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Disabling and criminalising systems? Understanding the experiences and challenges facing incarcerated, neurodivergent children in the education and youth justice systems in England

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ABSTRACT

Children defined as ‘neurodivergent’ are over-represented in the English and Welsh criminal justice system, and face a number of challenges as they navigate their way through the education and youth justice systems. This paper will empirically examine this neglected area of criminal justice involvement in young lives, and involves an interpretivist investigation of neurodivergent children’s experiences of the education and youth justice systems, involving semi-structured interviews with a purposive sample of 19 children in England who were either in custody or had recently been released from custody. Data were analysed using thematic content analysis.

The research findings suggest that both the education and youth justice systems in England and Wales are disabling and criminalising through processes that, often unintentionally; label, stigmatise, isolate, neglect and harm neurodivergent children. Consideration will turn, in the concluding section of the paper, to what a ‘child first’ education and youth justice system would look like for neurodivergent children.

1. Introduction

The term ‘neurodiversity’ was used within literature in the 1990s by Harvey Blume and Judy Singer and emphasises that neurological differences are to be celebrated, honoured and valued (Armstrong, 2017). Neurodiversity recognises that everyone’s brains are differently connected (Kirby, 2021, p. 4). Within the UK education context, the term SEND (special educational needs and disabilities) is used to describe children who may require additional assistance in education because of an identified special educational need and/or disability. Many children that fall under the SEND category may also be considered to be neurodivergent. There are, however, a number of key differences between the concepts of ‘neurodiversity’ and ‘SEND’. Primarily, neurodiversity tends to focus on a child’s individual strengths, as well as challenges, rather than solely on their deficits (Armstrong, 2017; Diehl et al., 2014; Mottron, 2011).

Parallels can be drawn between the deficit focus of SEND within the UK education system and the risk factor prevention paradigm within the youth justice system. The identified ‘risk factors’ within youth justice focused on individual, historical deficits, and the prevention and controlling of crime through the assessment, management and treatment of such factors. The risk paradigm has been heavily criticised in recent

years for its flawed methodology (Case & Haines, 2009), its labelling effect (Bateman, 2020), and the adulterisation and responsabilisation of children (Haines & Case, 2015). In response to this, it has been argued that an alternative model of youth justice, based on ‘child first’ principles, should replace the current system (Haines & Case, 2015). The key features of this system are that it would focus on ‘Positive Promotion’ (Case & Haines, 2020, p. 9), rather than the negative, deficit focus of risk. Crucially, this approach would involve a holistic, individualistic, tailored approach based on a child’s welfare needs that focuses on their strengths and future aspirations. Case and Haines (2020) envisage that this would be delivered by universal services, recognising that children in conflict with the law are still ‘children first’ and do not need to be separated, labelled, responsabilised, and criminalised.

The parallels between the neurodiverse and child first approaches to working with children require joint consideration, given that it is estimated that significant proportions of both adults and children in the criminal justice systems internationally (for example, Bower et al., 2018) may have a neurodivergent condition. It is estimated that at least one in three people in the criminal justice system in England and Wales may be neurodivergent (Cruise, Evans, & Pickens, 2011), and that this rate is even higher for children with ADHD and speech and language difficulties (Kirby, 2021, p. 10). Equally, it is estimated that the rate of

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children in custody with a neurodivergent condition is higher than those serving community sentences. For example, up to 90% of children in custody met the diagnostic criteria for a communication disorder (Hughes & Peirse-O'Byrne, 2016), in England; 89% of children in an Australian study had at least one neurodevelopmental impairment, 36% of whom had also been diagnosed with FASD (Foetal Alcohol Spectrum Disorder) (Bower et al., 2018); and one Canadian study estimated that youths with FASD were at least 19 times more likely to be incarcerated than those without FASD (Popova et al., 2011).

Despite a number of studies seeking to understand why the number of neurodivergent children in custody is disproportionate, there is very little empirical work which draws attention to the ways in which neurodivergent children interact with the education and criminal justice systems. What is missing from these narratives are children's voices in research. The concept of neurodiversity is being increasingly used by youth justice practitioners and policy makers, but remains poorly understood. The processes involved in determining a child as neurodivergent, the social and political context within which neurodivergence is developed and responded to, and the impact on the children is oblique in policy and practice. Moreover, absent at the level of grounded research and empirical evidence, is knowledge about how practitioners identify those who are neurodivergent, who acquires or indeed fails to acquire the neurodivergent label, and how decisions about neurodivergence impact on those so defined. It could be argued that rather than neurodivergent children forming a 'minority' within the youth justice system, they are increasingly becoming the statistical norm, and forming part of the core client base for front line practitioners internationally. This further emphasises the urgent need to understand what contributes to the disproportionality, and then, once in the criminal justice system, how to work with children in an individualised way that meets their needs.

This paper is based on findings of a project funded by the Nuffield Foundation that sought to examine the pathways of incarcerated children into, through and out of custody (Day et al., 2020). Data is drawn from interviews with 19 children in custody, or who had recently been released from custody.

