



Ministry of  
**JUSTICE**

**Court experience of adults  
with mental health conditions,  
learning disabilities and limited  
mental capacity  
Report 3: At court**

**Rosie McLeod, Cassie Philpin, Anna Sweeting,  
Lucy Joyce and Roger Evans  
BMRB and Liverpool John Moores University**

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**Report 3 of 6**

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## Acknowledgements

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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 third 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 3 focuses on court users' experiences of attending court.

Court users' anxiety at attending court was significantly eased by the presence of a support worker, or by having a single point of contact at court (e.g. the Witness Service or a Family Liaison Officer). Preparation for an appearance and explanations of court proceedings prior to attendance were also useful, and pre-trial visits (offered in criminal cases) were highly valued. Across courts, protocols for telephone contact with court users to identify support needs prior to attending court are recommended. Pre-trial visits should be offered and promoted in civil and family courts.

Where conditions were identified or disclosed at an early point in proceedings, professionals in the courtroom were able to modify their communication to accommodate needs. The typical lack of contact with professionals prior to a hearing, and the fast turnover of cases, meant that there were few opportunities for disclosure and hence for tailoring of communication. These issues should be addressed. However, confusion arose more generally across the three courts around professional responsibility for communicating information about court users' needs. Protocols are required across courts to clarify this, and to ensure that court users are enabled to disclose their condition in a discreet way.

The provision of special measures and proactive support through intermediaries had a positive impact on court experiences. However, their effect could be hampered by late applications, poor co-ordination and a failure to provide court users with realistic expectations. The extension of special measures to civil and family cases should be considered. More generally, raising awareness of the different agencies which can support court users' needs, and ensuring that practitioners are better informed about their roles and responsibilities, would improve the provision of support.

The language and terminology of the courtroom was not always understood. Where professionals adapted their language and made other adjustments to accommodate needs, this increased court users' comprehension of proceedings and overall comfort. A balance is needed between meeting needs and any actions which could be regarded as prejudicing proceedings.

## Research 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.

### 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 Government's development of a series of legislative and policy initiatives to meet the needs of this group more effectively, the 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. Findings have been organised into six reports.

## Findings and recommendations

Report 3 outlines court users' experiences of attending court.

### Arrival and preparation

Court users often found unfamiliar settings and people daunting, and felt intimidated by the formality and authority of the court building. Anxiety at seeing others involved in the case was a concern; this problem could be avoided by separate entrances and exits to the court building. Waiting for prolonged periods was found to be stressful, but was eased where court users were kept updated about case progress. Court users appreciated having someone to talk to while waiting to enter the courtroom. This helped to alleviate anxiety and prevent confusion, and was considered the main benefit of being accompanied by a carer or support worker. However, court users who did not already have this support in place were unsure how to access it.

Uncertain expectations of court proceedings, and their own role in these, compounded court users' anxiety, and could have affected their ability to give evidence in court. A clear understanding of the routine and formality of the court was related to higher levels of satisfaction and comfort with appearance at court. A pre-trial visit prior to court attendance helped greatly in this respect (see Report 2 in this series).

### **Disclosure and identification**

Court users who feared that their condition could impede their ability to cope in court were generally happy for it to be disclosed, provided that they received appropriate support as a result and were persuaded that disclosure would not have a detrimental impact on the case outcome. Court users generally preferred this information to be passed quietly to the judiciary, rather than revealed publicly in the courtroom. However, there was uncertainty as to which professional was responsible for making this type of disclosure. It is recommended that court staff and legal representatives be given guidance on how to disclose mental health conditions, learning disabilities and limited mental capacity to the court, where these are identified.

### **Understanding and engagement in court proceedings**

Because they struggled to understand the language used in the courtroom, many of these court users felt excluded from proceedings and frustrated in their interactions with legal representatives. To increase a sense of inclusion, steps should be taken to ensure that all court users feel they have been given the opportunity to air their views. This is particularly important in family cases, where many felt that decisions had already been made. In addition, practitioners should give greater consideration to how they communicate with vulnerable court users.

### **Special measures**

When special measures were used appropriately, court users found them very effective in alleviating the pressure of attending court and giving evidence. However, full explanations of entitlements were not always given, and access to provisions varied a little between courts. In addition, applications were not always made promptly. Where an intermediary was assigned, court users benefited greatly from their role. The ability to intervene during the hearing to ensure that court users fully understood the language used in the courtroom was particularly helpful. The extension of special measures to civil and family cases should be considered.

### **Statutory support provision**

Court users and practitioners alike held the Witness Service in high regard. However, no such support provision exists in civil and family cases, except in the few civil courts which have a Personal Support Unit. In civil cases, heavy reliance on written communication left court users feeling unprepared for their time in the courtroom. Also limited contact and high turnover of cases meant this group of court users rarely received additional support from legal representatives, the judiciary or court staff.

### **Responsibility for support**

Across all courts, the court's responsibility was seen to be simply to ensure that any special needs previously identified were met, rather than the identification of such needs. Court staff and judiciary were primarily focused on ensuring that the court ran promptly and effectively, rather than on court users' needs, and staff felt that they lacked the time and expertise to provide support themselves. Responsibility for ensuring appropriate adjustments in the courtroom should be clarified between legal representatives and the judiciary.

### **Training and awareness**

Staff training is needed across courts, to increase the likelihood of identification, raise awareness of vulnerabilities among the judiciary and magistrates, and encourage referral to support. Increased awareness of services is also important. In criminal courts, a lack of court staff awareness of the Witness Service impeded effective multi-agency working. This would also be facilitated by greater awareness of the different agencies available to support court users' needs.

# 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 report is the third in a series of six reports presenting the findings from the research. Reports 2 and 4 consider the experiences of court users with mental health conditions, learning disabilities and limited mental capacity before court and post court. Report 3 considers the 'at-court' experiences of people attending court as victims or witnesses with mental health conditions, learning difficulties and limited mental capacity. It will compare the experiences of court users involved in criminal, civil and family cases.

This report considers the process of attending court and covers court users' experiences of arriving at court, waiting to go into the courtroom, being in the courtroom and giving evidence. It explores the provision of support during this stage of the court process; the identification and disclosure of mental health conditions, learning disabilities and limited mental capacity; and the use of special measures and requirements. It discusses the barriers and facilitators to a positive court experience, provides examples of good practice and suggests improvements to the system. The findings presented are from interviews with key stakeholders, practitioners, court users and their carers as part of Phase 1 and 2 of the project.

## 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 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-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 given 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. Experiences of the ‘at-court’ process

This chapter outlines the ‘at-court’ process, including arriving at court, waiting to enter the courtroom, being in the courtroom and giving evidence.

### 2.1 Arriving at court (all courts)

#### Travelling to court

Court users in all case types reported that they generally made their own way to court. They described high levels of stress associated with this journey. Relatively small matters such as running late and being unable to find a parking space added considerably to the pressure faced on the day of a hearing. Phase 1 of this study explored the policies and practices in place to support court users with mental health conditions, learning disabilities and limited mental capacity. It found that while there is some guidance on the support that should be available at court, no official protocols specify what support a user should receive while travelling there.

*‘I was very nervous about going to court. I was meeting my solicitor there. I didn’t know what to expect and I couldn’t find the court. I got lost and had to ask a policeman.’*

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

A major concern for court users with mental health conditions, learning disabilities and limited mental capacity was seeing the defendant or others involved in the case.

*‘I bumped into him [the defendant] outside the court. I went into hysterics in the middle of the street. I started to shake and I didn’t think I’d be able to go through with it and go into the court. But I met my solicitor inside and she gave me a cuddle and said she would keep us apart.’*

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

This highlights how negative events experienced outside the courtroom before a hearing can affect court users. This could in turn have a serious impact on the case, potentially resulting in court users feeling unable to continue with their appearance.

#### Entering the court building

Simple tasks such as entering the court and passing through security could also be a traumatic experience for court users who found social interaction difficult, or were daunted by unfamiliar settings and people. Those with learning disabilities tended to mention that the formality and authority of the court building was intimidating. For example, they might regard court buildings as large and imposing and feel unable to approach anyone in uniform. It could also be hard for them to navigate the busy court building. People with learning difficulties in particular reported struggling to find their way around, as the signage in courts was not clear.

*‘I found the building really scary at first. The big gates were daunting and I wouldn’t even go through the doors at first. But I visited it a few times and got used to it. The security man was very brusque though and I didn’t like it.’*

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

## 2.2 Waiting to go into the courtroom (all courts)

### The waiting room

Many court users reported that waiting to go into the courtroom was a very stressful time. Once again, anxiety over seeing others involved in the case was a key concern. This was an issue for most interviewees in criminal cases. It was also relevant to many interviewees who had taken part in family cases involving contact with their ex-partners. Court users also felt nervous about meeting staff from social services and other public agencies (such as doctors or educational psychologists), whom they felt might be antagonistic to them in court.

Several criminal courts offer separate entrances and waiting areas for vulnerable court users, which interviewees appreciated. However, in many courts, victims and witnesses had to walk past main waiting areas to reach toilets, video-link rooms or refreshments. Several said that while doing so they encountered defendants or, in certain family cases, other parties. This had caused them distress.

*'I was put in a small witness room, but I had to walk through to main waiting area to get to the loo and get out for a smoke. That was where my ex-partner was waiting and it was so intimidating. I felt really fearful, uncomfortable.'*

(Female court user, limited mental capacity, criminal case, North)

Many participants also found it hard to cope with the experience of being in a busy, formal court building with unfamiliar people. The large number of people, both members of the public involved in other cases and legal professionals, could be intimidating. In many cases, court users reported feeling overwhelmed but were too nervous to wait elsewhere in case they missed the call for their hearing.

*'I was sat by myself in the waiting room and I was really panicky. There was a lot going on and a lot of people and it was doing my head in, the waiting. I said to the usher that I couldn't sit there with all those people and asked if there was somewhere else I could go. There wasn't because it was so busy so I asked if I could sit outside'*

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

### The length of waiting time

In some cases, court users had to wait for prolonged periods for their hearing to take place. Interviewees with all types of condition reported that this could be stressful, while those with a learning disability often also reported that they struggled due to boredom. Court users felt that being kept informed of the progress of their case helped them to cope with the waiting.

