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Court experience of adults with mental health conditions, learning disabilities and limited mental capacity

Report 6: Technical report

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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 sixth 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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1. Introduction

People with mental health conditions and learning disabilities may experience greater difficulties in accessing justice than other groups, and possibly also greater discrimination and disadvantage (Mind, 2001). Current Government policy aims to meet the needs of victims, witnesses and users of the justice systems 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 services. As part of this programme, the MoJ commissioned BMRB and Professor Roger Evans of Liverpool John Moores University to undertake research into the experiences of court users with mental health conditions, learning disabilities and limited mental capacity.

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

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

This is the final report of a series of six produced from the research. It provides an introduction to the project, outlining the background to the research followed by its aims, design and conduct. The report concludes with an overview of the content of the five preceding reports.

2. Background to the research

There is limited research literature specifically concerned with the experiences of vulnerable court users. However, some previous research suggested that people with mental health conditions were disproportionately at risk of becoming victims of crime, and were likely to experience greater difficulties achieving civil justice (Mind, 2001). Another study suggested that people with mental health conditions were more likely to come into contact with the court system through higher levels of relationship breakdown (Meltzer et al., 2002).

The Mind (2001) report suggested that people with mental health conditions experienced difficulties in accessing justice and often felt that the system discriminated against them. This research also found that 79% of staff working within justice organisations, including the Crown Prosecution Service (CPS), the police, and the legal professions, believed that adults with mental health conditions had difficulties accessing justice. Mind (2001) also found anecdotal evidence that in cases where a witness had a mental health condition, the likelihood of a not guilty plea was increased.

In relation to civil cases, the Citizens Advice Bureau's (CAB) research on its clients' experience of bailiffs found that the use of intimidation as a debt recovery method was of particular concern for people with mental health conditions and other vulnerabilities (CAB, 2000). It was 'generally accepted' that bailiff action in these circumstances was inappropriate. However, the Institute of Revenues Rating and Valuation code of practice (IRRV, 2001) places reliance on local authorities for identification, a practice which, in the CAB's experience, was unreliable and could not ensure the protection of vulnerable people.

Other studies have also highlighted issues around the identification of court users with mental health conditions. Marwaha (2005) found a reluctance to disclose mental health issues to relevant professionals. This was largely due to an expectation of discrimination, a perceived lack of understanding or prejudice by staff, and anxiety that this might negatively influence case outcomes (Marwaha, 2005; Powell et al., 2006).

Mind (2001) suggested that the fears of prejudice and misunderstanding among court users with mental health difficulties are valid. This study found that agencies often based their responses to victims with mental health conditions on incorrect assumptions and prejudices about mental health, which then compromised the ability of the agency to respond appropriately. Watson et al, (2004) found that police officers felt a heightened sense of risk when presented with a person with schizophrenia, which could compromise their ability to communicate effectively with that person. Several reports have suggested that police (Swanson, 2001; Brekke et al., 2001), police doctors (Mind, 2001), court staff, and other legal professionals could benefit from extra training to ensure that legal decisions are not based on stereotypical views (Mind, 2001), and that support agencies can respond effectively.

The Government has developed a series of legislative and policy initiatives to meet the needs of this group more effectively. These include the introduction of ‘special measures’ (Youth Justice and Criminal Evidence Act, 1999), which are designed to help vulnerable and intimidated witnesses give best evidence, the use of intermediaries, and initiatives on domestic violence such as the establishment of Specialist Domestic Violence Court .

Despite the government’s response, a recent literature review for the Ministry of Justice (KM Research and Consultancy, 2009) highlighted the need for further work. This review suggested that people with mental health conditions still experienced difficulty accessing justice and, moreover, still felt that the system discriminated against them. Evaluations of special measures and intermediary schemes showed a positive impact on users’ satisfaction with the system, but also indicate that some issues remain. For example, some criminal justice staff and police still have difficulties identifying people with mental health conditions or learning disabilities (Burton et al., 2006, Plotnikoff and Woolfson, 2007). Mind (2007) suggest that most police officers in London currently receive only three hours training on mental health awareness, while crown prosecutors, barristers, magistrates and other service providers receive no compulsory training at all.

