Meeting Criminogenic Needs to Reduce Recidivism: The Diversion of Vulnerable Offenders from the Criminal Justice System into Care

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Abstract—Once in touch with the Criminal Justice System, offenders with mental disorder tend to return to custody more often than nondisordered individuals, which suggests they have not been receiving appropriate treatment in prison. In this scenario, diverting individuals into care as early as possible in their trajectory seems to be the appropriate approach to rehabilitate mentally unwell offenders and alleviate overcrowded prisons. This paper builds on an ethnographic research investigating the challenges encountered by practitioners working to divert offenders into care while attempting to establish cross-boundary interactions with professionals in the Criminal Justice System and Mental Health Services in the UK. Drawing upon the findings of the study, this paper suggests the development of adequate tools to enable liaison between agencies which ultimately results in successful interventions.

Keywords—Criminogenic needs, interagency collaboration, liaison and diversion, recidivism.

I. INTRODUCTION

HIGH rates of mental health problems observed among inmates is a worldwide problem, and in the UK the situation is not different [1]. It has been suggested that offenders with mental disorder are more likely to reoffend, as vulnerable offenders tend not to receive adequate rehabilitation treatment in prison [2]. In this sense, effective interventions devised to decrease recidivism and protect the population should rely upon precise identification of offenders' risks and needs and their early diversion from the Criminal Justice System (CJS) into treatment.

In England, the Offender Assessment System (OASys) is the tool currently used to determine the risks and needs of adult offenders in contact with the CJS. The model works with the premise that certain risk factors are likely to predict for criminal behavior and consequently the likelihood of recidivism [3]. Therefore, by addressing these offending-related factors (such as offending history, literacy and employability, relationships, substance abuse, emotional balance, accommodation, and lifestyle), authorities are able to devise risk management interventions that ensure public protection.

Although mental illness is not identified as one of the major criminogenic factors promoting criminal behavior in OASys, studies have demonstrated that serious mental problems either

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can directly or indirectly cause criminal behavior [4]. Furthermore, as mental illness is overrepresented in the prison population, it is reasonable to make the conceptual leap to connecting mental health problems and criminal activity in a causal way. As a result, it seems to be natural for agencies to design rehabilitation programs that take into consideration offenders' mental health, as their ability to re-socialize is deemed to be directly related to the treatment they receive. To this end, it is sensible to have professionals within CJS aware of mental health conditions, treatments and services they can refer offenders to if the need arises. Likewise, mental health workers need to be supportive of their patients in case they find themselves involved with the CJS [5]. However, this cross-boundary collaboration has proven to be difficult to put in practice. In this context, the government in England has been working on a series of initiatives to improve access to services, being Liaison and Diversion schemes (L&D) one of them. L&D is a service targeted at connecting Criminal Justice and Welfare Services and diverting vulnerable offenders away from CJS by referring them to health and other services as early as possible in their trajectory through the criminal justice [6].

This paper focuses mainly on the work done by L&D front-line workers who liaise with organizations in the MHS and the CJS to meet the criminogenic needs of vulnerable offenders.

II. MEETING CRIMINOGENIC NEEDS

In trying to identify the reasons leading up to an offence, criminologists analyze the necessities of the offender. In other words, they attempt to determine the individual's unmet needs that led to a criminal behavior. Hence, criminogenic needs are the characteristics directly connected to the probability of a person to re-offend. These traits can be divided into two categories: Those that can be influenced by other factors (called dynamic), and those that cannot be changed (called static) [3].

Static factors cannot be addressed by any type of program aiming to prevent future offences. Examples of static factors include family criminality, criminal history, etc. In general, these are core aspects of a person's life that personally promoted the criminal activity. Conversely, dynamic factors, such as the lack of respect for authority, anti-social behavior, substance use, employment status, and so forth, are traits that can be addressed by therapy or any other type of targeted programming with the goal of influencing the individual into a more law-abiding posture. They are seen as directly correlated

World Academy of Science, Engineering and Technology
International Journal of Law and Political Sciences
Vol:13, No:6, 2019

with re-offending, being the type of criminogenic needs addressed by interventionist programs [3].

