



autism
west midlands

Autism and the Criminal Justice System

Advice and guidance for professionals

About the booklet

This booklet provides an overview of the basics of Autism Spectrum Disorders (ASD) followed by specific advice for different professionals and the different situations in which they will encounter people with ASD. For greater understanding however any professional within the CJS would benefit from reading all the sections, particularly if they have not received autism awareness training.



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Introduction to ASD

Autism Spectrum Disorder (ASD) is a term used to describe people with a range of developmental disorders such as autism, atypical autism, high functioning autism, Asperger syndrome and pervasive developmental disorders not otherwise specified. Put simply, the brain in people with an ASD is 'wired differently' than in the majority of the population. As a result people with ASD have difficulties in the following areas:

Social communication and social interaction

People with ASD may have difficulty understanding instructions or retelling an incident. Some people with ASD may take things literally. Some may have difficulty understanding socially acceptable behaviour, may not be able to take into account the needs of others, may not be able to understand body language and may have issues with understanding other's emotions and what they are thinking. ASD has been associated with a difficulty with "Theory of Mind" (the ability to appreciate that others may have a different mental state to oneself) which can manifest as a lack of empathy. Furthermore, some people with ASD may have difficulty creating, telling or sticking to lies.

Inflexible thinking


Some people with ASD may have difficulty coping with change and may rely heavily on their routines. Some may have difficulty following rules (except those that they have adopted, which they will follow unswervingly). Some will have strong interests in certain areas, which can sometimes lead them into trouble, these are referred to as 'Special Interests' and can be anything about which they have what might be termed an obsession.

Sensory issues

Some people with ASD may be hypo- or hyper-sensitive to any of their senses.

ASD affects more men than women. Some people with ASD take longer to process information. Not leaving enough time for them to process information can lead to a panic reaction which could include verbal or physical abuse. Furthermore, people with ASD may experience high levels of anxiety as they may not be able to make sense of what is going on around them.

People with Asperger syndrome or high functioning autism do not have accompanying



learning difficulties. Their speech may seem fluent and they may have learned to largely conceal their problems. However, social interaction may still be highly challenging which means they may be under constant stress.

ASD is a hidden disability which means it may not be immediately obvious to you that the person you are dealing with has particular needs.


No matter how intelligent the person with ASD may appear, they must be treated as a 'Vulnerable Person' as defined by PACE (1984), The Equality Act 2010 and a variety of other pieces of legislation as ASD is a recognised disability. The following information will explain why.

Individuals with ASD who come into contact with the Criminal Justice System are likely to be from the more able end of the spectrum (with high functioning autism or Asperger syndrome) as they generally have a greater degree of independence than those whose autism is accompanied by learning difficulties. Those 'less able' may be victims but due to the constant presence of carers they are less likely to find themselves in the role of a suspect / offender.

Although autism was first identified in 1943, it has remained a relatively unknown disability until recently. For this reason many professionals, including those in the general health or Criminal Justice System, may be unsure how to work with someone they believe may be on the autism spectrum.

ASD, including Asperger syndrome and autism, is a lifelong developmental disorder that affects how a person communicates with and relates to other people. It also affects how they make sense of the world around them. It is a spectrum condition which means that, while all people with ASD share certain difficulties, their condition will affect them in different ways. Some people with ASD are able to live relatively independent lives but others may need a lifetime of specialist support. People with ASD may also experience over or under-sensitivity to sounds, touch, tastes, smells, light or colours.

Asperger syndrome is a form of ASD. People with Asperger syndrome are often of average or above average intelligence. They have fewer problems with speech but may still have difficulties with understanding and processing language and will still have the other difficulties associated with the condition.



It is estimated that there are 500,000 (around 1 in 100) people with ASD in the UK but many, especially adults with Asperger syndrome, may not have had the condition diagnosed or may have previously misdiagnosed with another condition, such as schizophrenia. Their naivety also makes them extremely vulnerable to being exploited or abused by others and as such often makes them victims of Disability Hate Crime or sexual or other exploitation.

The characteristics of autism

People with ASD share a difficulty in making sense of the world around them. A person with ASD may also show some of the following characteristics:

Social interaction

He or she may:

- Appear to be indifferent to others or socially isolated.
- Be unable to read social cues.
- Behave in what may seem an inappropriate or odd manner.
- Appear to lack empathy.
- Avoid eye contact when under pressure.

Social communication

He or she may:

- Have difficulty in understanding tone of voice, intonation, facial expression.
- Make a literal interpretation of figurative or metaphorical speech: the phrases “Has the cat got your tongue?” or “He’d make mincemeat of you” would be alarming to a person with autism.
- Find it difficult to hold a two-way conversation.
- Become agitated in responses or come across as argumentative, stubborn or come across as over-compliant, agreeing to things that are not true.
- Use formal, stilted or pedantic language.
- Have poor concentration and thus poor listening skills.
- Be honest to the extent of bluntness or rudeness.

Social imagination

He or she may:

- Have difficulty in foreseeing the consequences of their actions.
- Become extremely anxious because of unexpected events or changes in routine.
- Like set rules, and overreact to other people's infringement of them.
- Often have particular special interests.
- Find it difficult to imagine or empathise with another person's point of view.