The number of potentially vulnerable or intimidated witnesses (VIW) identified by researchers during the evaluation of special measures far exceeded the Home Office (1998) estimate. The latter suggested that between 7% and 10% of witnesses fall into this category, but around 45% of the witnesses screened by telephone by Burton et al, (2006) identified themselves as vulnerable or intimidated. Another Assault (Mind, 2007) survey found that 71% of respondents with mental health problems had been a victim of crime within the last two years. This research found some reluctance around disclosing conditions to the police in order to access special measures, because it was believed that this would lead to indifference, a lack of sympathy, or even cause a case to be dropped. Sixty per cent of participants felt that the appropriate authorities did not take their reported crime seriously. Thirty-six per cent did not report the crime because they did not expect anyone to believe them. Mind (2007) considered that a ‘credibility imbalance’ caused attrition of cases at all stages in the criminal justice system.

KM Research and Consultancy (2009) highlighted the need for further research to explore the experiences of these court users. This study aims to build on the research already completed and provide much needed evidence in this area.

3. Research aims

Overall, this study aimed to determine how the courts system supports the complex and specific needs of adults with mental health conditions, learning disabilities and limited mental capacity. The study places a strong emphasis on exploring the direct experiences of court users in criminal, civil and family courts, excluding defendants and young witnesses in criminal cases. There were two phases of research: a scoping study (Phase 1) and a main stage of research (Phase 2). Phase 1 was developmental in nature, with a view to informing the design and approach of Phase 2.

3.1 Aim of Phase 1

Phase 1 aimed to map 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 specifically aimed to identify and explore:

- policies, services and practices available to support parties, victims and witnesses with mental health conditions, learning disabilities and limited mental capacity;
- any variation across England and Wales and how this affected the quality of local service provision; and
- different service models, considering how different agencies operate and any early examples of local good practice.

3.2 Aim of Phase 2

Phase 2 built on Phase 1 with the overall aim of developing a more localised and in-depth understanding of experiences and impacts in relation to the court experience of these groups. More specifically, Phase 2 aimed to:

- explore how policies and services varied across the two case study areas, and how this affected the quality of local service provision;
- assess the aims of different service models, explore how different agencies operated and explore any early examples of potential good practice;
- investigate how these parties, victims and witnesses experienced the courts and highlight key barriers and key facilitators of a good experience; and
- investigate current practices adopted by the judiciary, legal representatives and court staff (including those working within the support services identified in Phase 1) to support parties, witnesses and victims with mental health conditions, learning disabilities and limited mental capacity.

4. Research design

As outlined above, the research involved two phases. This approach had two main advantages.

- It allowed the research team to adopt an iterative approach, reassessing and amending the design and approach as the project developed, in order to make best use of the research and take account of what they were learning.
- It assisted in the development of research and recruitment tools.

Figure 4.1 outlines the two main phases of the research, which are discussed in detail below.

Figure 4.1: Research design

Phase 1

Scoping exercise: Nationwide
- Desk research
- Key stakeholder interviews
- Consultation with Area Directors

Phase 2

Court user experiences: London and North East
- Court observations
- Practitioner interviews

Court user experiences: Nationwide
- Court users and carer in-depth interviews
- Journey mapping experiences

4.1 Phase 1 design

A cascading approach to recruitment was adopted, given the initial uncertainty about who would be best placed to provide the information required and the need to develop a rounded picture. Information was gleaned from the research already completed to help guide future actions; for example, reviewing who should be interviewed and what should be discussed.

Phase 1 began with desk research and focused on written strategies and policies regarding courts' processes for supporting vulnerable court users, previous research and literature in this area, and relevant good practice models such as specialist domestic violence processes. The desk research took place over a two-month period from December 2007 to January 2008. Its findings were continually augmented throughout the rest of Phase 1 and Phase 2, as additional documents were highlighted or given to the research team.

Phase 1 primary research took place between January 2008 and June 2008. This involved:.