## 2.3 In the courtroom

### Being in court

Once again, court users reported that being in a highly formal environment and encountering unfamiliar people caused them considerable anxiety. Many court users did not know what was expected of them once they entered the courtroom, or understand the roles of the other people there. This uncertainty about surroundings often caused anxiety, which in turn could have a detrimental effect on the court user's ability to give evidence.

*'We went into the courtroom and it was bigger and a bit more full than I was expecting. I don't really like busy places. I started to get a headache and I felt all stressed and shaky. I got asked a question and told I had to explain things in my own words. I had to stop for a minute and calm down.'*

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

### Disclosure of vulnerabilities

Court users who felt that their condition could impede their ability to cope in court were generally happy for their issue to be disclosed to the people in the courtroom – provided that they received appropriate support as a result. They felt that disclosure would result in the use of appropriate communication, and help the people in court to understand them better. Those already receiving support, for example from support workers or Community Psychiatric Nurses whom they could rely on throughout the court process, were more likely to be willing to disclose their condition.

*'It's important that people know. Otherwise they might think that the person is being awkward, surly, ignorant, arrogant, violent, or whatever, because they don't know that that person's got a mental health problem. You need to let people know in advance so that you can get the right help.'*

(Male court user, mental health problem, civil case, South)

Findings indicated that court users were sometimes less comfortable with the court knowing about mental health conditions than about learning disabilities or limited mental capacity. Some interviewees felt that information about mental health conditions could have a more detrimental impact on case outcome. This view appeared to be based on a belief that mental health conditions were misunderstood and that people who suffered in this way were likely to be regarded as unreliable. This view was particularly prevalent in family cases, where court users felt that their mental health condition would cloud people's views of their ability to parent, more so than would be the case for a learning disability or limited mental capacity. Some reported that their solicitors, the Citizens' Advice Bureau, or family members had encouraged them to withhold this information.

*'I didn't really want to mention my suicidal tendencies or depression; my brother said it wouldn't help my case. I don't think people can see past a disability like that so you are less likely to be allowed to see your child. If I went through it again, I probably wouldn't mention that. I would tell people about my learning disability though, so I could get the right help'*

(Male court user, learning disability, family case, North)

Court users who felt they could manage their disorder tended to believe that it was therefore irrelevant to the case and unidentifiable by others in the courtroom. They generally preferred not to disclose their issue.

Court users who did not mind their condition being disclosed to the court were generally not aware of who should be responsible for doing this. Where court users had already disclosed this information to the police, legal representatives or court staff, they generally assumed that their solicitor, or the police in criminal cases, would have informed the courts. However, several cases were discussed in which the judiciary and magistrates had not been informed of a court user's mental health condition, learning difficulty or limited mental capacity prior to the hearing, despite the court user having disclosed this or its having been clearly identified by a professional at an earlier stage in the case.

When the court user or legal practitioners had to disclose the information during the hearing, this could be quite a negative experience for the court user. Because the court user had assumed that disclosure had already taken place they were unprepared for making the disclosure themselves. They reported feeling stressed, self-conscious and uncomfortable about informing people of their condition, particularly when they had to disclose to the whole courtroom rather than in private to the judiciary. It was preferable when the court user was able to pass a message quietly to the judiciary via a clerk or usher.

*'It would have been so much easier if my solicitor had told the magistrates already, instead of me having to say that I couldn't read in front of everyone. It made me feel thick.'*  
(Female court user, learning disability, criminal, South)

## **2.4 Giving evidence and understanding proceedings**

### **The use of legal terminology and inappropriate questioning**

Solicitors, barristers and the judiciary reported that they were aware of the need to tailor their communication to meet the needs of court users with mental health conditions, learning disabilities and limited mental capacity. However, court users, carers and support workers all frequently raised the issue of their own problems in understanding legal language and terminology.

*'The judges and legal people all spoke in jargon and really quickly. I had no idea what was going on. I had to wait until after for [support worker] to explain what had happened.'*  
(Male court user, learning disability, civil case, North)

While the judiciary and magistrates stated that they would rule out inappropriate questioning, most said they tried not to intervene in court proceedings too much, and generally expected legal representatives to monitor their own communication. However, the experiences of court users suggest that they would benefit from greater intervention by the judiciary to ensure that legal representatives communicate appropriately. Several said that they were unable to understand the questions asked of them. The resulting confusion negatively affected their demeanour in court.

*'I was so confused. I had this one person coming back and forth saying "you said this, now you're saying that" and then another person saying "did you say that" They were just confusing me, so I lost interest and I didn't care anymore. I just wanted to leave.'*

(Male court user, learning disability, criminal case, South)

When legal representatives were aware of court users' needs and took steps to ensure that they understood what was happening in the courtroom and what was being said, court users reported feeling respected and listened to. As a result they were generally more positive about their court experience.

*'I had a really understanding judge and solicitor. They made sure that I knew exactly what was going to happen in court and they checked throughout that I understood what was going on; they checked if I needed to have breaks. They made me feel more comfortable.'*

(Male court user, learning disability, family case, North)

*'The judge was a lovely bloke, very attentive and understanding. If ever I could see that [court user] was getting agitated or didn't understand, I waved at him and he would stop the proceedings and give [court user] a break and make sure that things got explained again for her.'*

(Female carer, North)

## Giving evidence

A particular issue was the use of legal terminology outside the courtroom, especially when solicitors or barristers did not explain terms which appeared straightforward to legal specialists. Court users reported that they did not understand some of the legal terms used during preparatory meetings before their court appearance, which led them to feel unprepared for the hearing. For example, solicitors or barristers would often refer to the notion of 'giving evidence' but did not explain what this would actually entail, or help prepare court users for the type of questions they would be asked. This led to many court users finding the style of questioning used in court confusing. They felt that this led to a stressful experience.

*'I think we had no time [to talk to the barrister], I'm not really sure you know, but my mum was talking to one of them and then, my care worker was talking to one, and my sister was talking, and it was all too much of a calamity – my mind was stretched, to tell the truth really ... they were just confusing me.'*

(Male court user, learning disability, criminal case)

Carers and learning difficulty practitioners stressed the importance of giving explanations in basic English, and of taking time to confirm that information has been fully understood. Legal representatives, support workers and carers might require extra training to provide adequately clear explanations.

*'You can tell people with learning difficulties anything and they would agree or say they'd understood. But you really need to check that they actually understand what's being said.'*

(Carer, learning disabilities, South)

## Sense of exclusion from proceedings

Because they struggled to understand the language used in the courtroom, many of the court users interviewed stated that they had felt excluded from proceedings. Court users across all cases often reported that legal representatives spoke in a language they could not understand, resulting in feelings of frustration. The issue was exacerbated in civil and family cases, where court users felt they were not given the opportunity to give evidence. There was a perception that decisions about the case had been made before the hearing and that they were watching proceedings that affected them, without an opportunity to become involved:

*'The judge didn't actually give me a chance. I think it was all agreed with social services in advance. I don't think they were really interested in listening to me. I would have liked to have been able to have my say.'*

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

*'I was sat at the back of the courtroom; the judge and everyone spoke to each other. It was all over in ten minutes and I didn't even know what had happened.'*

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

### 3. The provision of support ‘at court’

This chapter considers the various sources that provide support at court; what type of support is required by court users with mental health conditions, learning disabilities and limited mental capacity; and their experiences of receiving support.

#### 3.1 Forms of support required

##### Practical and moral support

The type of support that court users felt would help them to cope with their court appearance was broadly similar for those with mental health conditions, learning disabilities and limited mental capacity. They wanted:

- informal practical and emotional support throughout the day, such as regular updates on progress; and
- someone to talk to.

This support was required:

- when they first arrived at the court building; and
- whilst waiting for their hearing.

For court users with mild mental health conditions, this type of support tended to help prevent their symptoms from fluctuating. It also helped prevent those with learning disabilities and limited mental capacity from feeling confused and anxious.

Court users reported feeling more relaxed arriving at court when they were accompanied by a familiar person:

*‘On my first trip to court I was on my own. I was shaking; my head hurt. The next time my support worker picked me up from my house and we went there together. I met my advocate, the policeman who had been working with me and my social worker when we got there. I felt much better that second time.’*

(Female court user, limited mental capacity, criminal case, North)

Court users reported that a major benefit of being accompanied by a carer or support worker was that they could explain what was happening and why. Such explanations, and the comfort of a reassuring presence, were both crucial in overcoming the anxiety created by unfamiliar surroundings and situations. These also appeared to reduce the likelihood of court users’ conditions impeding their court experience.



Court users who had taken up the offer of a pre-trial visit (criminal courts) benefited from an additional sense of familiarity with the court. Those who had not had the opportunity for such a visit felt that it would have been beneficial (for further discussion of the benefits of pre-trial visits, please refer to Report 2).

### Case study

Mary has learning difficulties and she thinks this had an impact on how she coped with arriving at her civil court case. She found the building intimidating. Going through security took a long time and she felt as if she was being tested which made her feel nervous. Her advocate was able to explain why she was being searched which helped Mary to relax. Once past security, Mary was glad that she had the support of her advocate again, as she could not read the signs in the courthouse. Information about which courtroom she had to go to was shown on a sign on the wall which Mary found very confusing. Had Mary not had her advocate with her she doubts she would have known where to go.

### Specialist support

In general, only court users with more complex needs who were less capable of managing their symptoms felt they needed more specialist support than was available from court staff. For example, if a court user had an acute mental health condition it would be useful if someone was present who understood their need for medication, when it might have to be administered and how it would affect them.

Court users did not expect court staff or legal practitioners to know the best ways to communicate with them during stressful moments, but felt they would like this type of specialist support for communication. For example, one court user experienced extreme anxiety whilst waiting to enter court.

*'My CPN was the most useful person. She really understands me so we were able to talk about how I was feeling and when I might need to take my medication. She knows how to help me cope when I'm in busy places and how to calm me down.'*

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

This additional support was generally provided for court users with learning disabilities or limited mental capacity by carers and social workers, or advocates if they had an established relationship with the court users and a good understanding of their communication needs. Those with mental health conditions relied on existing support from Community Psychiatric Nurses (CPNs). Newcastle Combined Court provides an example of good practice, with regular referrals being made to Mind. However, in several cases contact with such support agencies was a result of a pre-existing relationship. Many court users who had no such support already in place reported being unsure of where to access it.

