these services have been structured. However, the importance of building relationships across agencies seems to be essential for them to function well.

Developing a shared understanding about a young person requires staff in different agencies to have enough of a shared understanding and vocabulary to be able to communicate effectively together. Achieving this seems to be easier to do with YOT and court staff and harder to do with Police, in part due to the busy nature of custody suites and shift patterns.

Police officers also get relatively little training about trauma, Adverse Childhood Experiences and developmental disorders, despite some good training programmes having been developed eg the Access to Autism Toolkit (developed at Nottingham University with autistic individuals to help inform custody officers about how to recognise and support people who might be on the autism spectrum and in Police custody). They are a critical part of the youth justice service and need to have the training to reflect the importance of their role.

Diversion from custody

Community alternatives to custody Out of Court Disposals and Caution +3s are available and used, but this seems to occur sporadically and seems to depend on who is involved and when, rather than following a consistent and transparent pathway.

It is confusing when a young person gets an OoCD having been charged with possession of an offensive weapon, whilst another is taken into custody on a first charge of possession of cannabis.

It seems important to monitor what the numbers are in relation to BAME in this area, as diversion processes may need to be reviewed to avoid any inequality of treatment.

Post-release care

A recurrent theme is the difficulty for community staff in organising high-quality post release care when they are given little notice of the timing of release. Placement planning needs to begin at the start of detention – as recommended in the Taylor report.

Lack of clear post-release planning causes a great deal of anxiety for the young person and makes it harder for them to prepare and adjust to leaving. They worry about being able to keep in contact with their family and friends, reconnect with education and about keeping track of their property.

Many young people have Education and Healthcare Plans (EHC Plans which replaced 'statements of Special Educational Needs) when they come into custody, but these are 'paused' at the point of

reception into custody. There is a requirement that they should be reviewed prior to release, but this often does not happen. This jeopardises a young person's continuity of education and reduces their opportunities to do well after release.

PROJECT EPIC²³ is a pro bono legal service that has been set up to support young people in getting their EHC Plans reviewed, but it is disappointing that its existence is necessary as this should be a routine part of discharge planning.

Indeed, it could be argued that EHC Plans should not be 'paused' when a young person enters custody as custody may provide an excellent opportunity to re-engage a young person with education and the increased opportunities this can provide. As indicated earlier in the discussion on neurodevelopment, the adolescent brain is orientated towards learning and it would therefore seem that education should be a much higher focus within youth custodial environments. The Secure School model²⁴ proposed in the Taylor Review but currently on hold, represents a promising development and one which fits much better with what we know about the developing adolescent brain.

Recommendations

- We recommend that there is increased training about child development and mental health difficulties provided to staff from all agencies involved in youth liaison and diversion services to ensure more effective communication and a better shared understanding of the issues.
- We also recommend a review of the use of non-custodial sentences including an evaluation as to any differential used with young people from BAME groups. We recommend an increased focus on the role of education as the focus for rehabilitation of young people who have come into contact with the youth justice services.

²³ <https://yjl.c.uk/free-sen-service-for-children-in-prison/>

²⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/712904/secure-schools-vision.pdf