- **Interviews with key stakeholders:** 27 face-to-face interviews were conducted with key stakeholders, including representatives from central government agencies, legal professions, support organisations inside and outside court, voluntary providers and academics with a relevant specialism.
- **Consultation with area directors:** Her Majesty's Court Service is divided into seven regions and 25 areas, each of which is managed by an Area Director. Area Directors are responsible for services in criminal, civil and family courts within their area. The 25 court Area Directors were contacted by email and asked a series of four questions, focusing on identification of conditions, support, examples of good practice, and policies and procedures. Fifteen responses were received by email, six of which were followed up by telephone to gain further information. Two additional telephone interviews were conducted with Area Directors who did not respond via email.

Phase 1 primary research also involved a small sample of senior practitioners and policy-makers who had a strategic understanding of the court systems. This provided insight into the identification and support processes in place for court users with mental health conditions, learning disabilities and limited mental capacity, but did not seek detailed information at an operational level. Findings were taken as indicative and the issues raised were explored further as part of Phase 2 of the research. Information elicited about the differences between civil, criminal and family court types helped guide Phase 2, during which the distinctions were explored in further detail.

4.2 Phase 2 design

Phase 2 of the research took place between June 2008 and July 2009, and aimed to develop a more operational and in-depth understanding of experiences and impacts. Two case study areas – London and the North East of England -- were selected to reflect national variation in practices.

These case study areas were not intended to be representative. Rather, they were considered to be areas in which good practice was in place, and where the courts carried large caseloads. The latter would ensure that courts had experience of users with mental health conditions, learning disabilities and limited mental capacity, and would assist in the recruitment of research participants. Therefore, as noted in section 4.3, caution is needed in generalising any findings as these areas are not representative.

The primary focus of this phase was on the court user's experience of the court. A range of methods and approaches were used to develop a rounded and in-depth understanding of the relevant issues. These included the following.

- **Court observations:** observations were undertaken to gain a more detailed understanding of each case study area and court type. This stage was also used to build relationships and to encourage participation in the research process;

- **In-depth interviews with practitioners:** face-to-face interviews with 143 practitioners working inside and outside court at an operational level across the two case study areas took place. This included representatives from the Judiciary, court and support organisations. A small number of practitioners were interviewed by telephone rather than face to face to provide more flexibility for the practitioner.
- **In-depth interviews with court users and carers:** face-to-face interviews with 61 court users with mental health conditions, learning disabilities and limited mental capacity, and with 23 carers, were undertaken across the country. Initially it was planned that these interviews would be carried out only in the case study areas. However, due to recruitment challenges the sample area was extended to cover all of England (see section 5.4 for further detail).
- **Journey mapping:** Interviews with court users and carers included a 'journey mapping' element in which participants drew on all elements of the process to fully explore their experience of the 'journey' through court.

A breakdown of the courts and organisations involved in both Phase 1 and Phase 2 of the research, and the quota details, can be found in Appendix A.

4.3 Limitations in design

Although this was a large study, using robust sampling structures, methodologies and analytical techniques, it is important to note the limitations of the research design.

- **The research was wholly qualitative in nature, so it is not possible to provide any numerical or statistical data.** Qualitative research aims to explore the range of issues, considering 'why' and 'how' issues occur, rather than 'how often' or 'how many'.
- **Phase 2 focused on just two case study areas, so the findings are not necessarily representative.** The research focused on London and the North East to gain a detailed understanding of the policies, practices and court experiences in these areas. While the court users were recruited across England the findings are not necessarily representative.
- **The individual court users in the sample had voluntarily self-disclosed their mental health condition, learning disabilities or limited mental capacity to the researchers.** As the sample relied on voluntary disclosure, the research may not have captured the experiences of those who would be less likely to disclose their needs.
- **Due to problems in recruiting appropriate court users it was necessary to recruit some whose cases had taken place up to three years before the research, so some experiences might have been different had they taken place under current policies.** That said, the majority of the relevant criminal justice reforms had taken place before this point. The study also excluded court users with live cases, which restricted the extent to which the research could capture the experiences of the current systems.

