

Regulations and code of practice in relation to Part 11 of the Act, Miscellaneous and General, including Adults and Children in prison, youth detention accommodation, and Ordinary Residence

1. Introduction

1.1. Headway – the brain injury association is pleased to have the opportunity to respond to the Welsh Government’s consultation on how the Social Services and Well-being (Wales) Act 2014 will be implemented through Regulations and Codes of Practice. We are responding to the relevant consultations through a letter, rather than the formal response form, as this will better enable us to share our views on the proposals.

1.2. As outlined below, brain injury can have a broad range of impacts on survivors and their families. These cover behavioural, physical, emotional and cognitive functioning, and the problems faced by people with a brain injury are often complex and multifaceted. It is therefore vital that they are supported to have timely access to specialist rehabilitation and support services so that they are enabled to live as full and independent lives as they can.

1.3. Research suggests the relationship between crime and brain injury can be reciprocal, and consequently brain injury is very relevant when considering care and support within the offender population. Our response to the consultation on Part 11 of the Act therefore focuses on this area, exploring the impact of brain injury, prevalence of it amongst the offender population, and the intervention points at which we urge the Welsh Government to consider the needs of brain injury survivors within the Code of Practice and any further guidance.

1.1.1. Headway – the brain injury association

1.1.2 Headway is a UK charity seeks to improve life after brain injury, providing frontline services to help people to rebuild their lives. We provide information, support and services to survivors of brain injury and their families and carers, including a national nurse-led helpline and an emergency fund for those in crisis. We also undertake research, policy and campaigning work to better understand the impact of brain injury, to raise awareness of its impact, and reduce its prevalence. Locally, Headway has a network of more than 120 groups and branches, providing services such as rehabilitative therapies, advice and advocacy, occupational projects and peer support.

1.1.3. In Wales, Headway currently has one group in Cardiff and ten branches which together cover 16 counties. From its base at the Rockwood Hospital, Headway Cardiff provides a variety of services, from carer support through to social rehabilitation programmes, delivered by staff and volunteers. Branches, which are led by volunteers,

provide a range of services and information, such as group social activities and carer support.¹

1.1.4. With such experience and expertise, Headway is well-placed to contribute to this consultation on the implementation of the new Act.

1.2.1 The impact of brain injury and the value of support and rehabilitation

1.2.2. Brain injury can impact a person in a range of different ways, and can affect them for the rest of their life (Williams, 2012:12). It can lead to physical issues, such as headaches, pain, and movement trouble; and emotional problems, including depression, anger and anxiety. Brain injury can also cause cognitive symptoms, like memory problems, information processing difficulties, and issues with concentration; along with behavioural issues. In terms of the latter, research has shown that brain injury survivors may have issues controlling their behaviour, and may exhibit aggression (verbal or physical) and irritability (Wood and Thomas, 2013: 253).

1.2.3. Such issues may be problematic for brain injury survivors in interacting with their social environment and, in turn, this can hinder their rehabilitation and recovery (ibid). Furthermore, aggression can lead to unemployment, social alienation (including from family and carers) and criminality.

1.2.4. There is no cure for brain injury, unfortunately, however rehabilitation can help people to understand and manage its effects. If referred to specialists, such as neuropsychologists, at the earliest opportunity, survivors can learn compensation strategies to help them deal with their symptoms. In addition to increasing their well-being, this can also be preventative in guarding against further future injuries. The cumulative effects of repeated head injuries can be significant; every new injury to the brain can make it more susceptible to increasingly severe damage in the future.

1.3.1. Brain injury and the offender population

1.3.2. It is imperative to note that not all brain injury survivors will suffer the behavioural impacts outlined above, and, of those that do, the majority will not become involved with the criminal justice system. The effects of brain injury can, however, lead people who have previously never fallen foul of the law to find themselves in difficulty with the legal system for one reason or another after sustaining their injuries. In considering the potential impacts of a brain injury, it is perhaps unsurprising that this type of injury is more commonly found amongst the offender population than the general population.

