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**Court experience of adults
with mental health conditions,
learning disabilities and limited
mental capacity
Report 1: Overview and recommendations**

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BMRB and Liverpool John Moores University**

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Report 1 of 6

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The authors

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

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

This is the first 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. Victims and witnesses in criminal cases and parties in civil cases were included in the project.

While existing policy and provisions for identification and support have improved the experience of court users, these relate to different groups of court users and to various agencies and stages across the court process. This inhibits multi-agency working and accountability, and means that this group lack a single point of contact for support throughout their court experience. A key priority should be connecting existing policies and protocols to produce a detailed pathway which outlines the route a court user with mental health conditions, learning disabilities or limited mental capacity would take through each court process.

Early identification of court users' conditions catalysed support provision throughout their case. This can be improved by increasing opportunities to disclose and developing protocols for each court, clearly outlining professional responsibility for identification. Further training is necessary for staff at all levels, to improve awareness of complex needs and of measures to facilitate communication.

Access to basic practical and emotional support is sometimes provided by the Witness Service. Elsewhere, it is contingent upon the presence of existing support networks and the effective operation of multi-agency teams. This requires improved training and awareness in relation to support pathways. Access to legal representation can be impeded in civil cases by both limited information on appropriate firms and fixed legal aid fees.

Special measures (a range of provisions to help vulnerable witnesses give best evidence) are available in criminal courts. These have substantially improved the experience of court users with mental health conditions, learning disabilities and limited mental capacity. Strong multi-agency working facilitated their provision, but was restricted by poor provision in certain courts and resistance to their use among some Judiciary and barristers. Their extension to civil and family courts is recommended, alongside training to ensure adherence to protocols.

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, some findings suggested that this group were more likely both 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 vulnerabilities among court users. Despite the development of a series of legislative and policy initiatives to meet the needs of this group more effectively, the need for further work in this area has been highlighted.

Approach

The research comprised two phases: a scoping study (Phase 1) and a main stage (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 court users.

Findings and recommendations

Overall

Overall, the court system was moving in the right direction, with detailed policies and a number of processes in place to assist identification and support. These had clearly led to improvements in experience. However, policies covered different stages of the court process and were the responsibility of different agencies. In addition, many of the policies which affected the experience of this group of court users were not directed specifically at them. Provision was therefore dependent on local practice models, and experiences were influenced by the court type and duration of case, the court location and the type of vulnerability. The creation of a support pathway which outlines the route a court user with mental health conditions, learning disabilities and limited mental capacity would take through each court process is recommended. This would result in greater accountability, by creating opportunities to outline the roles and responsibilities of various agencies involved

and develop clear lines of communication between them. The creation of small multi-agency teams would provide effective support for this strategy.

Early identification of conditions

Early identification of a court user's vulnerability increased the likelihood of satisfaction with their court experience because it catalysed subsequent provision of support throughout the court case. Protocols on professional responsibility, the use of direct questions, the presence of a supportive individual and existing contact with public agencies facilitated identification. More thorough training on recognition and awareness of these conditions, and increased opportunities for identification in civil and family courts through the development of checklists, are recommended.

Self-disclosure of mental health problems, learning disabilities and limited mental capacity

Court users were more inclined to disclose a condition if they expected that doing so would trigger support provision, or if a familiar person whom they trusted was present. Where court users were not assured their condition would be treated sympathetically, were unsure of its relevance to the situation or were concerned this information would discredit their evidence, they were less likely to disclose, sometimes because they had been advised against doing so by a lawyer or another professional. Increased opportunities for disclosure would be created through practitioners' use of a checklist and guidelines around disclosure.

Access to personal support

Access to basic practical and moral support alleviated stress and increased a court user's understanding of their court case. This was provided where court users had access to existing support networks, and in areas with close working relationships between agencies. Defence witnesses received less support, and support across cases tended to end abruptly at case closure. The research recommends increasing access to personal support through compiling and promoting a database of support organisations; expanding provision through replication of existing support units; improved dissemination of information on the court process; provision of one point of contact throughout the process to streamline provision; and provision of training to carers, advocates and the voluntary sector about their role in the court process.

Access to specialist support

For those with unstable or less manageable conditions, assistance in communication through intermediaries or in management of medication was required. Access to such provision could be impeded by a lack of training in identification of special needs and low awareness of the resources available, which the database and training described above should address.

Access to legal advice and representation

Across court types, contact with legal representatives had a positive impact on court experiences. However, fixed fees in civil and family cases could make solicitors less willing to take the cases of these court users, as more work might be required for the standard fee. Clear communication was important, but was impeded where barristers were anxious to minimise contact to avoid charges of coaching or interfering with evidence. A range of measures to increase contact with the Crown Prosecution Service (CPS) and solicitors' firms are recommended, such as promotion of access to legal advice for litigants in person, and provision of information on solicitors specialising in working with clients with vulnerabilities.

Knowledge and awareness of the judiciary

Where court users' needs were identified to judges or an intermediary was present, judges adapted communication in the courtroom, but a failure to do so affected court users' comprehension and acceptance of case outcomes. Judges' limited time and awareness of communication strategies could be improved through training to raise awareness and improve their capabilities in accommodating needs in the courtroom.

Provision of special measures

Strong multi-agency working facilitated provision of special measures, but was handicapped by poor provision in certain courts and resistance to their use among some Judiciary members and barristers. The research recommends the expansion of special measures to civil and family courts, and training to ensure adherence to protocols on provision.

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.

Report 1 provides an overview of the research findings. It starts with an overview and description of the differentiating factors identified. It then considers the key issues that affect court users' experiences of the court process. Then, for each issue, it looks at the barriers and facilitators to a positive court experience and examples of good practice.

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.

Approach to sampling and use of the term ‘court users’

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

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

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

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

The target population for this study constitutes a particularly ‘hard-to-reach’ group for social researchers, and recruitment presented a number of challenges. Various recruitment methods were employed to achieve quotas and access the widest range of individual experience. The most successful of these was through individual staff from local support organisations and advocacy centres. These individuals had an interest in, and commitment

to, the study. As well as identifying users, they acted as local conduits within and between organisations, gaining the support of other practitioners working in the field. This motivation helped to overcome time and resource pressures for voluntary organisations. The time taken to build a network of organisations and establish co-operative, trusting relationships with individual staff posed the greatest barrier to achieving quotas within the time frame.

Informed consent

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

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

Fieldwork and data

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

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

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

Analysis

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

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

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

2. Overview

The research concluded that the court system is moving in the right direction in the identification and support of people with mental health conditions, learning disabilities and limited mental capacity. Detailed policies and a number of processes to assist in identification and support were in place at the time of the research. These included special measures, the Witness Care Unit (and within that Witness Care Officers), the use of intermediaries, and support facilities such as the Witness Service and the Personal Support Unit.

These had clearly led to improvements in the experiences of people with mental health conditions, learning disabilities and limited mental capacity. Much of the support in place was primarily intended to achieve 'best evidence'. The emotional support which it provided and the impact of this on the court user's experience was a positive secondary outcome.

Also, these policies and processes had not been designed specifically with this group of court users in mind. Instead, court users with mental health conditions, learning disabilities and limited mental capacity came under the more general 'umbrella term' of vulnerable court users. Practitioners explained that court users often had multi-faceted problems. They often used general terms, such as 'poor social functioning' or 'limited intelligence', to describe this group. This amalgamation of conditions could have masked a lack of awareness of mental health conditions, learning disabilities and limited mental capacity. The grouping of court users with such conditions alongside vulnerable court users in general could also have prevented practitioners from giving much consideration to their differing needs.

