



Ministry of
JUSTICE

**Court experience of adults
with mental health conditions,
learning disabilities and limited
mental capacity
Report 2: Before court**

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BMRB and Liverpool John Moores University**

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Report 2 of 6

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The authors

BMRB is the longest established research agency in Britain, having been founded in 1933. Throughout that time the company has built up a reputation for methodological excellence and innovation, and enjoys a reputation for producing strategic work of the highest quality and integrity. BMRB regularly carries out important studies to inform policy-making for major organisations in the public and private sectors.

Roger Evans is Director of the School of Law and Professor of Socio-Legal Studies at Liverpool John Moores University and a Non-Executive Director of a Mental Health NHS Foundation Trust. The team also worked in collaboration with **Neil Hickman**, a practitioner working in community health. The team holds a combination of policy knowledge, research expertise and practical experience of working with the specified vulnerable groups and of researching within the court setting. In the past, the team has collaborated on projects such as Victims' Advocates and a research project into vulnerable and intimidated witnesses for the Ministry of Justice.

This is the second in a series of six reports on a research project exploring the court experience of adults with mental health conditions, learning disabilities and limited mental capacity. The research relates to victims and witnesses in criminal cases, and to participants in civil and family cases.

Report 1 outlines the key findings from the research.

Opportunities for identification of court users with these vulnerabilities, and the extent of subsequent support, varied across the courts. A number of relevant policies and processes have been introduced in recent years. However, these tended not to be designed **specifically** for court users with mental health conditions, learning disabilities and limited mental capacity. Furthermore, policies related to particular stages of the court case or to particular agencies, rather than the whole 'journey' of an individual victim, witness or case participant through the justice system. The report therefore recommends a clear support pathway for vulnerable court users, supported by improved systems of accountability and the establishment of small multi-disciplinary teams. Better processes for early identification of conditions, and guidelines to increase awareness of how disclosures can be made, are also recommended. A single point of contact for vulnerable court users throughout a case is proposed, along with increased dissemination of tailored information, improved access to legal representation, additional and improved training for professionals, and improvements to implementation of special measures.

Report 2 outlines the experiences of court users with these vulnerabilities from their first involvement with the justice system until their attendance at court.

Across the courts, conditions were more likely to be identified when a support worker was present with the court user. In criminal cases, experiences varied greatly depending upon police awareness of the court user's support needs. In civil proceedings, a lack of contact with the courts could impede identification, and court users depended on legal representatives or existing support networks to identify needs and provide support. Identification was most likely in family proceedings where assessments and close contact with professionals were common. Court users were unlikely to disclose their condition unprompted. Protocols for support in criminal courts meant that court users were more content with the level of information and support offered than was the case in civil and family proceedings, where no protocols or designation of responsibility for support existed.

Report 3 considers the process of attending court, including arriving at court, waiting to go into the court room, being in the court room and giving evidence.

Generally, court users made their way to the court room alone and were daunted by the formal environment; this stress was significantly reduced by prior familiarisation with the court

process, the presence of a support worker, and the support of the Witness Service in criminal courts. Court users who felt they needed support were willing to disclose their condition, but were not always aware of whether disclosure was appropriate or who was responsible for informing the court. In turn, staff often assumed that identification would already have occurred and did not feel that they had the expertise to carry out this function. Where the judiciary were aware of need, the adjustments which they made were helpful to court users and increased their sense of inclusion in proceedings. In criminal cases, special measures were helpful in supporting court users to give evidence. More specialist support was only required by those who felt unable to manage their conditions.

Report 4 outlines the 'after-court' process, including receiving verdicts in court, leaving the court and making the journey home, awaiting outcomes and receiving news at home, and moving on from the experience.

Hearing a verdict in court and receiving news of the case outcome at home were times of particular stress and low mood for court users. They needed clear explanations to understand their case outcome, and emotional support to come to terms with it. Co-ordination between agencies to ensure that the court user was adequately supported at this point required careful management, but there are few protocols for support provision following court appearances. Many of the court users who were interviewed for this research did not feel any further support was necessary following case closure. However, where it was required, communication and cross-referrals between service providers were important to ensure the court user was not left unsupported.

Report 5 provides an overview of the policies, services and practices in place across the court system to support the needs of adults with mental health conditions, learning disabilities and limited mental capacity.

Two key policy processes within the criminal justice system are relevant. The first aims to better enable vulnerable or intimidated witnesses to give best evidence in court, (including the use of special measures). The second aims to improve the criminal justice system more widely to better meet the needs of victims and witnesses. Special measures has had a significant positive impact on court experience, and early evaluations of intermediary schemes are promising. A range of protocols are used by the police and the CPS to facilitate the identification and support of this group of court users. In the civil justice system, service delivery in this area has been guided by two policy aims: to improve, simplify and speed up the litigation system (assisted by the Civil Procedure Rules), and to strengthen the law in relation to Anti-Social Behaviour Orders, including the extension of special measures to anti-social behaviour cases. In the family courts, policy to harmonise the Family Procedure Rules with the Civil Procedure Rules, and guidelines to support the use of McKenzie Friends for litigants in person, are in place. The overarching policy outputs relevant to the study

are the amended Mental Health Act (2007), the Mental Capacity Act (2005), the Disability Discrimination Act (2005), and the Department of Health's 'No Secrets' (2000) guidance on protection of vulnerable adults.

Report 6 outlines the background to the research and presents the project's research aims and methodology.

Overall, this research aimed to examine how the court system supports the complex and specific needs of adults with mental health conditions, learning disabilities and limited mental capacity. It explored the direct experiences of victims and witnesses in criminal cases, and case participants in civil and family courts. The project had two phases: a developmental scoping study, and a programme of interviews with practitioners, court users and carers. The methodology was entirely qualitative. Recruitment was conducted in house through contact with a range of networks and support organisations. All study participants voluntarily self-disclosed their conditions, and definitions of conditions followed participants' own usage. A process of informed consent tailored to individual need was used for all interviews.

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Policy briefing

This research provided an in-depth exploration of the court experience of adults with mental health conditions, learning disabilities and limited mental capacity. Report 2 focuses on the experiences of court users leading up to appearance at court.

There was no formal point for identification of vulnerabilities. Sometimes identification was achieved through explicit strategies, such as asking a direct question in a police interview, but elsewhere it was dependent on incidental factors or ongoing contact with professionals. The creation of opportunities for identification of conditions should be increased using professional contact and the use of direct questions in formal correspondence, with responsibilities clearly communicated to professionals involved.

Protocols exist for support in criminal courts, provided by the police and the Witness Care Unit. These facilitated the provision of updates, pre-trial visits and special measures applications. Where this support was accessed it was praised by court users. Few protocols are in place for equivalent support in civil or family courts, where specialist support of the type offered in criminal proceedings was not generally available. Their introduction and promotion to these courts is recommended.

Information-sharing between agencies, to advise of vulnerabilities and support needs where identified, is crucial. Resources should be made available for police training in awareness and identification of conditions, and protocols for information-sharing should be developed for courts of all types. It is also important that special measures are utilised and explained appropriately in criminal cases.

Court users tended to depend on existing support networks, or on solicitors, to provide practical and emotional support during their case. Access to legal representation in civil and family proceedings was pivotal in its impact on court users' experiences. However, these court users' vulnerabilities constituted a barrier to access, because they tended to require higher input from solicitors for the same fixed fee. To access representation and support, improved access to information, legal representation and advocacy should be promoted through the courts, and links should be forged with local voluntary sector support provision.

Summary

Overall, this research examined the court experience of adults with mental health conditions, learning disabilities and limited mental capacity. The research formed part of the 'Court Experience of Vulnerable People' Research Programme, which provides evidence to facilitate improvement in Ministry of Justice (MoJ) services. Report 2 outlines the experiences of court users leading up to their attendance at court.

Context

There is limited research literature specifically concerned with the experiences of court users with mental health conditions, learning disabilities and limited mental capacity. However, previous research suggested this group were more likely to be a victim or party in a case, and to experience greater difficulties accessing justice. In addition, research has highlighted issues around the identification of these conditions/vulnerabilities among court users. Despite the development of a series of legislative and policy initiatives to meet the needs of this group more effectively, our findings suggest that further work is needed in this area.

Approach

The research comprised two phases: a scoping study (Phase 1) and a main stage of research (Phase 2). Phase 1 mapped the range of policies and structures in place within and outside different court settings to support people with mental health conditions, learning disabilities and mental capacity issues. It involved three stages: desk research, interviews with 27 key stakeholders, and consultation with the 25 Area Directors for Her Majesty's Courts Service (HMCS). Phase 2 built on Phase 1, and developed a more localised and in-depth understanding of the experiences of these vulnerable court users. It focused on London and the North East and involved: court observations; 143 interviews with practitioners; 61 interviews with court users with mental health conditions, learning disabilities or limited mental capacity; 23 interviews with carers; and journey mapping with the court users. The findings have been organised into six reports.

Findings and recommendations

Experiences of the court process

In criminal cases, the experience of reporting offences was influenced by the actions and behaviours of police, and the availability of and access to specialist support. Where police were aware of the victim or witness's condition, the inevitable stress of making a statement was lessened by support, including special measures. Receiving information about the court process prior to going to court (for example, the 'Going to Court' DVD produced by HMCS) was considered helpful in preparing for a court appearance. Pre-trial visits in criminal cases improved court users' experiences.

Court users in civil cases depended on legal representatives to provide information on their case. Legal representatives were required to adapt communication to the court user's needs. In order to attend meetings, court users often relied on existing support networks. For litigants in person, the lack of legal advice prior to court appearance caused high levels of stress and anxiety, partly due to the lack of information and support with preparation.

Family cases tended to last for a relatively long time. This provided more opportunities for professionals to interact with court users and explain court processes. Visits to court, equivalent to a pre-trial visit in criminal cases, were not offered by civil and family courts.

Identification of conditions

In criminal cases, opportunities for the identification of conditions arose during initial interviews with the police and in Witness Care Unit telephone assessments. This clarity of responsibility assisted identification, although a lack of training or inadequate implementation of protocols could hamper this. There was no equivalent process in place in civil or family cases. We recommend training for police to improve identification, and guidelines for professionals in civil and family cases to create opportunities and produce clear roles and responsibilities for identification.

In civil proceedings, a lack of contact with the courts generally impeded identification. Court users depended on legal representatives or existing support networks to identify needs and provide support. More contact points with civil court staff, and the inclusion of specific questions to encourage disclosure in correspondence sent to court users, are recommended.

Identification was most likely in family proceedings where close contact and assessments were common. However, these assessments tended to focus on one aspect of individual need and court users could be reluctant to communicate vulnerabilities due to concerns about the impact on their case.

Disclosure

Across case types, court users were unlikely to disclose their condition unprompted. Shyness, uncertainty and embarrassment all contributed to this. However, a direct question tended to evoke a truthful response. This demonstrated the importance of ensuring points of contact at which professionals had this opportunity, and guidance for the use of these.

Experiences of support

Protocols and systems for support in criminal courts meant that court users were more content with the level of information and support offered than in civil and family proceedings. These provisions included explanations of court proceedings through pre-trial visits. However, no such provision was generally available in civil and family courts. Practitioners supported court users most effectively where individuals within agencies were personally

familiar, and in sufficiently regular contact, with court users to facilitate appropriate referrals. Building multi-agency teams between voluntary sector organisations, public sector services and the courts is recommended to improve co-ordination of support.

Implementation of special measures

The use of special measures in criminal cases helped court users to give evidence. However, a lack of clarity over responsibility for arranging meetings, and delays in making applications, could hamper their implementation. Practitioners gave a range of reasons for not using special measures which demonstrated some inconsistencies in application and uncertainty as to responsibility for provision. Training for police and court staff on the role of special measures and provisions available is therefore recommended. They should also be clearly explained to court users, in order to manage expectations.

Access to support in civil proceedings

Practitioners working in civil courts felt that many cases go unidentified and unsupported, due to the lack of contact and dependence on legal representatives for support. A low awareness of advocacy services among participants also contributes to this. Guidance from charities or existing support networks on choices of solicitors improved court users' chances of securing legal representation in civil cases. It is recommended that guidance and information on advocacy services are made available to legal representatives and court staff.

Routine offers of assistance

Findings showed that court users with difficulties may not seek support because they did not think of asking, or were afraid to. To improve information and access to assistance in civil and family cases, there is a need to introduce routine, proactive offers of assistance, as well as disseminating tailored information to improve understanding of the court process. An equivalent to the 'Going to Court' DVD used in criminal cases would be very helpful.

1. Introduction

People with mental health conditions and learning disabilities tend to experience greater difficulties in accessing justice than other groups, and also to experience greater discrimination and disadvantage (Mind, 2001). Current government policy aims to meet the needs of victims, witnesses and users of the justice system more effectively and to improve access to justice, particularly for vulnerable people.

The 'Court Experience of Vulnerable People' Research Programme helps deliver this aim by providing evidence to facilitate improvement in Ministry of Justice (MoJ) services. As part of this programme, the MoJ commissioned BMRB and Professor Roger Evans of Liverpool John Moores University to undertake research into the experiences of court users with mental health conditions, learning disabilities and limited mental capacity.

Overall, the research aimed to determine how the court system (and all other agencies involved throughout case progress) supports the complex and specific needs of adults with mental health conditions, learning disabilities and limited mental capacity. The study placed a strong emphasis on the direct experiences of court users in criminal (excluding defendants and young witnesses), civil and family courts.