2. Setting the context

An analysis of the literature in this area has been organised around the categories of defining neurodivergence; educational responses to neurodivergent children; the use of exclusion for neurodivergent children; criminal justice responses to neurodivergent children; and the use of custody for neurodivergent children.

2.1. Defining Neurodivergence

Neurodivergence is a complex area, encompassing a range of conditions, with no universally accepted definition (Criminal Justice Joint Inspection, 2021). The clinical definition of neurodevelopmental disorders, taken from the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5; American Psychiatric Association, 2013: 31) specifies diagnostic criteria for a range of 'neurodevelopmental disorders': 'a group of conditions ... [which] typically manifest early in development, often before the child enters grade school, and are characterised by developmental deficits that produce impairments of personal, social, academic, or occupational functioning.' Hughes (2015) notes that this includes a range of disorders including: intellectual/learning disability; specific learning disorder; communication disorders; attention-deficit/hyperactivity disorder; and autism spectrum disorders. However, a word of caution is noted about over-reliance on clinical diagnoses as basis for a definition, given that many children will not have been assessed and diagnosed in the education and youth justice systems, or they may have levels of impairment that do not meet the criteria for a diagnosis (Ibid). There are a number of reasons for this including the lengthy waiting lists (often running into

several years) for assessment of neurodivergent conditions. Further, this population of children is often disproportionately represented in the 'looked after' and excluded groups of children, who are often invisible to education systems, or moved around many local authority areas as a result of their care status (Gill et al., 2017). Further levels of complexity are added when one considers the impact of early childhood trauma, and other co-morbid conditions such as mental ill-health, poor physical health, and alcohol and drug misuse. There is emerging evidence, as noted above, of a significant overlap between neurodivergent conditions and FASD (Bower et al., 2018). It is important to note that children with such needs are also significantly over-represented in criminal justice systems (Baidawi & Piquero, 2021; Youth Justice Board, 2017). Moreover, relying on a medical model to understand neurodivergence can lead to a focus on individual deficits that must be 'corrected' through treatment (Baldry, 2010), ignoring the wider environmental factors and institutional processes that serve to further disable and exclude (Hughes, 2015).

The language of 'special educational needs and disability' (SEND) tends to be used within UK education. A legal definition of special educational needs and disability was given in The Children and Families Act 2014 as 'A child or young person has SEN if they have a learning difficulty or disability which calls for special educational provision to be made for him or her' (Council for Disabled Children, 2016).

Not all neurodivergent children will be identified by the education system as having SEND, nor will all children with SEND be neurodivergent. Often, neurodivergent children have been labelled by education, health and social care systems in England and Wales as SEBD, EBH or SEMH (Social and Emotional Behavioural Difficulties, Emotional and Behavioural Difficulties or Social and Emotional Mental Health difficulties). However, it is important to understand how the education system in England and Wales has responded to children with SEND (or SEBH/EBH/SEMH) as there are likely to be significant overlaps between the two groups.

2.2. Educational responses to neurodivergent children

The Children and Families Act 2014 sought to transform the system for all children with disabilities and special educational needs and created a series of requirements for children in custody. Key provisions included replacing the Statement of Special Educational Needs with an EHCP (Education and Health Care Plan); improved joint working between education, health and social care; and continuous and consistent support for children in custody. As part of this, local authorities were required to maintain an EHCP for children in custody, and provide goods and services to this end.

Unfortunately, the promise surrounding such sweeping provisions failed to deliver:

'Let down by failures of implementation, the 2014 reforms have resulted in confusion and at times unlawful practice, bureaucratic nightmares, buck-passing and a lack of accountability, strained resources and adversarial experiences, and ultimately dashed the hopes of many. There is too much of a tension between the child's needs and the provision available' (House of Commons Education Committee, 2019: 1).

The House of Commons Education Committee gave examples of poorly written EHCPs, 'off-rolling' (hidden exclusions of children with SEND), inconsistencies between local authorities, and children's health needs being ignored (House of Commons Education Committee, 2019). Interestingly, children's experiences in the justice system were not mentioned in the Committee's Report, despite the new legal requirements for children in custody, as outlined above. The Committee's recommendations centred on an increase of resources across the education system to adequately support children with SEND (House of Commons Education Committee, 2019: 20).

In January 2020 there were nearly 1.4 million school children in England and Wales with identified special educational needs – 15.5% of

all pupils. Of this group, 300,000 were legally entitled to support through an Education, Health and Care Plan (EHCP), with the remaining 1.1 million children receiving SEN support (Office of the Children's Commissioner, 2021: 1). This is support that is not protected by law and relies on local provision. Given the challenges in defining neurodivergence, it is difficult to estimate how many of the 1.4 million school children with SEN are also neurodivergent. However, it has been noted that neurodivergent children are likely to require specialist educational support and intervention through either an EHCP or an SEN support plan (Hughes & Peirse-O'Byrne, 2016). Some of the challenges facing neurodivergent children within education include that they may have long periods of disengagement and/or non-attendance from school; and difficulties understanding the behavioural expectations within a classroom, including verbal directions and class rules (Hughes & Peirse-O'Byrne, 2016). The failure to understand such expectations can then be wrongly interpreted by teaching staff as 'bad' or 'disruptive' behaviour, rather than indications of a child struggling to cope and function in the school environment (Ibid).

