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Investigative Interviewing: Research and Practice (II-RP)

Published on-line at <http://www.iiirg.org/journal>



Obtaining best evidence from the autistic interviewee: Police-reported challenges, legal requirements and psychological research-based recommendations

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Abstract

Autism spectrum disorder presents unique challenges for police officers seeking to obtain best evidence. In this article, we outline some of the characteristics of autism that require special consideration at interview (to best support autistic people), together with findings from a survey of almost 400 UK police officers regarding their experiences and perceptions of challenges they face when interviewing autistic people. We discuss current challenges, what strategies may be helpful and directions for future research and practice.

Keywords: *Autism spectrum disorder; police; criminal justice system; interviewing; achieving best evidence.*

Introduction

Autism Spectrum Disorder (henceforth, autism) is a lifelong condition defined by difficulties in social communication and interaction accompanied by repetitive behaviors, interests and

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activities

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2013). Autism is

a spectrum condition, meaning that its effects differ between people and, also, between situations. Whilst some autistic

individuals¹ may have co-occurring intellectual disability (sometimes called ‘classic autism’ or ‘Kanner’s autism’) and/or use little or no speech, others may speak fluently and/or be formally assessed as intellectually able. This latter subgroup of autistic individuals are often given the labels ‘high functioning autism’ or ‘Asperger syndrome’, but there is a move away from this now, for two key reasons. First, a relatively recent revision to one of the principal manuals that clinicians use to diagnose autism (DSM-5; American Psychiatric Association, 2013) no longer features the diagnosis ‘Asperger syndrome’. Earlier diagnoses under this label will continue to be recognized (unchanged) in law but a generic diagnosis of ‘Autism Spectrum Disorder’ will be more commonly assigned in the future. Second, the term ‘high functioning’ is somewhat of a misnomer – autistic individuals with fluent speech and without intellectual disability will, by definition, experience lifelong difficulties that impact significantly on their daily lives. Even those who are usually fluent may become mute or non-fluent for periods of time. Likewise, there is a move away from using the term ‘low-functioning’ autism too (see Bal, Falmer, & Thurm, 2017, for discussion of such issues).

There are no empirically established figures for the incidence of involvement of autistic individuals with police services, or the Criminal Justice System (CJS) more generally. However, autism-specific factors (e.g., social naiveté, obsessional interests) may result in some autistic individuals coming into contact with the police as victims, witnesses and/or suspects (Helveschou et al., 2015; Howlin, 2004; Learner et al., 2012; Rava, Shattuck, Rast, & Roux, 2017; Tint, Palucka, Bradley, Weiss, & Lunsy, 2017; Wing, 1981). Autism is often referred to as a ‘hidden’ condition; there may be no obvious indicators of disability – at least, not from the perspective of the non-expert. However the characteristics often associated with autism such as the difficulties recalling personally experienced events, and atypical responses to the sensory environment can impact negatively (and occasionally positively) on police investigations and any subsequent criminal proceedings.

Psychologically-guided, evidence-based best practice methods of obtaining evidence are key in any investigation (see Williamson, 2013). However, the level of challenge typically faced by investigators at police interview can be exacerbated considerably when the interviewee, whether a suspect or witness, is autistic. Under the Equality Act 2010, police services in England, Scotland and Wales are required to treat disabled suspects and witnesses, which includes *all those with autism*, in a way that is non-discriminatory (i.e., not to place them at an unfair disadvantage due to their disability, including by failure to adapt best practice). These services have parallel responsibilities under the Police and Criminal Evidence Act 1984 and the Youth Justice and Criminal Evidence Act 1999 to ensure that suspects and witnesses, respectively, are enabled to provide their best evidence at formal interview. Consequently, it is crucial that care and consideration are given to the social, environmental and cognitive factors in various situations that can impact upon the ability of autistic individuals to provide their best evidence and, related to that, the ability of the police interviewer to conduct an effective investigative interview.