1.3.3. There appears to be a reciprocal relationship between brain injury and offending behaviour. Here, the behavioural impacts of brain injury can lead to criminal behaviour and increased reoffending. However, those who engage in criminal activity are more prone to head injuries due to their lifestyle.

¹ For more information on Headway and the services it provides in Wales, please see the contact details and the end of this submission.

1.3.4. Whilst brain injury is not an excuse for criminal behaviour, the high prevalence among offenders demonstrates why it must be considered and investigated further whenever suspected. Providing survivors with the correct treatment can greatly reduce their risk of reoffending, and therefore it is for the good of both the individual and society as a whole. This presents a clear economic benefit as well as a social one, and can additionally produce savings if those with brain injuries are treated in a timely manner through mitigating future care needs and enabling people to make a contribution to society should they be able to return to work.

1.3.5. Research has been conducted to explore the prevalence of brain injury amongst the offender population. William's analysis of studies from across the world found that brain injury is relatively common amongst this group, suggesting that between 50 and 80 percent of offender populations have suffered a head injury, compared with less than ten percent of the general population (2012: 18).

1.3.6. A further study found that 36.2 percent of offenders questioned reported suffering a traumatic brain injury in the year prior to their interview with the researchers, and 87 percent had endured one at some point in their lifetime (Slaughter et al, 2003: 734). Other research found that, of 31 people assessed while they were awaiting sentencing or a trial for murder, 64.5 percent had issues in the part of the brain implicated in anti-social behaviour (Blake et al, as cited in Williams et al, 2010: 2).

1.3.7. These findings are striking, and have informed Headway's response to this consultation in connection to offenders. Having considered the Code of Practice, we believe there are three key areas that the Welsh Government should factor brain injury within when finalising the Code of Practice and implementing it. These include: brain injury awareness in training for professionals who work with or support offenders; considering the presence of brain injury during offender health screening, and; the portability of care plans.

2. Professionals working with offenders must receive brain injury awareness training

2.1. With research suggesting a high prevalence of brain injury amongst the offender population, Headway believes local authorities must increase their knowledge of this so that they can appropriately assess and meet the 'care and support needs' of this group. To reinforce this, relevant prison staff should also be aware of brain injury so that they can both understand and help implement any care and support plans in place or in development for offenders under their supervision.

2.2. Whilst it is important that all Welsh local authorities increase their knowledge of brain injury and connected support needs, it is even more critical for those with prisons or bail accommodation in their area who may need to cater for more needs. This is because, with local authorities set to become responsible for the care and support of all adults in their areas (including any offenders, regardless of whether their home is in another local authority

area) from April 2016, it is likely that those containing such facilities will have higher numbers of people with brain injuries.

2.3. The time leading up to the new Act being fully in force presents a significant opportunity for all local authorities. Headway believes local authorities should prepare for the upcoming transition by increasing their knowledge of brain injury, its effects, and the support and care needs of survivors, so that they will be fully equipped to provide appropriate services from April 2016. We urge the Welsh Government to address this with local authorities.

2.4. Headway strongly supports the suggestion in the Code of Practice that local authorities should consider offender supervisors and those within probation services in creating holistic care and support plans. We believe this should be mandatory given that these individuals will have key contact with offenders. Including these professionals in plans – and indeed within training on brain injury – would help to ensure the needs of this group are met and that there is appropriate understanding in the location the plan is delivered. Furthermore, increased knowledge may help prison and probation staff to identify others who need assessment for similar support.

3. Professionals screening offenders' health must consider a potential brain injury

3.1. Some offenders entering prison will be aware of having a brain injury, whereas others will not. In terms of the former, it is important that any existing care and support plan is transferred to the offender's new responsible authority and implemented in timely manner. For the latter, opportunities to identify a brain injury must be taken throughout an offender's progress through the criminal justice system.

