

SUBMISSION FROM STEPHEN KELLY

1. I am the parent of a 16 year old who has autism. Since his diagnosis in 1997, I have been acutely aware of the lack of education provision from nursery age through to secondary school availability. My concerns in respect of my son's future have been well documented by agencies in education, health and social work in the Glasgow area, where my family reside.
2. However, in this submission, I would like to draw to the committee's attention my experience as a solicitor practising criminal defence on behalf of young adults who have an autistic spectrum disorder (ASD).
3. In 2008, I represented a young male with an ASD who had been arrested and charged with a minor offence. During my initial enquiries as part of defence preparation, it became apparent that while the police who had arrested the male were aware that he had an ASD, this information was not divulged in any police report to the Procurator Fiscal. It was also clear from both the reports and the police's own acknowledgement that no steps had been taken to ensure that an appropriate adult was present when the police interviewed the male while in police custody.
4. I am aware that Strathclyde Police have pioneered the Autism Awareness Scheme, along with the Autism Resource Centre, to provide police officers with a better understanding should they come into contact with a person with an ASD. The above situation, which was mirrored in several other clients who had been arrested by police demonstrated that
 - Not all front line operational police officers in Strathclyde were familiarising themselves with the guidance in dealing with persons with an ASD;
 - The guidance was to make police aware that a person with an ASD could become violent. This makes the guidance laid down by police a device for police officer safety rather than ensuring a more appropriate method of dealing with the person with an ASD; and
 - Despite the existence of the guidance, there is no change in how the police carry out investigations by interviewing a suspect, such as a change in the wording of a caution to make it more understandable to the suspect with an ASD.
5. I received information from the Autism Resource Centre that they had been regularly asked for advice from carers of persons with ASD on matters relating to being arrested or detained by the police. I offered to provide a point of contact for providing legal advice and as a result, represented clients with ASD across central Scotland. Through such involvement, I became aware that Strathclyde Police was the only force in Scotland

providing guidance on ASD. Two cases that I dealt with in Edinburgh highlighted that, as late as Autumn 2009, there was no guidance in place among any Lothian and Borders front line police officers.

6. Until late 2009, I continued to represent clients who had an ASD. In ALL cases, there was evidence that police knew that the client had an ASD, but would not divulge this to the Procurator Fiscal in any reports. This is a crucial omission, because not only does the Procurator Fiscal not have all the information to decide if it is in the public interest to prosecute, but the withholding of the information may allow a legal challenge to any evidence obtained if it had been obtained in breach of any rules of fairness. I personally represented a client with ASD who had charges dropped when I informed the Procurator Fiscal in advance of the trial that as there was no appropriate adult present during police interview, I would be seeking to have any evidence of the interview excluded.
7. Therefore, if the information had been disclosed, then a decision not to prosecute would have been taken much sooner. Had the case required a prosecution in the public interest, then disclosure of an ASD would allow the prosecutor to consider at an early stage whether evidence obtained at an interview was obtained fairly or not.
8. While I have hopefully brought to attention the inappropriate law enforcement made by police through a lack of understanding, it is also apparent that other agencies such as the Procurator Fiscal are equally lacking in understanding. I took over representing a 16 year old male who was arrested at his home for causing a disturbance. It was decided that he remain in police custody for three days until he appeared in court, despite his family advising the police that he had autism. He was granted bail on his court appearance. On his release, his family approached myself to represent him. I felt that the most appropriate course of action was to approach the Procurator Fiscal's Office with a view to having the case dropped as all the circumstances of the case made it of low public interest.
9. It required five letters and three personal attendances by myself before a decision was made at senior management level of the Fiscal's Office to withdraw proceedings against the client. The decision was made approximately four months after his initial court appearance and it required me to provide extensive documentation to the Fiscal's Office which contained the client's medical, educational record and care plan and an extensive guide to ASD published by the National Autistic Society.
10. While a positive result was ultimately obtained, sadly there was a downside in that the client's communication skills regressed as a result of his ordeal. I was informed by his carers that before his arrest he was able to verbally communicate but by the time I was able to inform him of the outcome he

was only able to communicate by pointing to words and pictures depicted on cards.

11. Another unsatisfactory aspect of the above is that rather than using the input and the circumstances of the case as a marker for future approaches, it would appear that the case is being considered as a one-off within the Fiscal's Office, with no lessons being learned and at needless further future cost to public finances.
12. Since 2009, I have been involved in criminal court cases both as a prosecutor and defender. I have seen nothing in any of my dealings to indicate that understanding of ASD by agencies within the criminal justice system has improved and I include members of my own profession in this assessment.
13. I am advised by members of the Autism Resource Centre that the desire to change matters is there. There are a number of individuals who represent these agencies who agree that matters are unsatisfactory and change is urgently needed.
14. I would suggest that where I am dealing with a few, there are likely many more cases where young adults with an ASD are being subjected to inappropriate law enforcement, unnecessary due legal process and an undeserved criminal conviction, along with a commensurate cost to the public purse.
15. In view of the above submission, we need nation-wide, Government-led guidance and I believe the Autism Bill should become law.

Stephen Kelly
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