The Current Study

Overview

We recently conducted a large-scale survey collating the views of 394 police officers across England and Wales about their experiences of autism in police settings (Crane, Maras, Hawken, Mulcahy, & Memon, 2016). The results indicated frustration amongst police regarding a lack of

¹ In this article, we primarily use identity-first language (i.e., autistic person) to respect the views of the autistic community regarding their preferred ways of describing autism. We respectfully note, however, that there remains some disagreement about the way autism should be described (see Kenny et al., 2016).

training on autism, particularly around interviewing and obtaining evidence. While our police participants, overall, recognized the need for some form of adjustment when interviewing an autistic person, they reported that their ability to action this was constrained by limitations in knowledge, training and flexibility within their particular roles. Further, they rarely reported potentially simple (yet often effective) adjustments, such as changing the interview location or modifying the layout of the interview room. This suggests there is a need for autism-specific interview training, and access to specialist advice and appropriate guidance to enable best practice based on knowledge.

In this article, we present further results from this survey (which is, to our knowledge, the largest of its kind conducted in England and Wales), and discuss some of the characteristics linked to autism that are especially pertinent to police investigations, focusing on typical problems that may arise at formal interview. We also make recommendations, based on existing psychologically-guided evidence-based research, for police seeking to obtain best evidence (within the legislative framework for England and Wales) from the autistic interviewee.

Method

As described in Crane et al. (2016), police officers were recruited via advertisements circulated within police forces in England and Wales, the National College of Policing, social networking sites, and through snowball sampling via existing police contacts. The final sample comprised 394 police respondents. The majority were at the rank of Constable (63%, including 22% who were detectives), all ranks up to Superintendent were represented. The respondents had varying amounts of police service (16% 0-5 years; 29% = 6-10 years, 28% = 11-20 years, 26% = >20 years).

Our previous report (Crane et al., 2016) provided an overall analysis of the views and experiences of police officers and staff, as well as the autism community, regarding their experiences of autism within the CJS. In this article, the focus is specifically on police-reported challenges at investigative interview, which are presented alongside recommendations for future research and practice. These results are based on the officers' responses to open-ended questions, which were analysed using a method called 'thematic analysis' (Braun & Clarke, 2006). This involved identifying and understanding respondents' perspectives on their experiences, to identify overarching themes common to the respondents as a group. Analyses were independently conducted by one of the authors (TH), and reviewed by LC and KM. Four themes were identified, each of which we discuss next, in turn.

Results and Discussion

Theme 1: challenges and the importance of adaptations.

Many of the officers surveyed described numerous challenges that they faced when interviewing autistic individuals. Commonly reported challenges included:

- Difficulty developing rapport, the normal starting point for conducting an effective interview;
- Managing the interviewee's attention/concentration span during the questioning process; and

- Having an awareness of individual differences that may impact a person's ability to provide good evidence (e.g., sensory issues, difficulties recalling events in a chronological manner, managing distress).

Officers expressed the necessity to make adaptations throughout the interview process in order to enhance its effectiveness. In particular, they emphasized that a change in interview style was often required, and that standard interviewing techniques were not necessarily effective for obtaining information from autistic children and adults. Adaptations to communication style and properly informed use of specific, concrete and literal language were noted as important. Moreover, several officers – possibly those trained beyond basic interviewer level – noted that some traditional gold-standard formal police interview techniques (such as the Cognitive Interview) and very open-ended questions (e.g., 'tell me everything') were problematic. Officers noted that more precise or narrower parameters needed to be set, in order to reduce ambiguity and to elicit relevant information. These observations are broadly consistent with experimental studies about strategies for obtaining evidence from autistic eyewitnesses, which have found that the Cognitive Interview and open question techniques do not assist autistic witnesses in providing best evidence (e.g., Maras & Bowler, 2010, 2012; Maras, Memon, Lambrechts, & Bowler, 2013). However, recent work indicates that more concrete interview techniques, such as inviting the autistic interviewee to make sketches, may assist their recollection of a witnessed event (Maras, Mulcahy, Memon, Picariello, & Bowler, 2014; Mattison, Ormerod, & Dando, 2014; although see Henry et al., 2017). Whilst some officers were aware of and made these adjustments, others recognized their importance but were unable, for various reasons (e.g., training, resources, time and operational constraints), to apply them.

Encouragingly, many of the police participants commented that each autistic individual is different and that no two situations are the same, demonstrating an understanding of the spectrum nature of autism (highlighted above).

Theme 2: planning and preparation.

