

Personal Interest in Criminal Law

As the founder of mit.sip CIC; I have worked on initiatives to support and protect neurodivergent individuals, reflecting my commitment to addressing vulnerabilities in the criminal justice system. This work complements my legal ambitions and informs my approach to practice.

My consultancy firm has sought advice from members of Chambers in other areas of law, fostering connections that reflect shared values. Now in my final year of the Bar Vocational Studies program at City University of London, I am applying for pupillage with a focus on justice and safeguarding in criminal law, among other areas of interest. I have also had the opportunity to work indirectly with Chambers members. This essay works as an introduction to my dissertation.

Contents

Personal Interest in Criminal Law	1
Introduction	2
Part I: Vulnerable Defendants and Systemic Barriers	2
Part II: Progressive Initiatives and Legal Frameworks	3
Part III: Legal and Ethical Imperatives	3
Part IV: Proposal for Neurodivergent Screening in PSRs.....	4
Rationale:.....	4
Framework:	4
Part V: Addressing Challenges	5
Conclusion	5
Bibliography	6
Cases.....	6
Legislation.....	6
Guidelines and Other Sources.....	6

Enhancing Safeguards for Vulnerable Defendants: The Case for Compulsory

Neurodivergent Screening in Pre-Sentence Reports

Introduction

The principle of fairness underpins the criminal justice system; however, significant gaps remain in protecting vulnerable defendants, particularly those with neurodivergent conditions. These individuals frequently encounter systemic disadvantages, such as communication obstacles during trials and misinterpretation of their behaviours as deceptive or defiant. Although intermediaries and special accommodations are available, their implementation could be more consistent and proactive. This paper supports the compulsory implementation of neurodiversity training and neurodivergent screening in preparing Pre-Sentence Reports (PSRs). This reform would guarantee early identification of vulnerabilities, facilitating informed sentencing decisions and customised safeguards. This paper advocates for practitioners to endorse this essential reform by analysing legal frameworks, case law, and practical considerations.

Part I: Vulnerable Defendants and Systemic Barriers

Studies demonstrate that a considerable percentage of defendants within the criminal justice system display neurodivergent characteristics. Conditions such as Autism Spectrum Disorder (ASD) and Attention Deficit Hyperactivity Disorder (ADHD) can impair communication, decision-making, and social functioning. Despite these challenges, the system is deficient in proactive measures for identifying neurodivergent individuals, frequently resulting in their vulnerabilities being overlooked.

In **R v Sossongo [2021] EWCA Crim 1777**, the Court of Appeal annulled a murder conviction due to new evidence indicating that the defendant, then 14 years old, had undiagnosed Autism Spectrum Disorder and Attention Deficit Hyperactivity Disorder. The court recognised that the individual's conditions hindered his capacity to understand intricate social contexts, thereby heightening his susceptibility to exploitation. The lack of a formal diagnosis during the trial prevented him from accessing crucial safeguards, such as the use of an intermediary or expert testimony concerning his psychological state.

Similarly, in **R v PS [2019] EWCA Crim 2286**, the appellant's diagnoses of Autism Spectrum Disorder (ASD) and Attention Deficit Hyperactivity Disorder (ADHD) were revealed after the

conviction. The Court concluded that these conditions significantly lessened his culpability, as they impaired his ability to make sound decisions and heightened his susceptibility to peer pressure. Additionally, the absence of an intermediary and relevant medical evidence during the trial were acknowledged as significant procedural shortcomings. As a result, the Court reduced PS’s minimum sentence from 14 to 10 years, taking into account his circumstances as a mitigating factor.

These cases highlight systemic failures in identifying and accommodating neurodivergent defendants. Without compulsory screening, the justice system jeopardises the continuation of these failures, eroding the principle of equitable treatment.

Part II: Progressive Initiatives and Legal Frameworks

In May 2023, the City of London Police became the first police force in the country to screen suspects for Attention Deficit Hyperactivity Disorder (ADHD). This pioneering initiative reflects a growing recognition of the intersection between neurodivergent conditions and the justice system. By identifying individuals with ADHD at an early stage, this program aims to address underlying behavioural and mental health issues that may contribute to criminal behaviour. Such initiatives align with broader efforts to improve safeguards and support for neurodivergent individuals within the criminal justice system, promoting fairness and rehabilitation. This example underscores the urgency and feasibility of integrating systematic screening practices into judicial procedures to enhance the treatment and understanding of neurodivergent defendants.