Lack of understanding

People with autism do not always understand the implications of their actions, or the motivations of others. Due to their difficulties with social imagination, problems with flexibility of thought and a tendency towards restricted and repetitive behaviours, an individual may not learn from past experience. They will often find it difficult to understand how others perceive their actions and to intuitively transfer their experiences from one situation to another. As a result, some may become victims or repeat behaviour if not offered appropriate support and intervention. The areas of the brain involved in 'seeing the bigger picture' (context) or 'getting the gist' of what is happening may not function as well in the person with ASD so recognising danger or potential consequences of theirs or others actions is difficult if not impossible for most of them.

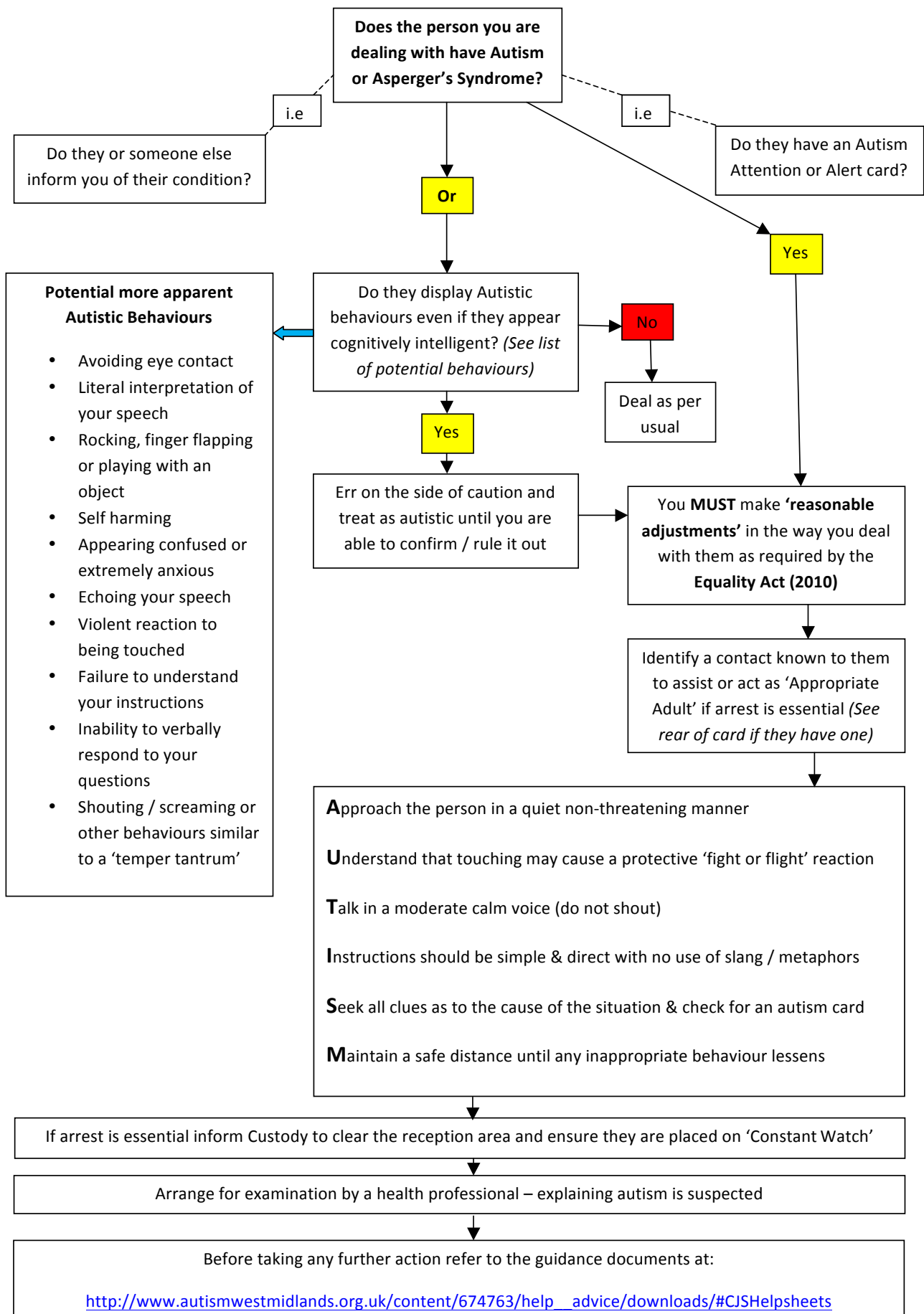
Autism recognition cards

The person with autism may be in possession of a card which indicates and explains their condition. Autism West Midlands, National Autistic Society (NAS) and other autism organisations issue cards like this, which are the same size as a business card and are designed to be shown as needed if the holder is unable to explain their own condition. See example:

The rear of the card will have contact details for a person who can act as an 'Appropriate Adult'. For more information see: http://www.autismwestmidlands.org.uk/content/675163/help_advice/criminal_justice/



Police encounter flowchart



Dealing with victims & witnesses who have ASD

It may not be immediately obvious to you as a criminal justice professional that the person you have encountered has particular needs. His or her unusual behaviour may invite the attention of others, but in general autism is a hidden disability. Because of the issues explained earlier, many people with ASD live in a state of constant anxiety and if involved in an incident or crime it will only increase this.