The way criminogenic needs relate to risk factors is that they are both tied together. In this sense, if someone, for example, is incapable of filling up a job application because of lack of literacy, this might result in the person resorting to criminal activity in order to make money. In this example, education is the need to be met and its absence is leading to the appearance of a risk factor. Hence, once this person is provided with education, the present risk factor diminishes and so does the probability of recidivism. Normally, to understand the risk factor of an individual, the CJS assesses both static and dynamic characteristics, but to affect – and lower – the re-offending risk, interventions are directed towards the latter.

Effective rehabilitative interventions are the ones that take into consideration the dynamic risk factors of an offender, especially those strongly correlated with criminal conduct. Thus, offence promoting needs such as antisocial personality, an established criminal history, antisocial cognition, substance abuse, lack of empathy, lack of problem solving skills, lack of self-control, and antisocial associates, should be the main target of rehabilitation interventions [3]. However, it is worth noting that the majority of offenders are more likely to re-offend because they present multiple risk and criminogenic needs [7]. Unemployment, for example, in itself is not deemed a strong risk factor. However, when an unemployed individual lacks self-control (which in most of the cases also implicates in substance abuse) and lacks problem-solving skills, then for this person offending might appear to be the solution rather than looking for a job. Therefore, successful programs are the ones that address clusters of correlated needs and provide multifaceted solutions.

Although mental illness is not expressly listed among the factors above, a study conducted on the assessment of predictors of criminal behavior demonstrated that mentally ill offenders have obtained considerably higher total scores on the tests than those without any mental condition [8]. The results have been confirmed by another research involving 600 probationers with and without mental illness [9], which has demonstrated that "the predictive validity of mental disorders most likely reflects antisocial cognition, antisocial personality patterns, and substance abuse" [10]. The empirically supported conclusion is that offenders with mental illness present more general risk factors for recidivism than healthy offenders, therefore requiring more suitable rehabilitation strategies. However, the care pathway of mentally unwell people in contact with the English CJS has been complicated. Organizations are usually inconsistent in their assessment of vulnerabilities, which makes individuals to fall between the services of different agencies. Consequently, those with multiple and complex needs tend to go unnoticed through CJS, which is disastrous for them and inefficient for the system that is already overcrowded [6], [11].

Aware of the problem, the government commissioned an independent study to determine the extent to which vulnerable individuals in contact with the CJS could, when suitable, be diverted to care and the eventual barriers to such diversion.

The Bradley Report identified, among other problems, an emphasis on diversion often too late in system, lack of joined-up services, and need for training for both health and criminal justice sectors [12]. Put simply, the lack of shared protocols and timeframes, insufficient information sharing, and uncertainty on lines of responsibility were identified as barriers to interagency work [13]. The need for focus on micro level relationships was also emphasized, meaning that if professionals in both MHS and CJS are able to effectively establish interpersonal relationships, then interprofessional collaboration takes place and ultimately interagency cooperation is promoted [13].

In the end, the issues identified in the Bradley Report were addressed by the national government by putting emphasis on collaborative practice between MHS and CJS as means to improve offender mental health and overcome the obstacles imposed by organizations with different agendas, and that L&D schemes are the tool to operationalize it [12].

III. THE DIVERSION AGENDA

The management of the needs of vulnerable offenders has been on the political agenda for the last two decades. As early as 1992, the Reed Report suggested that diversion schemes were helpful in providing a multi-agency focus that made effective disposal easier [14]. Nevertheless, the progress to realize the aims of the Reed Report were slow, and the need for a central strategy to put the service in practice across the country was identified [6]. By December 2007, the announcement of the Lord Bradley Review confirmed the still existent interest in creating a national model of L&D as well as the lack of efficient measures on the matter by that point [15]. Although the review had a broader scope of examining the extent to which vulnerable offenders could be diverted to care and what were the barriers to such diversion [12], Lord Bradley highlighted the importance of L&D schemes in accomplishing the goal.

The Bradley Report defines diversion as a process whereby mentally disordered offenders are directed away from CJS to health and care services. It also highlights that it can happen both before arrest, after proceedings have been initiated, during prosecution, or even when the case is already in court [12]. Accordingly, precise screening and assessment of the mental health condition of offenders are key to successful interventions and consequent signposting to health and social care as suitable. However, despite the efforts of the national government to rollout L&D around the country and equally implement standards of service, the local management of the schemes varies from region to region and research of the efficiency of the teams has revealed inconsistency in provision, with a part of the country still not covered by the service [11].