This is the second in a series of six reports presenting the findings from the research. Reports 3 and 4 discuss the experiences of court users while at court and after their court appearance. This report deals with experiences from initial involvement with the justice system until the court date. It begins with a discussion of court users' experiences of the processes before court, from reporting the crime to being kept up to date with progress. This is followed by an outline of the support provided and needed at this stage, as well as an account of the experience of support received. The report discusses barriers to and facilitators of support prior to court, followed by examples of good practice and recommendations for improvements. The findings presented in this report are based on the research conducted in Phases 1 and 2 of the study with key stakeholders, practitioners, court users and their carers.

1.1 Methodology

Research design

The research comprised two phases: a scoping study (Phase 1) and data gathering and analysis (Phase 2). Phase 1 consisted of desk research, mapping the range of policies and structures in place to support people with mental health conditions, learning disabilities and mental capacity issues within the court system. Twenty-seven interviews with key stakeholders (including court staff and agency representatives), and email consultations with 25 Area Directors for Her Majesty's Court Service were also undertaken, between January and April 2008.

The primary focus of Phase 2 was on the experience of court users with mental health conditions, learning disabilities and limited mental capacity. A range of methods and approaches were used to explore this, including:

- **court familiarisation visits;**
- **in-depth interviews with practitioners:** 143 interviews with practitioners in London and the north east of England were carried out between December 2008 and May 2009. Interviewees were court staff (27), legal representatives (34), staff from in-court support organisations (17), public agency staff (26), and staff from voluntary support organisations (27); and
- **in-depth interviews with court users and carers:** 61 interviews with court users and 23 interviews with carers were carried out between December 2008 and May 2009. Of the court users interviewed, 26 self-identified as having experience of a mental health condition, 20 as having a learning disability, and five as having limited mental capacity. Initially it was planned to conduct these interviews **only** in the same case study areas as the interviews with practitioners. However, due to recruitment challenges the sample area was extended to cover all of England.

The two case study areas were not intended to be representative of the UK as a whole. Rather, they were selected as regions in which good practice was in place, and where the courts carried large caseloads.

Court users

In this report series, the term 'court user' refers **only** to court users with mental health conditions, learning disabilities and limited mental capacity, and **only** to people who use the court in a non-professional capacity (e.g. not lawyers) and as case participants (i.e. not as jurors). In addition, defendants were excluded from the sample. All court users in the sample had been involved in a justice process within the last three years; those currently involved in 'live' cases were excluded.

Twenty-six of the court users interviewed had been victims or witnesses in criminal cases (three of whom were defence witnesses), ten had been involved in civil cases, and 25 in family cases. Because court users involved in civil proceedings typically had a relatively low level of contact with the courts or related support services, this participant group was particularly difficult to recruit.

No specific legal definitions of 'learning disabilities' and 'mental health conditions' are used in relation to the court setting. Consequently, court users who took part in the study self-identified as having one or more of these conditions, in response to open questions and examples of conditions. They were also asked whether they required any support in their day-to-day life (e.g. from social services, counsellors, advocates, key workers, psychiatric nurses, or friends and family).

For the purposes of this study, 'carers' were defined as relatives, friends or other unpaid individuals who had supported a court user through the process. Eleven carers had supported court users through criminal cases, eight through civil cases and four through family cases.

The target population for this study constitutes a particularly 'hard-to-reach' group for social researchers, and recruitment presented a number of challenges. Various recruitment methods were employed to achieve quotas and access the widest range of individual experience. The most successful of these was through individual staff from local support organisations and advocacy centres. These individuals had an interest in and commitment to the study. As well as identifying users, they acted as local conduits within and between organisations, gaining the support of other practitioners working in the field. This motivation helped to overcome time and resource pressures for voluntary organisations. The time taken to build a network of organisations and establish co-operative, trusting relationships with individual staff posed the greatest barrier to achieving quotas within the time frame.

Informed consent

Given the highly sensitive nature of the research study, an extremely thorough process was required to ensure that court users gave informed consent. The process was tailored to meet individual needs, and to ensure that participants fully understood what they were consenting to.

Informed consent was gained directly from participants at the point of interview. In order to aid communication, the researcher explained the details of the research verbally, and used leaflets written in an easy-to-read style specifically for the project (including information in written and picture format). Where present, carers and support workers were encouraged to assist in explanations, but consent was always gained from the participant themselves rather than a third party. Researchers also led participants through a consent form which checked their comprehension of the subject of research and the nature of the interview.

Fieldwork and data

Court users chose the interview locations which they felt would provide the most comfortable and secure environment. Researchers guided interviews using a topic guide which allowed questioning to be responsive to the issues arising. Interviews with court users also included a 'journey-mapping' exercise as a facilitating tool to explore experiences of the court system.

Due to the variation in participants' competencies and the sensitive nature of the subject area, researchers adopted a flexible approach to interviews in response to participant need. The time required with participants ranged from 20 minutes to two hours, often with frequent breaks. Some court users requested the presence of carers or support workers, to provide moral support or assist communication.

The detail and coherence with which court users were able to recount their experiences varied a great deal. Memory lapses, communication difficulties and challenges in recalling events in a linear fashion all affected participants to a greater or lesser extent.

Analysis

In the fieldwork and analysis for this project, a qualitative approach was adopted, in order to allow attitudes and experiences to be explored in depth. It should be noted that qualitative methods neither seek nor allow the quantification of data; for example, the number of people who hold a particular view or underwent a particular experience would not be included in any discussions.

An analytical procedure called 'Matrix Mapping' was used to analyse interview data. In Matrix Mapping, researchers work from verbatim transcripts of data to identify key issues and themes. On the basis of this, a **thematic framework** is constructed. This provides a grid into which qualitative material is summarised. On the basis of the thematic matrices generated, key features of the data are identified, and individual accounts are turned into a thematic story. Concepts are defined, typologies created, associations identified and explanations advanced.

Alongside the main analysis, some of the 'journey maps' generated during interviews were chosen for inclusion in the final report. Examples were selected which reflect the full range of user experience in a 'snapshot'. Journey maps were produced by presenting court users with a plain graph on which to map the events and key junctures in their experience. This was used to produce a visual chart of varying levels of satisfaction through the process.

2. The pre-court process

This chapter of the report outlines the experiences of court users before their attendance at court. It focuses on reporting the offence in criminal cases, finding out about court attendance in all cases, and the information and updates received from the courts.

2.1 Reporting the offence (criminal cases)

Court users tended to report crimes directly to the police by telephone. After this, a police officer would usually visit their home or attend the scene of the crime. Experience of this stage in the case varied greatly between court users, depending on:

- the actions and behaviour of the police;
- whether the police were aware of their condition; and
- the availability of and access to specialist support, such as specialist police officers and court users' own carers or support workers.

Support is discussed in more detail in section 3.2 below.

Police actions and behaviour

Court users' perceptions of their treatment at this initial stage varied, and usually related to whether they felt the officer believed them or showed genuine interest and empathy. Many court users were concerned that the police would not trust their stories, and a few found officers unfriendly or sceptical when called to their homes after the initial phone call. However, they felt that officers' attitudes seemed to change and become warmer when the court user brought a family member or carer with them when they made their statement.

'You feel you have to prove yourself a lot to them. In some respects I felt they didn't believe me at first ... so that kind of upset me a bit.'

(Female court user, criminal case, mental health condition, North)

Court users whose victimisation was immediately obvious (for example, if they were physically injured), found police were extremely kind and understanding from the outset.

Court users generally found that once police were aware of their condition, they were attentive, helpful and reassuring. They demonstrated this by offering support from special needs trained police officers, or offering court users the option of making a statement in their home rather than at the police station. Advocates and support workers also found that the police readily adapted their behaviour once they were aware of a condition.

'The police wanted to talk to me further, just to clarify that he had a learning disability, and then they would offer more sort of, a different sort of support and it was very good ... I just think they then explained things differently and there was more, they took things at a slower pace with him, but not, they never belittled him actually, they were, the police were very good about it, I have to say.'

(Advocate for court user with learning disabilities, South)

In contrast, where the police were not aware of a condition or vulnerability, their support was often more limited. Court users also suggested that occasionally the police did not provide support even after the court user had disclosed their condition. This was noted particularly by those with depression and anxiety issues.

Nature of the offence

Another issue influencing court users' experiences of the police was the nature of the offence reported. Court users reporting domestic violence incidents praised the police for their quick response and the emotional support they provided. In these cases, participants did not think the police were aware of their mental health condition or learning disability. However, they had felt able to describe their anxiety and receive support without formally disclosing their condition.

Presence of a carer or support worker

Court users found it useful for their support worker or carer to be present when they reported a crime. Having a familiar person involved in the process made them feel less intimidated and anxious. It also meant their vulnerability was flagged up to the police at this early stage, prompting the police to ask whether they needed any further support, such as a social worker.

'It did help a lot, to know that there was somebody in the next room, while I was being interviewed in the other room, who's not a member of the police ... Because to me, that person had feelings, the police seemed a bit cold. I suppose they are only doing their job.'
(Female court user, learning difficulties, criminal case, North)

Case study:

Nicola was seriously sexually assaulted in the street, and sought help from a supermarket close by. There she made a 999 call to report the incident, which she found easy despite her significant learning disabilities. The police came to the scene immediately, but despite her obvious distress and learning disabilities, simply returned her to her flat and left her there without offering any support. She found it hard to communicate with them and they appeared to disbelieve her. Nicola called her support worker, who saw her injuries and called the police back, but no statement or medical examination for evidence was taken. Nicola went to the police station a few days later accompanied by her social worker, and this time police officers were a lot more supportive, encouraging her to give her statement in a video interview.

2.2 Making a statement (criminal cases)

Following the initial reporting of a crime, court users had to make a statement. They usually did this at the police station or in their own home. However, in rare instances, if they had been transferred to hospital or a safe house, they could make their statement there. Court users generally found the process of making a statement a stressful experience, mainly because recounting the experience of the crime reawakened or intensified feelings of fear and distress. In cases where the court user experienced severe anxiety they often took

several attempts (on different occasions) before they were able to provide a full statement. Importantly, when this happened, court users found the police very patient and reassuring. In some cases they would even arrange visits to the court user's house between attempts, to maintain contact and help them feel more at ease.

The police made a range of provisions to accommodate court users when giving their statement, including in-home or safe-house video interviews. Occasionally a special needs trained police officer or an intermediary was present (see 'specialist support', section 3.2). This support benefited court users both emotionally and practically, primarily by aiding communication. Court users often suggested they would have been unable to provide a statement without it. For example, court users with communication difficulties felt that police officers with training in special needs were able to communicate with them more effectively than other police officers and this helped them to perceive the process more positively.

'If there was any words what I didn't understand she used to just explain it to me and then I was alright then. I have just got to have someone to help me and then I am fit as a fiddle.'
(Female court user, learning disabilities, criminal case, North)

2.3 Finding out about going to court

Criminal cases

Victims and witnesses were generally informed whether or not a case would go to court via a letter or telephone call from the police or Witness Care Unit (see section 3.1). Letters were often read to the court user by their carer or support worker, but both the court users and their carers or support workers often found the language hard to understand. In certain cases court users (or their carers) sought clarification about the content of the letter by telephoning the detective or Witness Service. They valued having a point of contact whom they knew they could call.

'We knew that we had to go to Court, we knew that part of it, but when it come to more stronger words, we had to ring up and ask what it was all about ... I think he did keep us up to date yes, you know to let us know what was going on and that. I asked him, I said I want to keep up to date.'
(Female court user, mental health problems and learning disabilities, criminal case, South)

In serious criminal cases, court users received details of their appearance at court from a Family Liaison Officer, detective or police officer (see section 3.1) who maintained contact throughout the duration of the case. Court users praised this contact, as they felt they were treated sympathetically and that the officer shared their interests, which raised their confidence about appearing in court.

'He wanted to make sure I could do this and be able to face court and stuff and tell them like different things.'
(Female court user, mental health condition, criminal case, North)

When cases did not reach a trial, solicitors or barristers occasionally offered a follow-up explanation. This was considered good practice by court users and legal representatives. However, it was not standard, despite requests for meetings and further information by court users who had the confidence to ask. Practitioners could be unavailable or otherwise occupied, and did not always consider another meeting to be their responsibility after trials.

'It hasn't actually gone to court, but why can't something still be done and for someone else to tell me why or if not why can't it be done or ... It will be better than just being right okay, you can't go.'
(Male court user, mental health condition, criminal case, North)

Civil cases

The way in which court users found out about going to court was different for those with legal representation and those who undertook litigation in person.

In civil cases with legal representation, the solicitor tended to relay information about the case and court appearances by telephone or letter, or in face-to-face meetings. In exceptional cases of severe learning disabilities, solicitors suggested that they were unable to communicate this information because the court user's condition was so severe. Generally, these court users relied on a carer, advocate (see support, section 3.1) or support worker to mediate this contact, reading letters or making arrangements to attend meetings.

Those with milder conditions could engage with the solicitor either directly or through their supporter. This varied with the court user's capabilities, and also with day-to-day variations in their condition, particularly for court users with bi-polar disorder, whose capacity and feelings were prone to fluctuate. Court users and carers found it helpful when solicitors gave a detailed, step-by-step breakdown of what would happen and what their client would be required to do in court. Court users felt more confident when they knew what they would have to do than if they felt unprepared. For example, one court user was unsure whether the case opponent would be in the courtroom with them, which made them more nervous.

Carers and advocates felt that they relied on legal professionals' ability to explain details of the case, so that they could then relay this information to the court user effectively. They were unlikely to have any experience of court cases themselves, so were rarely able to provide court users with any information without this support.

