

Response template for consultation on Mental Health Conditions and Disorders: Draft Legal Guidance

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Organisation (if applicable): The Association of Youth Offending Team Managers (AYM)

Address: The AYM is a professional association representing the majority of youth offending teams (YOT) and their managers in England.

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Question 1

Do consultees agree or disagree with the proposed factors to be taken into account by prosecutors at the public interest stage? Do consultees propose any further factors to be taken into account at this stage?

The AYM is pleased to see the factors that are included in this guidance and in particular those of acquired brain injury and ASD.

We are also pleased to see the inclusion of PTSD, however, many children suffer 'adverse childhood experiences' (ACEs) which research has demonstrated has affected their ability to function see examples below (non-exhaustive list):

- Cashmore, J., 2012. *The link between child maltreatment and adolescent offending: Systems neglect of adolescents.*
- Fox, B.H., Perez, N., Cass, E., Baglivio, M.T. and Epps, N., 2015. *Trauma changes everything: Examining the relationship between adverse childhood experiences and serious, violent and chronic juvenile offenders.* 'Child Abuse & Neglect, 46', pp.163-173.
- Gilbert, R., Widom, C.S., Browne, K., Fergusson, D., Webb, E. and Janson, S., 2009. *Burden and consequences of child maltreatment in high-income countries.* 'The Lancet, 373'(9657), pp.68-81.
- Murray, J. and Farrington, D.P., 2010. Risk factors for conduct disorder and delinquency: key findings from longitudinal studies. 'The Canadian Journal of Psychiatry, 55'(10), pp.633-642.

The AYM would wish to see a reference to this in the guidance to ensure that prosecutions brought are appropriate and that diversion from the criminal justice system are considered at the earliest possible opportunity where trauma has affected a child's functioning. The AYM believes that such early diversion would enable appropriate interventions to be offered that support the amelioration of such ACEs for a child and would require agencies to address the root cause of the child's offending.

However, the exclusion of speech, language and communication needs is problematic. SLCN is defined in the Special Educational Needs & Disability Code of Practice: 0-25 years as the key need within Communication and Interaction; one of the four identified broad areas of need. Whilst not a mental health disorder or condition as applied by the Mental Health Act it is a significant need which if not identified here could result in injustice.

Many individuals with mental health disorders and conditions may also have SCLN but not including this as a category for attention by the CPS may lead to prosecution of children who have 'crossed the boundary' of acceptable behaviour when challenged by others which results in an arrest. We would wish the CPS to be alert to this difficulty in order to avoid inappropriate prosecutions and miscarriage of justice.

Question 2

Do consultees agree or disagree that the new section on diversion from prosecution sets out the right factors for prosecutors to consider? Is there anything else that should be taken into account?

Diversion from the criminal justice system is supported by the AYM. In some areas it is the youth offending service that will assess for appropriateness of such diversion and deliver any required intervention to support such diversion. The AYM would prefer this to be recognized and included in the guidance so that all children at risk of prosecution are afforded the opportunity for appropriate diversion.

Question 3

Do consultees agree or disagree that the guidance clearly and accurately sets out the procedures for fitness to plead?

Yes

Question 4

Do consultees agree or disagree that the information in Annex A covers the main features of conditions which prosecutors should be aware of when dealing with these cases? Is there anything else that should be taken into account?

The AYM would like CPS to consider including information to assist prosecutors regarding SLCN:

The Communication Trust

https://www.thecommunicationtrust.org.uk/media/600984/ite_resource_2.pdf

Question 5

Do you have any further comments on the revised mental health conditions and disorders legal guidance?

No

How did you hear about this consultation (delete as applicable)?

- Specialist press (e.g. Law Society Gazette)
- CPS Website