Officers who felt that they had interviewed autistic individuals effectively tended to attribute this to sound preparation and the development of firm interview plans. This involved extensive research prior to interviews (including liaising with carers or appropriate adults), as well as effective organization in their preparation. While many officers recognized the importance of planning, others said they did not always do this in practice, citing several factors that they felt made planning problematic. These included the 'one size fits all approach' often operated by police services, which is incompatible with the variation between autistic individuals. Planning was also reported to be a strain on resources and time; often carried out with little or no guidance, and relying on the initiative of the individual interviewer. Despite these challenges, officers were consistent in suggesting that planning was essential for achieving best evidence and, similarly, for ensuring that autistic individuals remained comfortable, safe and protected. Many of the current sample of police officers noted that this initial investment in planning was likely to pay off in the long-term, avoiding the need to re-interview to elicit the available relevant evidence and the potential loss of information (forgetting) that occurs over delays (Clifford, Havard, Memon, & Gabbert, 2012).

Theme 3: intermediaries.

Throughout England and Wales, all autistic witnesses are eligible for provision of a Registered Intermediary² at police interview (as they are at trial). The role of the intermediary is impartial and they are responsible directly to the court (as opposed to the interviewee, police service or, at later stages, prosecution or defense teams). Their responsibilities include conducting a detailed assessment of the individual witness' profile and making formal recommendations for enabling the witness to provide best evidence throughout a criminal investigation, not least at police interview. Although recent empirical research indicates that registered intermediaries do not appear to increase the amount of accurate information recalled by child witnesses with autism (Henry et al., 2017), it is possible that they provide other indirect benefits such as reducing anxiety which can increase the likelihood of getting best evidence in the first instance.

Some police participants in the current study commented on the usefulness of intermediaries during the interview and subsequent processes such as court proceedings. Overall, intermediaries were considered helpful; for example, in planning how best to phrase questions, facilitating communication, and helping to develop rapport with the interviewee. However, some officers expressed frustration with delays in obtaining an intermediary. Unsurprisingly (as we surveyed officers from across all police roles, not just investigators and specialist interviewers), some officers described not knowing how to access the services of an intermediary (via the Ministry of Justice's Witness Intermediary Scheme) or, indeed, reported no knowledge of the scheme whatsoever. Furthermore, those that were aware of intermediaries commented that they were often difficult to obtain and use for a variety of reasons, including insufficient training on how to access them, long waiting times, lack of funding and resources, and there not being enough intermediaries to satisfy demand.

The provision of an Appropriate Adult (AA) is required for all vulnerable suspects (Home Office, 2011). Approximately 18 police participants commented on the use of AAs in interviews they had conducted. There were a number of factors that influenced the usefulness of having an AA present according to police officers, including their knowledge of autism, their personal relationship with the autistic individual and their understanding of the autistic individual's needs. Some responses demonstrated confusion regarding the role of an AA, which is to act as an independent safeguard to provide support, advice and assistance on such matters as legal rights to ensure that police treat the vulnerable suspect fairly and with respect, and to assist in communication with the police and others. Previous research indicates some negativity by police in the use of AAs (Leggett, Goodman, & Dinani, 2007; Oxburgh, Gabbert, Milne, & Cherryman, 2016), despite other reports that AAs have a positive impact on police interviewing practice (Medford, Gudjonsson, & Pearse, 2003). Given the mandatory status of AAs and the confusion some police officers demonstrate regarding their role, there is an urgent need for future research on their actual versus perceived utility for interviews with autistic suspects.

Theme 4: training.

The various legislative requirements (described previously) placed on police services in England and Wales (and also Scotland) with regard to their treatment of members of the autistic population mean that officers need a proper understanding of autism as they go about their daily

² This is the term used regarding intermediaries provided by the Witness Intermediary Scheme, operated by the Ministry of Justice. Registered Intermediaries are distinct from non-registered intermediaries who are self-appointed experts and, as such, may offer support in the cases of suspects as well as witnesses. Registered Intermediaries can also act as non-registered intermediaries, if they are assisting in the process of obtaining best evidence from a vulnerable suspect.

public-facing duties. Consequently, it is essential that officers have suitable training on autism to suit the particular requirements of their individual roles. The results of our survey highlight recognition amongst operational police officers in England and Wales of the need for discrete training on autism, yet just 37% of officers in our survey had received this. It should be noted, too, that this figure is likely to be an over-estimation, given that this was a non-compulsory survey involving self-selecting respondents.