The courts are subject to general legislation which addresses mental health conditions, learning disabilities and limited mental capacity. This includes the Mental Capacity Act (Department of Constitutional Affairs, 2007), the Mental Health Act (Department of Health, 2007) and the Disability Discrimination Act (British Government, 2005). Report 5 provides a detailed account of each of these.

The Mental Capacity Act 2005 (Department of Constitutional Affairs, 2007) came fully into force in April 2007 and provides the statutory framework for decision-making on behalf of people lacking capacity. The relevant key principles of the Act are:

- that the court will assume the court user is capable of making a decision unless it has established a lack of capacity and taken all practicable steps to aid the person to make a decision; and
- if the court makes any act or decision on behalf of a person, it must be in their best interests and the aim of the act or decision must be achieved in the least restrictive way.

The Mental Health Act 2007 (Department of Health, 2007) provides the statutory framework for the reception, care and treatment of people suffering from a mental disorder. The Act covers the detention and treatment of patients who are parties in civil law cases, and also patients concerned with criminal proceedings or under sentence from the criminal courts. There are no specific provisions covering the position of a person with mental health conditions involved in other civil or family proceedings. However, the Act contains a number of safeguards for detained patients, one of which is access to a Mental Health Review Tribunal. This is a court with the power to review detentions under the Act and to order the discharge of a patient where the legal grounds for detention are no longer met.

The Disability Discrimination Act 2005 (British Government, 2005) provides protection for disabled people by making an act of discrimination unlawful in the areas of employment, the provision of goods, facilities or services, and the provision and management of premises. The Act does not deal specifically with the rights of a disabled person involved in court proceedings. However, as a government agency, HMCS is bound by the Act, so courts must provide the same service to a disabled person as they would to a non-disabled person and must not make it impossible or unreasonably difficult for a disabled person to use the service.

Practitioners generally lacked a detailed understanding of these Acts and would refer to them on a case-by-case basis, should they become relevant. Court staff, such as clerks and court managers, appeared to be the least knowledgeable about the legislation in place. While many had heard of the Acts, few had any knowledge of their content. The most familiar Act was the Disability Discrimination Act (British Government, 2005). However, practitioners mostly referred to it in relation to ensuring people with physical disabilities would be able to access the courts, as opposed to meeting the needs of court users with mental health conditions, learning disabilities and limited mental capacity.

Legal practitioners such as barristers, solicitors and magistrates reported that they knew of the existence of various Acts in relation to mental health and disabilities. However, once again, their depth of understanding of the Acts' content was low. Typically they referred to the Mental Capacity Act (Department of Constitutional Affairs, 2005) and the Mental Health Act (Department of Health, 2007) but this was often in relation to defendants and their ability to stand trial. In regard to victims and witnesses, legal professionals generally suggested that they would use the Acts to help make decisions about a court user's capacity and to identify their level of vulnerability. Others explained that they used the Acts as an information source when situations arose that they had not experienced before, such as the use of a Litigation Friend.

There was also no specific policy addressing the needs of vulnerable court users from the beginning to the end of their court experience. Instead, policies covered different stages of the court process and related to different agencies.

Even though there are some policies which relate to all victims and witnesses, legal practitioners and court staff tended to know rather less about policies which relate to mental health and disabilities.

All courts lacked a defined pathway through the criminal, civil or family courts for court users with mental health conditions, learning disabilities and limited mental capacity. Such a pathway would describe the route that a court user should take from their initial contact with the justice system to completion of the trial or hearing and communication of the verdict. The pathway would outline the process and highlight which agencies should implement it, signposting them to possible support available, e.g. charitable support organisations such as Mind.

Criminal courts did have a system with some of these characteristics. For example, the Code of Practice for Victims of Crime (CJS, 2005) sets out the services that victims can expect to receive from the criminal justice system, such as the right to information within specified timescales and a dedicated family liaison officer for bereaved relatives. However, these were laid out amongst general codes of service for all court users, such as the Criminal Case Management Framework. Provision of any additional or specialist support required by court users with mental health conditions, learning disabilities and limited mental capacity was dependent upon local practice models, as no comprehensive guidelines were in place. This resulted in a huge variation in the court experiences of this group of court users, demonstrating the clear need for the introduction of support pathways.

The concept of 'care pathways' is a borrowing from NHS use, in which care pathways (also known as clinical pathways, integrated care pathways and various other terms) describe the route that a patient will take from their first contact with an NHS member of staff to the completion of their treatment. They are multi-disciplinary, locally agreed, evidence-based plans which detail essential steps in the care of the patient, describing expected progress and facilitating evaluations (Chartered Society of Physiotherapy, 2002). Their value as a means of reducing variation in care between cases, empowering patients and staff, and providing previews of care which guide expectations makes them an ideal model for the provision of support for court users as described in this study. Similarly, care pathways related to mental health care have already been applied to criminal justice settings with the production of guidance on the Offender mental health care pathway for mentally disordered offenders (Department of Health, 2005).

The creation of such pathways would result in greater accountability. By bringing together all the existing Acts and policies in place to support vulnerable court users, it would make it easier to access information about and follow the specific procedures for supporting court users with mental health conditions, learning disabilities and limited mental capacity. It would also create an opportunity to outline the roles and responsibilities of the different agencies involved, and develop clear lines of communication between them to ensure that they meet court users' needs as effectively as possible.

3. Factors influencing court users' experience

The following chapter considers how the type of court, the court users' particular condition, and the location of their court hearing influenced their experiences.

3.1 The type of court

The opportunities for identification and subsequent support vary across the courts. Generally, the level of support is highest in criminal courts and public family law.

Criminal courts

Interviews with practitioners working in the criminal justice system revealed a tendency to focus more strongly on support for defendants than on victims and witnesses, in relation to mental health conditions, learning disabilities and limited mental capacity. This imbalance was observed throughout the course of the primary research phase, despite the stated scope of the project.

Victims and witnesses in criminal cases can receive support from several different sources. Together, the Witness Care Unit, Victim Support and the Witness Service provide a range of personal support; for example, ensuring the court user knows about and understands the progress and conduct of the case, helping to prepare them through pre-trial visits, and giving them an opportunity to talk about their feelings and concerns.

Victims and witnesses who might otherwise have difficulty in giving 'best evidence' can benefit from 'special measures'. The term 'special measures' describes a set of procedures designed to help 'vulnerable and intimidated' witnesses to give their best evidence in criminal proceedings. These were introduced under the Youth Justice and Criminal Evidence Act 1999 (YJCEA 1999), and can be used at the discretion of the court. The Act specifies that they may be authorised 'only if they are likely to improve the quality of a witness's evidence'.

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

Although any application for special measures must be made by the prosecutor in a case to the court, police officers have an early opportunity to indicate that such an application may be advisable (using the MG2 form, described below). The YJCEA also obliges judiciary members to consider the use of special measures where they feel this would be appropriate, even in the absence of an application. When considering an application for special measures, judiciary members must consider both the witness's condition and any potential impact on the evidence or the case.