## Legal support

Court users across all courts stated that time spent with barristers and solicitors before entering the courtroom was a positive experience which helped them to feel more confident about their role and the court process. A good understanding of the court process and its routine was linked to court users' ability to cope with attending court. (Please refer back to the 'giving evidence' section for a more in-depth discussion of this topic.)

## 3.2 Provision of support

### Official support

Support	Court	Role	Credentials	Referred by
Witness Service (charity, funded by MoJ)	Criminal	<ul style="list-style-type: none"> <li>● Meet court user on arrival at court.</li> <li>● Provide a safe, comfortable waiting area, away from the defendant.</li> <li>● Offer emotional and practical support.</li> <li>● Answer any questions about procedures.</li> <li>● Accompany court user into court when giving evidence.</li> <li>● Cannot offer legal advice.</li> <li>● Cannot represent court user in court.</li> </ul>	<ul style="list-style-type: none"> <li>● Volunteers are trained to work in court and support and help people.</li> <li>● No specific training in mental health conditions, learning disabilities or limited mental capacity.</li> </ul>	CPS
Witness Care Unit (CPS and police)	Criminal	<ul style="list-style-type: none"> <li>● Assist court user to understand questions asked during trials.</li> <li>● Facilitate their coherent and accurate responses.</li> <li>● Facilitate communication between courts and court user.</li> <li>● They cannot provide legal advice.</li> </ul>	<ul style="list-style-type: none"> <li>● Previous experience in communication facilitation.</li> <li>● Five-day university-run course on legal skills and knowledge, run on behalf of the Office for Criminal Justice Reform.</li> <li>● Only some have specific experience in working with people with mental health conditions or learning disabilities, and focus on these cases.</li> </ul>	Police
Family Liaison Officer (FLO) (police)	Criminal (Crown)			

**Table 3.1 Official support available for vulnerable court users ‘at court’ (continued)**

Support	Court	Role	Credentials	Referred by
Victim Focus Scheme (CPS)	Criminal	<ul style="list-style-type: none"> <li>● Bereaved families meet with the prosecutor, who explains the court process, progress and procedures, the role of the CPS and any charges being made.</li> <li>● Cannot offer legal advice.</li> <li>● Cannot represent court user in court.</li> </ul>	<ul style="list-style-type: none"> <li>● As prosecutors, they are experienced in legal matters.</li> <li>● No specific training in mental health conditions, learning disabilities or limited mental capacity.</li> </ul>	CPS
Intermediary (CPS)	Criminal	<ul style="list-style-type: none"> <li>● Assist court user to understand questions asked during trials.</li> <li>● Facilitate their coherent and accurate responses.</li> <li>● Facilitate communication between courts and court user.</li> <li>● They cannot provide legal advice.</li> </ul>	<ul style="list-style-type: none"> <li>● Previous experience in communication facilitation.</li> <li>● Five-day university-run course on legal skills and knowledge, run on behalf of the Office for Criminal Justice Reform.</li> <li>● Only some have specific experience in working with people with mental health conditions or learning disabilities, and focus on these cases.</li> </ul>	Police
Personal Support Unit	Civil (Royal Courts of Justice, Wandsworth, High Holborn and Manchester Crown Courts only)	<ul style="list-style-type: none"> <li>● Meet court user on arrival at court.</li> <li>● Provide a safe, comfortable waiting area.</li> <li>● Offer emotional and practical support.</li> <li>● Answer any questions about procedures.</li> <li>● Accompany court user into court when giving evidence.</li> <li>● Cannot offer legal advice.</li> <li>● Cannot represent court user in court.</li> </ul>	<ul style="list-style-type: none"> <li>● Volunteers are trained to work in court and support and help people.</li> <li>● No specific training in mental health conditions, learning disabilities or limited mental capacity.</li> </ul>	Court users’ self-referral or signposted by court staff
Litigation Friend	Civil	<ul style="list-style-type: none"> <li>● As legal guardian (Mental Capacity Act 2005), they can represent the court user in court if they need it.</li> <li>● Courts have the power to appoint a legal guardian should a court user be unable to care for their own interests.</li> </ul>	<ul style="list-style-type: none"> <li>● A lay person, typically a friend or relative; no specific legal training.</li> <li>● Where a child’s wishes differ from those of their parents, CAFCASS appoints a Senior Social Worker to represent the interests of the child.</li> </ul>	Court user, following assessment indicating they lack capacity.

While there are clearly several sources of support available, the majority are in place to support people involved in criminal cases rather than in civil and family courts. Little additional specific provision is in place for court users with mental health conditions, learning difficulties or limited mental capacity. Typically they have access to the same support as all victims and witnesses who are defined as vulnerable, not only to those with the conditions considered in this research. It is only the newly established ‘intermediary’ role that may require specific knowledge of working with court users with mental health conditions, learning disabilities or limited mental capacity.

**Informal support**

**Table 3.2 Informal support available for vulnerable court users ‘at court’**

Support	Court	Role	Credentials	Referred by
Advocate, carer, support worker e.g. Mind or clinical practice nurse	All	<ul style="list-style-type: none"> <li>● Offer practical and emotional support to court user.</li> <li>● Assist court user’s understanding of the court process.</li> <li>● Liaise with other agencies.</li> <li>● Accompany court user into court when giving evidence.</li> <li>● Cannot offer legal advice.</li> <li>● Cannot represent court user in court.</li> </ul>	<ul style="list-style-type: none"> <li>● Training can vary.</li> <li>● Some advocates are specifically trained in legal issues.</li> <li>● Offer more generic advice with no specific legal training.</li> </ul>	Any practitioners in contact with the court user, or court user’s self-referral
McKenzie Friend	Civil	<ul style="list-style-type: none"> <li>● Offer practical and emotional support to court user.</li> <li>● Assist court user’s understanding of the court process.</li> <li>● Liaise with other agencies.</li> <li>● Accompany court user into court when giving evidence.</li> <li>● Speak quietly to the court user during the hearing.</li> <li>● Take notes during the hearing.</li> <li>● Assist with sourcing and editing legal documents.</li> <li>● Cannot offer legal advice.</li> <li>● Cannot represent court user in court.</li> </ul>	<ul style="list-style-type: none"> <li>● A lay person, typically a friend or relative.</li> <li>● They have no specific legal training.</li> </ul>	Request of court user, agreed by the courts

Many court users reported that they relied on informal support from carers, support workers or advocates with whom they had existing relationships.

### **3.3 Experience of support**

#### **Access to practical and moral support across court type**

##### **The Witness Service – criminal courts only**

One key contrast between the support available to court users involved in criminal cases and those in civil and family cases is their access to the Witness Service. The Witness Charter (2008) states that all victims and witnesses involved in criminal cases should be referred to the Witness Service for support. Findings from the scoping exercise in Phase 1 of the research demonstrated that there is no equivalent policy for support to parties in civil and family cases.

Court users and practitioners alike held the Witness Service in high regard. Court users praised the Service for its role in meeting them on arrival, familiarising them with the court building, and generally acting as a point of contact during their time at court. This included being available to answer questions, explain the court process and provide updates throughout the trial.

The high level of appreciation for the Witness Service among court users shows that this vulnerable group can benefit greatly from basic support, so it is vital to give them access to this. Simple things like being offered a cup of tea and having someone to talk to had a positive impact on court users' anxiety levels.

One of the key benefits of the Witness Service was its active role in meeting court users' needs. As previously highlighted, court users with mental health conditions, limited mental capacity or learning disabilities could feel uncomfortable in the formal court setting and find the uniformed staff intimidating. Therefore they were likely to benefit from the Witness Service's proactive support and advice rather than having to source information themselves. This was particularly true for those who were unfamiliar with the court and who would not otherwise have known what support and facilities were available to them, or who to approach to find out.

The Witness Service is better placed than court staff to meet the needs of vulnerable victims and witnesses, and their support appears to increase court users' level of satisfaction with the court process. Ushers and court clerks reported that they often lacked the time to focus on meeting the specific needs of individual court users, as their priority was the overall running of the court. Many also felt that they lacked adequate knowledge about mental health conditions, learning disabilities and limited mental capacity to be able to provide the necessary support.

However, it is worth noting that defence witnesses often had limited access to support from the Witness Service. Legal representatives suggested that the Service tended to prioritise prosecution witnesses due to limited time and space in waiting areas. Defence witnesses therefore relied more on the informal support of support workers and carers who knew little about the court process or court setting, and court staff who had little experience of working with people with these conditions.

### **Family Liaison Officers and Witness Focus Scheme (homicide cases only)**

Due to the severity of the cases heard at Crown Court, court users involved in such hearings benefit from better resources and have the best access to support on the day of a trial. In homicide cases, as well as their standard contact with the Witness Service, victims' families are allocated Family Liaison Officers (FLOs) and have access to the Witness Focus Scheme.

The FLO role is primarily to aid the investigation rather than to provide practical or emotional support. However, it ensures that witnesses and victims have a single point of contact, providing a co-ordinated response from agencies, throughout the trial. This latter was highlighted as a key benefit. Court users could find the number of agencies involved in a court case confusing, often feeling unsure about who had contacted them, or whom they should contact with a query. Familiarity with one official at the court arose time and time again as an important factor in overcoming anxiety for this group of court users.

These schemes are not designed to support people with mental health conditions, learning disabilities or limited mental capacity. However, because homicide and other serious cases tend to last longer, good relationships between court users and court staff can develop. This means the Witness Service, ushers and court clerks, and judiciary can gain a good understanding of the specific needs of the court users.