'We weren't sure where we were going to have to go and what it actually involved. We didn't have any clear instructions or ... written brief on what to expect. So it was quite a surprise, whatever we got when we got there.'

(Carer, civil case, North)

Where the participant was litigating in person, a letter with a court summons was often the first they heard of their involvement in proceedings. Receiving such a letter caused great distress, frustration and uncertainty about the right course of action. Where the participant

was unable to fully comprehend the summons due to literacy issues or an emotional state which temporarily impeded their capacity to function, the presence of a carer or advocate was important. They could explain the letter and seek further information if necessary.

Court users without access to a carer or advocate often felt scared and helpless. Unsupported court users also often suggested they were unaware of the legal services or pastoral support available to them when preparing for their appearance at court, and did not believe this information had been given to them. Occasionally, the stress of going through proceedings alone caused participants to discontinue proceedings altogether.

'I've just thought the best thing was to walk away from the whole thing ... During the run-up to it I got lots of pains ... It became so stressful, because I realised it was just such a waste of time ... I just thought the best thing was to walk away from the whole thing.'

(Female court user, mental health condition, civil case, South)

Family cases

There was no established process for informing court users of their court appearance in public law cases. Findings across the study sample showed solicitors and social workers tended to mediate all information relating to the court appearance. In the few instances where the court user had a Litigation Friend or advocate, the solicitors and social workers would communicate with them.

In private law cases, as in the civil courts, communications were sent via solicitors, usually as written correspondence. Court users' experiences of this time were strongly influenced by their relationship with their solicitor and the communication they received from them. They found it helpful when solicitors arranged a face-to-face meeting to explain what would happen prior to their appearance in court. However, receiving this information by letter often left court users feeling distressed, as they felt that the letter did not provide enough information to help them understand the process. For example, one party in a child custody case did not learn of the court hearing until their solicitor wrote them a letter, and had no further opportunities to learn about their appearance until they met on the day of the hearing.

'It was the solicitor that sent a letter saying that there was going to be a family court case which I found bad. Really when you go to family court your solicitor just meets you there. You have got to shut up and not say anything ... Her solicitor, my solicitor, the wife and myself and you have just got to sit there.'

(Male court user, learning disabilities, family case)

In exceptional cases where parents were not already involved in child protection proceedings, court users said they were unaware their children were being held in care. Receiving this information at the same time as learning of their court appearance came as a shock. Unless court users already had a good support system in place, such as a relationship with an advocacy service, they were often unsure where to go for advice.

'Nobody really said much about it to me until I had got my solicitors.'

(Female court user, mental health condition, family case, North)

2.4 Information and updates from the courts

Criminal cases

In criminal cases, court users had mixed experiences of contact by telephone and letter from the Witness Care Unit. Not all participants recalled being contacted. However, they acknowledged that they might have forgotten, or ignored the contact because they wanted to avoid thinking about the case. This was particularly likely among interviewees who suffered depression. Participants were also uncertain about **which** agency had contacted them, and consequently were unsure where they would have gone to access support should they have needed it.

A few participants recalled receiving the DVD, 'Going to Court'. This DVD is prepared by HMCS for victims and witnesses in criminal cases. It explains the court process and guides the viewer through the various stages. The DVD was accompanied by a letter with a telephone contact number. It explained the role of the Witness Care Unit and explained that members of the service would be available to offer personal support at the court hearing if required. Court users found the DVD informative, particularly because it showed the order of events and who would be present in the courtroom. This reassured court users about attending court and increased their confidence.

'It was pretty informative really all in all. Everything in there, that was put in there was made to make you feel, that this was not such a, you know, although it's quite a hard thing you know, everything would be, I got the impression everything would be, you know, that the forms and the CD, everything would be there to help you, in strange surroundings if you like.'

(Male court user, criminal case, mental health problems, North)

In a few cases, court users also recalled receiving a letter from the Witness Service. A number of participants took the opportunity to contact either the Witness Care Unit or the Witness Service. Where court users did not have access to alternative forms of support, they found this mechanism centrally important. They could telephone for reassurance and also ask staff to liaise with the police on some occasions. This eased anxiety and made them feel less daunted. However, if court users already had care and support in place they relied heavily on this, rather than taking up Witness Care Unit or Witness Service support.

Civil and family cases

In civil and family cases, the courts did not provide information. In these instances, court users depended on their solicitor for information about the case. Court users' views on this aspect of their experience therefore depended upon the effectiveness of their relationship with their solicitor (see 'Experience of support', section 3.2).

Most litigants in person had difficulty in accessing any information or assistance when preparing for their court appearance. As a result they felt very unsure about what they were

required to do. Occasionally, litigants in person contacted advice organisations such as the Citizens Advice Bureau (CAB) for further guidance on their case. However, most were not aware of any information or support available and did not know how to access advice services.

Court users and their carers had difficulty in contacting the courts to establish whether they could be accompanied at a court appearance. This uncertainty discouraged court users from attending, as they were unsure whether they would be able to cope if they had to go alone. Typically, this dependency derived from a need for emotional support for those affected by severe anxiety or depression, and a need for practical help for those with learning disabilities.

'I did ring the week before to find out the details and I did mention that [xxx] had a learning disability and asked if I could speak up for her because that is what she asked, but the receptionist said 'I don't know, it will depend on the day who the usher is.' When I spoke to the usher he said 'Oh I don't know, you will have to speak to the magistrate' so we didn't really know whether I was going to be able to speak for [xxx] until we got in there really.'
(Carer, civil case, South)

2.5 Pre-trial visits

Victims and witnesses in criminal cases would be offered pre-trial visits to the court by the Witness Care Unit and the Witness Service, unless a hearing was happening too soon to arrange this. Many participants chose to go on this visit to help familiarise themselves with the court. Those who did not take up the offer either felt that they did not need this support, or preferred minimal contact because they wanted to avoid thinking about being in court as it would only worsen their anxiety. One court user with Asperger's described feeling disinterest and a general lack of willingness to engage with individuals in relation to their court case.

Court users were shown around the courtroom and Witness Service or Witness Care Unit staff explained what would happen during proceedings, where the various parties would stand and what participants would be required to do. Court users felt that these visits were extremely useful, and helped them make decisions about what would suit them best on the 'real' day. For example, when a court entrance was felt to be very imposing, court users chose to enter through the rear court entrance instead. Although court users found security staff intimidating, knowing in advance who they were, and why they were there, helped to reduce this intimidation. Court users who were considering the use of a screen or video link during the trial were able to look at these 'special measures', which helped them to decide whether these would be helpful. Participants found these visits extremely helpful when preparing for their appearance in court and felt that they helped to demystify the process.

None of the interviewees who had taken part in family cases recalled being offered a pre-trial visit. According to practitioners working in civil courts, visits were not made available to court users before civil hearings. Participants with experience of both criminal and civil court settings felt that a visit to the court in their civil case would have been helpful.

3. Support before court

This section considers the sources of support for court users before attending court, the type of support required by court users with mental health conditions, learning disabilities and limited mental capacity, and court users’ experiences of receiving support.

3.1 Provision of support

There are several sources of support for court users. Statutory provision is outlined in Tables 1 and 2 and independent support is outlined in Table 3. These tables provide details of the support available, who provides it, at which courts it is available, professionals’ roles and credentials for supporting court users, and the referral route to this support.

Statutory support

The tables below describe the general and specialist statutory support provided before court for court users with mental health conditions, learning disabilities and limited mental capacity. ‘Specialist’ support is needed by court users with more severe conditions which significantly affect their capacity to give instructions and engage with their court case.

Table 3.1 Independent (non-statutory) general and specialist support available for vulnerable court users before court

General support	Court	Role in support	Credentials	Referred by
Police	Criminal	<ul style="list-style-type: none"> Refer court users to the Witness Service and Victim Support. Pass on any relevant information relating to a victim’s/witness’s condition. Identify need for intermediaries and other special measures; offer provision and assign intermediaries where appropriate. Meet victims to inform them if a decision has been taken for a case not go to court. 	<ul style="list-style-type: none"> Training in the application of special measures. 	<ul style="list-style-type: none"> Contacted by court user in reporting an offence
Witness Care Unit (Police and Crown Prosecution Service [CPS])	Criminal	<ul style="list-style-type: none"> Check police case papers for special measures needs. After letter explaining court attendance has been sent, telephone to explain not-guilty plea. Provide updates and information on the case by telephone and by letter. Carry out risk assessment to determine health/support needs over the phone. 	<ul style="list-style-type: none"> Trained by CPS to conduct needs assessments. No structured training or specialism reported. 	<ul style="list-style-type: none"> Referred by CPS

General support	Court	Role in support	Credentials	Referred by
Family Liaison Officer (Police)	Criminal (Crown) (only allocated in homicide cases)	<ul style="list-style-type: none"> ● Provide a channel for communication between the family and the police ● Gather evidence and information from the family that contributes to the police investigation; ● Provide information and practical support to the family; ● Ensure appropriate support for staff who are involved in delivering effective family liaison; ● Wxplain the function of a victim personal statement, and what the witness will be expected to do. 	<ul style="list-style-type: none"> ● 5-day Police training course about managing bereavement and available support organisations. ● No specific training in mental health conditions, learning disabilities or limited mental capacity. 	<ul style="list-style-type: none"> ● Police referral
Victim Support (also run the Witness Service for those called as witnesses)	Criminal	<ul style="list-style-type: none"> ● View notes on case; make early contact. ● Victim Support: confidential advice and support to all victims and their families ● Where special needs are identified, second a vulnerable and intimidated witness support worker from Victim Support to do a home visit (North East case study). ● May conduct a pre-trial visit at the court. 	<ul style="list-style-type: none"> ● Volunteers are trained in working in court and in supporting and helping people. ● No specific training in mental health conditions, learning disabilities or limited mental capacity. 	<ul style="list-style-type: none"> ● Referred by police
Barrister	Criminal	<ul style="list-style-type: none"> ● Review videos, identify if special measures needed. ● Earlier involvement than in the past. Assist assessment of learning levels and psychiatric issues. ● Make applications for special measures. 	<ul style="list-style-type: none"> ● No specific training. 	<ul style="list-style-type: none"> ● Assigned by CPS
CAFCASS (Children And Family Court Advisory Support Service)	Family	<ul style="list-style-type: none"> ● Information, advice and support specific to children and their families in family proceedings. 	<ul style="list-style-type: none"> ● N/A 	<ul style="list-style-type: none"> ● Assigned by family courts
Solicitor	All courts	<ul style="list-style-type: none"> ● Refer to support organisations. ● Depends on availability of advocates: faster, more streamlined if they assist. 	<ul style="list-style-type: none"> ● No specific training. 	<ul style="list-style-type: none"> ● Assigned by CPS (criminal); independently or through support organisations (civil and family)
Court clerks	All courts	<p>Civil: assist with filling in forms.</p> <ul style="list-style-type: none"> ● Refer to solicitors, legal advice services or charities such as CAB for legal support where requested. 	<ul style="list-style-type: none"> ● Training on disability awareness, which focuses on physical disabilities. 	<ul style="list-style-type: none"> ● Approached by court users by telephone or in person

Table 3.2 Specialist statutory support available for vulnerable court users before court

General support	Court	Role in support	Credentials	Referred by
Intermediaries	Criminal	<ul style="list-style-type: none"> ● Conduct a needs assessment of the court users. ● Assist communication between court users and practitioners in order to achieve best evidence. ● Mediate in reporting crimes, making statements and preparation of evidence. ● Advise officers in cases on how to achieve best evidence. 	<ul style="list-style-type: none"> ● Five days' residential training. ● Intermediaries are trained professionals in areas such as mental health, clinical psychology, speech and language therapy etc. 	<ul style="list-style-type: none"> ● Police
Official Solicitor/ Litigation Friend	Civil, Family	<ul style="list-style-type: none"> ● Appointed by the court to act as Litigation Friend for 'protected parties' – those lacking capacity under Mental Health Act 2005. ● Conducts all proceedings on behalf of those who meet three criteria: ● Incapacity is confirmed in a medical report; ● Funding is in place; and ● No family member or friend is willing to act. 	<ul style="list-style-type: none"> ● Legal representative 	<ul style="list-style-type: none"> ● Official Solicitor
Litigation Friend	Civil, Family	<ul style="list-style-type: none"> ● Provide instructions to the solicitor on behalf of a 'protected party' – a court user lacking capacity. 	<ul style="list-style-type: none"> ● 'Legal guardian: family member or friend. 	<ul style="list-style-type: none"> ● Professional such as solicitor or social worker indicate court user need; court user may nominate a preferred individual to be litigation friend.
Social worker	All courts	<ul style="list-style-type: none"> ● Liaise with legal representatives; provide informal support to court users. 	<ul style="list-style-type: none"> ● Training in mental health and learning disabilities as part of social work qualification. 	<ul style="list-style-type: none"> ● Social services

Independent support

Table 3.3 Independent (non-statutory) general and specialist support available for vulnerable court users before court

Support	Court	Role	Credentials	Referred by
Advocacy services	All courts	<ul style="list-style-type: none"> ● Help people to get legal representation and be present at meetings to make sure court users understand what is being said. ● Family cases: ask solicitors for a four-day rather than a two-day hearing with hourly breaks. 	<ul style="list-style-type: none"> ● Training can vary. ● Some advocates specifically trained in legal issues; others offer more generic advice with no specific legal training. 	<ul style="list-style-type: none"> ● Any practitioners in contact with the court user, or court user's self-referral
Third sector organisations e.g. Mencap Mind	All courts	<ul style="list-style-type: none"> ● Ensure court users understand what they are required to do, and support them to make the process easier. ● Attend appointments and help court users to understand court reports and other paperwork. 	<ul style="list-style-type: none"> ● Training can vary. ● Some advocates are specifically trained in legal issues, while other sources of informal support offer more generic advice with no specific legal training. 	<ul style="list-style-type: none"> ● Any practitioner/ court user self-referral
Domestic violence support agency	Criminal; referrals from CPS, other support agencies	<ul style="list-style-type: none"> ● Do risk assessment, assess needs, aim to reduce risk and empower victims. ● Close liaison with police, courts, social services, Victim Support, housing, probation, drug/alcohol, mental health. 	<ul style="list-style-type: none"> ● Varies by organisation. ● Trained counsellors. 	<ul style="list-style-type: none"> ● CPS, Police, support organisations
Rape crisis counselling		<ul style="list-style-type: none"> ● Provide clinical support; can liaise with police only with clients' permission due to confidentiality. 	<ul style="list-style-type: none"> ● Trained counsellors. 	<ul style="list-style-type: none"> ● Police officers on case
Citizens Advice Bureau	Civil Family	<ul style="list-style-type: none"> ● Offer information and advice. ● Refer on to recommended solicitors. 	<ul style="list-style-type: none"> ● Varies according to roles within the bureau; includes specialist advisors in financial advice. ● Training in welfare benefits, consumer, housing and employment legislation. 	<ul style="list-style-type: none"> ● Any practitioner/ court user self-referral
Mc-Kenzie Friend	Civil	<ul style="list-style-type: none"> ● Offer practical and emotional support to court users. ● Assist court users' understanding of the court process. ● Liaise with other agencies. ● Assist with sourcing and editing legal documents. ● Cannot offer legal advice. 	<ul style="list-style-type: none"> ● A lay person, typically a friend or relative, they have no specific legal training 	<ul style="list-style-type: none"> ● At request of court user; at the discretion of the judge

3.2 Forms of support required

Court users and carers identified a range of support needs for the period before they attend court. The support needs identified were practical, emotional, specialist and legal. These categories of support are discussed below.