- **The findings on civil courts are based mainly on the perspectives of practitioners and stakeholders because only a few of the court users and carers interviewed had direct experience of the civil courts.** However, these interviewees identified key issues which these users felt should be addressed, and the reports discuss these.
- **Court users whose primary difficulty was limited mental capacity were difficult to identify.** In general, 'limited mental capacity', for research participants, was seen as a consequence of some mental health conditions or learning disabilities. It was, therefore, difficult to draw conclusions relating specifically to this group.

5. Conduct of the research

The large scale and sensitive nature of the research meant that its conduct required careful consideration. This chapter provides an overview of the team's approach to ethical approval and the recruitment approaches used in the study. The obstacles to recruiting participants for complex, sensitive studies of this nature are discussed, along with the strategies used in this case to overcome these. The approach taken to gain informed consent, the conduct of the fieldwork and the analysis process are also discussed.

5.1 Ethical approval

This study dealt with a number of highly sensitive issues, most importantly the participants' disclosure of their conditions and the nature of their experience. Therefore careful consideration was needed to determine whether the study needed ethics approval. Also, because it was the first study of its kind, there was no precedent for obtaining ethical consent for research in this particular area.

At present there is no UK-wide system for ethical research governance, approval or review. Individual organisations or institutions may or may not have their own structures for ethical approval. There is currently a vigorous debate about whether systems of ethical approval, or ethical approval alone, are better suited to achieve research governance.

A principal way of ensuring good ethical practice in social research is by the application of guidance on ethical research. A number of organisations provide such guidance, including the Government Social Research Unit (GSR, 2005), the British Society of Criminology (BSC, 2006), the Economic and Social Research Council (ESRC, 2005), the Market Research Society (MRS, 2006) and the Social Research Association (SRA, 2003). Ultimately, however, responsibility for good ethical research practice lies with researchers and research organisations rather than any external institutions or organisations providing ethical approval.

Following extended discussions between the MoJ and BMRB, informed by consultation with experts and researchers in the field, the research team concluded that the study did not require external ethical approval. Abiding by MRS guidance (MRS, 2006) and the design of consent forms and research tools, were considered sufficient to ensure that the project complied with national and international standards for good ethical practice in research. BMRB has a proven track record in dealing with sensitive research and vulnerable participants, for example in work such as the Home Office Vulnerable and Intimidated Witnesses Project (Hamlyn et al., 2004). In addition, an ethics committee set up specifically for this project reviewed the research design, the data collection instruments, the recruitment process, and informed consent procedures. This committee consisted of an academic, a research expert and practitioners working in the field of mental health or learning disabilities.

The project did not require approval under the ethical provisions of the Mental Capacity Act (MCA) 2005, as the research excluded those that lacked capacity as defined in the MCA. However, the team was mindful of all the provisions of the Act and ensured that the research complied with it, including the fundamental principle contained in s1(2)

'A person must be assumed to have capacity unless it is established that he lacks capacity'.

5.2 Defining mental health conditions, learning disabilities and limited mental capacity

One of the findings of Phase 1 was that there were no consistent definitions of learning disabilities or mental health problems and, more often than not, no specific definition was used at all in the court setting. Consequently, for Phase 2, court users self-identified as having a mental health condition, learning disability or limited mental capacity – or, in a number of cases, more than one condition. The research team examined the use of these terms in the mental health literature to explore specialist definitions and help them to outline how they would identify and include court users in Phase 2. This section discusses definitions, the key issues research encountered, and the study's approach to self-definition.

Definitions of mental health condition

The term 'mental health condition' covers a wide range of problems which affect someone's ability to cope with daily life. These are often evident in changes in mood, changes in cognition or thinking patterns, maladaptive behaviours, and physiological changes. No single, clear definition exists which covers the whole range of difficulties which may be referred to as 'mental health conditions'. This may include a range from bereavement, phobias and anxiety disorders, to the more acute forms of depression, and disorders such as schizophrenia.

Mental health professionals have two systems for diagnosing and classifying mental health conditions; the *International Classification of Diseases* (ICD 10), produced by the World Health Organisation (WHO, 1996), or the *Diagnostic and Statistical Manual* (DSM IV), produced by the American Psychiatric Association (APA, 1994). Both list categories of disorder and provide diagnostic criteria in the form of symptoms. While broadly comparable, however, differences remain in the categorisation of particular conditions.