'The Witness Service here are excellent. They are always available and they only have two or three cases a day so they are aware of everything and all of the special needs and measures. Then there is the Family Liaison Officer who stays with the witness the whole way though giving a high degree of support. The Victim Focus Scheme for all cases involving a death was piloted here [the Central Criminal Court] too. So the prosecution meets with the family early on and explains everything: the court process, how long the trial will last, when they need to be here, who sits where, all the legal aspects of the case, and answers any of their questions.' (Central Criminal Court staff member)

Although support is available from the Witness Service in shorter, less serious cases being heard at Crown Court and magistrates' courts, the degree of familiarity and support may be lower as a result of the higher number and quicker turnaround of cases. There also appeared to be a closer working relationship between court staff, legal practitioners, the Witness Service and Family Liaison Officers at the Central Criminal Court. For example, all of these people attended regular meetings about upcoming cases. This meant that the various agencies better understood one another's roles, and were more likely to share knowledge about the specific needs of individual court users. As a result, organisation and communication within the court improved, and requests from other staff were more likely to be met.

The Witness Service at other courts was often the organisation with the most opportunities for contact with court users and was therefore potentially best placed to identify their specific needs. However, court staff were often unaware of what the Witness Service did and had little contact with its members.

*'I've never been up to the Witness Service offices and we don't really have much contact with them to be honest'*

(Usher, criminal cases, South)

Interviewees who attended less serious trials in Crown Courts and those attending magistrates' courts often only met with the Witness Service on the day of their trial and did not always feel confident disclosing their feelings, concerns or vulnerabilities to strangers. This meant that they did not always receive the support they needed.

Court users and carers suggested that while the support of the Witness Service and other charitable support organisations was useful once it happened, it would be better if it were made available earlier on. They felt that these organisations understood the conditions discussed here, and the challenges which court users with these conditions could face. Contact with such specialists before the court case could help to ensure that appropriate support, specific to the conditions involved, was provided.

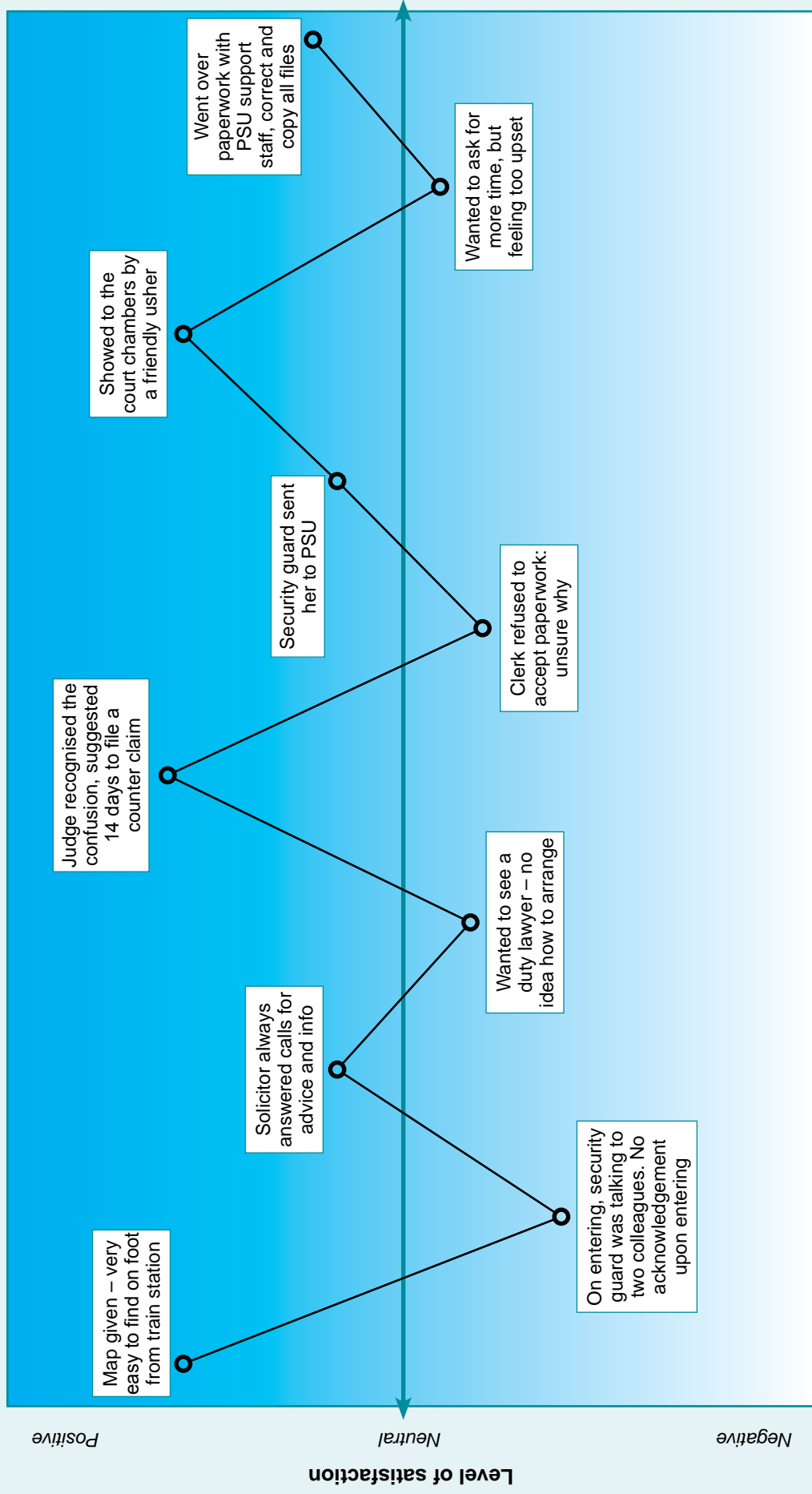
*'Maybe courts could employ someone that really understood learning disability and maybe before the Court starts, they could visit the person to get to know them and build up some sort of trust and know how they work.'*

(Advocate, North)

There is no equivalent national service which offers support to parties in civil and family court cases. However, in a selection of civil courts, the Personal Support Unit (PSU) provides support for vulnerable court users. Interviewees' comments on the PSU were positive. In civil courts without a PSU, court users often reported that it was difficult to access even basic information from court staff. For example, one court user with a learning disability stated that court staff were unable to tell him whether or not he would be required to give evidence, or whether his advocate would be able to speak on his behalf. This made it difficult for him to prepare for his court appearance and he was frustrated at not knowing where to find this information. (This study did not explore whether court staff interviewed could have answered his question.)

The journey map in Figure 1 relates to a court where the Personal Support Unit was available and highlights how important this type of practical support can be to court users with mental health conditions, learning difficulties and limited mental capacity. The satisfaction with the court experience peaks with the support offered by the PSU.

Figure 3.1 Civil court experience journey map





In public law family cases, court users' mental health, limited mental capacity or learning disability was often directly relevant to the issues under discussion. There was generally a high level of involvement from other agencies, particularly social services. This meant that mental health conditions and learning difficulties rarely went unidentified, as the agencies carried out professional assessments of these conditions. However, the purpose of these assessments was often to ascertain the court user's ability to parent. Any identification of vulnerabilities did not necessarily translate into adequate support for the court user during the hearing.

Court users tended to rely on support from advocates and carers, even when they appeared to have had good relationships with their family social worker in the past. Social services and CAFCASS (Children and Family Court Advisory Service) representatives were generally at court, but their role was to ensure the needs of the child were met, rather than those of the adult court user. Adult court users generally saw such agencies as the opposition and were therefore sceptical of the support they offered (this did not apply where the adult court user had their own social worker).

*'I'm amazed at how people respond to support from social services at court. It's literally daggers drawn at court even though the rest of the time they may have been supporting and helpful. Solicitors can be unsympathetic too, so CAFCASS workers often have to cross the boundaries of their role because there is a lack of support there.'*

(CAFCASS service manager, North)

### **Specialist support**

Neither court staff nor the Witness Service felt that they were capable of dealing with the more complex needs of court users with mental health conditions, learning disabilities or limited mental capacity, particularly those who need medication or have severe communication difficulties. Legal practitioners and criminal court staff were familiar with agencies where they could refer court users for support, such as the Witness Service and Victim Support. However, none of these catered specifically for those with mental health conditions, learning disabilities or limited mental capacity.

In civil and family cases, legal practitioners and court staff were often unaware of any providers of general practical and emotional support for court users, or more specific support organisations and charities for this vulnerable group. As a result, court users typically relied on their own support networks and carers. Many stated that if they had not had access to pre-existing support networks, including advocates, charities or CPNs, they would not have known where to ask for help with the court case.

In Newcastle there were good links between the courts and Mind, which allowed court staff to make referrals to other support agencies. When this occurred, court users were very positive about the support they received. These referrals can therefore be effective when a

clear system is in place, rather than simply leaving court users to make contact themselves and arrange their own support, as they lack knowledge of what is available. The close relationships involved went some way towards solving the problem that those with specialist knowledge of court do not have any specialism in disability, and those who have a specialism in disability do not have sufficient knowledge about the courts.

### Legal support

The level of contact between court users and legal representatives varied across court type and was highest for court users involved in the more serious criminal cases in the Crown Court.

In criminal cases, court users were likely to meet with the Crown Prosecution Service (CPS) before the trial in order to discuss the case, although in many cases they did not meet until the actual day of the trial. The greatest level of contact with the CPS occurred in Crown Court cases because of the severity of the cases. However, victims and witnesses felt that the relationship of a defendant to their legal representative was closer and more supportive. Interviews with members of the judiciary supported this view. These interviewees often provided detailed descriptions of provisions for defendants with mental health conditions, learning disabilities and limited mental capacity, but had little experience or knowledge of the support available for victims and witnesses with these conditions.

In criminal cases being heard at magistrates' courts, court users often reported that they were not able to spend enough time with their solicitor before their hearing, often speaking with them for just half an hour at most. Solicitors themselves agreed that this was too short a period and blamed their heavy workloads for this limitation.

Court users involved in civil cases often reported feeling unprepared for their time in the courtroom. Unlike in criminal cases, there was little or no pre-trial contact with legal representatives who could tell them what to expect. Court users might receive practical advice about the court process if they were attending one of the civil courts with a Personal Support Unit, but generally they had no access to legal advice.