It has been noticed that L&D schemes at the police custodies and courts have the potential of successfully diverting vulnerable individuals into hospital [16] and other services in education and social care [17], not to mention the cost-effectiveness of not having mentally unwell individuals contributing to the overcrowding in the CJS [18]. However,

much of the L&D work has not been properly recorded, which leads to a paucity of knowledge on what has been done by the existent L&D services across the country and consequent difficulties in moving the state of the art forward [19].

This paper builds upon an ethnographic research grounded in a 'cross-boundary' approach inspired by Engeström's work [20], [21], which has been conducted to a sample of 13 professionals involved with the rollout of the L&D services in a county in the South of England. The focus of the study is on documenting the progress of the scheme from its outset until now as well as pinpointing the challenges practitioners encounter in their daily activities. Participants consisted of mental health practitioners, support time recovery workers, team leaders, a service manager, and a data analyst. Their participation in the research was voluntary.

IV. THEORETICAL UNDERPINNING

This study focuses on collaboration between CJS and MHS by analyzing the professionals participating in the management of vulnerable offenders as activity systems working on a partially shared object [20].

In order to understand activities, their contradiction and possible ways of resolving them, the history in which they are embedded must be taken into consideration. Learning and problems are defined by local and historical forms of activity as well as the existent cultural means of resolving the problems. In this sense, Cultural-Historical Activity Theory (CHAT) provides the necessary tools to understand human behavior situated in its historical and systemic contexts. In other words, the model allows the study of complex learning environments from the standpoint of a chosen subject. It is a model to investigate how the subject and its collaborative community carry out an activity with the participation of mediating artifacts, rules and division of labor.

A complex learning environment is a situation in which several individuals participate in shared activities in a single or multi-organizational setup. The benefit for adopting activity system analysis of a situation is that it allows the researcher to look into the core of intricate datasets through a graphic model and build on that to draw systematic implications of a single human activity [22].

An activity system is studied through a triangular model, as seen in Fig. 1. In this graphic representation, the subject is the individual involved in the activity. Tools are resources supporting the subject in the activity, being artifacts, instruments, or even social others. Rules are regulations influencing the way the activity takes place. The community represents the social group the subject is part of while performing the activity. The division of labor addresses the issue of how tasks are distributed among members of a group. The outcome is the end result of the activity [20]. However, tensions within the system can exist and they usually arise from the nature of each individual component in the activity and the contextual systemic contradictions. Tensions influence the interactions between components in an activity system and ultimately affect the subject's ability to attain the object [22]. In the L&D activity system analysis, tensions within the

system arise from the significantly limited access to information L&D practitioners have on their patients due to non-integrated computer systems between the scheme and the other organizations in MHS and CJS, which ultimately affect the L&D staff's ability to divert vulnerable offenders into care.
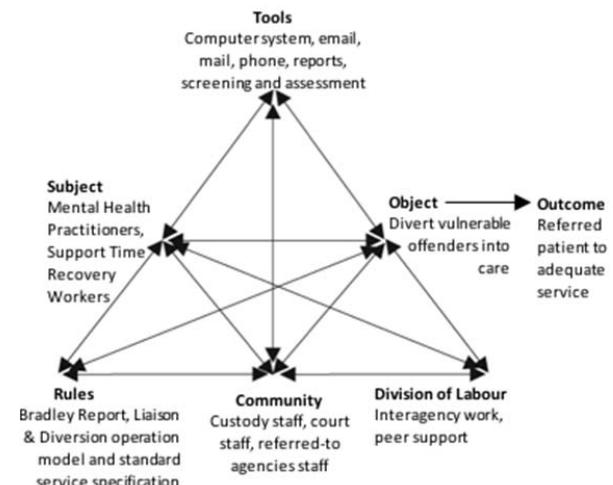