Practical support

Practical support is the general assistance and care required to enable full engagement with, and understanding of, the case. A range of practical support needs were identified, including:

- a point of contact for information;
- a clear explanation of case proceedings; and
- guidance to establish expectations of the court appearance and details of what would happen on the day.

This support helped court users to prepare more effectively for court. For example, it enabled them to develop coping strategies and alleviated the anxiety caused by uncertainty. It also helped court users to feel proceedings were inclusive and fair; this was especially true in family cases, where participants were particularly sensitive to their treatment. However, in some cases court users suggested they did not want to receive any support or assistance, in order to avoid the stress caused by focusing on the case before attending court.

Emotional support

Emotional support is the care provided to court users to ensure their emotional well-being and confidence. Across all cases, court users with mental health conditions were aware their mental health could suffer if the case caused them stress and anxiety. These fears played a major part in their decision whether or not to pursue the case. Court users who felt supported were more likely to continue with the case.

This support ensured they would have:

- somebody to speak to and share concerns with; and
- somebody to accompany them to all meetings and interviews.

Specialist support

Specialist support refers to the type of support needed by court users with more severe conditions that significantly affect their capacity to give instructions and engage in the court case. Practitioners and court users identified a number of support needs.

- **Representation by a Litigation Friend:** In cases where a medical assessment found that court users lacked capacity to give instructions on their case (see assessment, section 5.3), the court chose a Litigation Friend to act on their behalf. This was usually

a family member or friend. The Litigation Friend read and explained all letters, attended meetings with the court user or went on the court user's behalf, and managed the involvement of other professionals, such as mental health nurses or support workers involved in the court user's life. Court users found it helpful and convenient to have a familiar person supporting them, because they were easily accessible and the court user felt comfortable asking them questions. If a personal contact was not available to represent the court user, the Office for the Public Guardian appointed an Official Solicitor as the court user's Litigation Friend.

- **Communication and intermediaries:** Intermediaries were appointed to help court users give evidence in criminal cases. Court users with learning disabilities and carers felt that intermediaries were a vital tool that enabled them to express themselves effectively enough to make a statement for use in the trial.
- **Counselling:** Regardless of vulnerability, court users who were very distressed by the subject of their court case felt that they needed counselling to cope with giving evidence and appearing in court. This applied particularly to domestic and sexual violence criminal cases, as well as to a range of family cases.
- **Crime specific care:** As discussed above (in sections 2.1 and 2.2), court users in domestic violence cases felt that being referred directly to a safe house and supported by police with awareness of their particular needs gave them the security they needed to give evidence. For more serious cases, a Family Liaison Officer oversaw the support given to the witness for the duration of the court case. Having this consistent point of contact for the case was considered by barristers and court staff to help identify vulnerabilities, and monitoring of the case in case the court user's needs changed.

Legal support

All court users felt they needed either representation or advice from a legally trained practitioner. Court users and support workers expected solicitors to make personal contact, and valued regular telephone calls as well as letters as ways of receiving information about the case. In meetings, solicitors were expected to give explanations about the case in such a way as to ensure the court user fully understood the information. This required liaison with an advocate, carer or support worker who could fully grasp this information if the court user did not understand the solicitor.

3.3 Access to and experience of practical and emotional support

This section of the report considers the access to and experience of practical and emotional support, as described by court users and practitioners in the criminal, civil and family courts.

Criminal courts

Access to support

Some court users recalled receiving a telephone call from the Witness Care Unit. They viewed this as a route to support should they need it. Beyond this, the level of support

available related to the nature of the case, whether they had been identified by the police as requiring support, and whether they already had a carer or other professional to assist them.

The police, CPS and WCU are responsible for identifying vulnerable witnesses who are eligible for additional support. The police may identify needs when completing the MG11 witness statement form, which includes an initial needs assessment including assessment of vulnerability or intimidation. Subsequently, they may use an MG2 special measures assessment and application form. Court staff and barristers felt that the police should be responsible for giving court users access to practical and emotional support such as special measures, as well as for identifying individual support needs. However, legal representatives and voluntary support organisations felt that this access was limited because the police often failed to identify mental health conditions and learning disabilities, or dropped cases on grounds of witness credibility.

Access to support provided by the police, Witness Care Unit and Victim Support was also influenced by carers and support workers, who encouraged court users to take up the support available, or requested further contact with these agencies where they felt this was needed. This was important in dealing with court users where there was a danger that the stress of proceedings might cause them to close off and disengage from their case. For instance, one advocate took on responsibility for liaising with the police and was able to explain the use of a video link to a court user with learning disabilities who had become frustrated with the case because of their anger at the crime itself.

Experience of practical and emotional support

Overall, the practical and emotional support received in criminal cases was viewed positively by court users and practitioners alike. In cases where court users felt they had minimal support needs, a police officer, Witness Care Unit or Victim Support was felt to be sufficient as their point of contact, to provide explanations, guide the court user through their case and offer reassurance. Court users were generally happy to instigate contact themselves (or through their carer) where they required more regular updates on the case.

'It was very, very good, like I say, people were phoning up, police were phoning up all the time ... they would keep ringing up and giving us an outline of the case and you know, that set it down for the trial'.

(Male court user, mental health condition, criminal case, North)

The experiences of court users who felt they had greater support needs depended on whether they had access to other individuals or agencies who could provide this. Those who did not feel they needed more from the Witness Care Unit, Victim Support or the police, such as home visits rather than phone contact when talking through their case, as this gave them human contact for comfort and reassurance. This issue was also raised by support workers.

'We were trying to get Victim Support to come and see her because she's housebound, no, they won't come and I think it's just because they are so inundated with people, that they won't come.'

(Learning disability support organisation, South)

These court users also felt there was a hiatus in support between giving a statement and being informed about their court appearance, during which they did not recall receiving any information or updates. However, for the most part, court users with higher support needs felt these had been met as a supporting individual had taken responsibility for contacting the Witness Care Unit, Victim Support or the police. Where court users had a contact such as a Community Psychiatric Nurse to talk through issues including the effect of their case on their mental health, they tended to rely on them rather than taking up other court-specific support.

Police interviewed in the study emphasised the importance of voluntary or statutory support for court users to enable their cases to go to court. They emphasised that the police can only offer limited support, and if a court user with significant needs was unsupported the case would be less likely to continue.

'If there wasn't any support for that person, the case would be put away, because what would happen is, the officers would maybe keep phoning up the victim and saying, look, we need a statement, can I come around, but because the victim hasn't got the support there, whether that would be an advocate or their key worker, they feel they wouldn't be able to come in and have a one to one with a police officer taking a statement and going over the past incident that they're referring to. So unfortunately, it seemed that there were, I don't know how many, but a lot of cases, that just closed there because you know, there's no support for the victim.'

(Police, South)

For some court users in this study, their case did not reach court. In these instances, it was important for the court user to receive an explanation of why this had happened. Support organisations praised the work of police officers in arranging a meeting with social services or a support worker to explain why the case had not reached trial, and prepare the court user for this support transition. However, support organisations suggested that when no such support was offered by the police, court users were less likely to receive the support they needed to help them cope with the disappointment of case closure.

'We end up picking up the pieces with the victims where we believe that certain offences may well have happened and we try and support them after that event, and that is really, really problematic for our user group.'

(Learning disability service manager)

Civil cases

Access to support

As previously discussed, this study found that no formal practical or emotional support provision existed for court users in civil cases, other than the Personal Support Unit at a few courts. The letters sent from the courts did not include information on how to access advice or support.

The research found that solicitors were the main route through which court users and carers accessed support, so the relationship between court users and their solicitor had a strong impact on an individual court user's ability to access support.

However, solicitors and the judiciary doubted whether simply signposting vulnerable court users to support services was enough to connect them to the required support. These legal professionals felt that these court users would lack the confidence to make arrangements independently in many cases. Instead, if a practitioner identified a condition, these participants felt the practitioner should arrange for a supporting party to contact the court user directly and offer them assistance.

Referral to an advocate from court via a solicitor could be very 'hit and miss' by legal representatives' own admission, and access to advocacy in civil cases was extremely limited in the experience of practitioners and court users interviewed in the research. Furthermore, solicitors found that accessing support for court users through statutory provision could be a time-consuming process, which could cause delays and discourage both court users and solicitors from pursuing a case.

'You struggle to get social services to accept and support somebody. To the extent that we have to write a letter and say "look, these are your duties and we are going to take you to court if you don't", to get somebody to do an assessment'.

(Solicitor, civil, South)

Civil court staff considered it their responsibility to provide court users with practical support by filling in forms such as counter-claims. However, they did not believe it was within their remit to provide more intensive support or handle more detailed queries, such as informing court users how to access legal advice. In certain instances, litigants in person visited the court to meet desk staff face to face and ask for help in progressing their case and organising their files. This should have resulted in referrals to the CAB or other legal advice agencies. However, court staff rarely made these referrals and only considered them as referrals for legal assistance, rather than support relating to mental health conditions or learning disabilities. Study participants found the courts very inaccessible; telephone lines were busy, or staff unable to help with queries, causing intense frustration.

'The woman behind the desk was not helpful ... every time I got there she would just send me away, the clerk behind there. I must have been four times. She wouldn't accept my documents, she said I didn't need to do it, but I did need to do it because they would file costs against me ... I was going back to court to say there shouldn't be costs to pay.'

(Female court user, mental health condition, civil case, South)

Experience of practical and emotional support

Court users' experiences were strongly shaped by their solicitor, who was their key point of contact in relation to support, explanations and establishing expectations of their case.

These experiences varied a great deal. Court users found it reassuring when they were able to contact their solicitor easily with any queries or concerns they might have. The feeling that they had somebody 'on their side' built trust and confidence in the case.

As one would expect, individual court users reacted in a range of ways to this contact. Some did not engage, neglecting to keep appointments without reminders, while others were extremely proactive and repeatedly sought contact with their solicitor. These different responses meant that solicitors had to tailor their approach to individuals. Case management of this kind was described as being similar to that of a social worker or GP. For example, clients who showed obsessive tendencies towards their case and made excessive demands would be given limits on the amount of contact allowed, while in other cases solicitors had to pursue the court user to ensure contact was maintained. However, solicitors only gained confidence in this kind of case management, described as best practice among legal representatives, through experiences of cases where clients had special needs (see Chapter 6).

Court users without legal representation had no point of contact for the case at all. They became frustrated because they lacked the practical information they needed to understand their case and guide their expectations. Although all court users remembered receiving correspondence informing them of their court appearance, it was not written in language they could understand. Therefore court users with learning disabilities were often unsure about important details such as which court they should go to. Other court users relied on a carer, support worker or advocate to provide support, for example by reading correspondence. However, their supporter did not always have the legal knowledge required to provide explanations. The reassurance and comfort provided by this type of support was crucial.

'In the two years he attended everything ... he spoke for me until my faculties came back slowly ... he deciphered everything back and forth. He was just a rock and a comfort.'
(Female court user, mental health condition, civil case, North)

A few participants who had experience of both civil and criminal cases were able to compare the nature and level of support received in different courts. These court users felt the support they received as a witness in a criminal case would also have been helpful in their civil case. In particular, they mentioned leaflets describing what to expect on the day, signposting to helplines or support services, proactive telephone calls from support organisations, and the option of payment for travel expenses.

Family courts

Access to support

As with the civil courts, family courts did not provide official support, so court users had to depend on existing contacts for all explanations and guidance. The research found that family courts did not offer pre-trial visits to court users. However, practitioners reported that these arrangements were made on an ad hoc basis.

In family cases, solicitors and social workers felt that they tended to take on the role usually played by the police or Witness Service in criminal cases, assuming responsibility for liaising with court users and providing explanations and updates on case progress.