2.3. Exclusion from education

The disproportionate exclusion from education of neurodivergent children and/or those with an identified SEN remains an ongoing challenge. It is accepted that children in England and Wales with an identified special educational need (SEN) are at least 7 times more likely to be excluded from mainstream education than their peers (Gill et al., 2017). In 2018/19 children with SEN accounted for 44% of all permanent exclusions, and 82% of permanent exclusions in primary schools (Office of the Children's Commissioner, 2021). Children with SEN support plans are twice as likely to be excluded from school as children with EHCPs, and at over 5 times the rate as children with no identified SEN (Ibid, 2021). This may be due to the strength of exclusion guidance, which states that head teachers should do everything in their power to avoid children with EHCPs being permanently excluded. The same level of protection is not afforded to fixed term exclusions for children with EHCPs, or children with SEN support, where rates of exclusion are higher. Where children are excluded from mainstream education, they are typically sent to an Alternative Provision (AP) which is usually a Pupil Referral Unit (PRU). In 2018/19, 81% of children in Alternative Provision had an identified SEN (Office of the Children's Commissioner, 2021). However, despite this, there is no routine screening process in place for neurodivergent traits in excluded pupils (Kirby, 2021). There is also evidence that after exclusion, children are more likely to be identified as having an SEN than a child who has not been excluded (Ibid). The Office of the Children's Commissioner reports that this reflects the reported experiences of parents who claim that their child was excluded because of the school failing to understand and meet their child's needs (Office of the Children's Commissioner, 2021: 38).

Although alarming, the above figures are likely to be the tip of the iceberg as they only contain data on 'official' exclusions. The practice of 'off rolling' or 'hidden exclusions' (removing pupils from the school register by placing them in alternative provision or home education) has significantly increased in recent years (House of Commons Education Committee, 2018, p. 3). There are 5 times the number of children being educated in schools for excluded pupils than the number officially reported as permanently excluded each year (Gill et al., 2017, p. 13). In 2013, the OCC found that 1.8% of schools admitted to encouraging parents to take their child out of school and home-educate as a form of hidden exclusion (Office of the Children's Commissioner, 2013). By 2017, this figure had increased by 78% (Gill et al., 2017).

In England and Wales, a school's 'Progress 8' scores tracks the academic distance travelled by a pupil through secondary school. Pupils who fall behind in secondary school can negatively impact upon a school's results. The practice of off-rolling has been reported by parents as a method used by schools to increase their Progress 8 score (House of Commons Education Committee, 2018, p. 12). Evidence was also found

by the Education Committee of schools deliberately not assessing children with suspected SEND (Ibid, 2018: 10). Excluded children can save a school thousands of pounds, and it is more difficult to exclude a child with SEND, than a child with unidentified needs (Ibid). Off-rolling means that children are not afforded the levels of protection offered by the formal exclusion processes that place a number of duties upon a Local Authority (Timpson, 2019, p. 11), and are consequently not able to access the same levels of support (Office of the Children's Commissioner, 2013: 6). It has been argued that the system within which schools are operating appears to be financially incentivising the exclusion of children with complex needs (Gill et al., 2017, p. 26).

The 'school exclusion to prison pipeline' is well established across jurisdictions (Berridge et al., 2001; Ministry of Justice, 2012; McAra & McVie, 2010; Ministry of; Sanders et al., 2020; Timpson, 2019). However, despite this acceptance, it is acknowledged that understanding causality of offending as a linear relationship between exclusion and criminality oversimplifies what is often a complex interplay between a range of factors (Arnez & Condry, 2021; Berridge et al., 2001; Case & Hazel, 2020). There is no doubt that the complex interplay of factors in the 'school exclusion to prison pipeline' includes understanding why there are disproportionately high numbers of neurodivergent children excluded from mainstream education.

It is important that we gain an understanding of how some cognitive and emotional traits associated with particular neurodivergent disorders can directly influence a likelihood of certain challenging behaviours, and thus increase the risk of criminalisation (Hughes, 2015). There are also a range of social and environmental factors that can trigger certain behaviours and increase the likelihood of criminalisation. These include vulnerability to peer pressure, educational disengagement, and parenting practices and techniques (Hughes, 2015).

2.4. The youth justice system

There is relatively little research into the experiences of neurodivergent children at key stages of the youth justice system. The literature on neurodivergent adults' experiences offers some insights and potential areas of further investigation, however. A recent Criminal Justice Joint Inspection (2021) considered the experiences of neurodivergent adults in the criminal justice system. The inspection found that there were 'serious gaps, failings and missed opportunities at every stage of the system' (CJJI, 2021, p. 10). Upon arrest at the police station, the processes involved in booking someone in at the custody suite were found to be deeply unsettling for neurodivergent people, resulting in some challenging behaviours being misinterpreted by the police as non-compliant and thus rendered them less likely to be diverted away from the criminal justice system and more likely to be criminalised (CJJI, 2021, p. 12). Other issues at the police station included the failure to provide an appropriate adult (Talbot, 2008), meaning that neurodivergent adults did not have the assistance of someone to help with understanding police processes or advocating on their behalf (CJJI, 2021). Children and adults with FASD and other neurodevelopmental disorders found the interview process, which relies on narrative discourse and the use of expressive language, particularly challenging (Reid et al., 2020; Rollins, 2014; Thorne & Coggins, 2016). More generally, Kirby (2021) notes that children with communication and comprehension difficulties may struggle to understand charge, caution, bail and court orders.