Special measures include:

- screening the witness from the accused;
- giving evidence via a live TV link;
- giving evidence in private;
- removal of wigs and gowns by judges;
- video recording of an interview to be admitted as evidence;
- examination of witness through an intermediary;
- use of communication aids, such as a symbol book or alphabet boards; and
- video-recorded cross-examination or re-examination (not yet in force).

Where they are in place, special measures can alleviate some of the stress of attending court and giving evidence.

Aside from special measures, there are some differences in the level of support available. Some of the variation is linked to the severity of the case and the court at which it is heard. More serious cases, which are heard at The Crown Court, tend to benefit from greater resources. Families of victims in homicide cases will be allocated a police Family Liaison Officer to contribute to a co-ordinated response to their practical and emotional needs, involving other appropriate support agencies as required. This support is offered to **all** family members in such cases, not just those with mental health problems, learning disabilities and limited mental capacity. The increased support and single point of contact that such a scheme provides are, however, highly beneficial to this group of court users.

Court users involved in less serious cases which were heard at Magistrates' Courts spontaneously suggested that they would benefit from this type of provision. These court users understood Family Liaison Officer support primarily as a single point of contact. There was a perception among court users who had acted as defence witnesses, and also among members of the Witness Service, that the courts give greater consideration to meeting the needs of prosecution witnesses than defence witnesses. For example, legal representatives spent more time with prosecution than defence witnesses and, according to court users, the space and support available in the court building was prioritised for prosecution witnesses.

In criminal cases, the police should complete the 'special measures assessment and application form' (form MG2), immediately after taking a witness statement or recording an interview. The officer is required to make an assessment of whether the witness should be considered vulnerable or intimidated, and therefore suitable for special measures. They

should explain about the provision of special measures to the victim or witness and record any views the victim or witness expresses. This form is then included in the case file that is sent to the Crown Prosecution Service (CPS).

There are issues about how effectively the police are using the MG2 to identify vulnerabilities. For example, several court users and carers reported that they could not recall the police asking any questions about potential vulnerabilities, suggesting that police officers did not always complete the form. Practitioners within mental health and learning disability fields, including Community Practice Nurses and psychiatrists, queried the ability of police to identify such conditions accurately.

However, practitioners further along the court process, including court staff, the Judiciary and legal representatives, regarded the identification and communication of mental health conditions, learning disabilities and limited mental capacity as the police's responsibility. As a result, they tended to be less inclined to consider identification to be within their remit. Any misidentification at the earliest stage of the court process could therefore potentially have a major impact on the court user's subsequent court experience.

The CPS needs to gain reliable evidence from victims and witnesses in order to take a case to court. The availability of special measures to assist in the collection of reliable evidence prior to the court case and in the courtroom means that vulnerable court users have potential access to additional support. This is not the case in civil or private family law cases, where the courtroom is seen as less adversarial and the method of collecting evidence is not the same.

Civil courts

There are few mechanisms in place to assist in identifying any support needs of court users involved in civil cases. One of the key issues in relation to this is the limited contact between court users, legal representatives and the courts in civil cases. This said, there are some examples of good practice as illustrated in the text boxes.

Good practice: Personal Support Unit (PSU)

The PSU is an independent charity established in 2001, based in the main building at the Royal Courts of Justice in the Strand, London, in Wandsworth County Court, and the Manchester Civil Justice Centre. The PSU provides non-legal advice, help, information and support to litigants in person and to any member of the public attending the courts in need of help or assistance. Voluntary members of staff 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.

Family courts

Identification of court users' mental health conditions, learning disabilities or limited mental capacity was perhaps most likely in public family law cases, where a court user's difficulty would probably be relevant to the case, already known to the agencies involved in the hearing, or more likely to be identified because of the nature and range of agencies involved and the protracted nature of proceedings. There is also potential for extra support in public family law cases thanks to the high level of involvement of public agencies, in particular social services. However, courts do not seem to be making the most of this potential for providing support, as the focus in such cases is typically on supporting the child and ascertaining the court user's ability to parent rather than meeting their special needs.

The type of case could also have an impact on the court user's experience, with those involved in private family law being less likely to want their condition to be disclosed as they expected it would have a negative impact on their case. Court users, particularly those with mental health conditions, often felt that the court would associate their condition with an inability to parent well. Legal representatives working in family law supported this view.

Where a court user received legal aid, case fees were 'fixed' at a single rate for all clients, regardless of their support needs. This meant that, from a solicitor's point of view, cases involving vulnerable court users could involve a considerable extra workload for no additional money. Solicitors described this as a disincentive to take on such cases, and court users involved in cases of this type reported that they had encountered difficulties in accessing legal representation.

3.2 Type of vulnerability

Court users with learning disabilities appeared to be more at ease disclosing their disability than those with mental health conditions. This group tended to think they would benefit from informing courts of their disability so that communication could be better tailored to their needs. Court users with mental health conditions tended to be more reluctant than other groups to disclose their condition because they believed doing so could have a negative impact on their case.

Practitioners also suggested that learning disabilities would be easier to identify than mental health conditions. The latter could be harder to diagnose and difficult to recognise because of fluctuations in their severity. While court users with learning disabilities tended to be more open about their condition, both groups suggested that if someone asked openly about their condition it would encourage them to discuss their disability and in turn ensure that they received appropriate support. Generally, court users were unaware whether or not they needed to disclose their condition, which again made the issue of practitioners broaching the subject important.

3.3 Location

Some local courts have implemented small multi-disciplinary teams, including agencies such as HMCS, CPS, the Probation Service, Family Liaison Officers, Community Mental Health Teams, the police and Witness Service. These teams work well together and are familiar with the individual roles of the different agencies. As a result there appears to be a greater awareness within the agencies of the support available for court users, making it more likely that a user will receive the support they need. Also, as the agencies are working closely together, they appear to communicate more regularly and smoothly about case progression and wider partnership issues.

However, in the wider area of London there are complicated systems of boroughs, courts, and police stations. Communication between agencies in the capital sometimes appeared to be quite poor. Also, small rural courts and police stations tend to encounter fewer cases in which a witness or victim has a mental health condition or learning disability. As a result staff in these locations may be less familiar with the protocols in place and the support available.

4. Key issues

The circumstances discussed in Chapter 3 interact with four issues which have a key impact on court experience. These are: early identification of conditions requiring support; opportunities for disclosing vulnerabilities; access to personal support; and access to legal advice and representation. This chapter discusses these issues, as well as considering barriers, facilitators and good practice in each area.

4.1 Early identification of mental health problems, learning disabilities and limited mental capacity

Early identification of a court user's mental health condition, learning disability or limited mental capacity increased the likelihood of satisfaction with their court experience, as it became a catalyst for the subsequent provision of support throughout their court case. This support included referrals to support organisations, the provision of special measures or requirements, and awareness on the part of the judiciary and legal representatives of the need to tailor communication. When identification occurred later on in the process, it could delay applications for special measures until it was too late for the court to process them according to the Code of Practice for Victims of Crime. This could interrupt proceedings and cause additional unnecessary stress to the court user.

If a court did not identify a court user's mental health condition, learning disability or limited mental capacity and did not put any support in place, it could result in the court user deciding not to pursue the case. For example, in non-family civil cases litigants in person might withdraw their application if they did not understand what was required of them prior to appearing in court and did not have access to any support. Similarly in criminal cases some unsupported witnesses felt that they had not been able to give best evidence when making a witness statement, or were too nervous to appear in court and therefore failed to attend court.

