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Assessment of ADHD for the criminal justice system

There is an important relationship between attention deficit hyperactivity disorder (ADHD) and antisocial behaviour, and experts are increasingly being asked to advise the courts about the psychological vulnerabilities and management of defendants with ADHD.¹ The purpose of this article is to provide guidance on the assessment of ADHD for judicial purposes. The focus will be on the criminal justice system, as this is the most common source of request for an expert opinion.

Criminal behaviour is often linked to symptoms and/or personality factors associated with ADHD, including recklessness, sensation-seeking behaviour, poor control, inattention, labile temperament and a confrontational interpersonal style. People with ADHD will thus often come into contact with the police and the criminal court system and, if convicted, will have to be managed by the prison and probation services. Importantly, the symptoms that make them vulnerable to committing crime can also make them disadvantaged when arrested and appearing before the courts and when in prison.^{1,2}

There are two potential issues. First, the vulnerabilities of defendants with ADHD may not be recognised, which means that they will not be provided with the protection they need. Second, the various stages of the criminal justice system constitute a demanding and stressful process, which means that the vulnerabilities of defendants with ADHD are likely to be exacerbated.

The key legal issues

The typical questions that experts will be asked to address relate to:

- The reliability of the comments and replies provided by defendants in police interviews and the need for an 'appropriate adult' to be present during those interviews
- Whether a defendant is fit to plead and stand trial and, if so, what special arrangements may need to be provided to support them
- Whether adverse inferences should be drawn from their failure to go into the witness box
- Whether ADHD may have influenced their responsibility for the offence (for example, criminal responsibility)
- Mitigation of sentence and recommendations for disposal.



People with attention deficit hyperactivity disorder will often come into contact with the police and the criminal court system

People with ADHD may be at risk during a police interview, as they may provide unreliable accounts of events, including a false incriminating statement.^{3,4} The psychological vulnerabilities of suspects, including those with ADHD, during police interviews are best construed as potential risk factors, rather than definitive markers of unreliability.³ If detainees are unable to comprehend the police caution and/or their legal rights, this has important implications, including possible unfitness for interview.⁵

The vulnerabilities of people with ADHD may lead them to make false confessions or give vague or factually incorrect information, which may be perceived as them being evasive or deliberately misleading; this may happen for several reasons, including using maladaptive coping strategies; problems with sustaining attention; reacting impulsively and thoughtlessly to questions; and lack of confidence in their own memory, leading them to give a disproportionate number of 'don't know' answers.⁶

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Also, whether being interviewed by police or being cross-examined in court, people with ADHD often have problems staying focused, and this may require skilful management by the interviewer and the 'appropriate adult'.

Police interviews of vulnerable suspects, including all juveniles, must be conducted in the presence of an appropriate adult, whose primary role is to give practical advice, to further communication, and to ensure that the interview is conducted properly and fairly.⁵ In the case of juveniles, this person is likely to be a parent. In the case of a juvenile with ADHD, given the strong genetic component of the disorder,⁷ this parent may have (undiagnosed) residual ADHD symptoms, in which case they will probably also struggle with the interview process. In our view, juveniles with ADHD do require the services of an appropriate adult, but, ideally, that person should be familiar with ADHD and its implications.

As far as fitness to plead and stand trial is concerned, certain criteria must be met; for example, the defendant must be competent to give evidence, and be able to understand the nature of the charges, instruct and consult with their lawyers, listen to and understand the evidence presented against them, and challenge a juror. A failure to provide an answer during police questioning, or choosing not to go into the witness box, can, in England, result in adverse inferences being drawn about a defendant's defence.^{1,5,8}

There are a number of ways in which a diagnosis of ADHD may be used to negate criminal responsibility and/or mitigate the punishment for a crime.¹ In certain circumstances, inattention, hyperactivity and impulsivity may impair the capacity of people with ADHD to form intent and consider the consequences of their actions. In addition, recent evidence shows that ADHD symptoms, particularly inattention, are associated with a heightened level of compliance, which can result in people being particularly susceptible to being coerced, manipulated or induced into criminal activity, as well as being vulnerable to making false confessions.⁹

Legal considerations

ADHD consists mainly of high levels of inattentiveness, restlessness, impulsiveness, emotional dysregulation, disorganisation, and memory problems. ADHD symptoms are continuously distributed throughout the population and they are commonly associated with comorbid problems such as anxiety and depression.¹⁰ Clinical thresholds for ADHD are determined on the basis of usual clinical practice, which considers the impact on a person's functional ability and

identifies 'disorder' when the symptoms are sufficiently frequent or severe to cause major personal distress or distress to others. Symptoms remit with age, but not uniformly and, while some will continue to experience all symptoms and impairment in several functional domains, others will be in partial remission. The main aim of an ADHD assessment for judicial purposes is to establish the presence of core symptoms and the level of associated functional impairment (for more detailed guidance, see Young¹).