At court, neurodivergent adults were more likely to be remanded in custody before trial (CJJI, 2021); over a fifth did not understand what was going on in court or why they were there (Talbot, 2008); and neurodivergence was not considered in sentencing decisions (CJJI, 2021), despite a number of cases emerging internationally where it was considered as a mitigating factor (Reid et al., 2020). Similar issues have been found in the youth court that further disable children by reducing their chances of actively participating in the legal process, (Hughes, 2015). An example given is that children may plead guilty to an offence

without fully understanding the impact on their case and future life chances (Kirby, 2021, p. 7).

Upon being supervised in the community, neurodivergent adults were less likely to understand the requirements of their order (Loucks, 2007), and less likely to receive support for their offending (CJJI, 2021). Within youth justice, the focus on cognitive behavioural techniques to address 'offending behaviour' has been found to be inappropriate for many neurodivergent children (Snow & Powell, 2012). Hughes (2015) argues that this could lead to neurodivergent children disengaging with a youth justice order, and being at greater risk of further criminalisation through breach proceedings. Some examples of programmes that are tailored to meet the children's individual social, neurodivergent and health needs have been emerging internationally, such as the Manitoba Youth Programme (Reid et al., 2020). Such programmes potentially offer a blueprint for what neurodiverse, child first support programmes could look like for neurodivergent children.

A lack of adequate staff training and knowledge (McKenzie et al., 2000), a lack of appropriate screening tools (Hughes et al., 2012) and specialist support (Talbot, 2010) have all been cited as reasons for the disabling processes that criminalise neurodivergent people within the youth justice and wider criminal justice systems (Hughes, 2015). The lack of comprehensive screening means that it is often left to practitioners to identify and understand neurodivergence, with many reporting low levels of knowledge and confidence in this area (CJJI, 2021). Moreover, the medical model of disability, that focuses on individual, pathologising deficits further marginalises those with a 'disability' in the criminal justice and youth justice systems (Steele, Dowse, & Trofimovs, 2016). This is highlighted by the concept of acceptance of individual responsibility of offending, as there is an assumption that neurodivergent children and adults choose to offend (Baldry, 2010; McCausland and Baldry, 2017). This is particularly problematic at the 'gateway' to the youth justice system: in order for a child to be diverted away from the criminal justice system (and therefore not criminalised), they must admit personal responsibility and guilt.

2.5. Youth custody

The incarceration of both neurodivergent children, and children with disabilities has been a focus of concern internationally (Diehl et al., 2014; Hughes & Peirse-O'Byrne, 2016) with inadequate screening and assessment processes; poor staff training (Passmore et al., 2018); and the harmful and damaging experiences of neurodivergent children in custody being highlighted.

The development and use of the CHAT (Comprehensive Health Assessment Tool) across all young offender institutions in England and Wales in 2014 (Hughes & Chitsabesan, 2015; Hughes & Peirse-O'Byrne, 2016; Young et al., 2018) is regarded as an important step forward in improving the health screening and assessment of children in the youth justice system. Trained clinicians interview all children in young offender's institutions within the first ten days of being sentenced by the court. The CHAT assesses the four domains of physical health, mental health, substance use and neurodisability. It is unclear how the assessment is adapted where it has been identified that children may have speech, language and communication needs. Although a useful initial screening tool, it has been recommended that the CHAT should always be followed up by a detailed and comprehensive assessment by a multi-disciplinary team where specific needs are identified (Young et al., 2018). The limited impact of the CHAT has been highlighted in that it has been found that once flagged, the needs of children within custody were not met, nor did it inform the practice of staff who were working with the children on a daily basis (Hughes & Peirse-O'Byrne, 2016). Further, it has been argued that screening at the point of custody, or any criminal justice intervention, is too late (Hughes & Chitsabesan, 2015), and should take place early in a child's primary education.

Several challenges within the custodial environment and regime have been highlighted for neurodivergent adults in custody. It is noted

that there is limited knowledge about the specific impact of custody on neurodivergent children. However, there are a number of recurring themes emerging from the adult custodial estate that are likely to be mirrored and amplified within the children's custodial estate. A common difficulty was that neurodivergent adults often found it difficult to understand prison rules and behavioural expectations, meaning that they often broke the rules and were punished with isolation and reduced privileges (such as family visits). For those with literacy and numeracy difficulties, this often meant that they could not fill out prison forms, the main system by which to arrange family visits, gym sessions, and other sources of crucial support (Criminal Justice Joint Inspection, 2021; Talbot, 2008). Offending behaviour programmes in custody are often based on cognitive behavioural techniques that focus on the acceptance of personal responsibility for offending. The unsuitability of such programmes for both neurodivergent children and adults is widely acknowledged (e.g., CJJI, 2021; Loucks, 2007) and the lack of alternative, suitable programmes often means that neurodivergent children and adults are denied the opportunities to 'rehabilitate' and achieve an early release date, thus trapping them in a 'carceral web' (Gormley, 2021, p. 8).