As discussed, court users' mental health conditions, learning disabilities and limited mental capacity were most likely to be identified in public law family proceedings. Initial contact with police and the completion of the MG2 form provide opportunities for identification in criminal cases, although there are major variations in the specificity and quality of the information provided on the forms. There was a perception among some practitioners that the longer family and criminal cases progressed, the less likely it was that the court would identify mental health conditions, learning disabilities and limited mental capacity.

Non-legal practitioners, such as Community Practice Nurses and support workers, suggested that legal professionals might not have the time or knowledge to make such identifications. Legal practitioners felt they were unlikely to have to make such identifications. By the time they came into contact with court users, those with mental health conditions, learning disabilities and limited mental capacity would either have been deemed unreliable witnesses

and not reached court, or other agencies would already have identified their needs and offered appropriate support. In private law family proceedings there are disincentives to self-identification as vulnerable, as this might impact on judgements about the court user's capacity to parent. However, some participants mentioned examples where the opposing party had introduced issues relating to the court user's mental health or learning disability as cases proceeded. On the basis of the current data it is not possible to identify whether late identification is more or less likely in family law than any other case.

Practitioners involved in civil, family and criminal cases during the 'at-court' stage, such as court managers and ushers, the judiciary and magistrates, recognised their responsibility to provide appropriate support for vulnerable court users in general. However, they generally presumed that other agencies would already have identified any special needs before the case reached court. Barristers held the view that it was unlikely such court users would reach court, based on the assumption that the police and the CPS would not regard their evidence as reliable.

In contrast, opportunities for identifying mental health conditions, learning disabilities and limited mental capacity actually increased as a civil court case continued because the hearing was often the first point of contact between solicitors, magistrates and court users. However, as outlined above, identifying such conditions tended not to be a priority for practitioners at court; instead, they were focused on the legal aspects of the case. Also, time constraints resulting from the high turnover and short length of cases meant there was little opportunity for practitioners to spend time assessing court users for vulnerabilities. This meant that the likelihood of identification, even at this stage of civil cases, was not high.

Court staff and legal representatives across all courts tended to focus mainly on ensuring the efficient running of the court. While they recognised that they played a key role in supporting vulnerable court users, the courts are currently dependent upon the assistance of a range of agencies to provide support and tended not to regard the identification of their mental health conditions, learning disabilities or limited mental capacity as part of their remit, thus reducing the likelihood of identification. For courts to develop particular capabilities and processes for identification would potentially significantly increase the resources they required.

Facilitators of early identification

Asking a direct question

Court users stated that they would be likely to give a truthful answer if someone asked them directly whether they had support needs related to a mental health condition, learning disability or limited mental capacity. Police sometimes found it difficult to identify support needs, perhaps because of the often complex conditions of court users, such as a combination of drug or alcohol misuse alongside a mental health condition or learning disability, or alternatively because of their limited training in the field. In these cases it was more important than ever to remember to ask this question. In criminal and family cases, a solicitor's question, or direct wording on a form, would often result in disclosure where it would not otherwise occur.

Clear responsibility for identification

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

Good practice: Witness Care Unit in criminal cases

The Witness Care Unit will undertake a needs assessment of every witness over the telephone with court users to identify their support needs and will offer to explain court procedures as part of this needs assessment. Court users are also offered a pre-trial visit, which is conducted by the Witness Service and which offers another opportunity for court processes to be explained.

The presence of a carer or support worker in the initial stages of a case

If a court user was accompanied by a carer or support worker when an offence was initially reported to the police in criminal cases, the police were more likely to gain an accurate understanding of the court user's condition and take their special needs more seriously. They were also more likely to discuss the court user's need for additional support. Similarly, in civil and family cases, if a carer or support worker was present during initial meetings with solicitors they were more likely to be aware of the court user's needs.

Existing contact with public agencies

Where a court user's condition was an issue of concern for the police, they would sometimes check with agencies such as social services or Community Mental Health Teams to see whether they already knew the person involved. Where these bodies were already aware of the court user, this was a good indication that they were likely to be vulnerable, and they were more likely to receive support. In areas where there was a close working relationship between the police and public agencies, likelihood of identification was therefore increased. For example, in parts of Newcastle the police and Community Mental Health Teams met regularly to discuss those at risk. The police were therefore familiar with the members of the public in their community who had mental health conditions and there were open lines of communication with their support workers.

In public family law, it was likely that the court user's mental health condition, learning disability or limited mental capacity would be directly relevant to the case and that the information held by agencies such as social services would play an important role in proceedings.

Presences of specialist units in criminal cases

In certain types of criminal case, such as domestic violence and sexual assault, the investigation is often handled by specialist units with better resources and officers specifically trained in working with vulnerable people. In domestic violence cases in particular, if good

multi-agency systems and protocols are in place, such as those associated with specialist domestic violence courts or multi-agency risk assessment conferences (MARAC), then any vulnerabilities are almost inevitably identified.

Police officers who specialise in domestic violence cases were often likely to be more aware of the behavioural indicators of mental health conditions and learning disabilities, compared to police from non-specialist departments. Victims of more serious criminal offences are also more likely to be assessed at hospital or offered counselling, which will increase the likelihood of an accurate diagnosis of mental health conditions, learning disabilities or limited mental capacity. In certain cases, the CPS conducted an additional pre-trial witness interview to ensure that evidence was sufficient. This was another opportunity for identification to take place.

Existence of protocol

In criminal cases the police are responsible for the MG2 special measures assessment form referred to in section 2.1 above. Police can also request the presence of an intermediary if they require assistance in communicating with the witness. These processes ensure that the protocols are in place for direct questioning to aid early identification.

Barriers to early identification

Lack of awareness and understanding of mental health conditions, learning disabilities and limited mental capacity

As specified above, in criminal cases the police are responsible for the MG2 form. However, some police appeared to lack training and awareness which would help them to identify situations where the form should be used, and also in how to use it.

Some solicitors might also benefit from training to increase their awareness, as very few had any in-depth knowledge of mental health conditions, learning disabilities and limited mental capacity. Instead they relied on common sense and previous experience to identify any special needs. However, this meant they often failed to identify conditions accurately and had no real knowledge of what constituted appropriate support.

Court staff felt that the easiest way to identify cases of learning disability would be to ask whether a court user was able to read or write, despite this being just one indicator of a learning disability. Few seemed aware of the lengths that some court users would go to to disguise their condition, or of other potential indicators. This indicated that court staff needed more training in methods of identification. Court staff also felt they would find it harder to identify mental health problems that they regarded as 'mild', such as depression or anxiety, compared to those they perceived as more serious, e.g. schizophrenia. This attitude reflected a general misunderstanding of mental health among many court staff, although they did accept that because mental health can fluctuate even schizophrenia could be difficult to identify unless a court user was actually experiencing a schizophrenic episode.

Lack of guidance around discussing court users' conditions

The provision of training in identifying mental health conditions, learning disabilities and limited mental capacity is complicated by the lack of clear definitions of these conditions, or their symptoms, for use by people other than medical specialists. As noted above, court users reported that while they were not always comfortable disclosing their mental health condition, learning disability or limited mental capacity unprompted, they were likely to respond honestly to careful questioning about any special needs. However, practitioners reported feeling uncomfortable about raising the issue of court users' mental health conditions, learning disabilities and limited mental capacity, and suggested that they needed extra support in order to undertake this task.