*'I'd have liked to go to someone to get some advice, like a duty lawyer, but they didn't have one either. So I was totally lost really. I asked for a duty lawyer every time I went up there but there was nobody there.'*

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

Court users litigating in person could have the support of a McKenzie Friend, typically a friend or relative who could attend court in a supportive role. However, as lay people, McKenzie Friends often did not have the legal expertise to advise court users in detail on giving evidence. They also have no right to intervene if they object to the way in which the lawyers are questioning the court user, so once inside the court they could offer only moral support.

Hearings in civil cases are generally short, often lasting less than ten minutes. Both court users and practitioners stated that there was often not enough time at court to ascertain any special needs, such as tailoring communication or explaining proceedings prior to entry into the courtroom. As a result of this limited contact and high turnover of cases, court users involved in civil proceedings were rarely provided with additional support from legal representatives, the judiciary or court staff.

There is a strong reliance on written communication in civil hearings, with little opportunity for face-to-face contact between court users and their legal representatives before their hearing. Mental health and learning disability practitioners speculated that as a result, many individuals with learning disabilities involved in civil cases may not be able to understand the summons. People with mental health conditions may not be able to cope with the stress of the situation and may therefore choose to ignore any correspondence relating to a court summons or consider access to legal advice at this time. In fact, there was some suggestion among legal representatives that a high number of court users with mental health conditions, learning disabilities and limited mental capacity may not have attended court at all. As a result, judgements and orders may have been made in their absence.

The hearing of a public family law case generally takes place at the end of a lengthy legal process, so court users typically met with legal representatives on several occasions outside the court before their final hearing. Court users appreciated this level of contact as it gave them several opportunities to discuss their case and have any questions answered. The boundary between provision of legal support, and a more emotionally supportive role, could become blurred.

This established relationship, however, did not always result in the provision of appropriate support, as was the case in longer criminal cases. Legal representatives tended to see the court hearing as a very practical end to a process, rather than the emotional day that court users experience. Therefore they rarely considered whether court users might need additional support. Often, no one provided emotional support for court users, unless they were accompanied by a carer or support worker.

*'I was really nervous, you know, but everyone was so busy talking about legal proceedings that I didn't really think I could say anything, not about feelings.'*

(Male court user, mental health condition, family case, South)

This lack of consideration for court users' emotional needs is reflected in a family solicitor's explanation of the court process:

*'Even with support, the court process is ultimately a clinical one and someone has to make a decision that quite often the client isn't going to be satisfied with.'*

(Family solicitor, North)

There was a clear difference between public and private law in the level of contact with legal representatives. In a few cases, court users in private law proceedings found they had to litigate in person, so they had no contact with legal representatives at all. For example, court users did not know how to find a solicitor, and had difficulties finding somebody to agree to represent them. Legal representatives suggested that this difficulty arose because fixed fees created a disincentive for solicitors to take cases where a client has a mental health condition or learning disabilities. This is because they are perceived as requiring greater resources and time for the same fee.

## 4. Identification and disclosure

Identification and disclosure could take place at any stage of the court process and the way this was dealt with could have an impact on the court user's experience. This section focuses on those factors relevant to the 'at-court' stage of the process.

### 4.1 Identification of mental health conditions, learning disabilities and limited mental capacity

#### Responsibility for identification

Court staff, magistrates and the judiciary did not regard the identification of court users' mental health conditions, learning disabilities or limited mental capacity as their responsibility. In criminal cases, they believed it was the police's responsibility to identify any such vulnerability, and that this should be picked up on and communicated to the courts by the CPS. Most court staff and members of the judiciary felt that it was highly unlikely that any such vulnerability would have gone unrecognised by the CPS.

There was also quite a widely held view, in particular among the judiciary, that people with mental health conditions, learning disabilities or limited mental capacity would not be regarded as reliable witnesses, making it highly unlikely that a case involving them would even get to court. This view meant that some judiciary members were not greatly aware of court users with these vulnerabilities.

*'The answer to that is on the whole they are not very well identified. If they are at all it's done in respect of, almost always domestic violence cases and they're almost always vulnerable or intimidated witnesses thrown up by the Witness Service, or dedicated police officers. But identifying people with mental disorder as adult witnesses in the adult court doesn't happen, doesn't happen. Such as are identified will be Crown Court cases, so at my level the number of witnesses who I could identify as suffering from mental disorder or whatever, is close on zero, amazingly enough.'*

(District judge, London)

As discussed previously, many court users in criminal cases had disclosed their condition to the police or their legal representative early in the process. However, court users, carers and members of the Witness Service mentioned several cases where the police did not communicate this information to the courts. Some court users also reported that they first disclosed their condition to court staff on the day of their hearing, although such a delay was relatively uncommon. It occurred most frequently for court users with learning disabilities, who sometimes only told court staff about their inability to read on learning that they would have to read the oath.

In public family law, the high level of involvement of public agencies (such as social services) in such cases led most magistrates and judiciary to assume that any special needs would have been identified earlier in the case. Therefore they thought it unlikely that they would need to make any identifications on the day of a hearing.

*'By and large, the involvement of the local authority and of CAFCASS will bring to the court's attention, not necessarily the full extent of somebody's difficulties but the fact that they exist.*  
(Judge, civil and family cases, North East)

In civil cases, no one seemed to be aware whether court staff, legal representatives or court users themselves should be responsible for identifying or disclosing their vulnerabilities. It was assumed that legal representatives were most likely to make an identification.

*'There isn't any procedure in court available ... the court operates an advice centre where you can get leaflets and stuff about things but ultimately, at the end of the day, the court operates to be used by members of the public ... so until a member of the public turns up, either themselves or through a legal representative the court has no input quite understandably into how that person should be received and having been received they just have to make do.'*

(Barrister, civil cases, North East)

Across all courts, the court's responsibility was seen to be simply to ensure that any special needs previously identified were met, rather than actually identifying such needs. Courts depended upon other agencies for identification and support of the specific needs of court users. To develop internal capabilities and processes of identification would entail a considerable increase in their resources. Moreover, magistrates were uncertain as to whether they should be informed of a court user's vulnerabilities, or if this information was inappropriate for them to know.

*'If you are classified as vulnerable you would hope the Victim Support would actually pick it up. But why would they necessarily relay that information to us because they are coming to give their side of the story. You wouldn't actually have them say well this witness would have mental problems because it could open up a whole new avenue ... I am only here to hear the trial, I want to be completely unbiased.'*

(Magistrate, criminal cases, South)

### **Expertise in identifying vulnerabilities**

Few court staff or legal representatives were aware of official diagnostic tools such as DSM-VI (Diagnostic and Statistical Manual for mental health) or the WAIS (Wechsler Adult Intelligence Scale). There is no training specifically related to mental health conditions, learning disabilities and limited mental capacity, and no process in place for court staff or legal representatives to identify such vulnerabilities. For the majority of staff involved in the 'at-court' stage of the process, the way this group of court users was dealt with fell under the more general umbrella of vulnerable and intimidated court users. Court staff and members of the Witness Service therefore relied on their own judgement and on self-disclosure by court users when identifying and supporting those with mental health conditions, learning difficulties and limited mental capacity. However, they did not feel that this is adequate.

*'If it's a crowded room and I stand up and I walk across and I quietly sit down and say to them, do you have a problem with crowded rooms? I may as well go and put a big sign on their head, I have a problem.'*

(Witness liaison officer)

Many staff explained that they were more likely to pick up on literacy issues, as they often checked whether court users could read out evidence before they entered the courtroom. However, they were less confident in their ability to identify mental health conditions accurately, especially as fluctuations in these could make them harder to recognise. This lack of confidence created a heavy reliance on self-disclosure. However, several carers highlighted the lengths to which people with mental health conditions and learning difficulties would go to hide their difficulties. Court staff felt they needed clear and detailed guidance on how to identify vulnerabilities and encourage disclosure, and on what appropriate support they needed to provide.

*'He [court user] presents himself as more able than he is which can cause difficulties; other people tend to assume he can do things he can't, but when they realise this, if they patronise him he'll get annoyed. The issue needs to be managed really carefully.'*

(Carer, North East)

The Central Criminal Court has a resident nurse and psychiatrist. They are primarily available to work with defendants and advise the judiciary, but court staff stated that they would consult these practitioners if they had any concerns about a court user's state of mind. Few other courts offered this service, so court staff were generally unsure whom to contact for advice on managing a vulnerable court user.

Legal practitioners often assumed that the level of expertise in identifying mental health conditions, learning disabilities and limited mental capacity would be higher among legal representatives and magistrates involved in family cases. They felt it was likely that these conditions would be relevant to the case and staff would therefore have more experience in dealing with such court users. In some areas, support organisations spoke highly of legal representatives who specialised in working with this client group. This did not appear to be a national trend.

There was no specific training in identifying vulnerabilities for professionals working across any of the courts, even among Witness Service and Witness Care Unit staff. Most had taken part in limited mental health or learning disability awareness training to help them support vulnerable court users. They relied on their own common sense or previous experience when working with this group of court users.

*'I don't think they even have a structured training programme which I think that they should have ... I think somebody who recently came into our unit had some kind of general induction, but I don't know if it was specific to the witness care unit.'*

(Witness Care Unit officer)

Practitioners in civil cases explained that in some civil cases, because the heavy reliance on written communication meant there was little contact with legal representatives or agencies, the first opportunity for identifying any vulnerabilities could be when a court user was giving evidence. This made it vital for legal representatives and the judiciary to be able to recognise signs of mental health conditions or learning difficulties. However, there was limited evidence that they had the knowledge or time to achieve this.

*'I think they've got a better chance, I know that sounds horrible, in the criminal court ... [in civil cases] there's much less interaction and whenever there's less interaction, there's less chance of anybody being picked up ... in such things, we're less open in so much that things are much more black and white and are moved onto the end stage. We don't have the beginning stage, if you see what I mean ... And I think it's, again, it comes to a basic not recognising, not knowing what sign to look for. It's hard isn't it?'*

(Magistrate, all cases, South)

Members of the judiciary also pointed out that where a witness's capacity or condition was not known, they were not in a position to demand an assessment and therefore had to rely on self-disclosure.