The prison environment itself has also been found to be harmful for neurodivergent adults, with the busy and noisy wings, cell-sharing and changes to the daily routine offered as examples (CJJI, 2021, p. 12). Further research with adult prisoners with learning difficulties and disabilities has found higher levels of restraint, segregation, bullying, feeling scared, and having depression and anxiety than other inmates (Gormley, 2021; Lewis et al., 2016; Loucks, 2007; Talbot, 2008; Young, 2018). It has been argued that the challenges of the prison environment disproportionately impact on people with ADHD (Young et al., 2018) and ASD (Lewis et al., 2016), as behaviours (often caused by the distress of the prison environment) linked to these conditions are likely to lead to higher levels of restraint and isolation. Such challenges within custody have been conceptualised as 'hidden harms' (Gormley, 2021, p. 6) that disproportionately impact on neurodivergent people.

The risk-based youth justice system disengages children from education in custody because it ignores the fact that they are individual children with their own needs, interests and abilities. Reframing educational needs within custody as risk factors responsabilises the individual child, rather than considering how the educational and youth justice systems have failed to meet the educational needs of children in the youth justice system (Case & Hazel, 2020).

The containment, control and isolation of people with cognitive disabilities is a common feature and experience of criminal justice systems across many jurisdictions, and reflects a pattern of treating people with disabilities as a 'dangerous other' who are 'bounced between the community and police, courts and prison custody and are not fully supported to live a life of dignity in the community' (McCausland & Baldry, 2017, p. 301–302). When considering the impact of custody on neurodivergent children through a rights-based lens, a recent UN general comment on the UNCRC (United Nations Convention on the Rights of the Child) in September 2019 stated that children with developmental delays or neurodevelopmental disorders or disabilities 'should not be in the child justice system at all', or when present should be individually assessed (Hughes, Sheahan, Williams, & Chitsabesan, 2020, p. 163). This poses a fundamental challenge to the universally-applied mandatory age of criminal responsibility of 10 in England and Wales. However, for those children who are in the criminal justice system, it is noted by the UN that firstly there should be an awareness of disability, and the individual child's needs, to ensure that their rights are protected. It is noted that this should be from the earliest contact with the criminal justice system, throughout the trial, and whilst in custody, which should only ever be used as a last resort (Hughes, Sheahan, Williams, & Chitsabesan, 2020).

The isolation, exclusion, and stigmatisation of neurodivergent children permeates both the education and youth justice systems. Poor staff training, limited knowledge, and insufficient assessment and screening

tools have contributed to a lack of support and identification of neurodivergent children in both the education and criminal justice systems internationally (Gill et al., 2017; Hughes and Chitsabesan., 2015; Passmore et al., 2018; Office of Children's Commissioner, 2021; Kirby, 2021). This paper seeks to consider children's journeys through both systems, and consider how a child first education and youth justice system could enable and empower neurodivergent children.

3. Methods

This paper is drawn from the findings of a recent study that considered the pathways of children into, through and out of custody. Qualitative approaches were adopted using 1:1 semi-structured interviews with children who were in custody from the North of England, or had been recently released. Interviews were conducted with 48 children. The children's interviews were analysed, and 19 children self-reported in interview that they had been diagnosed with, or believed that they had, a neurodivergent condition. The findings are based on data derived from these nineteen interviews.

Of the nineteen children interviewed:

- All were boys (1 aged 15, 4 aged 16, 12 aged 17, and 2 aged 18)
- 13 boys identified as White British
- 2 boys identified as Mixed White and Black British
- 3 boys identified as Mixed Asian and White British
- 1 boy identified as Asian British
- The range of offences committed by the boys included burglary, robbery, violence, sexual offences and manslaughter.
- 6 boys were interviewed in the community following release from custody (all within 3 months of their release date). The remaining 13 were interviewed whilst still in custody.

Prior to conducting the research, ethical clearance was secured from the host university and HMPPS (Her Majesty's Prison and Probation Service). Children were identified and approached by their youth justice worker (both in custody and the community), who verbally ran through the information sheet and asked them if they would like to be interviewed. All but one child consented, and interviews were then arranged. The researcher discussed the individual children's learning and communication needs to ensure that her interview style was appropriate to each child's needs.

Immediately prior to commencing all interviews, the researcher checked that the participant still consented, and made it clear that the process was entirely voluntary, given the inherent power imbalances that exist when conducting qualitative research in prison (Abbott et al., 2018). It was important that the children were all aware that the interview was not part of a 'requirement' of their sentence and that they could withdraw at any time without any further sanction or implication. An interview schedule containing 'prompts' and 'probes' was used to facilitate a conversation, the pace and direction of which was largely determined by the interviewee. The aim in the interviews was for the exchange to feel like a 'conversation with a purpose' (Burgess, 1984) and less like a structured question and answer session. All interviews were recorded and deleted immediately after transcription. All interviews were anonymised at the point of transcription.