Depending on the nature of their ASD, the individual may display some of the following characteristics:

Behaviour

He or she may:

- Not recognise police or other emergency services' uniforms or vehicles and may not understand what is expected of them. Conversely, their association of police with uniforms may be so strong that they will not understand the concept of 'police' in a plain clothes situation.
- Cover ears or eyes, stare, or look down or away constantly or avoid eye contact when under pressure.
- Appear to be indifferent to others or socially isolated.
- Behave in what may seem an inappropriate or odd manner.
- Appear to lack empathy for others.
- React to stressful situations with extreme anxiety, which could include pacing, flapping or twirling of hands, self-harming, screaming or groaning, shouting and loss of control. All of these are a response to fear, confusion and frustration and are an effort to stop the stimuli and retreat into a calm state.

Speech

He or she may:

- Speak in a monotone voice and/or with unusual or stilted pronunciation.
- If he/she appears to have normal language this may be masking his/her actual level of understanding.
- Repeatedly ask the same question or copy/repeat the last phrase they heard (this is



known as 'echolalia').

- Not respond to questions or instructions.
- Become noisy or agitated if required to deviate from regular routine.
- Have difficulty in understanding tone of voice, intonation, facial expression.
- Make a literal interpretation of figurative or metaphorical speech. For example the phrase "Has the cat got your tongue?" or "He'd make mincemeat of you" would be alarming to a person with ASD.
- Find it difficult to hold a two-way conversation.
- Become agitated in responses or come across as argumentative, stubborn or come across as over-compliant, agreeing to things that are not true.
- Use formal, stilted or pedantic language.
- Have poor concentration and thus poor listening skills.
- Be honest to the extent of bluntness or rudeness.
- Talk obsessively about a topic that is of particular interest to them, but which may have no apparent relevance to the situation.

Communicating with a person with ASD

A person with ASD will often find unexpected or unusual situations very difficult.


- Aim to keep the situation calm.
- Do not attempt to stop the person from flapping, rocking or making other repetitive movements as this can sometimes be a self-calming strategy and may subside once things have been explained to them clearly.
- People with ASD may carry an object for security, such as a piece of string or paper. Removing it may raise anxiety and cause distress.
- If sirens or flashing lights are being used, turn them off to avoid alarm and distraction.
- If possible, and if the situation is not dangerous or life-threatening, try to avoid touching a person with ASD, as they may respond with extreme agitation due to their heightened and acute sensitivity.

- People with ASD may have an unusual response to pain and not report or be able to communicate injury. Check the person for any injuries in as non-invasive a way as possible, looking for unusual limb positions (e.g. limping or hanging arms) or other signs, such as abdominal pain.

Guidelines for effective communication

Other than for immediate operational needs, anyone with ASD ought only to be questioned with an 'Appropriate Adult' present, even if they are victims or witnesses.

- People with ASD often understand visual information better than spoken words. It may be useful to use visual supports/aids, such as drawings or photos, or explain to the person what is happening. If they can read, it may be useful to put your information in writing.
- To prepare the individual, explain clearly the situation that they are in and what the professional will be asking questions about. If you are taking the individual somewhere else, explain clearly where and why to lessen their anxiety.
- Try to avoid shouting at the person with ASD.
- Keep language clear, concise and simple: use short sentences and direct commands.
- Allow time for the person to respond. Individuals with ASD may take a long time to digest information before answering, so do not move on to another question too quickly.
- Reinforce any physical gestures, such as pointing, with a statement to avoid misunderstanding.
- If you know the person's name, use this at the start of each sentence so that they know you are addressing them. Give clear, slow and direct instructions. For example: "Jack, get out of the car."
- Avoid using sarcasm, metaphors or irony. People with ASD may take things literally, causing huge misunderstandings. Examples of idioms that would cause confusion to someone who interprets language literally are "You're pulling my leg", "Have you changed your mind?" and "It caught my eye".
- Ensure that questions are direct, clear and focused to avoid confusion. A person with ASD may respond to your question without understanding the implication of what they are saying, or they may agree with you simply because they think this is what they are



supposed to do. If a person with ASD is asked “You didn’t do this, did you?” they may repeat the question (known as ‘echolalia’) or say “No” but if the question is “You did this, didn’t you?” they may repeat the question or say “Yes”.

Responses by the person with ASD

- Do not expect an immediate response to questions or instructions, as the person with ASD may need time to process them. Give the person at least ten seconds to respond.
- If a response indicates echolalia (i.e. repetition of the question) it is important not to construe this as insolence: check that you have posed the question clearly enough.
- Avoidance of eye contact by the person with ASD should not be misconstrued as rudeness or a cause for suspicion, as they often find eye contact difficult.
- People with ASD may not understand the notion of personal space. They may invade your personal space, or may themselves need more personal space than the average person.

Victim/witness statements


Unless absolutely essential it is advisable not to try to obtain a witness statement from someone with an ASD immediately after an incident as, due to their condition, they will be extremely anxious and stressed and may not be able to function adequately to provide useful evidence.

You may be able to elicit an initial account sufficient for a crime report but a statement should be taken by appointment later. It is essential that you are exactly on time for any appointment as a person with ASD cannot cope with unpredictability and if late you may well find them anxious and uncooperative.