Lack of direct contact with the court user

Heavy reliance on written communication in civil cases reduced the chances of early identification, as there was little direct contact with the court user. In criminal cases, the Witness Care Unit often relied on risk assessments conducted by telephone to identify any special needs. Practitioners in mental health and learning disability fields, such as Community Practice Nurses and support workers, thought this reduced the likelihood of identifying mental health conditions, learning disabilities and limited mental capacity, as the signs are easier to recognise in face-to-face communication.

Lack of protocol in civil cases

In criminal cases, the MG2 form acted as a catalyst for identification and provision of support for people with mental health problems, learning disabilities and limited mental capacity. There is no equivalent policy in place to trigger the identification of such vulnerabilities in civil or family cases. As a result, practitioners involved in civil and family law were unsure who was responsible for this task.

4.2 Self-disclosure of mental health problems, learning disabilities and limited mental capacity

Court users, carers and practitioners alike stated that they believed that agencies involved in the court process, such as the police and legal representatives, could not be relied upon to accurately identify court users' mental health conditions, learning disabilities and limited mental capacity. Often such practitioners lacked the time, skill, and level of contact with court users to be able to make identification, and protocol was not always in place to assist them in the task.

Facilitators to self-disclosure

Expectation of support

Court users were more inclined to disclose their mental health conditions, learning disabilities or limited mental capacity if they felt it would be beneficial to their court experience. This was more common among those with learning disabilities, as they felt that informing legal representatives and the courts of their condition would mean these agencies would take

steps to facilitate their understanding of the process. Crucially, legal representatives could tailor their communication appropriately. Court users with mental health conditions, such as anxiety, who were conscious that juries and others present in court might find their demeanour strange, were also more likely to want to inform the court of their condition so that those present would be able to understand their behaviour better.

Having a familiar person to disclose to

In criminal cases, self-disclosure was more likely when court users felt that they ‘knew’ the person to whom they were disclosing their condition and were more comfortable with them. This tended to occur where victims and witnesses maintained contact with the same Investigating Officer throughout a case, or where they had the support of a Family Liaison Officer, or had developed good relationships with Witness Service staff. As civil cases tended to be shorter, there was often less contact with legal representatives, so court users were unlikely to develop this type of trusting relationship during their case.

Good practice: Single point of contact

Having one familiar point of contact throughout a trial was beneficial to court users, given that there are so many possible sources of information regarding a court case, for example the Witness Service, Witness Care Unit, CPS, Investigating Officer and so forth. In homicide cases, this single point of contact is usually provided by Family Liaison Officers.

Barriers to self-disclosure

Lack of reassurance

Some court users were self-conscious about their condition and would try to hide their disability to avoid embarrassment. Several, particularly those with mental health problems, were concerned that disclosure of their condition would have a negative impact on the outcome of their case. Court users therefore appeared to lack reassurance that the court would deal with their condition sympathetically, that appropriate support would be in place, and that court officials would take steps to prevent any barriers to with achieving a fair and just hearing.

Being unsure of relevance

Court users explained that they were not always aware whether their mental health condition, learning disability or limited mental capacity was relevant to the case and therefore did not consider disclosing until someone asked them about it directly. This implies a lack of advice on the issue throughout the court process, although police, legal representatives and in-court support organisations all had opportunities to inform court users of the option of disclosing any vulnerability and the support that was in place to help them.

Concerns about being discredited

Court users who felt they could effectively manage their mental health condition, learning disability or limited mental capacity and that it was therefore not relevant to the case were

unlikely to want to disclose their condition. Several felt it would result in the court unjustifiably discrediting their evidence. Those with mental health conditions involved in family cases were least likely of all to want to inform the courts of their condition, as they believed it would be detrimental to their case. Many family solicitors supported this view.

4.3 Access to personal support

Court users with mental health conditions, learning disabilities and limited mental capacity explained that they often found dealing with unfamiliar situations and people stressful and a source of anxiety. Being involved in a court case meant court users had to deal with exposure to a variety of different challenging situations. Those with learning disabilities found the unfamiliar situations hard to understand and those with mental health conditions were concerned that a trial would have a negative impact on their mental health. Court users involved in criminal cases found giving a statement daunting. The thought of seeing the defendant at court was incredibly stressful and cross-examination was also a difficult experience. Across all court types, entering court and passing security were negative experiences, as was hearing of the negative outcome of a trial. Those with learning disabilities often struggled to find their way around the court building due to unclear signage.

Court users with mental health conditions, learning disabilities and limited mental capacity therefore reported that they benefited from support that helped them deal with these situations. They explained that having access to basic practical and moral support, such as being accompanied on the journey to court, receiving regular updates on the progress of the court case, and having someone to talk to during the day, could alleviate stress and prevent fluctuations in mental health. This type of support is similar to the support provided for court users without identified vulnerabilities by the Witness Service.

Facilitators to accessing practical and moral support

Access to an existing support network

Court users who already had the support of a carer, advocate or support worker (for example, a mental health practitioner or contact through a charity such as Mind) could rely on these existing relationships to provide moral support when no other support had been arranged for them during their case.

Presence of a small multi-agency teams

In areas with close working relationships between agencies such as the police, community mental health teams and the courts it was more likely that court users would receive appropriate support.

Barriers to accessing practical and emotional support

Being a defence witness

Both legal representatives and court users who had acted as defence witnesses suggested that defence witnesses receive less support in court than prosecution witnesses. When the number of volunteers and space in the separate waiting areas was limited, the members of the Witness Service said they tended to prioritise the needs of prosecution witnesses, particularly since defendants and their witnesses had the visible support of the defence legal team.

Lack of awareness of available support

Across all three courts, few court staff or legal representatives were aware of any support organisations that specialised in working with court users with mental health conditions, learning disabilities or limited mental capacity to which they could refer court users.

Reaching the end of a trial

Court users felt they needed support after outcomes had been received to help them to cope with the results of their case and to access further support that they may need. Even in criminal cases where support was available before and during a hearing, this support tended to end abruptly as the case came to a close. Support from the Witness Service and/or from intermediaries stopped at the conclusion of a hearing, leaving court users to arrange their own transport home. In many cases they were alone when they received news of the verdicts or outcome of their case, even when it was not in their favour. There was no procedure in place at any of the courts to ensure that on-going support could be made available if required. Several court users with mental health conditions reported having to refer themselves to their GP for support after the stress of going through a trial. This suggests that people need such support, and that there are probably other court users who need it but are not as proactive at accessing the support.

Good practice: Communication of verdicts and sentences (criminal cases)

A carer or support worker, with client consent, provides the Witness Service with their contact details as well as those of the court user, and requests that they be informed of the outcome of proceedings. This allows practitioners working close to court users to ensure that the court users will not be alone when they receive the news. Where there is no support network or key contact, the Witness Service, Victim Support or other court-led agency makes provision for home visits when they relay case outcomes to court users. This has been piloted. However, it is currently only a local discretionary practice organised by branches of the Witness Service.