A strong desire for training was evident amongst the officers, and specific areas were highlighted for future improvement or inclusion within training schemes or programs. Many officers expressed their dissatisfaction with autism training received in the form of online or self-taught courses, and called for practical training that went beyond 'awareness' training. As expressed by one officer, this *'would ensure I was more capable of doing my role'*. This indicates a specific training need centered on how to communicate effectively with autistic people, which is clearly key for obtaining best evidence at interview. Very recent research suggests that while 'off-the-shelf' police awareness training provided by autism experts may provide police officers with a proper understanding of autism it may not, in contrast, equip them with the skills needed to respond to the disorder appropriately in police settings (Mulcahy & Pine, in preparation a). Underscoring the comments of the officers we surveyed, it also suggests that autism may pose relatively more complex challenges for obtaining evidence than some other causes of vulnerability.

It is important to note that police are not required to be experts on autism; but they should be sufficiently trained to be able to spot possible signs of vulnerability and be able to respond appropriately (see Jaarsma & Welin, 2012). There are, however, significant challenges in identifying autistic individuals from the perspectives of both the police (Crane et al., 2016) as well as legal professionals (see Cooper & Allely, 2017). Since police most frequently become aware that a person is on the autism spectrum via disclosure from the individual themselves or a parent/carer (Crane et al., 2016), a key factor is ensuring that an autistic person feels comfortable in disclosing their diagnosis in the first instance, with the understanding that this will result in their needs being met as appropriate (Crane et al., 2016).

There is no published research on the most appropriate way for police to address the need for autism awareness and response training, however potential avenues to explore include the development of 'autism leads' such that officers have a named contact for advice and guidance relevant to their roles, and the concept of an 'autism ticket' for interviewers (akin to the England and Wales Judiciary 'sex ticket', which qualifies specially trained judges to deal with cases involving sexual offences). An 'autism ticket' would ensure that only those with training and suitable expertise in autism are permitted to conduct interviews with autistic victims, witnesses and suspects. It is important to stress, however, that there needs to be an empirical evaluation of such options before recommendations can be made about their utility. Meanwhile research is ongoing to identify the qualification-specific training needs of police interviewers pertinent to the legislative framework relevant for England, Scotland and Wales (Mulcahy & Pine, in preparation b).

It is acknowledged that there are pockets of good practice, at least in the UK, the US and Canada, almost invariably involving close co-operation between individual local police services and autism experts (in some cases including autistic people themselves). For example, Hampshire Constabulary in the UK has developed a strong working relationship with the charity Autism Hampshire. Nonetheless, there is a need, at least across the UK, to identify suitable role-specific autism training for public-facing police officers. This would: (a) provide officers with a proper understanding of autism; and (b) enable police services to respond appropriately to autistic

individuals. Finally, more empirical research, including non-laboratory studies, should be prioritised in order to identify optimal techniques for obtaining best evidence from individuals with conditions across the autism spectrum, with a separate focus on suspect and witness interviews (where different legal and support provisions apply).

Conclusion and Recommendations

We conclude this piece with a summary of some of the key findings from the current study, together with recommendations for police officers when dealing with autistic witnesses or suspects:

- Communication should be adapted appropriately. Non-literal or abstract language can lead to breakdowns in communication and, also, apparent inconsistencies in accounts due to misunderstandings. Very open questions without parameters can also be problematic. Interviewers should also be mindful of variability in an individual's vulnerability depending on the situation as well as variability between autistic individuals. Good verbal and cognitive abilities of some individuals may mask profound underlying differences in perception and difficulties in social understanding. Accordingly, full, detailed and clear explanations of processes and procedures should be provided to the individual, based on their particular needs, and any changes should be explained clearly and as far in advance as possible, as disruptions to plans can be pose challenges for an autistic person.
- Interviewers should also consider how the interview environment could be adapted to meet the sensory and emotional needs of the particular interviewee (e.g., extreme sensitivity to certain sounds, smells and textures, or fear of strangers).
- Planning and preparation is key. Interviewers should consider each person on an individual basis and consult with autism experts (including the autistic person him/herself) and those who know the individual well (e.g., family members, carers and teachers) to plan interviews accordingly.
- There was some consensus among the officers that intermediaries (availability issues notwithstanding) are a useful source of support in achieving best evidence. Given the hidden vulnerabilities of autistic individuals, the appointment of an intermediary should always be considered for an autistic individual prior to interview. The provision of an Appropriate Adult is mandatory for all autistic suspects who are defined, in law, as vulnerable persons.
- Officers should receive role-specific training on autism. Identification of suitable training that both provides police with a proper understanding of autism and enables them to respond to it appropriately is needed.

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