Remember that other than for immediate operational needs, anyone with ASD ought only to be questioned with an ‘Appropriate Adult’ present, even if they are victims or witnesses.

The individual may be more relaxed if they are interviewed in a familiar place, with a familiar person present.

Dependent on whether the person is high functioning and has a good use of language or is less able to communicate, you will need to consider the following:


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- Referring the matter to your local PPU for interview by a trained 'vulnerable witness' interviewer (preferred option).
 - Use of a vulnerable interview suite to video the evidence if necessary.
 - Use of a Registered Witness Intermediary to facilitate communication – details of how to access this via the SOCA Specialist Operations Centre <http://www.soca.gov.uk/about-soca/specialist-operations-centre/witness-intermediary-team> or from 2014 via the National Crime Service (NCS).

If it is apparent after consultation with any carers of the victim/witness that meaningful communication is unlikely and that they would struggle to meet the requirements of a 'Credible Witness', you will need to get a professional psychiatrist/psychologist, specialising in autism, to assess them and provide a statement confirming they cannot provide evidence.

In every case early contact with the CPS will be necessary to discuss the use of 'Special Measures' should the case progress to court.

Guidance for the witness interview process

- Be aware that people with ASD find changes in routine very difficult to handle and will certainly be stressed if their routines are disturbed by, for example, being taken to a police station without prior arrangement.
- Even planned events may be very stressful for them. You will need to give them plenty of advanced notice and remind them again the day before and on the actual day as they may also have problems with time.
- Appointments should be arranged around their regular routine so as not to disrupt it otherwise the interview may well be unproductive.
- Some people with ASD are hypersensitive to noise and light, even strip lights may be too bright or sound too loud to them.
- An individual may also be extremely anxious in a strange environment, such as an interview room or station front counter.
- An individual may be unable to tolerate such an experience, their anxiety leading them




to become agitated or disruptive. If their anxiety increases they may even lash out. If an individual is in this type of situation, any questioning may be adversely affected.

- It may not be possible to gather all the information you need during one interview. It might be necessary to hold several sessions in order to build up familiarity with the individual.
- Despite concerns of re-victimisation it may be beneficial to take a person with ASD back to the scene of the crime to aid recall as they often have greater capabilities in the visual part of the brain and this can trigger a replaying of events like re-running a video.
- If possible, talk to the parents, carers or the professionals involved with them, such as their psychiatrist, to seek advice on the best way to interview them.
- Additionally, it may be necessary to seek advice of a psychologist or social worker who specialises in the field of ASD.
- It will be helpful to keep the interview as short as possible. A child with ASD may not be able to concentrate for any longer than 10 to 15 minutes at the most. An adult may also need more frequent and longer breaks than is usual.
- If known, explain how long the interview is likely to last and what will happen at the end of each session as this will help reduce anxiety.
- Children and some adults with ASD often have an attachment to a particular object, such as a piece of string, a toy or key-ring etc. The child or adult may wish to hold the object or possibly twiddle or flap it during the interview. Research suggests that sometimes this helps them to concentrate and removing the object may cause the person unnecessary distress.

Conducting the interview

- Talk calmly in your natural voice, keeping language as simple and clear as possible. Use only necessary words.
- Try not to exaggerate your facial expression or tone of voice as this can be misinterpreted.
- Keep gestures to a minimum, as they may be a distraction. If gestures are necessary, accompany them with unambiguous statements or questions that clarify their meaning.
- Use the individual's name at the start of each question so that they know they are being addressed.

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- Cue the individual in to the language you are about to use, preparing them for the instructions or questions that might follow. For example, “John, I am going to ask you a question”.
 - Avoid open questions. Closed questions are more likely to be understood. For example, asking a person with ASD to “tell me what you saw yesterday” may be too vague. The individual may not be able to judge exactly what the interviewer needs to know. A better approach would be to say “tell me what you saw happen in the shopping centre at around 10 o’clock”.
 - People with ASD have very literal understanding of language. Avoid using irony or sarcasm.
 - Back up questions with the use of visual aids or supports. People with ASD often understand visual information better than words. Consider asking them to draw or write down what happened.
 - Allow the individual extra thinking time to respond to each question. People with ASD often take longer to process information. If there is no response at all, try rephrasing the question. A person with ASD is unlikely to be able to inform you when they don’t understand what you have asked: be prepared to prompt the individual in order to gather sufficient relevant information. Don’t assume that silence means there is no answer forthcoming.
 - People with ASD may have better expressive language skills than receptive language skills. Be aware that they may not comprehend fully what is said to them. Some people with ASD have echolalia: they may echo and repeat the words of others without understanding the meaning of those words.
 - Don’t expect the individual to necessarily make eye contact during the interview.
 - Remember that people with ASD may speak in a monotone and/or use very stilted language.
 - In some situations, people with ASD may come across as stubborn or belligerent. Alternatively, they may be over-compliant, agreeing with the interviewer’s suggestions or to statements that are untrue. They may not understand the consequences of this action.

Victim support

- Always offer the services of Victim Support and ensure this is recorded on the crime report.
- Even if the person with ASD is only a witness they may require support. In this case they are still eligible for the services of Victim Support or they may benefit from support from an organisation specialising disabilities such a charity with whom they have had previous contact.
- Remember to liaise with CPS from the outset and ensure 'Special Measures' are put in place for any resulting court case.
- Always keep the person informed of any developments and especially the result of your investigation to reduce any anxiety.
- If the offence is one of 'Disability Hate Crime', ensure the Local Policing Team is aware and update your local intelligence systems with the information to ensure that any repeat incidents are dealt with quickly and appropriately.