Where solicitors were linked to local voluntary sector provision, clear routes of referral and co-ordination with courts and social services had already been established. These facilitated specialist support provision (see Chapter 7). This tended to occur where court or support staff recognised that the court user was having difficulty understanding meetings and proceedings, particularly for those with learning disabilities. However, solicitors acknowledged that they may not have the knowledge or training to know where they should direct court users for support, as shown in the case study below.

Case study: Determining support

A legal representative with no background in mental health took on a childcare proceedings case in which the mother had learning difficulties and the father heard voices. Both parents had capacity assessments and were found to be able to give instructions, but practitioners found it hard to identify the appropriate resources available in the community and bringing them to the case.

'I don't think there is enough knowledge around to identify which psychiatrist should be used in which case... You wouldn't go to a conveyancing lawyer for a care case, would you?'

(Family legal representative)

Parents in private law cases did not generally receive support, as no public support agency had responsibility for them.

Experience of practical and emotional support

Solicitors found their role in supporting and counselling the client both complex and time-consuming. They also felt that it could sometimes take precedence over the 'legal' side of the role. However, court users valued this type of contact highly because it helped their understanding of the case and provided emotional support by ensuring their solicitor was accessible for reassuring conversations.

'If I had any problems, I rung her up straight away; she'd answer my calls, I never seemed to have a problem getting in touch with her. If I had a problem and I needed advice, if she could get around it, she'd tell me how to get around it, or if I were fretting too much, she'd make a meeting, and I'd go in and see her, so she bent over backwards, as much as she could.'

(Female court user, mental health condition, family case, North)

In family cases with longer timescales, court users and solicitors had more time to develop a relationship. This often resulted in stronger bonds and mutual understanding, which improved the level of moral support that court users felt they received from this person. Furthermore,

because the parent's ability to cope was under scrutiny, solicitors felt they were more closely attuned to the influence of proceedings in exacerbating the parent's condition. A range of judiciary, court staff and also court users found that experienced solicitors had highly developed communication and support skills, which reduced the need for advocates for court users with few support requirements.

Holding child protection conferences a week before the hearing was considered best practice by legal representatives and social workers. They felt that this helped court users understand their case. However, it was not possible to confirm this, as no research participants had experienced this model. All of the agencies involved were aware of this protocol, but practitioners interviewed suggested that they often simply did not have time to comply with it.

Court users who had an advocate found them indispensable for providing explanations, as well as a reassuring presence for emotional support. In more severe cases, where the court user found it hard to communicate during meetings with a solicitor and public agencies, advocates could help to speed up communication during meetings to save time. By contrast, a small number of court users in family cases who had no support felt that their inability to control their emotions in the lead-up to their court appearance had affected the eventual outcome of their case. This occurred for court users with both learning disabilities and mental health conditions. They felt that some support, for example, from a carer or support worker, would have helped them to manage their condition. However, these participants acknowledged many issues were involved in influencing the case outcome. Court users in private proceedings did not benefit from any court-organised route to accessing advocates.

Where court users found it hard to understand their solicitors, their emotional state could suffer. This could also create potential problems of escalating client costs. Solicitors then found themselves faced with the dilemma over whether to offer extensive support which could significantly increase costs.

3.4 Experience of specialist support

Communication: Intermediaries (criminal)

At the time of the research (February 2009), awareness of the use of intermediaries appeared to be low among police officers. They rarely offered the service, and practitioners in the case study areas recalled very few examples of its use. However, they also suggested that this could be due to the relatively recent introduction of the service, and they expected use of the scheme to increase as awareness grew over time.

Practitioners gave examples where intermediaries had been crucial to the continuation of a case. For example, an intermediary was assigned to assess and assist in taking evidence from a woman with serious learning disabilities who had alleged an assault. With support from the intermediary, she used Makaton symbols with her fingers, signing letters on her leg

to recount her experience. This resulted in a full disclosure, and the case continued to trial. Without the intermediary, the police officer felt he would not have been able to communicate successfully with the woman to obtain the necessary details to progress the case.

Representation: Litigation Friend (civil)

Few participants had experience of Litigation Friends. Those who did (all of whom had learning disabilities but not a mental health condition) had appointed a family member or advocate, and found that the relationship worked well. Their Litigation Friend read their letters, liaised with their solicitor, and attended meetings, where they gave instructions. They also kept other support, such as community nurses, informed of case development. This allowed court users to relax, because they trusted their Litigation Friend to take responsibility for them, whilst remaining involved in the case.

Although court users felt that the Litigation Friend helped them to understand issues which they could not have grasped alone, they did not feel this individual had the knowledge or experience of the legal system to understand the case fully either. They would have preferred the solicitor to adapt their communication style so they could have more direct contact with them.

'She [the Litigation Friend] explained it better to me, but not an awful lot, some of it would be over her head ... No, she wouldn't understand it either.'

(Male court user, learning disabilities, civil case, North)

Counselling (all courts)

Few participants had experience of counselling during their case. When they did receive counselling, it tended to be as a result of crime-specific care such as domestic violence support organisations. Counselling was found to help these court users to recover from traumatic incidents, but participants in this research tended to discuss it more in relation to after-court experiences (see Report 4 in this series, *Court experience of adults with mental health conditions, learning disabilities and limited mental capacity: After court*).

Crime specific (criminal)

Support provided by the police and voluntary sector organisations was praised by court users in domestic violence cases. Police responded rapidly to call-outs, and safety measures they arranged to be fitted to the home made court users feel more secure. Women's support organisations, as well as those such as Mind, provided additional care and interest in the case. This increased court users' overall contact with support services, which they felt they needed. Where court users made statements in a safe house or moved out of their own accommodation altogether, these organisations also monitored court users' emotional states during this time to ensure court users did not feel isolated. One carer in the study believed that the classification of an offence as a hate crime towards a court user with a learning disability caused increased police interest in the case. This resulted in more support, including an additional interview with the court user, which carers felt improved the quality of evidence achieved on the case.

3.5 Experience of legal support

Criminal courts

In criminal cases, court users generally had minimal contact with solicitors and barristers until immediately before their court appearance, as discussed in Report 3 in this series (*Court experience of adults with mental health conditions, learning disabilities and limited mental capacity: At Court*). Where it was made available, court users greatly valued contact with legal representatives and it had a real impact on their confidence levels when preparing to attend court.

Specifically, court users thought this contact helped barristers to understand their needs, and were reassured by these discussions. Barristers generally regarded this as good practice, and considered it a priority for clients with mental health conditions and learning disabilities.

Civil and family courts

Access to legal representation and advice

The experience of accessing legal representation in civil and family proceedings was pivotal in its impact on court users' experiences. In civil cases funded by legal aid, legal representatives believed that the identification of mental health conditions, learning disabilities and limited mental capacity decreased court users' chances of securing representation, as such cases required more resources for the same fee. The impact of this could be reduced where court users were supported by a carer or advocate, as they could save time by mediating communication. Solicitors with experience in working with clients with learning disabilities, mental health conditions and limited mental capacity found themselves inundated with referrals from the voluntary sector and the Office of the Public Guardian. However, they had no experience of this client group contacting them independently. They assumed this was because knowledge of their firm's specialism was spread by word of mouth and reputation, and would not reach this group of court users themselves.

'They will not know where to get representation even if they are told, because firms like ours that do these kinds of cases are overwhelmed, and I think for people with mental health problems it is that much harder.'

(Solicitor)

A few participants tried to seek legal representation on their own. However, they found this challenging, and preferred to rely on the advice and assistance of a support network. This might include community learning disability teams, social workers or voluntary organisations. Through such networks, they might succeed in finding representation that they were happy with. However, advocates and voluntary organisations themselves had difficulty finding solicitors to represent their clients. In exceptional cases, participants who sought legal representation entirely alone relied on recommendations from the solicitors they contacted who refused to represent them, but offered the names and contact details of other firms. Even when they found representation, these participants had difficulties explaining their

case during meetings, and did not feel they were understood or supported. In a couple of instances for court users with mental health conditions, this led them to ignore the solicitor's advice and choose to represent themselves.

Awareness of duty solicitors was low and the service was overburdened. According to court staff, those attending could expect long waiting times and extremely limited attention, with an average of 20 minutes per client.

Experience of legal representation and advice

Legal representatives' approach to communicating with court users tended to vary according to the training they had received, their experiences of cases with this client group, the resources available to them, and their perceptions of their duties to the client. This wide variation in approach was reflected in court users' mixed views on their experiences of their legal representatives.

Case study:

Lucy felt she got no support from her social workers before or after her children were taken away – she was telephoned and told to seek legal support, as she was being taken to court and the children could be put up for adoption. She had no idea who to contact, and eventually found a solicitor in the Yellow Pages. But she felt he had no understanding of learning disabilities, and she was sent for an assessment without being told why and how it would be used. She now thinks it was a report which was used against her. She didn't trust her solicitor at all, and never felt she understood what was happening.

“No one explained what the legal advice was to us ... I would feel more comfortable about it if I was informed ... what was actually going on and why.”

(Female court user, learning disabilities, family case, North)

Court users with different needs and competencies valued similar features in their solicitors' approaches to working with them. During meetings, court users felt it was important that solicitors spoke to them directly and used language they could understand, even if a carer, advocate or Litigation Friend was present. Particularly in family cases, court users appreciated it when their solicitors made sure they were included in discussions and helped them to feel that they had some control of their case and situation. Court users with mild learning disabilities tended to notice whether their solicitor was accustomed to working with people with their needs. They judged this by the way they were spoken to. However, they often felt that the use of jargon had excluded them from the interaction.

'I said, he's got to use easier words on it, because that's the only way how I can get across. If you use loads of jargon for any person with a learning disability, you're not going to get anywhere. Yes, they want to talk and forget about you. I even said that, too.'

(Male court user, learning disabilities, civil case, North)

Solicitors found that constraints of time and experience in cases with this client group meant that the role of advocates or carers was often essential. It could speed communication, particularly where the court user's interpersonal skills were low. Their involvement could be critical in enabling the court user to instruct the solicitor in their case, as in this example.

'He does have a high IQ but because of the fact that he has Asperger's syndrome, he has enormous problems with interpersonal relationships and managing day-to-day life ... He just wouldn't be able to sit through an interview with a solicitor and maintain concentration.'
(Carer, civil case, North)

Court users and their carers appreciated being able to telephone solicitors to discuss the case. In many instances, this was necessary because they did not understand the solicitor's letters. However, court users had mixed success in accessing solicitors by phone.

4. Special measures (criminal cases)

'Special measures' is the collective term for a set of procedures introduced under the Youth Justice and Criminal Evidence Act 1999 (YJCEA 1999). They form part of an integrated scheme to support and assist vulnerable victims and witnesses, including those with mental health conditions and learning disabilities, to enable them to give best evidence in criminal proceedings (see Reports 1 and 5). Special measures can be used at the discretion of the court, where a witness is classed as 'vulnerable' or 'intimidated'. The YJCEA specifies that they may be authorised 'only if they are likely to improve the quality of a witness's evidence'.

The definition of a 'vulnerable witness' encompasses children, and any adults who have a mental disorder (as defined within the Mental Health Act), or a significant learning disability. It may also include some people with physical disabilities. In practice, the majority of interviewees in this research could be considered 'vulnerable' under this definition.

Special measures are available only in a minority of civil and family cases. Participants in civil cases who were interviewed for this research had no experience of special measures or provisions, and neither were the court staff or other practitioners interviewed aware of any particular provisions available in the courts.

4.1 Special measures

The police, CPS and WCU are responsible for identifying eligible vulnerable witnesses. The police may identify needs through the completion of the Manual Guidance 11 (MG11) witness statement form, and subsequently may use an MG2 special measures assessment and application form (both described above). The police and CPS are responsible for offering special measures and holding an early discussion with an independent supporter available to help the court user select appropriate support.

However, court staff reported that the police were not always aware of what was available in each court, particularly in courts in the North East. For example, Standard 27 of the Witness Charter (2008) states that: 'If you have any language or communication needs, an accredited interpreter, registered intermediary, signer or other assistance will be provided either by the court staff or the prosecution or defence lawyer, provided that this need has been identified in advance'. This research identified very few cases involving intermediaries, and found that few practitioners were familiar with their role.

'I know that intermediaries are now available in magistrates' courts as well as Crown and I hope they will make a huge difference but at the moment they are not used enough. It's the police's responsibility for getting them involved at the beginning and support should follow the case all the way through.'

(Magistrate, Newcastle courts)

In addition, court users did not always fully understand what had been arranged for them. When special measures did not provide the security court users expected, this could lead to heightened stress levels. For example, interviewees did not always realise that when they sat behind a screen in court, they would be able to hear the defendant, or that they would be visible to people in the courtroom when giving evidence via video link. Provision of clear information about special measures and management of expectations were important.

'Because his difficulty was with things that were not routine, things that were new, new people, new situations, he needed to know well in advance what will happen. He had quite a severe learning disability... an application had not been made for special measures, despite everyone being aware of this learning difficulty... I sent several reminders to Witness Care, Witness Care badgered CPS, I know about that, and in the end the application was made on the day, which was a complete nightmare because you've got this gentleman, his problem is needing to know exactly what will happen, and I couldn't tell him. I couldn't tell him whether he'd give his evidence by TV link with screens, or an open court ... he ended up going to an open court ... he found it incredibly intimidating, and he tended to try and please in the answers he gave. Consequently the trial was going absolutely nowhere .. the whole trial collapsed. This chap was convinced it was entirely his fault'.