4.4 Access to specialist support

Most court users with mental health conditions, learning disabilities and limited mental capacity tended to report that they only required basic practical and moral support to help them to deal with the pressure of a court case. However, for those whose conditions were

less stable or who were less capable of managing their condition, access to specialist support, for example from an intermediary, carer, community mental health worker, or Clinical Practice Nurse, was vital. Specialist support predominantly included assisting the court user to communicate effectively, recognising signs that their mental health might be fluctuating and require additional support, and managing their medication.

Good practice: Intermediary involvement in investigation stage

Intermediaries can assist both police and court users to facilitate communication and optimise the evidence given at the investigation stage of criminal cases. This could ultimately raise the proportion of cases reaching trial and the provision of a detailed assessment report that assists police and other practitioners in their approach to supporting the court user throughout the court case.

Good practice: Use of intermediaries to facilitate communication in court

Intermediaries can communicate and explain to the court user the questions asked by the judge, magistrate and prosecution and defence teams. They can also communicate the court user's responses back to the court. They can make the judge or magistrate aware if any questions are posed in a manner which is inappropriate or difficult to understand. Court users also reported that the presence of an intermediary offered moral support in the courtroom. However, intermediaries are officers of the court and should be, and be seen to be, independent.

Barriers to accessing specialist support

A lack of court staff training in mental health conditions, learning disabilities and limited mental capacity

While court staff across all courts, such as ushers, front of house and court managers, as well as members of the Witness Service, were aware of the importance of meeting the needs of vulnerable court users, they were generally not specifically trained in identifying or working with those with mental health conditions, learning disabilities and limited mental capacity. They therefore did not feel comfortable dealing with the needs of court users who presented with more complex needs such as severe communication problems, or mental health conditions that required careful management or medication.

A lack of awareness of specialist support

Few court staff or legal representatives knew where to refer people who needed specific support for their condition.

4.5 Access to legal advice and representation

Court users in all types of court reported that contact with solicitors and barristers had a positive impact on their court experience. They stated that they were reassured by having someone on their side who could fully explain the court process to them. In particular, court

users involved in criminal cases felt that they needed support from legal representatives when they were preparing to give evidence. Litigants in person in civil and family cases also reported feeling unprepared for their appearance in court.

Facilitators to accessing legal advice and representation

Presence of clear communication

Court users reported high levels of satisfaction with their court experience when their solicitor or barrister took time to explain issues relating to their case. This was most common among those involved in family law. Practitioners felt that this was because a relatively high number of family law cases involve people with mental health conditions, learning disabilities and limited mental capacity. As a result, practitioners working in family law have comparatively extensive experience in dealing with this user group and therefore know that they may benefit from extra support.

Barriers to accessing legal advice and representation

Fixed legal aid fees

Many legal practitioners felt that representing court users with mental health conditions, learning disabilities and limited mental capacity required more resources than working with other court users. However, within the current system of legal aid, payment is the same for all groups. As a result, some solicitors are unwilling to accept such cases and court users involved in civil and private family law cases are more likely to litigate in person.

Concerns about interfering with evidence

While court users involved in criminal cases often reported that they felt unprepared for the experience of giving evidence in court, practitioners suggested that there were concerns about helping court users prepare for cross-examination as they were afraid of being seen as 'coaching' victims and witnesses for their time on the stand.

Good practice: Liverpool Witness Support, preparation and profiling

The Witness Support preparation and profiling model was mentioned by support agencies as a model of practice for support in the criminal justice process. The Investigations Support Unit (ISU) of Liverpool City Council started the Witness Support preparation and profiling initiative to help promote equal access to justice for people with mental health or learning difficulties. The process commences after the investigation stage where witnesses are provided with an in-depth support and preparation programme. An assessment is made of the witness's potential to be a credible and competent witness in a particular criminal trial and a profile is drawn up detailing their capacity to be a witness. This includes advice about what support the witness will need to best present their evidence. A report on the assessment is presented to the court, the prosecution and the defence. The initiative also provides support to help witnesses to develop the skills necessary for them to give credible evidence and helps to develop their understanding of the court process and what will be expected of them when they attend court.

Lack of solicitors with experience of mental health conditions, learning disabilities and limited mental capacity

Solicitors who specialised in working with this particular group of court users reported being inundated with referrals from voluntary sector support organisations as well as work from the Public Office of Protection. Only a limited number of solicitors had experience in this field, and they felt unable to meet the demand. There is a further problem in that court users who are litigating in person do not know how to access their support.

4.6 Knowledge and awareness of the judiciary

The nature of interactions with the judiciary impacted on a court user's experience. When judges and magistrates made a point of addressing the court user directly, and took care to tailor their communication style appropriately (in particular, avoiding jargon and taking the time to check the court user had understood proceedings), this substantially improved court users' satisfaction with the experience. Court users reported that it made them feel respected. In particular, it increased their ability to accept the case outcome and made them feel respected and involved in the court process.

Facilitators to judiciary's knowledge and understanding of court users

Identifying court users' needs to the judiciary

To a certain extent, once they were aware of a court user's mental health conditions, learning disabilities or limited mental capacity, judges would adapt their communications by slowing their pace of speech and altering their language to make it as direct as possible. However, when judges or magistrates had not been told that a witness was vulnerable they were left having to rely on noticing any communication barriers during the trial.

Use of intermediaries

The study showed that the support of an intermediary who can provide a translation of courtroom terminology, including that of the judiciary, was invaluable in ensuring that court users understood the questions they needed to answer.

Barriers to knowledge and awareness of judiciary

Limited time

Adapting communication to ensure that it is delivered clearly and slowly throughout a case can clearly improve the experience of vulnerable court users. However, doing so for the entire duration of a case may be impractical due to time restraints.

Lack of awareness of best approach to court users with mental health conditions, learning disabilities and limited mental capacity

The judiciary are encouraged to modify their communication style in order to facilitate communication with this group of court users. However, some judiciary members were unsure of how to strike a balance between making adjustments which are useful, and

patronising, or appearing to patronise, victims and witnesses. Additional training and awareness of what is useful and helpful in working with these vulnerable court users could be helpful.

4.7 Provision of special measures

When special measures were used appropriately they had a very positive impact on court users' experiences. When intermediaries were present during police interviews they helped court users to communicate effectively. In addition, intermediaries could also assist in the identification of further appropriate special measures. Knowing they could give evidence via a video link or screen often encouraged court users to pursue a case, as it removed the pressure of appearing in court or confronting the defendant. As court users with mental health conditions, learning disabilities and limited mental capacity also reported finding formal settings and unfamiliar people daunting, the judiciary's removal of wigs and gowns could help them to feel more comfortable and capable of attending court.

Facilitators to the provision of special measures

Presence of multi-agency working

Court users were most likely to benefit from the provision of special measures when there were good working relationships and clear lines of communication between the police, CPS and the courts, and when all practitioners involved had a good working knowledge of what measures were available.

Good practice: Regular meetings at the Old Bailey

Regular meetings are held at the Old Bailey between front-of-house court staff, the Witness Service, Family Liaison Officers and judiciary to discuss upcoming hearings to ensure that everyone is aware of the needs of any court users and that any special measures have been arranged as required.

Barriers to the provision of special measures

Poor communication

In some cases special measures were not clearly explained and, as a result, court users found on the day of the hearing that their expectations of support had been mistaken. When courts did not receive applications for special measures in time to make them available, the resulting disruption or disappointment could have a very detrimental effect.