Dealing with suspects who have ASD

Remember - no matter how intelligent the individual may appear the person with ASD must be treated as a 'Vulnerable Person' as defined by the PACE (1984), the Equality Act 2010 and a variety of other pieces of legislation.

In addition to the information provided above in regards to dealing with victims/witness who have ASD, the following additional points must also be considered for suspects:

- Where a situation allows and it will not compromise the investigation of an incident then arrest of someone with ASD is better if done by appointment to allow for appropriate measures to be put in place to ensure a productive process.
- If taking a person with ASD into a Custody Unit, it is advisable to contact the Custody Sergeant and arrange for the reception area to be clear as the anxiety caused by the arrest will be made worse by the potential for sensory overload in a busy environment. The result may be a violent outburst and remove any likelihood of being able to process the suspect.
- Remember that their disability renders them vulnerable. They will always require 'Constant Watch' initially. If left unattended, those held in custody may react by self-harming, which could involve repeated biting or poking of parts of their body or banging their heads against a wall.
- Individuals with ASD should have access to a professional who understands their disability, can provide advice and explain their needs. This may be a psychiatrist, psychologist or a nurse/carer specialising in ASD.
- Family and carers should be consulted as to the support, care or intervention that the individual requires as this will vary from one individual to another.
- An appropriate adult will always be needed during the custody/interview process. For the above reasons it is advisable to use someone who knows them and understands their condition as an appropriate adult and not the Duty Social Workers or other person on an 'Appropriate Adult Scheme' list unless there is no other option.
- Where an offence is deemed minor and consideration may normally be given to use of 'Restorative Justice' techniques to resolve the matter, this is usually unsuitable for persons with ASD due to their particular difficulties. Instead the use of 'Acceptable Behaviour Commitments/Contracts' simply worded and aided with pictures may be more appropriate. There is an example later in this booklet.

When interviewing a suspect the following additional points not covered in the witness interviewing advice also apply:

- The person may have learned to commit facts or the statements of others to memory. This rote skill is common in people with ASD and may allow him or her to quickly assimilate and regurgitate data. The individual may be more proficient in his or her expression of these facts than in comprehension of them. He or she may have developed a sophisticated form of echolalia, echoing or repeating the words of others. For example, the person with ASD could memorise the allegations of a person overheard at the scene, facts inadvertently provided by a first-responding officer, and details of some of the circumstantial evidence that an interviewer has revealed during questioning. Under these circumstances, the person with ASD could provide a very convincing untrue statement or false confession. At the least, this knowledge could be misconstrued as a real familiarity of facts that only a guilty person could know.
- Due to their literal interpretation of speech, when asked if he or she has ever thought about committing the offence in question, the innocent person with ASD may answer 'Yes', as opposed to the characteristic answer of 'No' from an innocent person. While both persons only thought in passing about committing such an offence, the 'normal' person would not consider answering 'Yes'. The concrete-thinking ASD person may answer the question as it is asked, causing the interviewer to continue the probe.
- It is possible, though very unlikely, that the person with ASD has learned through experience to lie but due to their differing brain function this is difficult for them. So his or her attempts to lie will be done poorly. An interviewer should ask a series of unrelated questions to determine the person's ability and potential for lying. This should be done prior to asking questions that are pertinent to the matter at hand.
- The interviewer must be specific in what information is sought by asking questions that avoid ambiguity. If the interviewer asks, 'Did you take the money?' the person with ASD may say 'Yes' whether or not he or she actually took it. It would be clearer to ask 'What did you do?' allowing for the individual to provide a response before probing their answer for specifics.
- If you ask 'Were you with your family or John?' the ASD person may respond 'John' because that was the last choice of the sequence. If the question was asked again but in reverse order, the ASD person may answer 'my family' for the same reason. A more specific question might be 'Who were you with?' which reduces the influence of suggestion on the subject.

Charge and bail

- A person with ASD may not understand any charges brought against them and they will need explaining in simple language.
- Similarly, any bail conditions will need to be simple and explained.
- If they are given section 47(3) or Part IV bail to return to the station, this will need to be clearly explained to an appropriate adult or carer as people with ASD may have difficulties with time, forward planning and organising.
- CPS advice should always be sought before charging as in many cases criminal acts by people with ASD may be due to a variety of factors, but evidence suggests that there is rarely a deliberate intention to hurt others. In fact, proving 'Mens Rea' in most cases would be extremely difficult as it just is not there. They lack the skills to imagine the potential outcome and consequences. They are unable to think ahead to formulate a plan to commit an offence. This means there is a high probability of the defence seeking to use the Mental Incapacity Act at any subsequent court case to highlight this reducing the likelihood of a successful prosecution.

Interview Guidance Notes

The person has an autistic spectrum disorder (ASD) or other communication problems

Remember – no matter how intelligent a person with ASD may appear they must be treated as a 'Vulnerable Person' as defined by the PACE (1984) and the Equality Act 2010.