(Witness Service staff, North East)

4.2 Administration of special measures

Meetings between practitioners

Home Office Practice Guidance states that the police and CPS should arrange an early special measures meeting, as well as meetings between the CPS and vulnerable or intimidated witnesses. During these meetings, special measures can be explained (Home Office, 2001). Stakeholders interviewed during Phase 1 agreed that these meetings offered a good opportunity for the police and the CPS to discuss the specific needs of individuals, to consider any information provided on the Manual Guidance 11 form (see Identification, section 5.2) and to outline any special measures required.

However, practitioners in Phase 1 suggested that these meetings did not always take place. They felt that, as a result, their applications for special measures were not always handled within the necessary timescales. This could mean that witnesses might not always benefit from the special measures to which they were entitled, if applications were not made with sufficient detail or care. Several practitioners also raised these concerns during Phase 2. Practitioners felt these problems typically occurred because of a lack of communication on several levels: between the police, the Witness Service and the courts, and between the police and the court user.

Applications for special measures were sometimes delayed even where there was awareness of a court user's condition. Staff at the Witness Care Unit and Witness Service felt that this occurred where there was a lack of contact with the police over the case. In one example, following repeated requests by the Witness Service, an application was made on the day of the hearing, but not upheld. Witness Service staff felt that this decision was influenced by background information from the police, and insufficient time to consider the case.

Timing of applications

Court staff in one region reported that courts often left decisions on special measures until the day of the court appearance. Court users in this study felt that this could have a clear impact on them. For example, a victim of assault by their ex-partner only learned immediately before appearing in court that there would be no screen in the courtroom. This caused them to panic and they were subsequently unable to respond under questioning. Other court users felt that knowing what would happen on the day would have increased their confidence.

'If I'd have known beforehand there was definitely going to be a screen, I wouldn't have to face him, I wouldn't have to look at him – I'd have been a little bit more confident about going in the courtroom.'

(Female court user, mental health condition, criminal case, South)

HMCS staff also stated that they were not always informed about the need for special measures, such as video links, until the day of a hearing. By then it could be too late to organise and implement provision. Witness Service staff suggested that they had sometimes alerted the CPS to a need for special measures, after court users became distressed. Staff felt the police did not always identify the need for special measures applications.

Agreement to grant special measures

While the police should inform the CPS if a witness may be eligible for special measures, the CPS would tend to decide whether the witness was eligible and whether the special measures requested would maximise the evidence given. The research identified a range of reasons why special measures were not always used or encouraged. Legal representatives suggested that special measures which prevented the jury seeing the witness could adversely affect their case. On the other hand, defence counsel opposed the provision of special measures if it was felt this could disadvantage their client.

There was also uncertainty among magistrates about the role of special measures. Many associated them with children rather than vulnerable adults, or suggested that they were focused primarily on meeting the needs of the witness rather than achieving best evidence. This meant that magistrates often relied on the views of the barristers and solicitors.

'It's the solicitor's job to do the best by their client and make sure their needs are met.'

(Magistrate)

The range of reasons given for not using special measures demonstrates a lack of consistency in how they are applied and who is seen as responsible for their provision.

5. Identification and disclosure

This section outlines the points in the criminal, civil and family court processes where there are opportunities for participants to disclose their condition to a professional involved in their case, or for their condition to be identified by another party. Professional responsibility for identification, and factors which influence disclosure and identification, are also discussed.

5.1 Points for identification and disclosure

Criminal cases

The first point at which a court user's special needs could be identified was when police completed an MG11 form while taking an initial statement. During this process, police asked victims and witnesses about any needs and health conditions which they may have (see responsibility for identification, below). Police could also contact a learning disability team to establish whether the individual was known to mental health professionals or to social services, who could send a social worker to support them. However, this would only happen if police officers identified the court user's condition.

The second point was when the Witness Care Unit conducted a needs assessment over the telephone in conjunction with police files. Staff aimed to identify details which had not been picked up by the police. The Witness Care Unit then sent the court user a letter about special needs, inviting them to disclose by asking open questions including whether they had any support needs, concerns about giving evidence, or medical conditions.

The third point when vulnerabilities might be highlighted was at a pre-trial witness interview conducted by the CPS to ensure that the available evidence was sufficient to result in a charge. This would only be held where the Crown Prosecutor required more information to assess the reliability of evidence given. Once identified, according to procedure, this information should be transferred to the court listings office through the Witness Care Unit. However, some interviews indicated that this did not always happen. As a result, court users sometimes assumed that legal representatives or court staff had disclosed their condition to the court, when in fact they had not. Additionally, the CPS held a pre-trial witness interview in circumstances where they were uncertain of a witness's credibility.

Civil cases

The hearing letter sent out to all court users in civil proceedings before they attend court contains a question requesting information on any special requirements. As discussed above (section 3.2), court users in civil cases depended primarily on their solicitor as their point of contact for identification or disclosure (see 2008 CPS Code of Practice). Litigants in person, therefore, had very limited opportunities for identification or disclosure.

To encourage self-identification, civil courts also provided leaflets which advised users to talk to the court manager, customer service officer, disabled persons' contact or other member of court staff before coming to court if they had any special requirements. However, court users who took part in this study rarely recalled receiving this type of information. This research suggested that court users might have insufficient reading proficiency to understand the hearing letter unassisted. In the few cases where court users recalled receiving a questionnaire asking about particular needs, they had assumed that the question related to physical disability rather than mental health conditions.

'I can't remember what we had to write on these forms, it was just our details and stuff. But if it had of said do you suffer from depression or what have you, I'd have put it down, and then when they've read it they'll know. And then when I can't speak for myself you know what I mean? ... Yes, it would have been better.'

(Female court user, learning disabilities, civil case, North)

Practitioners considered that identification was more likely in long-running cases, as there were more contact opportunities, or where a case directly concerned a particular condition which made it self-evident. Once a need had been identified, this could be relayed to an usher through notes on the case file, to the counsel directly and to the local authorities in cases where they were involved.

For litigants in person, there are currently no means of identifying vulnerabilities until the day of the court appearance. Some interviewees suggested that it might be possible to introduce potential 'identification points' by indirect means. For example, organisations such as the Citizens' Advice Bureau suggested that in cases relating to debts, creditors or opponents should be obliged to attach a form to a creditor's claim with information about the court user's condition, but this could have limited impact as it was not considered relevant to the court.

Family cases

In public proceedings, conditions tended to be directly relevant to the case, so practitioners were likely to know about them from the outset. If cases continued over an extended period, court users could be subject to multiple assessments as part of the proceedings. Judges who took directions for proceedings were confident that they could identify any issues during the pre-hearing review and order a psychological or psychiatric assessment if they had any concerns about the individual's capacity.

However, the purpose of psychological or parenting assessments was not always disclosed to participants, and in retrospect court users felt they should have been told. For example, one court user in child protection proceedings learned that a parenting assessment had been carried out in their home without their knowledge. They did not find out about this until the hearing, and felt they should have been told earlier. In private

family proceedings, lack of contact also brought challenges for identification, much as discussed above for civil cases.

5.2 Professional responsibilities for identification and disclosure

Criminal cases

Court staff, legal representatives and the judiciary worked on the assumption that the police and the Witness Care Unit were responsible for identifying court users with mental health conditions, learning disabilities and limited mental capacity. They suggested that if a condition was not picked up during contact with these practitioners, it was unlikely to be identified thereafter because no other agencies had direct contact with the court user, or considered themselves responsible or trained for this task. Reporting an offence and giving a statement were therefore viewed as critical points for the identification of court users. However, advocates acknowledged that they were also presented with opportunities, such as watching a witness statement on video.

The Criminal Case Management Framework (2007) and *Code of Practice for Victims of Crime (2006)* state that the police should fully complete the MG11 witness statement form in accordance with the Manual of Guidance. This includes witness contact details, care and consent. In this, a careful assessment of any particular needs (other than special measures) should have been made. Police were also expected to ask about any special needs when they completed the Manual Guidance form 2 (MG2), in which they asked whether the court user had any particular needs or conditions. Police should consider the particular characteristics of the witness, the nature of the case, the evidence the witness can give and the range of special measures available. They should also record a detailed assessment of the witness's needs. The police are then responsible for explaining the provision of special measures to the witness, and recording any views they expressed.

If victims or witnesses attended the police station without a carer or advocate, the police were heavily reliant on individuals choosing to self-disclose. However, while the police were aware of the need to complete MG2 forms, support workers, court staff and legal representatives questioned whether this always took place, or how well the police were completing the forms. This was a particular concern in less serious cases, where interviewees felt that the lead police officer might be less well trained. There did not appear to be a consistent approach to police training, which was administered at a local level.

Witness Care Unit officers conducted a 15-point needs assessment (see section 5.1 above), and considered themselves able to pick up cases that police had failed to identify during this. However, the Witness Care staff interviewed could only recall a few instances where their staff had identified needs. Witness Care staff acknowledged that without individual medical training, identification was not '100% watertight', and feared that staff shortages meant they

did not always have the time for an interview in which they could assess a client's needs as fully as they would like. Furthermore, court users considered that a telephone interview would be less likely than face-to-face contact to encourage them to disclose a condition. Learning disability social workers also queried the level of training WCU officers were given in identifying special needs among court users.

Civil cases

Because civil proceedings were conducted by paper correspondence until the court user's appearance at court, court staff, barristers and judges expected solicitors to be the main parties responsible for identifying special needs.

'Unless it's a case where somebody brings it to your attention, I suppose there's an awful lot of cases where you know, if you say on the learning side, perhaps you don't know and I can't honestly think off the top of my head how we would know until people actually arrive at your door.'

(Court manager)

However, solicitors tended to perceive their remit and priority in relation to identification to be more narrowly focused on the court user's capacity to instruct them, and the relevance of the court user's condition to the case. They felt it was important to flag up issues to the judge only insofar as they might impact on their client's ability to function, cope and understand what was happening. Among some solicitors and members of the judiciary, it was felt that conditions did not need to be disclosed unless they affected the court user's capacity to give instructions or impacted upon court proceedings in some way.

Family cases

As with civil cases, courts generally considered the solicitors to be responsible for providing counsel with information about a court user's condition. However, in some cases, solicitors chose not to pass on information which court users had disclosed to them. Solicitors felt that a fine balance should be struck in deciding whether this information was relevant to a case and whether it should be disclosed to the court. Particularly in family court child protection proceedings, it was felt that this disclosure of information could affect future contact arrangements.

5.3 Overarching issues

This section considers the factors influencing disclosure in court user experiences, and identification by practitioners, noting where issues are particularly relevant to certain courts.

Disclosure

Concerns about credibility and impact on the case

Across the courts, court users described reservations about disclosing a mental health condition because they were concerned that it would have an adverse impact on their case,

by lessening their credibility as a witness in criminal cases, or weakening their case in civil and family settings. The support organisations and legal representatives interviewed shared the opinion that disclosure could have this effect.

In criminal cases, participants with mental health conditions in particular believed that disclosure would increase the chances that the case would not reach trial on grounds of witness credibility. They feared they would be stigmatised and felt anxious that the condition would be used against them. Participants described the need to be convinced by police, a legal representative or other professional that disclosure was not 'shameful and embarrassing' before they would be prepared to do so.

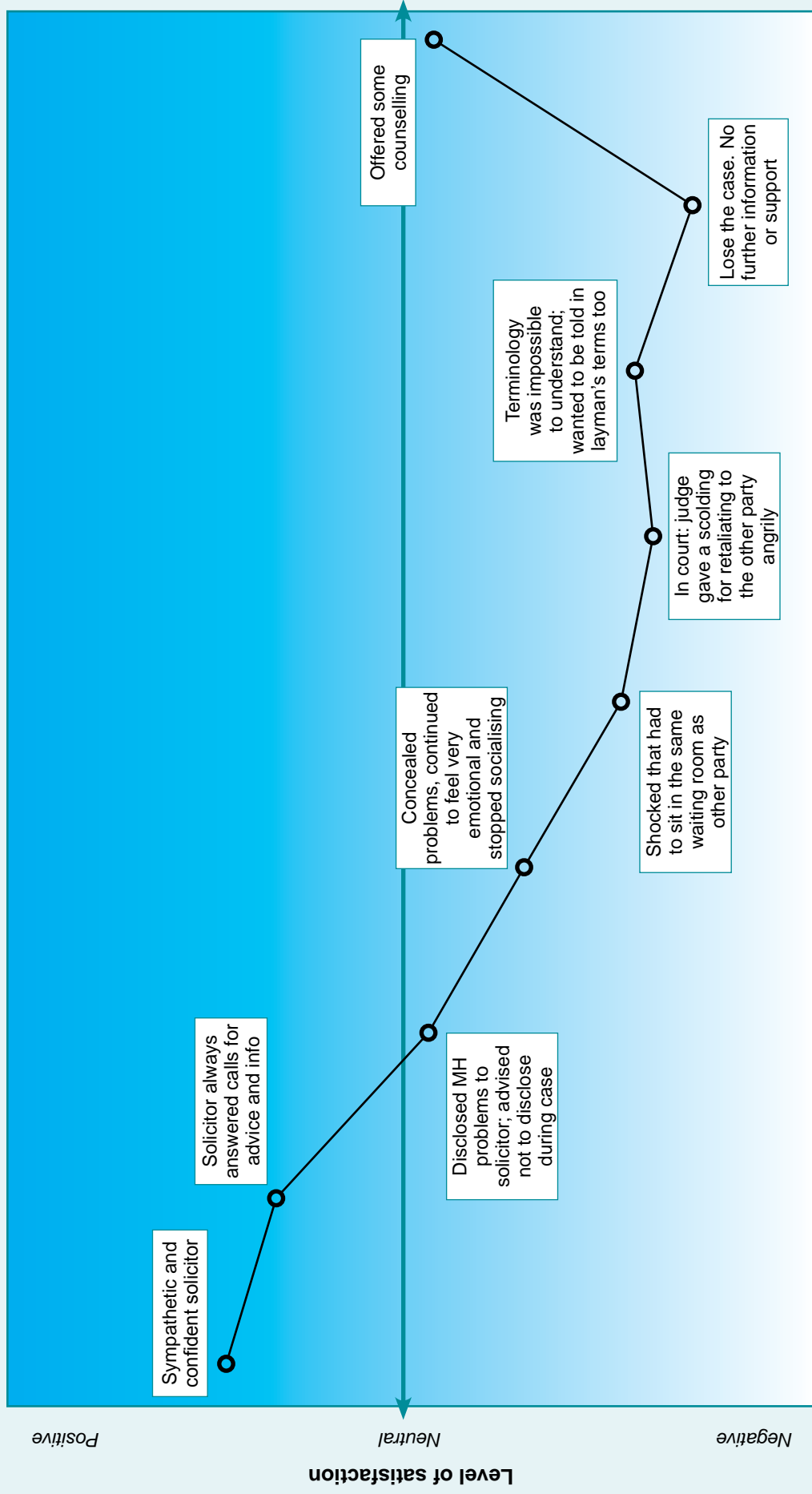
'I was frightened that all my mental health issues would come out, and my drugs and medication would be seized on and it would be used against me.'