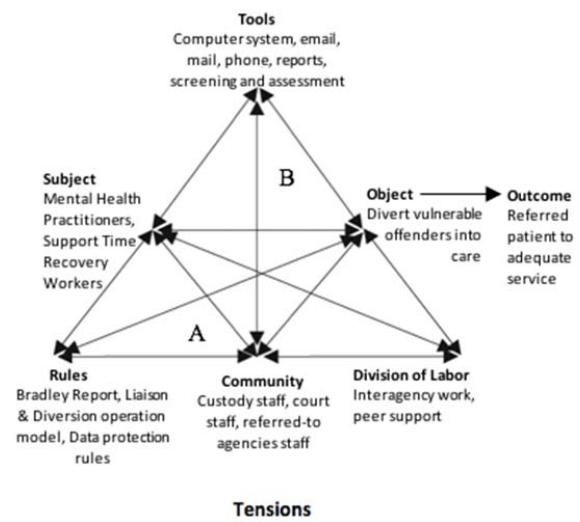Fig. 1 The triangular model of an L&D activity system (adapted from [20])

Tensions

A Diversion of vulnerable offenders while having limited information on them due to data protection
B Diversion of vulnerable offenders while having non-integrated systems between services

Fig. 2 Tensions affecting practitioners activity of diverting vulnerable offenders from CJS into care

Fig 2 represents how external factors in the contextual situation that create systemic contradictions can generate tensions in individual activities and affect their nature. The tensions in the represented activity were provoked by the systemic contradictions related to data protection rules and non-integrated computer systems, both limiting access of the L&D staff to information on their clients and ultimately

World Academy of Science, Engineering and Technology
International Journal of Law and Political Sciences
Vol:13, No:6, 2019

impairing their ability to divert them from CJS into care.

Tension A between rules and the object represents how the mental health practitioners and the support time recovery workers in L&D team struggle with data protection laws that limit their access to information on their clients. Tension B between tools and object emphasizes the fact that non-integrated computer systems affect the capacity of professionals to provide appropriate treatment to service users as information sharing is only achieved in a case-to-case basis. However, the high level of specification and interdependence of human activities these days requires the study of activity systems as a network rather than unity of analysis. By investigating only one activity, the researcher may risk having a partial understanding of the object being produced, overlooking accessory activities that are equally important [21].

The next sections consider the findings from semi-structured interviews, field notes, and observations that took place over a period of 4 months between 2017 and 2018. The goal was to explore the participants' perspectives of the issues involved in interagency work and the rehabilitation of vulnerable offenders.

V. INTERVIEWS

The semi-structured interviews followed a common schedule and set of prompts, but participants were allowed to address topics they deemed relevant to the research. Whenever possible, a preliminary meeting between the researcher and the informant took place with the objective to build rapport and confidence between parts.

Participants were informed beforehand on data collection, confidentiality and anonymity in reporting. In addition, written informed consent to record and report was collected upon interview ending.

Recordings were put through thematic analysis, with key concepts being identified from the data and added to a framework based on CHAT for transmitting the essence of what the data highlighted [20].

Traditionally, the result of an ethnographic study is a thick description which is then analyzed through analytic notes on data and the establishment of themes and codes. Although concepts from existing literature are commonly adopted at the analysis, normally there is a challenge in fitting specific aspects of the study into standardized categories while the researcher attempts to create new knowledge.

Having adopted CHAT as theoretical framework from the outset of the research has meant that the design in this study has existed throughout, and has informed the content emerged from the fieldwork [23]. Furthermore, the model has helped to structure the data analysis without limiting it due its openness to meanings and interpretations.

VI. FINDINGS

A. Informatics Systems as Tools to Enable Offender-centered Care Collaboration

Technological advances have transformed the concept of offender care, where organizations have the tools and resources to impact on the management of the individuals in touch with the CJS. Ideally, a care coordination plan would reach across all various organizations' informatics systems, with timely access to information and efficient communication. However, practitioners who participated in the research generally experienced the available systems as disempowering, as they were seen to be fragmented and limiting of the professionals' ability to deliver.