Guidance for the interview process

- Keep the interview as short as possible. A person with autism may not be able to concentrate for any longer than 10 to 15 minutes at the most.
- Individuals with autism who are held in custody must be supported. If left unattended, they may react by self-harming. Keep waiting times to a minimum.
- Conduct several sessions in order to build up familiarity with the individual.
- Seek the support of an 'Appropriate Adult' who knows the person and can advise on the best way to interview them considering their disability.

Conducting the interview

- Talk calmly in your natural voice, keeping language as simple and clear as possible.
- Give time for the person to respond; don't assume that silence means there is no answer forthcoming. Follow the 10 second rule – ask a question and wait 10 seconds, in order to give auditory processing time.
- Try not to exaggerate your facial expression or tone of voice and keep gestures to a minimum.
- Use the individual's name at the start of each question so that they know they are being addressed.
- Cue the individual in to the language you are about to use. For example, "John, I am going to ask you a question."
- Word questions carefully: closed questions are more likely to be understood. People with autism have a very literal understanding of language. Avoid using irony or sarcasm and do not use police jargon.
- Support questions with the use of visual aids or supportive prompts. People with autism often understand visual information better than words.

Keeping the environment as calm as possible

- The individual may be more relaxed if they are interviewed in a familiar place, with a familiar person present.
- If known, explain how long the interview is likely to last and what will happen at the end of the session.
- Where court procedures allow, use video links or other adaptations to meet the needs of people with autism who are giving evidence.
- Ensure there are no sensory overload issues. Even quiet sounds such as a ticking clock can be upsetting.
- Children and some adults with autism often have an attachment to a particular object, unless you have safety concerns do not try to remove the object as it may cause the person unnecessary distress.

Interviewee response

- Be aware that they may not comprehend fully what is said to them. Some people with ASD may have echolalia or palilalia: they may echo and repeat the words of others without understanding the meaning of those words.
- Don't expect the individual to necessarily make eye contact during the interview and remember that people with autism may speak in a monotone, and/or use very stilted language.
- In some situations, people with autism may come across as stubborn or belligerent. Alternatively, they may be over-compliant, agreeing to suggestions or to statements that are untrue and not understand the consequences of this action.

Probation/Youth Offending Services

Dealing with Offenders who have ASD

- People with ASD often understand visual information better than spoken words. It may be useful to use visual support/aids, such as drawings or photos, to explain to the person what is happening. If they can read, it may be useful to put your information in writing.
- You will need to use very simple language when drafting out the conditions of their licence or other order as the normal 'legal jargon' and phrases are not concrete and literal enough. Their ambiguity will only lead to confusion and probably lead to them being breached. See the following 'Recommendations for ABC' which shows translation of legal jargon into plain English which can be understood.
- To prepare the individual, explain clearly the situation that they are in and what you will be talking about and doing with them. If you are taking the individual somewhere else, explain clearly where and why to lessen their anxiety. New people, places or anything unpredictable causes extreme anxiety and impacts on their ability to communicate.
- Keep language clear, concise and simple: use short sentences and direct comments (as you might for a child).
- Allow time for the person to respond. Individuals with ASD may take a long time to digest information before answering, so do not move on to another question or topic too quickly. Allow at least 10 seconds for them to process what you have said and respond.
- Use the person's name at the start of each sentence so that they know you are addressing them.
- Avoid using sarcasm, metaphors or irony. People with ASD may take things literally, causing huge misunderstandings. Examples of idioms that would cause confusion to someone who interprets language literally are "You're pulling my leg", "Have you changed your mind?" and "It caught my eye".
- Ensure that questions are direct, clear and focused to avoid confusion. A person with ASD may respond to your question without understanding the implication of what they are saying, or they may agree with you simply because they think this is what they are supposed to do. If a person with ASD is asked "You didn't do this, did you?" they may repeat the question (known as 'echolalia') or say "No" but if the question is "You did this, didn't you?" they may repeat the question or say "Yes".
- If a response indicates echolalia (i.e. repetition of the question) it is important not to construe this as insolence: check that you have posed the question clearly enough.
- Avoidance of eye contact by the person with ASD should not be misconstrued as

rudeness or a cause for suspicion many find eye contact difficult and disturbing.

- People with ASD may not understand the notion of personal space. They may invade your personal space, or may themselves need more personal space than the average person.
- The individual may be more relaxed if they are interviewed in a familiar place with minimal distractions. Some people with ASD are hypersensitive to noise and light, even strip lights may be too bright or sound too loud to them, so select the quietest room for meetings.
- Even planned events may be very stressful for them. You will need to give them plenty of advanced notice and remind them again the day before and on the actual day as they may also have problems with time.
- Appointments may need to be arranged around their regular routine so as not to disrupt it otherwise the interview may well be unproductive. A usual 30 minute appointment may not be sufficient; you may have to build in additional time.
- An individual may also be extremely anxious in a strange environment, such as a Probation office.
- It may not be possible to gather all the information you need during one interview. It might be necessary to hold several sessions in order to build up familiarity with the individual.
- Avoid open questions: closed questions are more likely to be understood. For example, asking a person with ASD to "tell me what you saw yesterday?" may be too vague. The individual may not be able to judge exactly what the interviewer needs to know. A better approach would be to say "tell me what you saw happen at the shopping centre at around 10 o'clock".
- People with ASD have a very literal understanding of language. Avoid using irony or sarcasm.
- Back up questions with the use of visual aids and supports. People with ASD often understand visual information better than words. Consider asking them to draw or write down what happened. Allow the individual extra thinking time to respond to each question. People with ASD often take longer to process information. If there is no response at all, try rephrasing the question. A person with ASD is unlikely to be able to inform you when they don't understand what you have asked. Be prepared to prompt the individual

in order to gather sufficient relevant information.