*'A witness is voluntary. We can't ask for a witness to be assessed. A witness is a witness. A defendant of course, if they have been proved guilty, then if we ask for reports, we can ask for a professional assessment. You can't do that on a witness.'*

(Magistrate, criminal cases, South)

## **4.2 Disclosure of mental health conditions, learning disabilities and limited mental capacity**

### **By court users**

As explained previously, court users who felt that their condition was irrelevant to the court case, or who could manage their symptoms effectively, tended to be less inclined to disclose it. This was most likely to apply to those with mild mental health conditions who did not think their condition would affect their ability to cope with the court case, or influence its outcome. Those involved in private family law cases who thought their condition was likely to be detrimental to their case were also unlikely to want to disclose their condition. Family solicitors tended to hold the same view.

Several court users involved in criminal and civil cases who felt it would have been helpful if the court was aware of their condition did not feel they had the opportunity to inform people, as they were never directly asked whether they had such a condition. Court users regularly stated that, while they might feel uncomfortable about raising the issue themselves, they would probably respond honestly to careful questioning.

Those with learning difficulties were more likely to feel comfortable disclosing their condition to the court, as they felt court officials could then take steps to help them understand proceedings better. As outlined above, court users who wanted such disclosure generally



expected police or legal representatives to do this in advance. When this did not happen, and court users had to disclose this information themselves directly to the court, they often felt uncomfortable.

*'I didn't feel too happy about telling them [the magistrate] I had a mental health condition in front of everyone. Had they known already, they'd have been prepared and I'd have been able to cope better.'*

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

Several court users reported that they had informed ushers or members of the Witness Service that they had literacy conditions. As a result the matter had been handled sensitively and discreetly. Usually the court usher quietly informed the judge and there was no interruption to the hearing, which judges found to work well.

*'Ushers are excellent at things like this and it may be an informal channel of information but it is one that shouldn't be discounted or devalued even ... they are very good at picking up difficulties even although they may only glimpse them.'*

(District judge, family court, South)

### **By legal practitioners, judiciary and court staff**

There appeared to be a lack of protocol in relation to the way in which mental health conditions, learning disabilities and limited mental capacity were disclosed to the courtroom by court staff and legal representatives, including ushers, the judiciary, magistrates, defence counsel, barristers and solicitors.

The Achieving Best Evidence in Criminal Proceedings Guidelines (Home Office, 2002) state that it is the responsibility of the judiciary and magistrates to approve applications for special measures, and for the judiciary to rule out inappropriate questioning. Disclosure of mental health conditions, learning disabilities and limited mental capacity is vital in order for the judiciary to be able to make judgements about the need for special measures and decide whether and how to tailor communication. However, as noted above, this research uncovered several cases in which the judiciary and magistrates had not been informed of a court user's mental health condition, learning disability or limited mental capacity before the hearing, which meant they were not in a position to fulfil these responsibilities adequately.

It was important for court users to be told in advance whether their mental health condition, learning disability or limited mental capacity would be raised in court, whether by court staff, their legal representative, or defence counsel. This would allow them to prepare for the disclosure and avoid unnecessary distress. Court users reported being made to feel 'small', 'stupid', 'thick' and 'embarrassed' by the unexpected disclosure of their condition to the courtroom.

*'No one asked me about whether I could read or write so I didn't tell anyone. It wasn't until just before I went into the courtroom that I found out about having to read stuff out that I told the usher. He announced it to the whole room and I felt so small. It was disgusting.'*

(Female court user, limited mental capacity, criminal case, Wales)

Court users said that they would prefer the judiciary to be discreetly made aware of their conditions before the start of the hearing. This would allow legal representatives to tailor their communication and reduce the possibility of the court user's condition adversely affecting their court appearance. Court users also appeared comfortable with disclosures being made to the whole courtroom as long as their legal representative had discussed this with them in advance so that they could prepare themselves, and when it was done sensitively by their legal representative or the judiciary. This was true for users with all types of vulnerability.

## 5. Special measures and requirements

Victims and witnesses in criminal cases who might otherwise have difficulty in giving 'best evidence' can benefit from special measures. This is a collective description for a set of procedures introduced under the Youth Justice and Criminal Evidence Act 1999 (YJCEA 1999). Special measures can be used at the discretion of the court, and the Act specifies that they may be authorised 'only if they are likely to improve the quality of a witness's evidence'. Special measures may be appropriate where a witness is classed as 'vulnerable' or 'intimidated'.

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.

As civil and family cases are regarded as less adversarial, they are not covered by these measures. Protocol does state that special requirements can be applied to civil and family cases, but none of the legal practitioners or court users in this study had experience of this.

The special measures available in criminal cases include the option of giving evidence via a video link or from behind a screen, and requesting that legal representatives remove wigs and gowns. One recently introduced special measure is the use of an intermediary to help vulnerable court users give evidence by explaining any questions to the witness and ensuring that their responses are fully understood by the court. Screens and video links were the special measures most familiar to judges and magistrates for use with all vulnerable court users, and the ones that court user interviewees were most likely to have experienced.

When special measures were used appropriately, court users found them very effective in alleviating the pressure of attending court and giving evidence. In fact, the measures had a positive impact on their overall court experience. For example, several court users reported that knowing they could avoid contact with defendants through the use of video links convinced them to continue with their case, which they would otherwise have found too stressful. The use of intermediaries also increased the court users' understanding of the trial.

Successful uses of special measures included:

- a video link being set up at a witness's home if they felt too nervous to travel to court; and
- an intermediary enabling the court to understand a victim with severe learning difficulties.

However, several limitations were found in relation to their provision in certain criminal courts. When special measures did not adequately meet court users' needs or expectations they could actually have a detrimental effect because they interrupted proceedings and made court users feel insecure.

## **Criminal courts**

### **Quality of provision**

Although the quality of provision could be very good, access to special measures and other support mechanisms varied a little between courts. For example, some did not have video-link equipment. It also appears that the provision of special measures was not always a priority for courts. For example, one legal advisor in a London magistrates' court explained that they had a remote video-link facility installed but that it had not been properly set up so had never been used.

As discussed in Report 2, communication issues between the police, CPS and the courts could result in special measures applications being submitted too late. Home Office Practice Guidance states that the police and CPS should arrange an early special measures meeting between the police and the CPS as well as meetings between the CPS and vulnerable or intimidated witnesses, during which they should explain the special measures available and what they would involve. It is the responsibility of the investigating police officer to decide whether the circumstances of the particular case require an early special measures discussion, and CPS prosecutors also have a responsibility to consider this. However, practitioners in Phase 1 suggested that sufficient consideration was not always given at an early stage. They felt that, as a result, their applications for special measures were not always handled within the necessary timescales. This could lead to witnesses not always benefitting from the special measures they were entitled to if applications were not made with sufficient detail or care.

In some cases court users gave evidence without the necessary support, or trials were postponed while special measures were organised. We found several examples where courts had made appropriate applications for special measures, but issues had arisen on the day, such as video links not working properly, or screens being forgotten, which led to case postponement. Each of these scenarios caused high levels of stress among court users at the prospect of prolonging the case further.

*'I had to wait for ages because the video link was broken. I was panicking and shaking and all that. It was horrible. I just wanted to get it out of the way and asked to just give evidence in the courtroom because I couldn't stand the bloody pressure any longer. We'd already waited hours. I had to be talked out of it by my support worker, she said it would be too much pressure and the judge ruled that the case should be adjourned.'*

(Female court user, learning disability, criminal case, North)

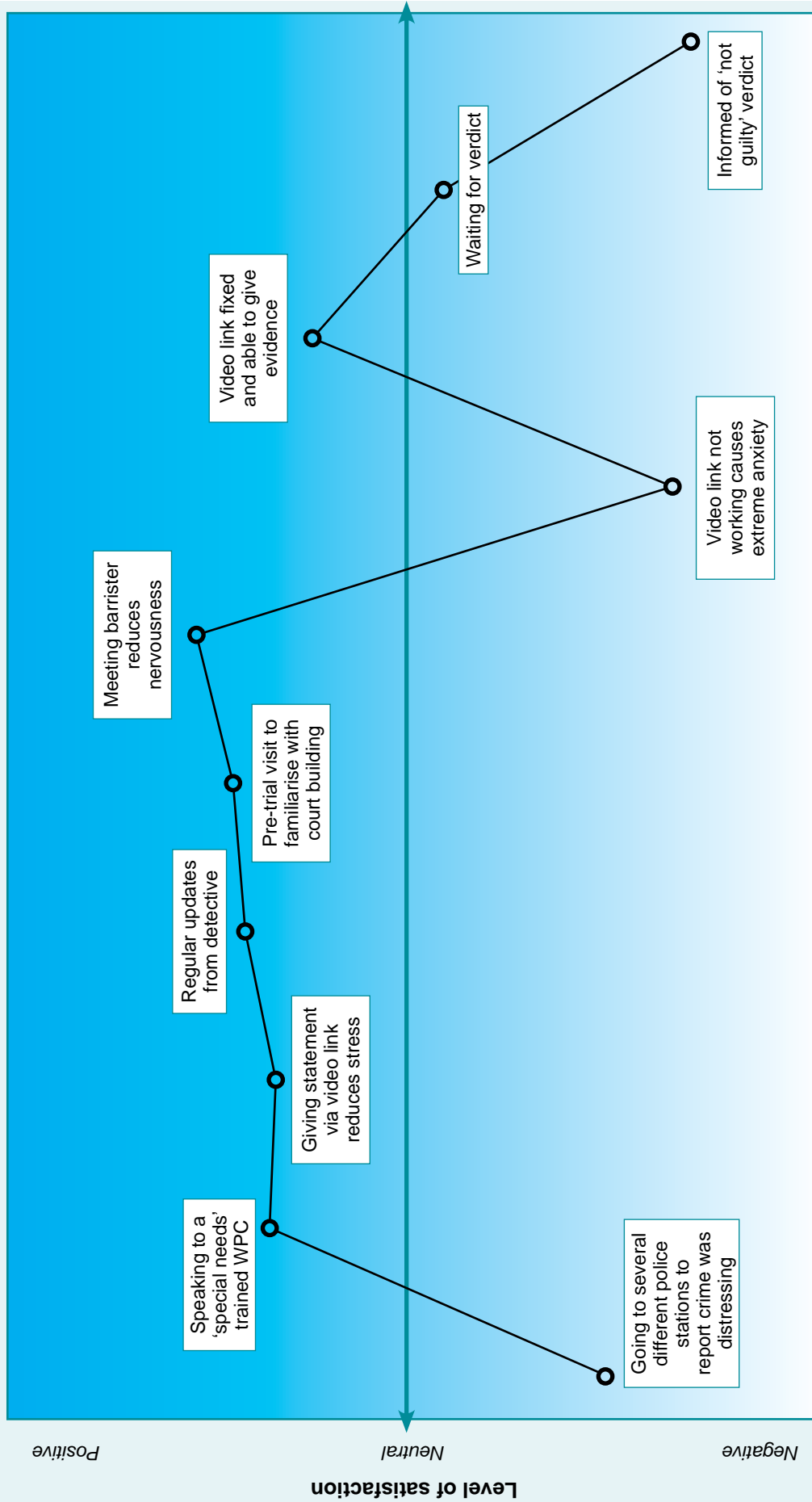
Legal representatives and the judiciary generally agreed that additional support should be available for court users with mental health conditions, learning difficulties and limited mental capacity. However, some legal representatives suggested the provision of special measures could give an unfair advantage to the prosecution, and that a balance needed to be found between the needs of the court user and the needs of the court. As the judiciary were ultimately responsible for approving special measures applications, the fact that some query the role of special measures may have an impact on the extent to which they are approved, in particular via late applications on the day of a trial.