Good practice: Newcastle Community Learning Disability Team leaflet

The Community Learning Disability Team in Newcastle developed a guide to special-measures provisions and pre-trial visits, containing photos and explanations, for use by police and other practitioners.

Poor provision

Not all courts had the necessary technology to provide video links, and there could be problems over the operation or state of repair of facilities. Court users who had used intermediaries reported that they were very effective in aiding their understanding of the court process, assisting them in their ability to give evidence and having a positive impact on their overall court experience. However, because the use of intermediaries is a relatively new special measure there was limited awareness among legal representatives and the judiciary, and reportedly among the police. In addition, the intermediaries themselves reported a shortage of trained intermediaries, so there are relatively few available to support court users.

Attitudes of judiciary and legal representatives

Special measures need to be approved by the judiciary and magistrates. However, several questioned the need for special measures. Some members of the judiciary also reported that defence counsel would often oppose special-measures applications, believing they gave an unfair advantage to the prosecution. Many legal representatives suggested that the use of special measures could upset a desirable 'balance' between the needs of the court user and the needs of the trial.

Attending civil and family courts

Although it is possible to apply for special requirements in civil and family courts, this appears to happen very rarely, and few legal practitioners were aware of the possibility. Solicitors and magistrates tended to perceive civil and family courts as less intimidating than criminal courts and therefore tended not to believe special requirements would be necessary. However, court users did not support this view. The small number of court users who had experience of both civil and criminal courts explained that they found them equally stressful, while court users involved in family cases felt they could have benefited from measures such as the use of screens to avoid confrontation with other parties.

5. Recommendations

This chapter summarises the recommendations from each report, in relation to:

- the identification and disclosure of mental health conditions, learning disabilities and limited mental capacity;
- access to practical, moral and specialist support;
- legal advice and representation; and
- the provision of special measures and requirements.
- It also offers an overall recommendation for the court system.

The cross-cutting nature of this project means that these recommendations relate to a wide range of different agencies and organisations with involvement in the justice system. The sections which follow do **not** allocate responsibility for discussion and possible future implementation of each recommendation. We suggest that the MoJ takes the lead in and follows up our proposed recommendations and suggestions during dissemination of the report to clarify allocations and implications. In some cases, a single recommendation may relate to more than one body or area of work.

A number of these recommendations have close parallels with those of two other recent documents. These are Lord Bradley's *Review of people with mental health problems or learning disabilities in the criminal justice system* (Department of Health, 2009), and Sara Payne's *Redefining Justice: Addressing the individual needs of victims and witnesses* (Ministry of Justice, 2009). These parallels will again be explored in greater depth during dissemination.

A number of these recommendations have major resource implications. Where these would make implementation impractical or impossible, other ways to address the issues involved for court users with mental health conditions, learning disabilities and limited mental capacity should be examined.

Recommendations which have implications for bodies outside the Ministry of Justice have been marked as 'suggestions' in the sections which follow.

The courts to which each recommendation applies are noted in the right-hand column.

5.1 Overall

Recommendation 1: A support pathway for court users with mental health conditions, learning disabilities and limited mental capacity	All courts
<ul style="list-style-type: none"> ● Define a detailed pathway for support through each type of court specifically for people with mental health conditions, learning disabilities and limited mental capacity. This should outline the court process, which agencies should be involved, what support is available, and how the agencies should work together, clearly defining each agency's roles and responsibilities. 	All courts
Recommendation 2: Small multi-agency teams	All courts
<ul style="list-style-type: none"> ● Set up small, multi-disciplinary teams to work with court users with mental health conditions, learning disabilities and limited mental capacity. Team members should have clearly defined lines of communication, and an understanding the available support mechanisms and roles within these. ● For criminal proceedings, these teams should include representatives from the police, WCU, NHS or Community Mental Health Teams, and major voluntary sector support organisations. ● In civil and family proceedings, these should include representatives from the Citizens' Advice Bureau, court staff and voluntary sector support organisations. ● Investigate ways to achieve multi-agency working within resource constraints and organisational structures. 	<p>All courts</p> <p>Criminal</p> <p>Civil and family</p>

5.2 Identification of mental health conditions, learning disabilities and limited mental capacity

Recommendation 3: Training for recognition and awareness of mental health conditions, learning disabilities and limited mental capacity	All courts
<ul style="list-style-type: none"> ● Offer and promote more thorough training to the police in recognising the signs of mental health conditions, learning disabilities and limited mental capacity, and in use of the MG2 and MG11 forms. ● Offer training to Witness Care Unit staff (criminal courts), court staff and members of in-court support organisations, including the Witness Service (criminal courts) and Personal Support Unit (civil courts), to raise knowledge and awareness of mental health conditions, learning disabilities and limited mental capacity, in order to respond appropriately to need. ● Allocate responsibility for provision of this training. ● Offer training to the judiciary and magistrates to increase their awareness of the presence of court users with mental health conditions, learning disabilities and limited mental capacity. 	<p>Criminal</p> <p>All courts</p> <p>All courts</p> <p>All courts</p>

Recommendation 4: Multi-agency working and information-sharing	All courts
<ul style="list-style-type: none"> ● Encourage multi-agency working and information-sharing between police, support services and the courts to better enable identification of court users with mental health conditions, learning disabilities and limited mental capacity. 	Criminal
<ul style="list-style-type: none"> ● Develop systems for implementing the above effectively within the requirements of data protection legislation. 	All courts
<ul style="list-style-type: none"> ● Ensure all practitioners are aware of their duties to facilitate communication and information-sharing. 	All courts
<ul style="list-style-type: none"> ● Promote opportunities for multi-agency communication (e.g. quarterly meetings with key agencies). 	All courts
<ul style="list-style-type: none"> ● Review each agency's IT systems to facilitate communication. 	All courts
Recommendation 5: Opportunities for identification	Civil/family
<ul style="list-style-type: none"> ● Where there would normally be limited contact between courts or legal representatives and the court user, such as in civil cases with litigants in person, create more contact points to increase opportunities for identification. 	Civil
<ul style="list-style-type: none"> ● Working with practitioners in mental health conditions, learning disabilities and limited mental capacity, develop an identification checklist to aid practitioners who liaise with civil and family court users and ensure it is followed. Make this available also to legal representatives and in-court support organisations. 	Civil and family

5.3 Disclosure of mental health problems, learning disabilities and limited mental capacity

Recommendation 6: Opportunities for disclosure	Criminal
<ul style="list-style-type: none"> ● Make the checklist proposed in Recommendation 5 available to practitioners in criminal courts, as this would give court users more opportunity to inform practitioners of their condition. 	Criminal
Recommendation 7: Guidelines for disclosure	All courts
<ul style="list-style-type: none"> ● Develop guidelines to ensure that practitioners consult court users to decide whether, and how, to disclose their mental health condition, learning disability or limited mental capacity to the court. 	All courts
<ul style="list-style-type: none"> ● Develop guidance on the sensitive use of 'direct questions' about mental health conditions, learning disabilities and limited mental capacity. 	All courts
<ul style="list-style-type: none"> ● Provide guidelines for advocates, judiciary and legal representatives on how to deal with disclosures made by court users. 	All courts