Thematic approaches were used, seeking to identify, analyse and discuss repeated patterns or themes (Braun and Clarke, 2006) emerging from the data by the research team. Patterns and themes were coded and organised using NVivo. Adopting inductive reasoning, data analysis of the interviews highlighted several recurring themes that are outlined below. The approach recognises that data is produced as a result of the interaction between interviewer and interviewee (Charmaz & Bryant, 2007). It is therefore recognised that the nature of the interview, the relationship between the interviewer and interviewee, and the setting can all impact on the data. Pseudonyms have been used for all participants.

The findings are based on the perceptions of a group of children in the criminal justice system which, although reflecting the experiences of those with negative outcomes, may not be representative of all neurodivergent children in the youth justice system. The findings do not offer clarification on how or why some neurodivergent children have positive outcomes, and do not go on to experience exclusion from education or involvement in the criminal justice system.

4. Findings and discussion

A number of themes emerged during the interviews with the children as we explored their pathways through the education and youth justice systems including labelling and disabling; isolation and segregation; and surviving custody.

4.1. Labelling and disabling

A 'typical' trajectory through education and the youth justice systems was described by the children during their interviews. Many reported displaying disruptive and challenging behaviours in Years 4–6 in primary school (aged 8–11). The children described being labelled according to their behaviours, many of which were 'traits' associated with various neurodivergent conditions that tended to escalate within the stressful and overwhelming formal education environment. The 'bad' or 'naughty' label followed the child as they made the disruptive and difficult transition to secondary school. Very often, as supported by Government data (Office of the Children's Commissioner, 2021), by year 8 or 9, the child had been labelled as a 'problem child' and entered into a pattern of fixed term exclusions, leading to eventual permanent exclusion from mainstream education. Eddie had been diagnosed with ADHD whilst at high school but still felt labelled according to his behaviours:

Eddie: I was just a problem child in school, the class clown. I've been to a few schoolsbut they barely lasted a day.

Int: Why did you barely last a day?

Eddie: I just didn't like it, so I just had to be naughty there.

Int: Even after you were diagnosed with your ADHD in school, did they not give you support?

Eddie: No, they were pretty shit that school.

Eddie has identified that after being moved around several schools and acquiring a label of a 'problem child' and 'class clown', the only way he could express that he did not like school was through his behaviour, meaning more moves, placing him in a vicious cycle.

It was not just Eddie who described moving around several schools. This was a strong theme for the majority of children in this study. Some described being sent home and de-registered (off-rolling), as found in previous studies and reports (Gill et al., 2017; House of Commons Select House of Commons Education Committee, 2018). The long periods of disengagement, often as a result of children struggling to understand the instructions within a classroom has been previously identified as a particular challenge facing neurodivergent children (Hughes & Peirse-O'Byrne, 2016). The periods of instability, disengagement and disruption tended to exacerbate challenging behaviours, placing the children in a vicious cycle of labelling and disabling. Even when the children were placed in a specialist provision, such as a Pupil Referral Unit, the same pattern continued as in mainstream education:

Declan: Well I've always been a little nobhead at school. The teachers would let me swear and let me smoke, but you only go there for 12 weeks until you go back to school. I went there and you were allowed to swear and do bear shit, I went back to school, I went back there, smoking outside and I just told them to fuck off before I got excluded again.

Jake: I went to four mainstreams, then I went back to mainstream again and I got in PRU. I've been in PRU since Year 8 and Year 11.

Int: How did you find being in the PRU?

Jake: I was always fighting and problem, problem child innit. I got kicked out of there.

The majority of children had not been assessed for, or diagnosed with, a neurodivergent condition, but some had been told by professionals that they could see ‘signs’ of a neurodiverse condition, such as ADHD:

Int: Have you got ADHD?

Harry: I haven't been diagnosed or owt like that.

Int: Has anyone ever suggested it or thought about it?

Harry: CAMHS workers yeah.

The children widely discussed being labelled according to their behaviours, ignoring their needs within the education and youth justice systems, supporting literature in this area (Bateman, 2020; Hughes, 2015; Hughes & Peirse-O'Byrne, 2016). This placed the children into a deeply disruptive and disabling cycle within education. This continued in the youth justice system, where the children's underlying needs continued to be ignored:

Int: Did you speak to any staff and say, "I've got these mental health difficulties, I've got ADHD, you can't put me on basic, it's going to make me worse", did you have that conversation with anyone?

Jon: Yeah, but they don't take you serious, they just think you're talking rubbish. I take medication for all the things what I say, so I know I'm serious, but they don't take you serious.

The focus within youth justice systems on managing and responding to a child's behaviours (Gill et al., 2017) is inherently linked to the risk paradigm, which requires criminal justice professionals to focus on managing and controlling a child's ‘risk factors’, rather than considering whether they have any underlying needs (Case & Haines, 2009; Haines & Case, 2015).