*'Sometimes the Witness Service can get a bit too involved. I've had cases where they began demanding extra things for a witness, like to have breaks and give evidence by video link. The judge had to intervene eventually and say that the Witness Service is just there to support, not to interfere in the court process.'*

(Court clerk, London)

The journey map in Figure 5.1 highlights the extreme impact that unexpected interruptions and changes to the expected provision of special measures can have on this group of court users.

Figure 5.1 Criminal court experience journey map



A further role of the police in the application of special measures is to explain to court users exactly what these involve. As shown above, mistaken expectations of special measures can have a negative effect. Therefore a crucial part of the information offered to court users before their appearance is a realistic description of the special measure or measures which are being offered to them. Similarly, it is important to ensure that all of the measures offered are actually available on the day.

Other examples of special measures not meeting expectations included:

- a court user not realising that the courtroom would be able to see her whilst giving evidence via video link; and
- a court user not realising that she would still be able to see the defendant partially, and hear them fully, from behind her screen.

### Passive support

Court users who did not have the support of an intermediary were generally accompanied in the courtroom or video room by a member of the Witness Service or a carer or advocate, who could only play a passive role. They were unable to speak to or touch the court user, or intervene in court proceedings if the court user could not understand, or felt distressed. As a result they could only offer emotional support. Although court users stated that they found this reassuring, being unable to speak to their supporter while in the courtroom meant that their presence had only a limited impact. Many court users reported having to wait until breaks or after the hearing for their support worker or carer to explain what had taken place in the courtroom. Non-expert carers and support workers themselves could face some challenges, due to the use of specialist legal terminology and practice.

*'[The advocate] couldn't come into the court with me because she was a witness. Another lady came and sat with me. She sat behind me. I was told that I couldn't talk to her. She couldn't touch me and I wasn't even allowed to look at her. I had to look at the judge.'*  
(Female court user, learning disability, criminal case, North)

There was also little help in place to prepare carers for the courtroom. For the majority it was their first court experience, so they were often distressed by the courtroom situation and felt unable to offer enough support to the court user.

*'It was the first time I'd ever been in a courtroom myself so I wanted to cry at the time too.'*  
(Carer, Wales)

### Intermediaries

A special measure, 'examination of a witness through an intermediary', was established in 2005 in six pathfinder areas and nationally rolled out from April 2008 following positive findings from the evaluation (Plotnikoff and Woolfson, 2007). The use of intermediaries is

therefore a relatively new measure, which explains why there is limited awareness of their use. However, there is clearly a need to promote their role better among the judiciary, the police, Her Majesty's Court Services (HMCS) and legal representatives, so that more court users can benefit from their support.

In cases where an intermediary was assigned, court users benefited a great deal from their support. In this project, only court users with learning disabilities had experience of working with an intermediary. The support of an intermediary who was familiar with the court process, could provide a translation of the legal terminology during the hearing, and was not emotionally involved in the case, was invaluable to those who had access to it. Some legal representatives and carers suggested that court users could benefit greatly from the support of people who are specifically trained in legal issues as well as mental health and learning disabilities.

*'At the moment lots of people are relying on friends or solicitors who are not experts in both mental health and the law. We need more trained advocates to support people in court.'*  
(Citizen's Advice Bureau Advocate, North)

The use of intermediaries may help to provide supporters with knowledge of both the legal system and mental health conditions, learning disabilities or limited mental capacity but this is not their role and so any support offered by them is incidental.

As well as better promotion, there appears to be a need to develop the service provided by intermediaries. Previous research (Plotnikoff and Woolfson, 2007) suggested that there were gaps in the intermediaries' skill sets. This concern was raised again by intermediaries themselves during this research. As awareness of the service increased, they were being approached to work on cases outside their area of specialism, where they could not always provide appropriate support.

*'I get asked to work on lots of cases that are not appropriate to my skills. Learning disability is one of the major categories and I thought at first that perhaps if it was a minor case I'd be able to help, but it's just too specialised so I have to turn them down.'*  
(Intermediary, South)

Although on the whole intermediaries felt that the judiciary respected their role, some cited examples of instances in which they felt less satisfied.

*'A big part of our role is ensuring questioning is appropriate and defence counsel are not very happy on having an intermediary. Some are more receptive than others. A lot of it has to do with the extent to which the judge is familiar with the intermediary role and how prepared they are to enforce it. I was once faced with a very aggressive defence counsel and I kept signalling for the defence to be reined in but the judge clearly wasn't on board and repeatedly ignored me.'*  
(Intermediary, South)



## Civil and family

There is no specific policy on what support can be made available for court users attending civil and family cases. This means that the provision of support is more ad hoc than in criminal cases. Magistrates said that they were aware that they should overrule inappropriate questioning. There was little evidence of legal representatives having any knowledge of extra support that could be provided for those with mental health conditions or learning difficulties.

The *Civil Procedure Rules* (1998) stipulated that HMCS were responsible for offering the right to a Litigation Friend in cases where court users lacked capacity. However, there appears to be nothing in place for people who have limited capacity or communication as a result of learning difficulties or mental health conditions. The Serious Organised Crime and Police Act 2005 also extended special measures, such as the possibility of giving evidence via video link, to civil anti-social cases. However, practitioners working in civil law appeared to be unaware of any extra support that was available and had no experience of these measures in practice.

In family law there was also a limited awareness of what was available. The *Family Procedure Rules* state that court users can be accompanied by a Litigation Friend and, although special measures do not appear to be outlined in any policy documents as they are in criminal law, they can be applied for if required. However, few practitioners or support organisations were familiar with the notion of special measures or had a great deal of experience of providing extra support.

*'I can't recall any extra support other than the solicitor being provided, even if mental health problems or learning difficulties have been raised in pre-court reports. I've never come across a Litigation Friend.'*

(Magistrate, criminal and family cases, North)

Court users in civil and family cases did state that they would benefit from similar measures to those available in criminal cases, in particular from being able to sit behind a screen in cases that involve ex-partners; from pre-trial visits; and from being accompanied by someone such as an intermediary who could provide more proactive support in court. Intermediaries are only available in criminal cases, but the same communication issues they addressed were also faced by court users in civil and family proceedings. Currently, court users could only be accompanied by their carers or advocates, who often lack the legal knowledge that court users find so reassuring, and can only provide limited support in the courtroom as they are not allowed to interact with the court user.

*'We didn't understand anything. Nowt at all. We just had to sit there and listen. Not until we got outside and [the advocate] could sit down and talk to us. Explain what was going off in court, what they said, what was happening. But I still didn't get most of it.'*

(Male court user, learning disability, family case, North)

## 6. Barriers and facilitators

Key influences on the court experience include access to practical and emotional support, preparation for court, provision of special measures and requirements, and practitioners' awareness of mental health conditions, learning disabilities and limited mental capacity. Barriers and facilitators to these are discussed below.

### 6.1 Access to practical and emotional support

#### Facilitator: existing support networks

When court users were supported by people with an understanding of mental health conditions, learning difficulties and limited mental capacity, they were more likely to be satisfied with their court experience. Having a carer, support worker, or advocate to act as a conduit between court and court user could be invaluable to all groups in the research. Practitioners were often unsure of where to access such support, and therefore it was helpful when court users could rely on their existing contacts.

#### Facilitator: criminal courts

Far more support was available at criminal courts, with all court users being referred to the Witness Care Unit and the Witness Service. In more serious cases, such as homicide, additional support was available from Family Liaison Officers and the Victim Focus Scheme.

#### Barrier: civil and family courts

Unless civil hearings took place at one of the few courts that benefited from the presence of the Personal Support Unit, civil and family courts lacked an equivalent to the support offered by the Witness Service in criminal courts.

### 6.2 Preparation for court

#### Facilitator: contact with legal representatives

When court users were able to meet with their solicitor or barrister before the hearing they generally reported feeling more confident about their court appearance as a result of this. They appreciated having a full explanation of the court process and the feeling that someone professional was on their side. This was most likely to happen in family law and in more serious criminal cases where trials tended to last longer.

#### Facilitator: pre-trial visits

Court users who were offered a pre-trial visit found this very useful. The visit enabled them to familiarise themselves with the court building and the courtroom, which alleviated some of the stress on the day of the hearing.

### **Facilitator: explanation of cross-examination**

The Witness Care Unit can provide information about the process of giving evidence. Court users appreciated this, but further steps could be taken to ensure that the information is detailed enough and fully understood – for example, by including provision of this kind in the pre-trial visit.

### **Barrier: reliance on written communication**

In civil cases, much of the communication prior to a hearing is in written format. Court users with mental health conditions, learning disabilities and limited mental capacity preferred face-to-face meetings. This made it more likely that their condition could be identified and allowed legal representatives to explain the court process more appropriately. Court users felt better prepared where this had taken place.