(Female court user, mental health condition, criminal case, North)

In civil cases, litigants in person particularly felt that they had no recourse to advice on whether their condition was appropriate to disclose. For example, one court user felt that their failure to read letters charging them with non-payment of fines was influenced by a bout of severe depression, but was unsure whether they should mention this to anybody.

Particularly in family settings, disclosing an additional condition such as anxiety could present parents with a dilemma, as they would be unsure what impact this information would have on their case. The 'journey map' in Figure 5.1 shows the experience of a mother with mild learning disabilities who suffered from depression which was not fully disclosed. She was filing for adoption in a case which lasted seven months. She was afraid to reveal her condition to her solicitor, or anybody else, for fear of the effect on her case, and became very withdrawn, pessimistic and afraid. Her relationship with her solicitor suffered as a result, and she gave up hope of winning her case. Had she disclosed and thus felt able to seek help through counselling or medication, her condition might have stabilised or improved, creating a positive effect on her attitude towards the case and her own competencies.

Figure 5.1 Family court experience journey map



Value of disclosure

Overall, court users held varied views about the relevance of their condition to the case itself, and to its effects on their capacity in court. Many court users with milder conditions did not consider disclosing, both because they did not think their condition was relevant to the case itself and because they were not aware that support was available. On reflection, court users who had not disclosed regretted this because they would have wished for support during their case had they known about it. However, particularly in child protection cases where the focus was felt to be on the child with little support for parents, court users did not anticipate that disclosure of any condition would result in any positive benefit in terms of support.

'I didn't know if there was anybody out there who could help me ... you're on your own really.'
(Female court user, mental health condition, criminal case, South)

Others weighed the perceived risks around disclosure against the expectation or hope that positive benefits such as support or counselling would ensue. Subtle differences emerged between court users with learning disabilities and those with mental health problems in attitudes towards stigma and disclosure. Court users with both a learning disability and a mental health condition suggested they were more prepared to disclose a learning disability.

'Because people with disabilities have rights.'
(Male, criminal case, learning disabilities and mental health condition, North)

Identification

Type of case

Overall, practitioners felt that the nature of the case and the type of litigant were the greatest influences on the likelihood of identification. Judges and court staff were alert to certain case types associated with vulnerable adults in criminal cases, such as those involving domestic violence, the Court of Protection or rent arrears.

Practitioners agreed that the likelihood of identification was higher in family than in criminal proceedings. This was because family cases were directly concerned with the condition of the individual and typically depended upon the use of more personal information about the court user, including much higher use of psychological and psychiatric assessments gathered over a longer period of time. It was suggested that this comparison between courts provided an indication of the number of cases which criminal courts could miss.

'We've had it happen where there are interlinked family and criminal proceedings, and in the family proceedings we've had assessments, psychological assessments, and transferred those into the criminal one, we shared that information between the two cases, which has been helpful, and when you do that you begin to realise what you could be missing out on in the cases that aren't linked to family cases'. (Judge, criminal and family courts, North East)

Legal practitioners considered that the civil procedure rules, in which judges are enabled to take a more active role in determining the circumstances of the case, provided court users with some protection, as the judge's closer involvement made it more likely that they would be aware of the court user's condition and accommodate it. However, this depended on the seriousness of the case and how much time the judge could realistically give it.

Practitioners felt that the identification of vulnerabilities was more likely in more serious cases, due to the additional resources available. In cases going to the Old Bailey, the pre-trial interview conducted by the CPS to ensure evidence was sufficient to result in a charge was also an opportunity for identification. Victims of sexual assault, for instance, were subject to a risk assessment by professionals. Newcastle's domestic violence charity expected around 95% of their clients to suffer from depression at the point of contact.

'Mental health issues is something that's very predominant in the client group that we work with because of what's happened to them, especially historical abuse, so it's really common.'
(Rape crisis counsellor, Newcastle)

Furthermore, other agencies such as hospitals or social services were more likely to be involved in such cases, which increased the likelihood of identifying a condition.

Information-sharing

Court staff, police and the judiciary were concerned that professionals across a range of organisations were reluctant to share information about court users' conditions, because they were not confident about their rights and duties in this regard. This impeded both the initial identification of a condition, and information-sharing with other professionals involved in a case. In particular, police reported reluctance among NHS and community services to share service users' information, as these staff were uncertain about what could be disclosed.

'It just boils down to a lack of awareness of what information you can share and what you can't share ... staff might say, I'm sorry, I can't tell you any of the information because of confidentiality, because of their human rights. You find that a little knowledge is a bad thing. As long as you can justify that information will be used to prevent risks to that person or another person, that information should be shared, without a shadow of a doubt ... the lack of communication between them [NHS staff and police officers], the lack of sharing information, you know, it's very, very frustrating.'

(Police, South)

Dependence on disclosure

Police, support agencies and legal representatives described their approach to identification as needs-led, focused on support needs, rather than defining a condition. This was particularly important where a support worker was not present, or when they were unable to identify any support infrastructure. Because needs such as literacy issues or depression were not obviously visible, unsupported court users were dependent on disclosure to let professionals know about their needs. Police officers were generally considered by

practitioners across the court process to lack the necessary skills to identify a condition themselves if the court user did not disclose their condition.

'What would make it better is if such people were identified in the first instance. I don't think that's happening so you're not even on first base.'

(Barrister, criminal cases, North)

Support organisations working with court users with learning disabilities found that individuals did not always want to disclose their condition, despite clear difficulties in understanding information presented to them. In these situations, practitioners felt that the police were unlikely to find a means of encouraging them to disclose.

'Some people are very out and proud and it's all lovely. A lot of people are not happy with the phrase at all, don't want to be seen to have a learning disability and so won't bring it up and then get themselves in a sort of terrible spiral sometimes, because they are, won't say it, don't want to say it and so people's level of understanding, people's expectation of their level of understanding is greater. And then they get angry or frustrated or just shut down because they are not ... being well understood really.'

(Learning disability support organisation, South)

Assessment of mental capacity across courts

Although determining a court user's capacity to instruct in the case was an ongoing process, the responsibility for monitoring their capacity did not seem to fall to any particular individual. Solicitors suggested that where their client's capacity fluctuated and they could no longer be sure of their capacity to instruct, they would refer them to a GP or consultant psychiatrist. However, not all solicitors interviewed were aware of how to go about arranging an assessment. Where judges undertook direction hearings in civil cases, or had a pre-trial review in criminal cases, they could also consider the need for psychological or psychiatric assessments to determine the court user's capacity to give instructions.

The study identified recent problems in support in relation to the Mental Capacity Act 2005. Where clients drifted in and out of capacity, their right to make decisions could raise some difficulties for the client-solicitor relationship. For example, the solicitor might feel that one of their client's decisions was 'unreasonable', but that their capacity had not fallen enough to warrant the permanent transferral of conduct of proceedings.

Some support advocates were aware of the mechanisms in place for determining capacity to instruct; others were less aware. Because their clients had usually been referred by a solicitor or social worker, advocates felt that these professionals would have addressed any needs for capacity assessments, so they did not expect to have a role in determining whether an assessment of capacity was appropriate. However, solicitors suggested that advocates would benefit from further training to help them decide when to consider assessments of capacity.

6. Barriers to and facilitators of support across all stages of the 'before-court' process

The extent to which court users were supported throughout their trial depended on a range of factors. These included early identification, implementation of support, access to legal representation and explanations of proceedings.

6.1 Barriers and facilitators: early identification of need

Facilitator: a direct question

Directly asking court users whether they had support needs relating to a mental health condition, learning disability or limited mental capacity was likely to elicit a truthful response. Otherwise, the option of disclosure might not occur to them. Many interviewees said they would have been willing to disclose their condition if asked directly, particularly if it was explained to them that the information was needed in order to better meet their support needs. In criminal and family cases, a solicitor's question or direct wording on a form or during telephone contact with the Witness Care Unit would often result in disclosure. Court users preferred legal professionals to ask them directly whether they had any condition, rather than expecting them to volunteer information in an unknown context.

'It would be nice for the police to have turned around and say, I don't know how they'd put it to somebody, but you know, just ask them, "do you have any health problems or mental health problems?" or you know, and then I'd probably be quite forthcoming.'

(Male court user, criminal case, mental health, North)

Barrier: shyness and uncertainty

Many court users whose vulnerability was not identified suggested that they were willing to disclose, or had actively wished to do so. Their failure to disclose without prompting was in part due to shyness. Particularly in cases of depression and anxiety, court users were not sure whether disclosure was appropriate and were embarrassed to raise the issue.

Facilitator: presence of a support worker

Court users accompanied by a support worker were usually recognised immediately as having specific needs. Where files had not included information about a condition, or participants had not shared information, the support worker's continued presence could be important to secondary identification by other professionals later on in the court process.

Facilitator: clarity over responsibility for identification

In criminal cases, the police and Witness Care Unit were clearly responsible for identifying court users with mental health conditions, learning disabilities and limited mental capacity. This focused these practitioners on this aspect of their work, and improved accountability.

Facilitator: existing contact with public agencies

Where court users were already known to agencies, such as social services or Community Mental Health Teams, identification was more likely. In criminal cases, the police could attempt to access such files as part of their investigation. In public family law, information held by agencies such as social services played an important role in proceedings.

Facilitator: familiarity/consistent point of contact

Self-disclosure and discussion of specific needs appeared more likely in criminal cases where court users maintained contact with the same Investigating Officer or Family Liaison Officer throughout. A consistent point of contact therefore appeared to influence whether witnesses felt confident enough to inform police of their vulnerability.

Facilitator: expectation of support

Court users were more inclined to disclose their condition if they felt that doing so would improve their court experience. In particular, people with learning disabilities hoped that legal practitioners would tailor their communication as a result of disclosure. Court users with mental health conditions such as anxiety, who were conscious that their demeanour might be picked up on by the jury and others present in court, were also more likely to want to inform the court of their condition so that those present could better understand their behaviour.

Barrier: embarrassment

Some court users were self-conscious about their condition and would try to hide it to avoid embarrassment. Many court users were very experienced at disguising issues such as illiteracy and would be unlikely to disclose them without encouragement and reassurance.

Barrier: concerns about being discredited

Court users who felt that they could effectively manage their condition, and that it was therefore not relevant to the case, were least likely to want to disclose their condition. Several felt that it might result in their evidence being unjustifiably discredited. Those with mental health conditions involved in family cases were least likely of all to want to inform the courts of their condition, as they feared that it might be detrimental to their case.

Barrier: lack of contact

Where there was limited contact with professionals in the early stages of a case, this reduced opportunities for identification and disclosure and as a result impacted on court users' experiences. Court users involved in private family proceedings, civil litigants in person and defence witnesses had minimal, if any, personal, face-to-face contact with staff who could identify a condition, or to whom they could disclose. For clients with creditor problems, advice and guidance at earlier stages is crucial to prevent creditors taking action.

The higher level of contact for victims in criminal cases raised the likelihood of identification. For defence witnesses, a lack of any contact with legal representatives before their court appearance also made identification less likely.

Barrier: court inaccessibility (civil)

Court users and carers interviewed described instances where they telephoned the court to request attendance by an advocate, but were told they could only register this information with an usher on the day of their appearance. Participants suggested this information should have been noted on the front of the case file in preparation for their arrival.

Barrier: non-disclosure by other parties

Legal representatives in civil cases felt that opponents who were aware of a court user's condition when they brought proceedings against them would pass this information to the courts. For example, this might occur in cases involving housing repossessions, or other forms of debt. However, landlords tended not to use sections of the forms detailing tenants' circumstances to record any knowledge of vulnerabilities, even though social landlords might be aware of this information from the original housing application. This information was considered relevant to the case, particularly where it could have lessened the court user's capacity to manage their affairs. Where this information was not disclosed, court users could suffer because the reasons behind their behaviour were not fully acknowledged in court.