- You may need to use specialist programmes or interventions as many of the 'standard' programmes, particularly those involving group activity are likely to be ineffective and possibly counter-productive and even lead to 'avoidance' by the individual leading to them breaching conditions.
- Because of their particular difficulties an ASD offender may be unable to empathise with a victim or see the situation from any perspective but their own thus making use of standard RJ techniques ineffective and even confusing for them.
- Special techniques as used by SEN Teachers may provide a way of overcoming their inability to see the bigger picture, empathise or understand why their behaviour(s) are unacceptable or unlawful, thus preventing re-offending. If you have not received specific autism training you may need to seek advice on the use of such techniques including 'Social Stories', 'Comic Strips' or 'Circles'. Examples and explanations can be found via an internet search under these headings..

Recommendations for Acceptable Behaviour Contracts/Commitments for persons with ASD

Must haves:

- Include a process for checking the person's understanding
- Advice/warning letters to include pictures
- Ensure you do what you say you will do
- Any appointments must be kept specifically to time as people with ASD take everything literally so if you say 5pm they expect to be seen at 5pm. If not they may become anxious due to their difficulties dealing with changes to routine or things not happening predictably. This can lead to sensory overload and extreme anxiety making any hope of a successful meeting impossible.
- Complete an initial checklist to establish known facts (including their specific behaviours which may impact on any ABC).
- Use simple language (short simple sentences).
- Always provide a verbal explanation to support any written warnings.
- Always use a verbal explanation to accompany each intervention to ensure understanding – check by simple questions that they have interpreted what you are saying correctly.
- SMART objectives to be included in the ABC
- Use literal language only – no legal jargon, metaphors etc.

Should haves:

- Provide a simplified flowchart to the person outlining the steps in the process as they may not understand and be able to visualise future concepts.
- Involve parents or family / carers at every opportunity as they understand the person and their particular behaviours and will be essential in reinforcing the ABC.
- Identify an appropriate venue for any interview and meetings – most people with ASD have heightened sensory perception and may not be able to cope with bright lights, background noise (even a humming computer which you may not notice) or new and unfamiliar environments.
- Incorporate a 'Recognition Scheme' – positive praise and reinforcement of acceptable behaviour.
- Use the 'Feedback Sandwich' at ABC reviews to end on a positive.
- Include CAN DOs as well as CAN'T DOs in ABC.
- Ensure there is a marker for ASD placed against their nominal on IT systems and seek to do the same on other agencies systems to inform any possible future encounters.

Could haves:

- Pictorial definitions included on any written forms for those who are lower functioning.
- Use of a 'social story' to explain the incremental approach.
- Positive praise cards to be sent to parents to reinforce improved behaviour.

See below for an example adapted ABC for a young man whose 'Special Interest' was knives which he had been found carrying in public.

Acceptable Behaviour Contract

Changed wording to make it ASD friendly (equally applies to any younger person especially those with Learning Difficulties)

I will not use threatening, abusive or disorderly behaviour towards any person/property whereby to cause alarm, harassment or distress.

I will not swear in a public place.

I will not fight anyone except to defend myself if attacked.

I will not say things to people to scare them or make them upset.

I will not damage anyone else's property.

I will not use/throw any object, missile or any other object at or towards any person or property unless I have the express permission of that person or its owner.

I will not throw things (except balls when I am playing a ball game) – could be added if he does play sports but just omit this if he doesn't).

I will not use, carry or possess any knife, blade or sharply pointed object/instrument whilst in a public place, save that I may have a folding pocket knife (with a cutting edge less than 7cm long) for the purposes of fishing.

I will not take knives outside my house.

I will not hold anyone else's knife.

I can have a small penknife with me if I am fishing (only put in if he actually does fish).

I can hold knives I have been given in restaurants or cafes.

I will not be in possession of alcohol or ask any one to buy it for me or any other person. I will also not be drunk in a public place. (I may consume alcohol whilst at my home address or at my grandparents' address with their express permission).

I will not drink alcohol except at my house or my grandparents' house if they or my mother say I can.

I must ask their permission before I can have a drink in the house.

I will not associate with (insert name of person(s)) whilst in a public place.

I will not speak to

I will not phone

I will not text

I will not contact via the internet.

I will not go anywhere near (specify a distance) if I see him/them when I am out.

I will only use reasonable force with which to defend myself when such circumstances arise, but I will always look to turn away from trouble and seek the appropriate assistance from family members.

I will not start any fights but if someone hits me first I can hit them back.

If I have to hit someone I will only use my hands and not anything else that is around.

If I have to hit someone it should only be enough times to let me get away from them.

If I feel I am being bullied or getting angry with someone I will go straight home.

If I feel myself getting worried or confused I will go home.