5.4 Access to practical, moral and specialist support

Recommendation 8: Promotion and expansion of support	All courts
<ul style="list-style-type: none"> ● Produce a list or database of support organisations to increase awareness among practitioners, including the police, legal representatives and in-court support organisations, of the support available to court users with mental health conditions, learning disabilities and limited mental capacity. In criminal cases, this may be provided through use of the Witness Care Unit's existing database. The extension of this resource would be particularly helpful in civil and family courts, where in-court support is not as readily available, and across all courts for post-court support. 	All courts
<ul style="list-style-type: none"> ● Consider how to ensure that court users with mental health conditions, learning disabilities and limited mental capacity are offered support before arrival at court and after a hearing. 	Civil and family
<ul style="list-style-type: none"> ● Expand the support offered to court users with mental health conditions, learning disabilities and limited mental capacity by the Personal Support Unit to all civil courts and consider how an equivalent service could be offered in family courts. 	All courts
<ul style="list-style-type: none"> ● Build on current work to proactively offer the opportunity for pre-trial visits as far as resources allow by verbal communication in criminal courts. Create opportunities across all courts for pre-trial visits by court users with mental health conditions, learning disabilities and limited mental capacity, so that they are aware that they can familiarise themselves with the building. 	All courts
<ul style="list-style-type: none"> ● Training should be made available for carers, advocates and voluntary sector organisations who work with court users with mental health conditions, learning disabilities and limited mental capacity, to prepare for their role in court and enable them to provide the best possible support they can. ● Responsibility for provision of training should be allocated. 	All courts
Recommendation 9: One point of contact	All courts
<ul style="list-style-type: none"> ● Create a single point of contact between the courts and individual court users with mental health conditions, learning disabilities and limited mental capacity, who can fulfil this role throughout the life of a case. The Witness Care Unit provides such a point of contact in nearly all criminal cases; in very serious offences it may be a specialist police officer or an independent advocate. Where there is more than one individual or unit who could fulfil this role, ensure that it is clearly and consistently allocated. 	Criminal
<ul style="list-style-type: none"> ● Provide a case manager for case parties with mental health conditions, learning disabilities and limited mental capacity, to provide one point of contact and oversee support. 	Civil and family
<ul style="list-style-type: none"> ● Consider how court users with mental health conditions, learning disabilities and limited mental capacity are informed of case outcomes when this happens away from the court, to ensure they receive emotional support at the time. 	All courts
<ul style="list-style-type: none"> ● In criminal cases, explore ways to ensure that victims and witnesses with mental health conditions, learning disabilities and limited mental capacity are supported when they hear the verdict; this is particularly important where the court user is unaccompanied at home. 	Criminal

Recommendation 10: Provision of information on the court process	All courts
<ul style="list-style-type: none"> ● Continue to promote pre-trial visits, in particular for court users with mental health conditions, learning disabilities and limited mental capacity. 	Criminal
<ul style="list-style-type: none"> ● Ensure the DVD 'Going to Court – A step-by-step guide to being a witness' (produced by Her Majesty's Court Service) is provided to all court users. 	Criminal
<ul style="list-style-type: none"> ● Produce an equivalent DVD on the civil and family court processes and promote its availability to court users. 	Civil
<ul style="list-style-type: none"> ● Introduce the provision of pre-trial visits to users of the civil and family courts who have mental health conditions, learning disabilities and limited mental capacity, and promote its availability. 	Civil
<ul style="list-style-type: none"> ● Develop guidelines outlining what can be done to help court users with mental health conditions, learning disabilities and limited mental capacity to prepare for attending court. Examine ways to manage this, taking into account concerns over interfering with evidence. 	All courts
<ul style="list-style-type: none"> ● Offer information tailored for the needs of court users with mental health conditions, learning disabilities and limited mental capacity, e.g. leaflets in alternative formats such as 'easy read'. 	All courts

5.5 Access to legal advice and representation

Recommendation 11: Increased contact with legal representatives and advisers	Civil and family
<ul style="list-style-type: none"> ● In civil and family cases, where parties have mental health conditions, learning disabilities and limited mental capacity, provision should be made available for additional contact with legal representatives prior to the day of the hearing. 	Civil and family
<ul style="list-style-type: none"> ● Explore ways to facilitate access to legal advice to court users with mental health conditions or learning disabilities who litigate in person. 	Civil
<ul style="list-style-type: none"> ● Promote the contact details of solicitors who specialise in cases involving court users with mental health conditions, learning disabilities and limited mental capacity, so court users can access their services more easily. 	Civil
<ul style="list-style-type: none"> ● Courts should promote information provided by the Law Society listing solicitors that specialise in working with clients with mental health conditions, learning disabilities and limited mental capacity. 	Civil
<ul style="list-style-type: none"> ● Any evaluation of fixed fees must consider the impact on cases concerning court users with mental health conditions, learning disabilities or limited mental capacity. 	Civil and family

Suggestion: Training for legal representatives	All courts
<p>Make training in working with court users with mental health conditions, learning disabilities and limited mental capacity available to solicitors. This should include guidance relating to modification of language in courts and appropriate methods of communication.</p>	All courts

5.6 Information for the judiciary

Suggestion : Training for the judiciary	All courts
<ul style="list-style-type: none"> ● Offer training to the judiciary and magistrates on communicating, engaging and working with court users with mental health conditions, learning disabilities and limited mental capacity. 	All courts

5.7 Provision of special measures and requirements

Recommendation 12: Expansion of special measures to civil and family cases	Civil and family
<ul style="list-style-type: none"> ● Make available special measures, such as the use of screens and intermediaries, to court users with mental health conditions, learning disabilities and limited mental capacity who are involved in civil and family cases. ● Promote the special requirements that can already be applied for in civil and family cases among legal practitioners. 	Civil and family Civil and family
Recommendation 13: Training and awareness of special measures	Criminal
<ul style="list-style-type: none"> ● Increase police, Witness Care Unit and Witness Service awareness of special measures and the specific details of each, to ensure the measures are provided when appropriate and explained adequately to manage court users' expectations. In particular, ensure the right of the defendant to view the video of a witness's evidence prior to the trial is communicated to the court user. ● Ensure police are aware of special measures available in their local courts and how these can assist vulnerable and intimidated witnesses. ● Provide additional training and awareness raising on the uses of intermediaries for the police, CPS and Witness Care Unit. 	Criminal Criminal Criminal
Recommendation 14: Adhering to protocols	Criminal
<ul style="list-style-type: none"> ● Consider measures to ensure the Witness Care Unit and the CPS adhere to their responsibility to inform the courts of any special measures in advance and ensure their provision, as outlined in the Criminal Case Management Framework, 2007. ● Consider measures to ensure that the early special measures meetings between the CPS, police and witness take place as appropriate. 	Criminal Criminal

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Court experience of adults with mental health conditions, learning disabilities and limited mental capacity. Report 1: Overview and recommendations

This is Report 1 in a series of six reports on a research project exploring the court experience of adults with mental health conditions, learning disabilities and limited mental capacity. The research relates to victims and witnesses in criminal cases, and to participants in civil and family cases.

This report outlines the key findings. 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, in particular in the criminal courts, and these support the court experience of vulnerable court users. The report recommends a clear support pathway for court users with mental health conditions, learning disabilities and limited mental capacity, alongside improved systems of accountability, the establishment of small multi-disciplinary teams, an increase in relevant training, improved processes for early identification of conditions, and guidelines to increase awareness of how disclosures can be made. A single point of contact for vulnerable court users throughout a case is proposed.

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