[Integrated computer systems] would be really useful. Because rather than calling social services, then waiting a week for them to call me back, then they call me let's say now when I am talking to you so I cannot answer the phone, so I then called them back and they do not answer... If I can just look on their system, it will be a lot quicker. (AM, L&D outreach worker, female)

Technology is expected to expedite processes as well as facilitate knowledge sharing, but with organizations using non-integrated computer systems efficiency decreases and the work of practitioners become more time-consuming. On the benefits of integration, a participant has said:

Different areas have different systems… There is no national system. What we would do, because the crisis team works 24 hours a day, so we tend to ring them [to have information on patients from other regions]. I was 40 minutes on the phone the other day just to get some information and I still did not speak to somebody. It is not great. It does not happen a lot, most of our clients live here in the county. However, it is quite restrictive, and it is not very good for a client who is travelling from another county either.

Even within the same service, the fragmentation of the informatics systems can be noticed, which is definitely a barrier to good practice.

[The police's system] is not national. It is the similar sort of thing… It is strange because the National Health Services is national, the police force is national, but every county seems to do their own thing. The management of counties I never really understood properly. (MK, Custody police officer, male)

In addition to limitations in the systems operational manner, professionals are subject to data protection rules that restrict the sharing of information on the individual between organizations for whom that person is a common case. In this sense, when an offender is referred to L&D by other agencies, any necessary disclosure of information on the individual is bound by data protection regulations that can be quite restrictive. On having unlimited access to patients' information, one participant has commented:

From a practitioner point of view, it would make things a lot easier. It would be brilliant. If I put myself as a patient though, I am not sure that I would want all of my information to be universally shared. Our system was attacked recently. They at least could only get a certain amount of information. If everything is in one system, the possibility for being hacked is huge. On the one hand, it would be great if I could have access to everything, but

World Academy of Science, Engineering and Technology
International Journal of Law and Political Sciences
Vol:13, No:6, 2019

then actually what right do I have to access all of this information? (KN, Support, Time and Recovery worker placed in court, female)

B. Interagency Staff Relations

There is a concern that other agencies do not have a full understanding of the roles and responsibilities of L&D practitioners. Overall, the other organizations are willing to collaborate with the L&D team, but participants emphasized the need to educate other professionals on what it can be expected from the service.

Every organization I have come across is very positive and respectful about the work we do. The only issue I can think of is when... I think there is still quite a bit of confusion as to what we actually do. I think lot of services do not really understand our work. They think that we can do more than we can. They think that we have more access to information than we do. People think that we have access to all the police systems, but we do not. (LL, Mental Health Practitioner placed in custody, female)

Understanding what L&D can provide is key to enable collaboration between the scheme and other agencies. However, this awareness can only be achieved if professionals develop a comprehensive grasp of relevant legislation, policy and agency requirements. Moreover, participants have highlighted the importance of relationships established on a personal level in order to spread understanding on the scheme's responsibilities and limitations. Once professionals are familiarized with one another, organizational barriers tend to fall down and a certain degree of camaraderie overcomes the standard skepticism existent between agencies. Thus, being physically located in the custody as well as in the court has helped L&D practitioners to integrate with professionals in the CJS. Moreover, the background of the practitioners in the L&D team – most of them with work experience within health and care services – helps them to understand the culture of organizations existing across the MHS.

You do need to know who people are... Because we are nurses and we are in a police station, which is not our environment, and we had to come in here and build working relationships in their environment. It is not a hospital ward, we had to get into their custody, work with them, and sort of join their team. So, it is very important to build up that working relationship. (EE, Mental health practitioner placed in custody, male)

As emphasized by another participant:

If you start trying to do things over the phone all the time, people will not pick up. They will not make referrals because they are busy. People will be missed. It is just another obstacle in somebody's way. (EE, Mental health practitioner placed in custody, male)

C. Funding

The costs associated with collaboration revolve around coordination, communication and implementation. With agencies in CJS and MHS usually being overcommitted and underfunded, the potential for new collaborative relations to be formed is low. In the case of the L&D, participants relate the challenges of having to cope with high workload with a limited staff.

So if I have got an assessment on one side of the county and an assessment on the other side of the county is needed, I just physically cannot get there. It would be nice just to call on someone and say: Could you go see them? But, it does not stop us from doing our work. We just make the appointment for another day. (AF, Mental health practitioner placed in custody, female)

This raises the importance of having creative and proactive practitioners overcoming the challenges imposed by the obstacles they encounter. Bureaucratic top-down rules restricting agency at the front-line level, limitations imposed by informatics systems that do not fully meet the needs of their users, and understaffing due to insufficient funding resulting in work overload are only a few of the problems faced daily by participants of this research. Innovation in the public sector cannot only rely on the resourcefulness of practitioners, but it also has to be supported by the system.