## **6.3 Provision of special measures or requirements**

### **Facilitator: multi-agency working**

Special measures were most likely to be provided when there were good working relationships and clear lines of communication between the police, the CPS and the courts and when all practitioners involved had a good working knowledge of what measures were available.

### **Barrier: practical issues**

Not all courts are set up for the more technical special measures, such as video links. The role of intermediaries has been well received, but although their numbers are increasing, relatively few are currently available to work in courts.

### **Barrier: lack of special measures in civil and family courts**

Although it is possible to apply for special requirements in civil and family cases, the options available are less comprehensive than in criminal cases and the level of awareness among practitioners is generally low.

### **Barrier: passive support**

When advocates or carers are present in court, they are only allowed to give passive support to court users with mental health conditions, learning disabilities and limited mental capacity. Many interviewees felt that their supporter's presence would have been more reassuring if they had been allowed to talk to them.

## **6.4 Awareness of mental health conditions, learning disabilities and limited mental capacity**

### **Facilitator: relevance to the case**

When a court user's mental health condition, learning disability or limited mental capacity was directly linked to a case, as is often the case in public family law, it was more likely that practitioners would be aware of their condition and therefore have more opportunity to meet their needs.

### **Barrier: lack of specific protocols**

Current policy and protocol places this group of court users under the general term of 'vulnerable and intimidated witnesses'. There is no specific training in place or guidance on how to identify or meet the specific needs of court users with mental health conditions, learning disabilities or limited mental capacity, and a consequent low level of awareness of these conditions among court staff and legal practitioners.

### **Barrier: mistaken perceptions and lack of awareness**

In criminal cases in particular, the issue of victims and witnesses with mental health conditions, learning disabilities and limited mental capacity actually attending court was not widely recognised by the judiciary and magistrates. There is a perception that this group of court users are unlikely to reach court, as they will probably be deemed unreliable witnesses.

### **Barrier: focus on other parties**

In criminal cases, there appeared to be a focus on the needs of defendants with mental health conditions, learning disabilities and limited mental capacity rather than victims and witnesses with similar conditions. Although it was more likely that these conditions would be identified in family cases, it was suggested by a range of participants that the main focus was on the needs of the child rather than those of the parents, so this identification would not necessarily translate into support.

## 7. Examples of good practice

### Witness Service and Personal Support Unit

The practical support provided by these in-court services helped court users feel familiar with their surroundings and understand the court process.

#### Good practice

The Personal Support Units at the Royal Courts of Justice, Wandsworth and Manchester take appellants to the courtrooms prior to the trial, accompany them to hearings, and book quiet rooms to provide assistance with completing forms and explanation of court processes in civil cases. They can keep court users company throughout the day, offering moral support. The Witness Service provides the same support for court users involved in criminal cases.

### Single point of contact

Although their role was not specifically developed to support court users with the conditions considered here, the support offered by Family Liaison Officers to this group was regarded highly by court users and practitioners. Court users found it beneficial to have a single familiar point of contact throughout a trial especially when there were a number of different possible sources of information about a court case.

### Intermediaries

The ability to intervene during the hearing to ensure that court users fully understand the language used in the courtroom was particularly helpful.

### Multi-agency meetings at the Central Criminal Court

Regular meetings were held at the Central Criminal Court between front-of-house court staff, the Witness Service, Family Liaison Officers and the judiciary to discuss upcoming hearings and ensure that everyone was aware of the needs of individual court users and that any special measures had been arranged as necessary.

### The Witness Care Unit

Explanations of the court process and cross-examination, offered by WCU staff, helped court users to prepare for their court appearance. It was suggested by court users that their role could be improved by offering more face-to-face meetings rather than telephone contact.

## 8. Recommendations

This report highlights several issues concerning the likelihood of identifying mental health conditions, learning disabilities and limited mental capacity once a case gets to court, as well as the level of support that is made available. It also highlights areas that could be improved in order to meet court users' needs better.

### 8.1 Protocols

#### Identifying vulnerabilities

- Training could be offered to help court staff identify and work with court users with mental health conditions, learning disabilities or limited mental capacity. Specialists in mental health and learning difficulties stated that it would be possible to develop a simple checklist to help court staff do this effectively without causing stress to court users (Report 1, recommendations 5 and 6).
- For example, such assessments could be completed by the Witness Service in criminal cases. Consideration should be given to how this could be expanded to cover civil and family cases (Report 1, recommendation 3).
- Arrival at court
- Arrangements should be made to ensure that court users are offered telephone and face-to-face support before they arrive at court. Court staff could consider the possibility of meeting vulnerable court users outside the courthouse (Report 1, recommendation 8).

#### Disclosure of vulnerabilities

- Court staff and legal representatives should be given guidance on how to disclose mental health conditions, learning disabilities and limited mental capacity to the court where these are identified (Report 1, recommendation 7).
- Practitioners would benefit from guidelines to ensure that court users are consulted to discuss whether, and how, their vulnerability should be disclosed (Report 1, recommendation 7).

### 8.2 Ensuring familiarity with the court process

Familiarity with the court process was crucial in alleviating some of the stress associated with attending court among this group of court users. Interviewees stated that basic support, such as regular updates on the process of the trial, was very helpful. Several steps could be taken to increase familiarity with the court process. These include arranging a single point of contact for each court user, increased use of pre-trial visits, and full explanations of any special measures used.

#### One point of contact

- In civil cases, court users with mental health conditions, learning disabilities and limited mental capacity could benefit from having the opportunity to have one member of court

staff as a point of contact throughout the trial. This would be similar to the role provided by the Witness Care Unit in the criminal courts in the lead up to the trial (Report 1, recommendation 9).

- Given how highly regarded the Witness Service and Personal Support Unit were by vulnerable court users, the establishment of equivalent support services in civil and family courts could be considered (Report 1, recommendation 8).

### **Pre-trial visits**

- The opportunity for pre-trial visits should be proactively offered across all courts so that court users can familiarise themselves with the building (Report 1, recommendation 8).
- Consideration should be given to the possibility of including detailed explanations of the court process, including giving evidence, in pre-trial visits (Report 1, recommendation 8).

## **8.3 Training opportunities**

The lack of specific training in relation to mental health conditions and learning difficulties has already been highlighted. Training is needed for three key reasons: to increase the likelihood of identification; to raise awareness of the issue among the judiciary and magistrates; and to encourage referral to support.

### **Identification**

- As previously explained, court staff could be offered training to help them identify mental health conditions, learning disabilities and limited mental capacity through the use of a simple checklist (Report 1, recommendations 5 and 6).

### **Awareness among magistrates and the judiciary**

- Awareness training related to cases involving victims and witnesses with mental health conditions, learning disabilities and limited mental capacity should be considered. There is currently a perception that few of these court users would be regarded as reliable witnesses. Training in relation to communication with these groups of court users and support measures available to them could also be useful (Report 1, recommendations 3 and 13).

### **Better promotion of support**

- A list of agencies which provide support for court users with mental health conditions, learning disabilities and limited mental capacity could be displayed in police stations and courts across the UK, particularly in civil and family courts (Report 1, recommendation 8).

## **8.4 Increasing support throughout the trial**

### **The expansion of special measures to civil and family cases**

- Court users in civil and family cases suggested that they would benefit from pre-trial visits in order to familiarise themselves with the court process and the court building (Report 1, recommendation 8).

- Several people involved in family cases also suggested that they would have appreciated being placed behind a screen in court to avoid confrontation with ex-partners (Report 1, recommendation 14).
- Although it is possible to request special support in civil and family cases, there is currently no policy equivalent to that available to court users involved in criminal cases. The possibility of offering such measures in civil and family cases should be promoted (Report 1, recommendation 14).

### **Provision of more proactive support in the courtroom**

- The role of intermediaries should be better promoted among legal representatives, magistrates and the judiciary (Report 1, recommendations 12 and 13).
- Provision of intermediaries could be expanded (Report 1, recommendation 14).
- Consideration should be given to the support offered to carers, advocates and support workers to help them prepare for their role in court (Report 1, recommendation 8).
- Better preparation for giving evidence
- Many court users suggested that their pre-trial visit should have included a full explanation of the cross-examination process. Court users who had benefited from help when preparing to give evidence, for example from the Witness Care Unit, found the experience less traumatic than those without that level of preparation (Report 1, recommendation 8).
- Court users should have more access to legal representatives, particularly in civil cases, to help them prepare for their appearance in court (Report 1, recommendation 11).
- Greater inclusion
- Court users who were able to give evidence felt more satisfied with their court experience. Steps should be taken to ensure that all court users feel they have been given the opportunity to fulfil their roles in communication effectively, particularly in family cases where many felt that decisions had already been made .
- Practitioners need to consider how they communicate with court users with mental health conditions, learning disabilities and limited mental capacity. Many court users reported that when they were accompanied to court by a support worker, carer, advocate or intermediary, the judiciary and legal representatives had a tendency to communicate with their supporter rather than directly with them. This resulted in court users feeling excluded from the court process, which caused them some frustration (Report 1, recommendations 13–15).

### **Clarification of responsibility for identification and support provision**

- Legislation states that the judiciary hold responsibility for final decisions on the application of special measures and ruling on inappropriate questioning. However, many judges and magistrates explained that although they had the power to intervene, they would expect a court user's solicitor to ensure that their needs were being met and would therefore rely on them to raise any issues. There appears to be some confusion about who is responsible for ensuring that judiciary are aware of court users' needs, which should be clarified (Report 1, recommendation 16).



## **8.5 The need for multi-agency working**

### **Promotion of agencies**

- A higher level of awareness is needed among court staff and legal representatives of the different agencies available to support court users' needs. Practitioners need to have a clearer and more precise awareness of their own roles and responsibilities. Regular meetings between courts, the police and support organisations (such as those held at the Central Criminal Court) could improve the level of support provided for court users and encourage better co-ordination between services (Report 1, recommendations 4 and 16).

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**Court experience of adults with mental health conditions, learning disabilities and limited mental capacity. Report 3: At court**

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

Stress caused by the formality and unfamiliarity of the court was significantly reduced by prior familiarisation, 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. Where 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.

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