



Acquired brain injury and the criminal justice system

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What is acquired brain injury and traumatic brain injury?

The Equal Treatment Bench Book sets out some information about acquired brain injury. It says:

Acquired brain injury is a non-progressive injury to the brain which is acquired after birth.

Trauma is just one cause. It can result from a variety of causes such as stroke, brain tumour, infections such as meningitis, or metabolic conditions such as severe hypoglycaemia (low blood sugar).

The consequences can vary enormously between individuals, and range from cognitive impairment to behavioural and mood changes in addition to physical problems such as seizures, incontinence and headaches.

The cognitive effects of a brain injury affect the way a person thinks, learns and remembers. There may be problems with memory, the ability to concentrate and pay attention to more than one task at a time, particularly when tired or under stress, speed of processing information, including understanding fast speech and difficulties in planning and problem solving and with language skills.

Emotional and behavioural effects may result in agitation, anger and irritability, lack of awareness and insight, impulsivity, depression and anxiety.

The initial period after the trauma can show rapid improvement from a very low base. However, after one or two years, the rate of improvement is likely to slow down and eventually will hit a ceiling. When a person is recovering well, they can appear deceptively able to communicate and cope. Processing new information, environment and travel routes, let alone concentrating on questions and formulating answers, will be exhausting. If pushed too far, the brain will simply go blank and 'switch off'.

It is estimated that accident and emergency departments in the UK see about 900,000 head injury presentations each year, including around 100,000 classified as severe. Brain injuries can be roughly categorised as mild, moderate, severe and very severe. These levels depend on how long consciousness has been lost and the length of amnesia following the injury. The longer the period of unconsciousness, the more severe the brain injury is likely to be.

Traumatic brain injury (TBI) is the greatest cause of brain injury, usually arising from an impact injury to the brain – as a result of violence, sports injuries and road traffic accidents. Even minor injuries can cause lasting effects to brain function, especially where there has been a cumulative effect of several mild injuries, which can mirror the problems of a severe TBI. Mild TBIs are also less likely to be reported and, therefore, may go undiagnosed and untreated.

Brain injury and the criminal justice system

A number of studies have shown that there are much higher rates of brain injury found in the offending population, suggesting that there may be a link between TBI and offending behaviour. The effects of brain injury may impair judgement, as well as leading to reduced impulse control and increased aggression.

Two issues caused by brain injury, believed by the Disabilities Trust to be the most relevant to behaviour seen in court, are post-traumatic amnesia and frontal lobe paradox.

Post-traumatic amnesia (PTA) is a temporary state of confusion, disorientation and memory difficulties which occurs immediately following a significant blow to the head, most usually with a loss of consciousness. It may last only several minutes or possibly for several hours, dependent upon the nature of the injury. PTA is sometimes referred to as 'post-traumatic confusional state' and can occur from the moment of the injury until the return of normal memory functioning. During this condition, an individual cannot be viewed as fully cognisant, despite being awake and able to respond to questions. They may respond or behave erratically and may mistakenly be judged as intoxicated.

Frontal lobe paradox describes a phenomenon where a person with a frontal lobe brain injury retains the ability to discuss and show knowledge of what they have done or need to do but then struggles to actually do this in practice. As such, they can perform well in an interview but in an everyday situation they fail to perform well, can be impulsive and make poor decisions, resulting in problematic behaviour. This is to say, that due to this particular 'neuro-disability' the person is 'good in theory, but poor in practice'.

Some relevant statistics

- Acquired brain injury is thought to affect around 8.5% of the population during their lifetime. About 10-15% of all TBIs are classified as moderate or severe, and the remaining 85-90% are classified as mild.
- TBIs tend to occur mostly in children, adolescents, young adults and those who are aged over 75.
- Although the rate of women experiencing brain injuries has grown over the last 10 years, men are more likely to experience brain injury (62%), especially in adolescence and adulthood.
- The Centre for Mental Health estimates that around 60% of adult offenders and 30% of young offenders have a history of TBI, often involving multiple injuries.
- Hospitalised head injury was found in 24.7% of prisoners in a recent study, and was significantly more prevalent than in a matched general population sample.
- A study at HMP Drake Hall young offender institution found that 64% of women there reported a history indicative of brain injury. Of the women who had reported a brain injury which was traumatic in nature, 62% of these injuries were incurred by domestic abuse.