VII. Discussion

From its outset in the early 1990s, L&D has focused on liaising with CJS and MHS while diverting vulnerable individuals out of criminal justice and referring them to health and other services [6]. However, until the 2009 Bradley Report and the consequent L&D trial launched by the national government in 2014, L&D decisions were taken locally and as such results would vary according to local innovation and funding.

The issues emerging from the observations and interviews in this research confirm the relevance of interagency collaboration in supporting the rehabilitation of vulnerable offenders. The views expressed by the participants are in line with earlier work that emphasized the importance of having both the management level (macro), the project level (meso) and the operational level (micro) working together toward implementing innovative cross-boundary tools [24].

During the interviews, participants stressed the challenges of constructing a shared object with professionals in other organizations since each agency tend to have diverse objectives, tasks and agendas. The problems are only aggravated by agencies adopting separate computer systems, which hinders knowledge sharing among themselves.

In activity theoretical terms, constructing a shared object from diverse perspectives can be challenging, but can also be beneficial. The tensions generated by the disagreement between service providers create opportunities for expansive learning, which calls for the innovation of existing working routines as well as the creation of new sorts of tools that ultimately take the object and forms of collaboration into consideration [25]. In other words, everyday routines are the consolidation of past experiences in a particular setup [26], and these accumulated tensions have the power to trigger a learning process in the current activity system that leads to a new type of activity around a new, expanded object [20].

World Academy of Science, Engineering and Technology
International Journal of Law and Political Sciences
Vol:13, No:6, 2019

However, interagency knowledge creation call for boundary crossing in the form of negotiated knot-working [27], which does not seem to be happening currently [28].

Knot-working is a form of collaboration that encourages innovation and usually takes place in a complex learning environment, which can only be achieved with adequate tools supporting the interactions between agents [27]. Tools, such as computer systems, shape how individuals interact with reality, their surroundings and others. In a context where informatics systems are not integrated, professionals struggle to achieve their goals and deliver their best performance.

Tools are a reflection of other people's attempts to solve similar problems at an earlier time by creating/modifying available instruments to make them more efficient. In this sense, tools carry with them a particular culture that reflects the historical fragments from that development, and can end up being a limitation to the accomplishment of certain goals if they are not adapted to the current context in which they are applied [29]. Notwithstanding, participants have expressed a positive attitude towards their experience of interagency collaboration and the willingness of professionals across organizations to work together towards an adequate treatment to vulnerable offenders.

The importance of interpersonal contact in the current scenario must be highlighted, as it has been only through relationships on a personal level that knowledge sharing has been promoted. In the end, overcoming fragmented informatics systems while trying to implement the diversion and liaison agenda seems to be the challenge of practitioners these days.

VIII. LIMITATIONS

This paper is built upon a small-scale study that focuses on the results of only one county in the South of England. There is possibility to test the transferability of these observations to the population of practitioners in MHS and CJS across the country.

IX. CONCLUSION

L&D schemes have been around in England for nearly 30 years, yet it was only from 2014 that the implementation of the service lost its regional character to embrace a national model. Thus, bringing about the rollout of a uniform model across the country is a complex and long-term process that requires fine-tuning over time, and one of the reasons for this is the nature of the existing systems and structures prior to the new model that need to be taken into consideration.

This paper suggests that even though professionals are willing to understand the philosophy of other organizations, they still have to become more familiarized with the roles and responsibilities of the L&D schemes, which ultimately will enable them to work more effectively together. In this scenario, informatics systems could play an important role of integrating agencies and enabling knowledge sharing but the current setup is fragmented and bureaucratic.

In conclusion, the challenge seems to be how government and agencies can support the development of more adequate tools that enable liaison between agencies towards diverting vulnerable offenders from the criminal justice into care.

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World Academy of Science, Engineering and Technology
International Journal of Law and Political Sciences
Vol:13, No:6, 2019

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