Barrier: incomplete identification; focus on only one aspect of individual need

If a court user had multiple vulnerabilities, solicitors might be aware of only some of the conditions affecting them. This could result in an incomplete description of the court user's overall state. Importantly, mental health community staff and solicitors monitoring capacity considered that identification was an ongoing process, particularly in relation to mental health conditions which could improve or degenerate. Long-lasting cases could worsen or even help precipitate mental health conditions such as depression and anxiety disorders.

Barrier: lack of training and experience

Few solicitors' firms had experience in working with clients with mental health problems or learning disabilities, and police received very little training in identification and awareness. Although police are responsible for completing MG2 forms, there did not appear to be a consistent approach to training to help officers recognise and work with mental health conditions, learning conditions and limited mental capacity.

Barrier: lack of protocol

In criminal cases, the MG2 form was regarded as the catalyst for identifying need and providing support for people with mental health problems, learning disabilities and limited mental capacity. There was no equivalent policy in place to trigger the identification of such vulnerabilities in civil or family cases. As a result, practitioners involved in civil and family law

were sometimes unsure who was responsible for this task. In addition, beyond the MG2 form, judiciary and magistrates suggested that information was relayed between professionals in an ad hoc way. This could allow court users who had been identified at an earlier stage to 'slip through the net' if police and court staff did not take responsibility for ensuring case files contained all relevant information.

'I think it's really, really important that notes are taken and are in the right files. The notes of the prosecutor, the notes of the defence, because one will be from the other. But particularly the court files ... It's a big, big problem. Admin within the court system that the wrong file is there, the file is limited, the person that has been notified perhaps the day before or whatever hasn't had time to read it ... Hasn't had time to meet the witness, you know. If we're talking about witnesses in particular, look at the prosecution ... The reviewing lawyer isn't available so unless the notes are full and the file is complete, things are missed, glossed over. And I think that's where people fall through the net.' (Magistrate, all courts, London)

6.2 Barriers and facilitators: implementing support

Facilitator: resources

Across courts and case types, the resources available to support court users before court varied considerably. The Witness Service and Witness Care Unit were accessible to all in criminal cases, and could be relied upon to consider court users' support needs. Importantly, having one point of contact within the Witness Care Unit, as specified in the *No Witness No Justice* guidelines (Cabinet Office, 2004), helped ensure court users knew how to access support throughout the case.

Barrier: limited resources in civil system

It was the prevailing view across all practitioners working in civil proceedings that many vulnerabilities go unidentified and unsupported. It was evident that voluntary legal advice services could not play a key role in identifying conditions, due to limited contact, very low resource levels and limited outreach in the community.

In some cases, by the time civil proceedings had reached a hearing, solicitors felt that crucial elements of support arrived too late. One support worker described a general need for support at an earlier stage, to help with interpreting correspondence from bailiffs. The bailiffs' 'aggressive' tone 'petrified' vulnerable clients, causing the court user to retreat and 'close off' from engagement with the case.

Barrier: witness credibility (criminal cases)

Criminal law barristers and court staff believed that this group of court users were unlikely to reach a trial or hearing. This view rested on an assumption that the police and CPS would not regard their evidence as reliable from the outset. This assumption may form a barrier to the consideration of using support (e.g. special measures) to achieve best evidence.

'In reality ... you tend to find people with mental health or learning disabilities etc. tend to be written off as witnesses before you even get anywhere, and so the actual practical times I have ever seen the special measures used or vulnerable witnesses being videotaped or video links for vulnerable witnesses as opposed to children is extremely small ... I suspect the police take the view, oh it's just going to be hopeless trying to rely on anything he says, so we'll not bother.'

(Barrister, North East)

Barrier: designation of responsibility

Certain support services, including counselling, arranging access to advocacy and, in family courts, pre-trial visits, were not routinely offered to court users who felt they would have benefited from them. This was due in part to incomplete knowledge of these support measures among practitioners, but mainly to a lack of responsibility for support coordination.

Barrier: proof and diagnosis of vulnerability

There was wide acknowledgement among legal representatives and third-sector organisations that inability to handle personal affairs could be a manifestation of underlying vulnerabilities which had not been formally proven or diagnosed. Some people who have become involved in civil proceedings due to difficulties such as falling into rent arrears or other debt may not have been offered any support prior to their involvement in a court case. They may also suffer from multiple vulnerabilities. Legal representatives cited borderline depression and literacy issues as typical examples of multiple problems which could present in this way.

Barrier: awareness of advocacy

Carers as well as court users felt that they could benefit from advocacy while involved in court cases. They often felt that they were not necessarily best placed to support the court user because they did not have experience of the court process or of representing an individual in formal settings. This could place an additional strain on supportive relationships, and resulted in a low level of referrals by solicitors to access advocates for clients.

'If [xxx] had had an objective advocate that he, that he believed he could trust and that could communicate with him then I think that would have helped enormously in making him more of a part of the process instead of somebody that you felt obligated to tell because it was his case ... having an objective advocate might well have helped [xxx] quite a lot and might have helped the process between [xxx] and ourselves.'

(Carer, civil case, South)

6.3 Barriers and facilitators: gaining legal representation

Facilitator: guidance on choices

In civil and family court cases, guidance in finding and choosing appropriate legal representation was one of the most helpful supports. This could come from a range of parties. In family cases, social workers, charities or informal networks could refer court users to recommended solicitors. In civil cases, court users relied on charities or informal networks.

Barrier: fixed legal aid provision

Mental health conditions, learning disabilities and limited mental capacity were seen as fundamental barriers to accessing legal representation. The research suggested that identification or disclosure could decrease a court user's chances of securing representation, as solicitors considered it likely such cases would require more resources for the same fee.

6.4 Explanations of court proceedings

Facilitator: protocols for explanation

Court users were more likely to receive explanations of court proceedings in criminal cases, due to the mandatory provision of support offers, e.g. pre-trial visits, by the Witness Service.

Facilitator: informal explanation

In civil and family proceedings, preparation depended on the time, skill and discretion of a solicitor or advocate where available. However, advocates often struggled to access information about precisely what would be required of the court user and their supporters.

Barrier: lack of contact and court inaccessibility (civil cases)

From the outset, unsupported individuals had difficulty understanding their case because nobody was responsible for contacting them to offer information. This was a view shared by court users and practitioners alike. In relatively minor, rapidly progressing civil proceedings, fewer resources were available to provide any support to individuals beyond what they received from pre-existing support networks.

7. Examples of good practice

7.1 De-escalation measures (civil)

Housing officers and solicitors interviewed suggested that opportunities for litigants to resolve issues through mediation could prevent a large proportion of these cases reaching court. This was mentioned particularly in relation to issues involving housing, debt and non-payment of fines, because these issues were symptomatic of the need for support in the management of personal affairs. These interviewees suggested that this point was particularly pertinent to individuals with learning disabilities or mental health conditions that increased their support needs. However, it may apply to a wider range of court users.

7.2 Intermediaries (criminal)

Intermediaries could assist both practitioners and court users to facilitate communication and optimise the court user's evidence at the investigation stage of criminal cases. This could ultimately raise the proportion of cases reaching trial. A detailed assessment report would also assist police and other practitioners in their approach to supporting the court user throughout the court case.

7.3 Witness preparation and profiling (criminal)

Support agencies described the Witness Support preparation and profiling initiative as a model of practice for support in the criminal justice process. The Investigations Support Unit (ISU) of Liverpool City Council started the Witness Support preparation and profiling initiative to help promote equal access to justice for people with mental health conditions and learning disabilities. The process starts after the investigation stage where witnesses are provided with an in-depth support and preparation programme. Staff assess a witness's potential as a credible and competent witness in a particular criminal trial and draw up a profile detailing their capacity as a witness. This includes advice about what support the witness will need to present their evidence effectively and is presented to the court, the prosecution and the defence. The initiative also helps witnesses to gain the skills necessary for them to give credible evidence, as well as developing their understanding of the court process and what will be expected of them when they attend court.

7.4 Explanations of special measures (criminal)

The production of documents and best practice on awareness and communication of special measures to court users had a big impact in encouraging take-up of special measures and increasing confidence in court appearances.

7.5 Voluntary sector protocols with courts

The protocol discussed below, for involving trained learning disability voluntary sector agencies in cases, contributed to the early identification of court users with learning disabilities.

Good practice:

At Newcastle combined courts, Mencap were funded for six years to develop and implement a protocol for identification and support of court users with learning disabilities in family cases. An advocacy service was provided for those thus identified, which was highly praised by practitioners involved across the courts, legal and public services.

7.6 Pre-trial visits

A pre-trial visit, during which court users can explore the courtroom, learn how the trial will be conducted and familiarise themselves with the setting, is available in criminal courts. It is also available, though not always publicised, in family courts.

8. Recommendations

8.1 Training opportunities

Training, or additional training or promotion of training, on specific areas of provision and the court process would benefit a range of practitioners. Most importantly:

- training for advocates: this should cover some basic legal issues and the processes of the criminal, civil and family courts. This would enhance the value and contribution of advocates in supporting court users (recommendation 8, report 1);
- training for police on the uses of intermediaries, as well as further training on special measures, may help to improve the uptake and utilisation of these provisions in appropriate instances (recommendation 15, report 1).

8.2 Improving identification of mental health conditions, learning disabilities and limited mental capacity

Training

- Training for police officers to help raise their awareness of mental health and learning disabilities would be beneficial. This may be assisted by the National Policing Improvement Agency's development of a training programme (recommendation 3, report 1).
- Organisations providing legal support and advice should have the necessary expertise to advise litigants in person (report 1, recommendation 11).
- Increased contact points in civil and family courts
- A dedicated staff contact point in civil and family court settings for individuals with extra needs could be considered. This would provide an opportunity for court users to telephone for guidance and advice on attending court (report 1, recommendation 9).
- Information about this provision could be included in the letter informing court users of their court attendance (report 1, recommendation 8).

Specific identification questions to encourage disclosure

- A more explicit identifying question about mental health conditions, learning disabilities and limited mental capacity on civil court forms would improve levels of disclosure prior to attendance at court. Court users do not always recognise the relevance of the questions currently used in these forms (report 1, recommendation 5).
- Court ushers and other court staff could be advised in protocol to ask court users directly whether there are any communication issues they wish to flag up. This information should be passed to the judge (report 1, recommendation 5).

8.3 Improving support provision: build multi-agency teams

The findings indicated that practitioners can identify and support court users most effectively where individuals within agencies are personally familiar to them and in sufficiently regular contact to facilitate referrals.

- Links between specialist voluntary sector organisations, multi-agency public service providers and the courts should be developed with representatives from the various professions (report 1, recommendation 4).
- As described in the Norwich protocol and Newcastle's Mencap protocol (see good practice, Chapter 6), protocols could help to formalise these arrangements (report 2, recommendation 4).

8.4 Improving information and access to assistance in civil and family cases

Findings show that court users with difficulties may not seek support because they do not think of asking, or feel afraid to do so. A solicitor may identify a vulnerable court user and point them in the direction of voluntary services, but court users may not feel capable of pursuing this themselves. Court users therefore need focused services which will, as a matter of course, contact those who have been identified as vulnerable, organising an interview and making an offer of assistance.

- Make routine, proactive offers of assistance to court users in civil and family cases (report 1, recommendation 8).
- The resources for a dedicated staff contact point for individuals with extra needs could be considered for civil and family court settings. This would provide the opportunity for court users to telephone for guidance and advice on attending court (report 1, recommendation 8).
- Introduce and publicise availability of pre-court visits to family and civil courts for vulnerable court users (report 1, recommendation 8).
- Tailor information – provide literature, including information leaflets explaining court procedure, in alternative formats (such as easy-read), to improve understanding of the court process (report 1, recommendation 12).
- Consider adaptation of the 'Going to court' DVD currently available in criminal cases for civil and family courts (report 1, recommendation 10).

8.5 Increase litigation prevention schemes

Following the Norwich protocol discussed (see good practice, Chapter 6), the development or promotion of mediation schemes arranged between the courts and support organisations could help resolve disputes and affairs relating to personal finances, diverting some individuals away from court proceedings.

- Greater access to mediation in social housing could divert cases before they come to court.
- Officials should enforce litigants' duty to declare any mental health conditions, learning disabilities or limited mental capacity that are known to affect any parties in proceedings, to prevent the exploitation of vulnerable individuals and facilitate diversion schemes.

8.6 Raising awareness of opportunities for advocacy in civil cases

Awareness of advocacy and court case support services was low among legal representatives, court users and carers involved in civil cases. However, the role played by advocates where available was greatly valued.

- Guidance on advocacy services and lists of local support organisations could be made available to legal representatives, to increase access to advocacy in appropriate cases (report 1, recommendation 8).
- Information on advocacy services could be provided to courts for inclusion in letters on court attendance, to raise awareness of support services available for court users (report 1, recommendation 9).

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Court experience of adults with mental health conditions, learning disabilities and limited mental capacity. Report 2: Before court

This is Report 2 in a series of six reports on a research project exploring the court experience of adults with mental health conditions, learning disabilities and limited mental capacity. The research relates to victims and witnesses in criminal cases, and to participants in civil and family cases. This report outlines the experiences of court users with these vulnerabilities from their first involvement with the justice system until their attendance at court.

Conditions were more likely to be identified when a support worker was present with the court user. In criminal cases, experiences varied depending upon police awareness of the court user's support needs. In civil proceedings, lack of contact with the courts could impede identification, and court users depended on legal representatives or existing support networks to identify needs and provide support. Identification was most likely in family proceedings where assessments and close contact with professionals were common. Court users were unlikely to disclose their condition unprompted. Protocols for support in criminal courts meant that court users were more content with the level of information and support offered than was the case in civil and family proceedings, where no protocols or designation of responsibility for support existed.

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