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Brain injury is a hidden disability

As a result of an injury to their brain, an individual may have physical difficulties that can and do resolve over time and as such they may be seen as having improved and recovered. However, due to their brain injury they may have ongoing difficulties that are not visible from the outside. Such hidden difficulties may include problems with attention span and concentration, planning and organising, problem solving, understanding and using inferential language, memory and emotional changes. These issues can be ongoing and long-term.

Brain injury and development of the brain

During childhood and adolescence, the brain is rapidly changing and developing. Although the brain will try to repair itself if an injury is incurred at this stage, it does not always regenerate completely. This can mean that a person who is affected by an injury while still developing may have long-term problems with some functions. For example, the parts of the brain which relate to temperance (behavioural control) and impulse control are located in the frontal lobes of the brain, which are some of the last areas of the brain to fully develop. Damage to these areas may therefore cause long-term problems with impulse control and temperance.

How can brain injury affect presentation and participation in court?

Brain injury can have effects on presentation and participation in court, for example:

Cognitive effects

- Difficulty in concentrating on proceedings
- Issues with memory and recall, meaning the person may be forgetful or find it more tiring to remember things
- Difficulty in processing new information – eg it may be difficult to remember new court dates or probation appointments and new locations may be confusing
- Difficulty in reading or understanding complex information
- Difficulty in moving on to new topics, so information may be repeated
- Difficulty in formulating and responding to questions
- Issues with knowing when to provide appropriate evidence

Behavioural effects

- May feel more anger, increased irritability or shorter temper
- Mood swings, which may cause extreme reactions or inappropriate emotional responses to proceedings (eg laughing)
- Poor social judgement – leading to potential misinterpretations of situations or inappropriate interactions

Physical effects

- Problems with balance, which may make standing in court especially tiring and difficult
- Headaches and dizziness, making it hard to concentrate during court proceedings

It is important to remember that people with brain injury may demonstrate any of these changes, all or none of them, and have some good and bad days.

What can you do in court?

If a brain injury has been identified the *Equal Treatment Bench Book* suggests the following reasonable adjustments:

- Delaying the hearing if the person is still at the rapid improvement stage
- Taking breaks at very regular intervals, especially while the person is giving evidence, eg every 20-30 minutes
- Shortening the day
- Allowing late start times and early finish times to avoid rush hour travel or choosing a venue close to the person's home
- Ensuring the room is quiet and without distractions
- Speaking slowly and clearly
- Making one point at a time in short sentences
- Allowing time to process information and respond
- Some individuals may use Makaton signs and symbols to communicate

(Makaton is a language programme combining signs, symbols and speech. Read more at www.makaton.org)

You should also ensure that proceedings are clear by checking the person's understanding throughout the process. Rather than asking 'Do you understand?', ask 'What have you understood?'

If you have concerns about someone then you should:

- Ask for a liaison and diversion assessment
- Check the pre-sentence report and request another one is completed if you have concerns

How can brain injury affect participation and engagement with programmes?

- Brain injury can also have similar effects on participation in programmes, as thinking ahead and planning may be difficult. More time and support to complete programmes may be required.
- Disinhibition and behavioural changes can make participating in group programmes more challenging.

Further information and reading

- Brainline www.brainline.org
- The Disability Trust <https://bit.ly/magistrate2087>
- The Equal Treatment Bench Book <https://bit.ly/magistrate2088>
- Headway <https://bit.ly/magistrate2089>
- Repairing Shattered Lives: Brain injury and its implications for criminal justice, Barrow Cadbury Trust <https://bit.ly/magistrate2090>
- Traumatic brain injury and offending, Centre for Mental Health <https://bit.ly/magistrate2091>

Thank you to the Disabilities Trust for their help in compiling this guide.