I will adhere to an evening curfew (which will be agreed with my mother/grandparents at the time). I will also advise them of where I am going. I will be able to go beyond the curfew times whilst I am with my parents/grandparents.

I will only leave the house if my mother or grandparents say I can.

I must ask their permission to go out and tell them exactly where I am going and who with.

Unless I am with my mother or grandparents I will not be allowed outside the house after at night (agree a set time which must be the same every night – to ensure routine which is essential to addressing autistic behaviour. Do not have differing times for weekends for instance – keep every night the same).

If I stick to these rules I will make my mother and grandparents happier (identify an incentive they can offer to show when they are happy with him i.e. a monthly treat for each month he abides by the rules – positive reinforcement).

If I break these rules the police can arrest me and I could go to prison (verbally remind him what it was like in a police cell).

Advice for legal professionals

Any case involving a person with ASD as a victim, witness or suspect will pose real challenges in court proceedings. In every case 'Special Measures' will be required (including for the defendant where possible). The following are factors to consider before any case involving someone with ASD reaches court to enable them to play a full part and ensure justice is done.

Any legal professional for the prosecution or defence in a case involving someone with ASD will need to have an awareness of the condition and how it affects the particular individual. Generic difficulties under the following areas are common to all persons with ASD though their severity will vary with each individual. They will always impact on their ability to understand and participate in proceedings:

- Communication
- Social interaction
- Rigidity of thought/imagination
- Weak 'Central Coherence' (natural predisposition people have to place information into a context in order to give it meaning). They may not be able to see the 'bigger picture'.
- Poor 'Executive Function' (the mechanism which enables us to move our attention from one activity or object to another flexibly and easily. It allows us to plan, organise ourselves and solve problems). Their actions may have been as a result of being unable to 'think' their way out of a situation and identify an appropriate course of action.
- Problems with 'Theory of Mind' (Theory of Mind is the ability to appreciate the mental states of oneself and other people. It enables us to understand that people have thoughts and feelings which differ from our own). This can manifest as a lack of empathy.

Many medical professionals, particularly GPs, have only a limited knowledge of ASD. Where a medical assessment is required it will be necessary to use a clinician specialising in ASD. A pre-trial forensic psychiatric report prepared by an autism specialist is essential!

Due to the lack of awareness in society in general, judges, magistrates and members of a jury may not realise how the condition impacts on the individual with ASD and this may have influenced the matter before court. To overcome this and ensure that misconceptions, and misinterpretations of their behaviours, do not prejudice the outcome and expert witness may need to be called to provide an explanation to the court. The bench should

also be asked to read the entry on Asperger Syndrome within the 'Equal Treatment Bench Book' prior to commencement of proceedings.

- Consideration must be given even at the pre-trial investigation stage to use of a 'Witness Intermediary' to aid communication. Use of a Registered Witness Intermediary to facilitate communication – details of how to access this are via the SOCA Specialist Operations Centre <http://www.soca.gov.uk/about-soca/specialist-operations-centre/witness-intermediary-team> or from 2014 via the National Crime Service (NCS). Failing this, advocates or SEN Teachers may be able to assist with communication.

Investigating officers should be advised to consider this at an early stage to prevent misconceptions that all persons with ASD would not meet the 'credible witness' criteria.

In cases with an ASD defendant, it is highly likely that they may meet the criteria of being 'unfit to plead' and consideration may be necessary of proceeding under Mental Health legislation rather than criminal. This does not preclude them from being found guilty but will alter the sentencing options.

Where there is no admission of guilt sentencing might have to be under the Criminal Procedures Insanity Act 1964. This means the defendant cannot be imprisoned but the Probation Service will not take them and it falls to the Defence Solicitor to arrange a diagnosis and try to identify a care package such as those offered by St Andrews Healthcare in Birmingham.

The normal adversarial style of questioning used in proceedings will in almost every case be extremely difficult to understand for a person with ASD and can lead to inappropriate responses and potential sensory overload. This may lead to a 'meltdown' (similar to a tantrum) where the person will be unable to participate further and may display extreme behaviour. Such 'meltdowns' can incapacitate the person for hours or even days and cause officials to misinterpret their behaviour negatively, thus prejudicing a case. To overcome this any questioning needs to follow the advice provided in other sections of this booklet

Despite all of the above information, people with ASD can participate in legal proceedings as long as the appropriate support and measures are put in place, with 'Special Measures' such as the use of video links being particularly recommended. In fact some aspects of their condition as listed below are positives which if pointed out to the court may alter their



perception of the person's testimony:

- Their belief in justice and obeying rules.
- Their problems with imagination making it difficult for them to lie (or at least sustain a lie under questioning).
- Their ability to recall events in very specific detail with no variation no matter how often repeated (they appear to literally replay the event like a recording in their mind).
- The lack of 'Mens Rea' due to their differing neural function.



About Autism West Midlands

There are more than half a million people in the UK living with autism, an invisible, misunderstood and lonely disability. 60,000 live in the West Midlands.

We are the leading charity in the West Midlands for people affected by autism. We exist to enable all people with autism and those who love and care for them to lead fulfilling and rewarding lives. Our passionate, expert staff and volunteers work across all age groups and abilities, providing direct support to people affected by autism.

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Our vision is a world where all people on the autism spectrum have the specialist care and support they need to lead fulfilling and rewarding lives.

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