It is often helpful, in the first instance, to screen for symptoms using a checklist (for example, the *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition, Text Revision checklist of symptoms¹¹ or the Barkley symptom scales¹²). This needs to be completed for both childhood symptoms and current symptoms.

For those who screen positive, a semistructured diagnostic interview should be completed when possible (using, for example, the Diagnostic Interview for ADHD in Adults¹³ or the Conners' Adult ADHD Diagnostic Interview for DSM-IV¹⁴). These measures require that each positive self-rating is endorsed by the assessor on the basis of follow-up questions or other available information (for example, independent documentation or a different source). Difficulties stemming from childhood are central to a diagnosis and it is, therefore, essential, whenever possible, to corroborate self-reported childhood symptoms with other sources. Ideally, these should include documentation recorded at the time (for example, school records, medical records, probation records, professional assessments). However, it is not always possible to obtain these records, and time and/or financial constraints may limit what corroborative information the expert can obtain.

The ideal assessment of a defendant with ADHD includes the elements listed below.

- A review of school, occupational and medical records, including presentation to child and adolescent services.
- An interview with the defendant, which includes obtaining a comprehensive developmental history and an evaluation of current mental state (with possible symptoms of anxiety and depression) and differential diagnosis.
- Interviews with informants to obtain corroborative information from different sources (for example, parent, partner, friend, teacher, probation officer, social worker) regarding the defendant's past and current functioning. The expert should look for consistent 'real life' expressions of core symptoms and mood instability, especially since symptoms may be less overt in novel situations.

- Observation of behaviour during the interview and testing (for example, level of co-operation, attentional problems, impulsive and hasty performance, inappropriate behaviour).
- Completion of child and adult ADHD symptom rating scales. These scales are usually standardised, which means the defendants' results can be compared with a normative sample to determine the extent to which they differ from 'normal' results, but they should not be used as a sole basis for diagnosing ADHD.
- A neuropsychological assessment of intellectual functions, attention and vigilance, impulsiveness, response inhibition, and level of effort during the tests.

It is important to note that medication status will influence the interpretation of test results. If effectively treated with medication, deficits may not be found on neuropsychological testing or endorsed on rating scales. If a defendant claims to have been off medication at the time the offence was committed, then neuropsychological assessments need to be conducted off medication (that is, 48 hours after abstinence from medication) and rating scales completed for their functioning when off medication.

The expert must consider the severity of the ADHD symptoms in the context of the issue under instruction (for example, reliability of admissions, fitness to stand trial, diminished responsibility or mitigation relating to sentence). This is not always an easy task and may involve having to disentangle inconsistent information from a range of sources. Placing test findings within the relevant legal issues and the context of the totality of the case is often the most complicated aspect of evaluation.

Appropriate recommendations should be made; for example, regular breaks during the trial, no lengthy and complex questions, and making sure that important information is presented. These precautions may prevent unnecessary and costly interruptions and prevent defendants from being disadvantaged.

Conclusions

The reported rates of young people and adults with ADHD in the criminal justice system far exceed those found in the general population.^{15,16} These young people are vulnerable and often disadvantaged at several stages in their interaction with the criminal justice system; many become 'revolving door' offenders.^{1,2} This is being increasingly recognised, in parallel with scientific advances in the understanding of the psychological vulnerabilities of these young people when interviewed by police, appearing in

court, and serving a prison sentence. However, while the association between ADHD and offending is now better recognised and acknowledged by the courts, suspects with ADHD, learning disabilities and mental health problems are often not identified as vulnerable and therefore not provided with the protection they need.³

There is an urgent need for ADHD screening of suspects detained at police stations and those remanded in custody and sentenced to prison. The greatest challenge is probably for management in institutional settings to accept that specific treatments (both pharmacological and psychological) are necessary to help individuals control their ADHD symptoms and improve their pro-social competence – unless this happens, nothing will change in the long term ■

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Key points

- Criminal behaviour is often linked to symptoms associated with attention deficit hyperactivity disorder (ADHD).
- People with ADHD can be disadvantaged when arrested and appearing before the courts and when in prison.
- The forensic assessment of a defendant with ADHD is bound by specific legal considerations.