Part III: Legal and Ethical Imperatives

The principle of equality before the law, established in Article 6 of the European Convention on Human Rights (ECHR), necessitates that all defendants are provided the opportunity to engage meaningfully in their trials. The Equal Treatment Bench Book underscores the judiciary’s obligation to recognise and address the requirements of diverse participants, including individuals with concealed disabilities.

As we advocate for equality before the law, it is essential to acknowledge the specific needs of neurodivergent individuals. The impact of conditions such as Autism Spectrum Disorder (ASD) on a defendant's social interactions and decision-making processes can significantly reduce their culpability, affecting their ability to navigate the legal system. Legal precedents, such as **R v Vowles [2015] EWCA Crim 45**, highlight the necessity for courts to consider how a

defendant's mental health condition impacts their culpability. Moreover, the Sentencing Council Guidelines emphasise that mental health conditions and neurodevelopmental disorders are relevant factors that can diminish culpability, advocating for rehabilitation-focused sentencing approaches. This perspective aligns with the ethical imperative to provide tailored treatments to defendants based on their specific circumstances and capacities, ensuring that the legal outcomes are fair and effective in promoting rehabilitation and reducing recidivism.

In this context, the Equality Act's anticipatory duty in providing services and public functions sets a compelling precedent. Service providers must proactively remove barriers for disabled persons generally, reflecting society's commitment to equity. This duty should inspire similar proactive measures in the criminal justice system, particularly in the treatment of neurodivergent defendants, who face unique disadvantages.

Part IV: Proposal for Neurodivergent Screening in PSRs

Neurodivergent screening during PSRs would proactively identify vulnerabilities, ensuring that sentencing decisions are informed, and safeguarding measures are implemented effectively.

Rationale:

1. **Fair Sentencing:** Early identification of neurodivergence would enable courts to consider its impact on culpability, as demonstrated in **R v Sossongo** and **R v PS**.
2. **Procedural Safeguards:** Screening results could inform the appointment of intermediaries, modifications to trial procedures, and tailored rehabilitation plans.
3. **Prevention of Miscarriages of Justice:** Misinterpreted behaviours, such as lack of eye contact or delayed responses, would be contextualised, reducing the risk of unfair outcomes.

Framework:

- **Standardised Assessments:** Tools such as the Autism Spectrum Quotient (AQ) and Connors Adult ADHD Rating Scale should be incorporated into PSR preparation.
- **Qualified Professionals:** Train probation officers or clinical psychologists should conduct assessments.

- **Judicial Oversight:** Screening outcomes must be presented to the court as part of the PSR, ensuring transparency and accountability.

This proposal mirrors the Equality Act’s anticipatory duty, underscoring the necessity for proactive measures to safeguard neurodivergent individuals. By requiring systemic adjustments to address potential barriers, the criminal justice system can align with broader societal obligations to support and include vulnerable populations.

Part V: Addressing Challenges

Implementing compulsory neurodivergent screening poses logistical and ethical challenges. However, these can be mitigated through strategic planning and resource allocation.

1. Resource Constraints:

- A need for trained professionals may initially limit implementation. Investment in training programmes and phased rollouts could address this issue.
- Collaboration with existing court mental health teams could optimise resource utilisation.

2. Risk of Stigmatisation:

- Critics may argue that mandatory screening could reinforce stereotypes about neurodivergent individuals. However, framing the initiative as a safeguarding measure would mitigate this risk.

3. Potential for Misuse:

- Safeguards must be established to ensure that screening results are used to inform fair and just outcomes rather than to excuse criminal behaviour.

Conclusion

The cases of **R v Sossongo** and **R v PS** underscore the urgent need for systemic reform to address the challenges faced by neurodivergent defendants. By introducing compulsory neurodivergent screening during PSRs, the criminal justice system can ensure that vulnerabilities are identified and addressed proactively. This reform would promote fairness, reduce recidivism, and align the system with its ethical and legal obligations. Practitioners must

advocate for this change, recognising that it is not merely an aspirational goal but a practical necessity for an equitable justice system.

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