3.2. This is particularly key given the link between brain injury and offending behaviour, and it is important to recognise that not all brain injuries are picked up by medical professionals; this is especially true of minor head injuries which often do not show up on brain scans, yet can have significant impacts. There are also people who may not report their injuries or attend hospital following an incident, and this is perhaps more likely if they have been sustained in the course of criminal activity.

3.3. Consequently, Headway believes it is vital that brain injury screening takes place, and calls on the Welsh Government to consider how this could be made standard practice throughout the Wales prison estate. With such prevalence statistics, it is likely that a number of offenders with brain injuries may need care and support to aid their rehabilitation and prevent reoffending.

3.4. To ensure that those with brain injuries are identified and enabled to access support, we call on the Welsh Government to make it mandatory for local authorities to collaborate with prison health care teams to screen all offenders for brain injury. We suggest this takes place in the health screening which forms part of the Prison Reception and Induction Stage, as this would ensure those affected are able to access care and support at the earliest opportunity;

with early intervention shown to promote the best possible recovery, this is in the interests of both the individual and the health and care system in terms of ongoing support costs. As discussed above, it may also help to reduce reoffending through helping brain injury survivors to recover from, or better deal with, ongoing behavioural symptoms.

3.5. It is important that such screening is undertaken using the correct tools. For example, the Disabilities Trust Foundation has developed the Brain Injury Screening Index (BISI) to aid the identification of people with a brain injury. Developed for professionals, this has been piloted in HMP Leeds and the research from this has been peer reviewed and published in 2014.²

4. Care plans must be fully portable across county and UK nation borders, and continuity of plans must be immediate following a move or upon turning 18 years

4.1. The draft Code of Practice states that 'there are regular prisoner movements within the prison estate in Wales,' and Headway is keen that there is continuity of offenders' (and ex-offenders') care and support plans as they relocate. Consequently, we are pleased to see the focus on portability which the Act contains, and that this is in the draft Code of Practice.

4.2. We would like assurance that this will work in practice, as success here will depend on sound and effective communication links between local authorities. Without this, there is a risk that brain injury survivors will not receive sound transition arrangements, or that there may be delays before they are reassessed by the new local authority.

4.3. These risks also apply in the instance of prisoners moving between Wales and other UK nations, given that there are currently no formal cross-border arrangements in place for prisoners moving between UK nations. Headway appreciates the Code of Practice states there will need to be solid agreements in place in such circumstances between the two local authorities involved, however we urge the Welsh Government to initiate formal processes here to ensure that relevant offenders again do not fall through the gaps. We are particularly concerned that women may be at risk, given that they serve their sentences in English prisons and therefore they will routinely fall into this bracket when beginning their resettlement.

4.4. In addition, Headway is concerned that any differences between the care and support services provided by local authorities across Wales (and those in other UK nations where Welsh offenders spend their sentences) could lead to changes in care and support plans for offenders with brain injuries when they are moved or resettle. We believe this must be given consideration in view of the Code of Practice's focus on portability, to ensure that any differences in the services offered and available do not undermine good intentions here.

² Paper entitled 'Neuropsychological performance markers of self-reported traumatic brain injury in a sample of adult male prisoners in the UK.'

Headway response to the Welsh Government consultation: implementation of the Social Services and Well-being (Wales) Act 2014

Headway believes it must be stressed to local authorities and prisons that prisoners should only be transferred to areas with the resources required to meet their individual care needs.

4.5. Finally, the upcoming rules state that adult offenders are the responsibility of the local authority their institution geographically sits within We would like assurance that this will not negatively impact on young offenders with brain injuries when they turn 18. As stated by the Code of Practice, the responsibility for children remains with their home local authority, however for adults it becomes that of wherever they are resident. As a result, there is a risk that there will be continuity issues when a young offender becomes 18 and this responsibility changes.

Further information

For more information on any of the content of this consultation submission, please contact Holly Towell, Policy and Campaigns Manager, at campaigns.manager@headway.org.uk or on 020 8640 8413.

References

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