Although the introduction of the speech, language and communication needs assessment for all children who enter the youth justice system, and CHAT (Comprehensive Health Assessment Tool) for all children who are sentenced to custody is important progress (Hughes & Peirse-O'Byrne, 2016) in identifying children's neurodevelopmental needs, this information is often not acted upon and does not lead to any meaningful change for the child (Hughes & Peirse-O'Byrne, 2016; Young et al., 2018). As a result of this failure, children were placed in a disabling cycle of punishment and frequent moves within the education and youth justice systems. The disruption that this caused only exacerbated certain behavioural traits, further entrenching them within the cycle:

Robbie: I know everyone's got their choices, but if they've got someone going through tests and stuff, and they know that they're off the scale of being too giddy, running about the wing, they should know there's something not right with them, and they used to put it across to my mum and that, that I used to be like a little shit there, I used to do stuff on purpose.

Int: They were just interested in your behaviour, they were only talking about your behaviour?

Robbie: Yeah, they were talking about my behaviour, they weren't talking about what was going on with me. Like mentally, they never used to sit down and talk to me, no nothing, not really, none of the officers would sit down and ask me what were going on.

Robbie discusses ‘what was going on with me’ – he wanted professionals to look beyond the behaviour, and speak to him about what was bothering him. Taking the time to pause, speak to children as individuals and look beyond the presenting behaviour for further complex needs appears to be the first crucial step to move away from the labelling

and disabling cycle.

4.2. Isolation and segregation

The focus on children's behaviours often meant that they were subject to frequent isolation and segregation throughout both the education and youth justice systems. Sam described the impact of being grounded in the family home:

Sam: Just like grounded me and got me dad to ground me and stuff like that. But I'd jump out of the window and just go out.

Int: Why didn't you want to stay at home and try and not offend?

Sam: Because I think I was used to being out all the time, I'd never really stay in or owt like that, I was always outside and walking about.

Int: You don't like being stuck inside?

Sam: It like I can't settle, I can't stop walking, even in my house I'm walking around the house not knowing what to do with myself.

The children described being repeatedly subject to fixed term exclusions within school for what appeared to be quite minor behaviour or breaking trivial rules:

Int: What was going on at school?

Paul: I was getting excluded, excluded, excluded. Isolations, it was just all that since Year 7.

Int: Why was that going on, what kind of stuff were you doing at school?

Paul: Nowt, it's stupid, like if you had a stripe on your sock and that, so you had to wear all black socks and you had like a white stripe or a green stripe on your sock, they'd put you in isolation for it. So, I just used to walk out and go home.

As outlined above, the ‘school exclusion to prison pipeline’ is well established in the literature (Berridge et al., 2001; Ministry of Justice, 2012; McAra & McVie, 2010; Ministry of; Sanders et al., 2020; Timpson, 2019). Certainly, for the children in this study, there was evidence of repeated school exclusions prior to the commencement of, or alongside an escalation of, offending.

Paul describes walking home when the rules and stresses associated with school became too much. Upon entering custody, the children did not have the luxury of being able to remove themselves from an environment when it became ‘too much’, often impacting on their behaviours and leading to increased levels of isolation and segregation, supporting research conducted with neurodivergent adults in custody (Criminal Justice Joint Inspection, 2021; Talbot, 2008). This had a negative impact on some of the children's mental health:

Eddie: You don't cope, the day just goes by, you've just got to accept the day going by. You don't cope with it at all, you don't have a choice.

Int: Does it affect your mental health?

Eddie: Yes. Especially me, they know they don't like me without a TV because I'm one of them people I can't just sit on myself and look at a wall.

Int: What do you do?

Eddie: I get mad, I get attitude with officers, I feel like fighting straight-away, I feel like there's nothing else to lose now.

The focus of practitioners on children's behaviours throughout their interactions with the education and youth justice systems placed them in a disabling cycle that almost always involved increased levels of isolation and exclusion. However, both Eddie and Sam describe the use of isolation and exclusion as harmful to their mental health, and causing them to become frustrated, needing to escape or leading to challenging behaviours. The vicious, and harmful, cycle that appears to typify

neurodivergent children's journeys through the education and youth justice systems supports the UNCRC guidance, as outlined by Hughes, Sheahan, Williams, & Chitsabesan, 2020 which states that children with neurodivergent conditions 'should not be in the child justice system at all' (Ibid, 2020: 163). Adam considered the suitability of custody for children with autism and ADHD:

Adam: I just think people, lads like, I know that some lads, they deserve to go to jail, but some lads who have got like autism and ADHD, they need to get looked into good and proper before they actually do think about sending them to jail, because it's really, it did mess my head up pretty bad going to ***** YOI.

Int: How did it mess your head up?

Adam: Because of keeping me behind my door, or when I used to get into fights with people, say if you smack me, I'd still go on bang up if I even tried smacking you back.

Jake discussed the importance of maintaining contact with family and friends as a way of coping with the isolation and loneliness experienced in custody:

Int: What did it feel like?

Jake: It did feel like you were alone in there. Your parents, they had to, you could only get so many people on a visit, and it was only what Friday and Saturday, no Saturday and Sunday, and at the jail there was like 300 or something lads, and there was only like 25–26 tables, for one visit, and they're only on Saturdays and Sundays. So, it's like 50 lads out of 300 are getting a visit on a weekend, so you really want more people ... They want less people in prison, because it's not right for some people, like mine, kind of best made up a bit, do you know I mean because I'm going through autism and ADHD assessments and stuff, it were playing with my head, because I couldn't see my family as much as I did before, and I could hardly stay in contact with them.

The isolation and segregation often continued upon release, with many children being placed on an electronically monitored curfew (on tag) every evening:

Luke: Yeah, seven months I'm on tag.

Int: How do you think you're going to manage with that?

Luke: That's what I struggle with most tag, so I think they're going to do something where I can ... They're going to do it so my tag goes all over the garden, so I can go outside and stuff like that.

Exclusion, isolation and segregation presented as recurring themes for all children as they navigated their way through the education and youth justice systems. This caused significant distress for many, adversely impacting their mental health and contributing to challenging behaviours. Unfortunately, the response of professionals was often to 'manage' the behaviour with further isolation and punishment.

4.3. Surviving custody

Many neurodivergent children described different methods of surviving custody such as being aggressive to avoid being bullied:

Ben: Like I needed people to see me as an aggressive person so I wouldn't be approached, you know what I mean?

Int: And do you think that environments like ***** YOI are good for kids?

Ben: No, not for one minute.

Int: Why not?

Ben: You can go in 'cause you've made a mistake like me and you can come out wanting to commit more offences because of the stuff you've seen and because of the ... survival instinct that goes into you while you're in there.

Another common method of surviving custody was self-isolation and avoiding interactions with other children on the wing:

Int: You were in your cell all the time and stuff?

Rob: I weren't coming out of my pad at first.

Int: Weren't you?

Rob: No.

Int: Were you not coming out at all?

Rob: I think I were coming out to get my dinner and then went back in my pad for my dinner.

Int: Why were you doing that do you think?

Rob: I was sort of like nervous around other people, and I just didn't know what to expect.

Being placed on a smaller unit within custody for 'vulnerable' children or those with complex needs was spoken about favourably by those who had been placed there:

Rob: I think I've settled anyway, I think it's just because it's smaller and I feel like the staff are a lot better, they can focus on you more because there's not that many people on.

Living on a smaller unit appeared to help as staff had 'more time' and the less intimidating environment often meant that children often felt more settled. However, for the majority of children, custody was an environment that they had to 'survive'. Frustration, anger and distress were evident as children recounted their experiences of the education and youth justice systems.

5. Conclusion

Neurodivergent children face a number of challenges as they navigate their way through the education and youth justice systems. The themes of a labelling and disabling cycle, isolation and segregation, and surviving custody all suggest that neurodivergent children are experiencing a range of 'hidden harms' (Gormley, 2021) that appear to result directly from a failure to recognise, assess, understand and effectively respond to children's needs. Both the education and youth justice systems appear to focus their attention on behaviours, which are often the product of the environmental stressors that the children are struggling to cope with. The focus of both SEND (special educational needs and disability) and the risk paradigm mean that children's individual needs are reframed as 'deficits' that must be managed and controlled. This, unfortunately, means that neurodivergent children are disproportionately labelled and disabled by the very systems that are supposed to help them.

This paper has argued that a neurodiverse and child first approach will turn the attention away from the 'deficits' or presenting behaviours of the children, and onto the very systems that label and disable. By moving away from the deficit focus of SEND and risk within education and youth justice, and towards neurodiversity and child first, a child is viewed firstly as an individual with their own specific strengths and needs. Educational and youth justice responses to neurodivergent children would be underpinned by the principles of Positive Promotion (Case & Haines, 2020), informed by a social model of disability, that involved a holistic, individualistic, and tailored approach based on their welfare needs, that focused on their strengths and future aspirations.

There is an urgent training need for all front-line professionals working with children around awareness of neurodivergence, where to go for advice and assistance, and some basic techniques covering communication styles and behaviour management. This should form a core part of training for all professionals, either as part of a professional qualification, or as an induction into a non-professional role.

Early screening of children at potential 'trigger points' (such as when

a child is at risk of exclusion, demonstrates behavioural challenges or has learning needs) for neurodivergent conditions would go a long way to shift the focus of professionals from behaviours and onto underlying needs. To this end, banning the routine hidden, fixed and permanent exclusion of neurodivergent children would go a long way to ensuring that the focus remains on how to meet children's needs, rather than conveniently removing them from sight.

Screening for neurodivergent conditions should form part of the assessment of children at entry point into the youth justice system. The inclusion of a specialist to conduct the screening within multi-agency youth justice teams would facilitate this and allow alternative, neuro-diverse pathways to work with children to be identified, similar to the Manitoba Youth Justice Programme. Custodial pathways should be limited to smaller, care-based custodial placements, such as Secure Children's Homes. Further, the integration of the United Nations Convention on the Rights of the Child into English and Welsh Law would give legal force to the principle of last resort for children sentenced to custody. Consideration should be given to a presumption against breach and an electronically monitored curfew for children supervised in the community.

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