For example, DSM IV groups 'clinical disorders' such as anxiety, depression, autism and schizophrenia/ psychoses under the same category (APA, 1994), but then goes on to list subcategories for each (e.g. the manual then distinguishes different types of anxiety disorders according to different diagnostic symptoms). By comparison, the ICD 10 separates mood disorders, anxiety disorders, schizophrenia/psychotic disorders and learning disabilities into distinct categories from the outset, with further subcategories similar to DSM IV. People presenting to mental health services may be diagnosed with more than one disorder, depending on their presented symptoms. At times, they may also experience respite from symptoms while still being classified under a diagnostic category. Therefore, as acknowledged by DSM IV (APA, 1994), the diagnostic categories are ‘not discrete with absolute boundaries’.

Key issues

Alongside the complexity of definitions and some resultant lack of clarity among staff, individuals with mental health problems may not have had access to services or received a diagnosis. In addition, it is often common for court users to experience anxiety and distress on the day of the court appearance specifically in relation to this. This is a normal reaction to a stressful situation rather than evidence of mental illness, a factor which had to be considered during recruitment.

Definitions used for recruiting court users with mental health conditions

Court users were asked to self-identify their mental health status. Recruiters and practitioners were provided with examples of conditions that could be described to court users if necessary, to gain further information about the nature of their condition and to ensure the user met the essential criteria for the research. These included depression, anxiety disorders, phobia, panic, psychosis, schizophrenia and eating disorders. Recruiters were instructed to attempt to recruit participants with a broad range of different mental health issues, to avoid a predominance of more common conditions, such as depression, in the sample. Quotas were set to ensure that this was the case.

As well as self-definition, the recruiters asked court users whether they required any support in their day-to-day life; for example, from social services, a counsellor, a care coordinator, an advocate, key workers, psychiatric nurses, or friends and family. This question was designed following advice from mental health and learning disability organisations and provided a further method of determining the extent to which a person was affected by a mental health condition. It also helped to avoid recruiting those who experienced stress and anxiety due to the court case alone, although court users who fell into this group appeared not to volunteer for the research. That said, some court users with learning disabilities did report short instances of anxiety and depression as a result of their court case.

Definitions of learning disabilities

Once again, a range of complex factors is involved, and there is no single clear-cut definition which can be used to identify people with disabilities of this type.

- *The Diagnostic and Statistical Manual IV (*DSM IV, APA, 1994), and the *International Classification of Diseases* (ICD 10, WHO, 1996) both incorporate IQ into their diagnostic criteria and definition of learning disabilities. Specifically, both state that an IQ of below 70 indicates a learning disability. DSM IV also states that there are “concurrent deficits or impairments in present adaptive functioning in at least two of the following areas: Communication; Self-care; Home living; Social Interpersonal Skills; Use of community resources; Self-direction; Functional academic skills; Work; Leisure; and Health and Safety." Both systems categorise the degree of learning disability according to the level of IQ, using the categories mild, moderate, severe and profound.

- The American Association for Mental Retardation (AAMR, 1992) uses an alternative term (mental retardation) which is less likely to be used by current practitioners, due to perception of the terminology as derogatory. AAMR defines a learning disability as: "Significantly sub-average intellectual functioning existing concurrently with related limitations in two or more of the applicable adaptive skill areas." AAMR does not use IQ measurements at all in criteria and therefore abandons the subcategories of the extent of learning disability. Instead, they focus on adaptive functioning areas.

Key issues

Some organisations use the term 'difficulty' as this avoids the disability 'label' and puts the person before the disability. In medical and psychiatric terms, disability and difficulties are sometimes used interchangeably. However, 'difficulty' tends to reflect a specific area in which the person has difficulty. Conversely, learning disability tends to indicate broader intellectual impairment in learning, understanding and general functioning (Royal College of Psychiatrists, 2004).

Definition used for recruiting court users with learning disabilities

The research included court users with a learning disability and also with specific learning difficulties, to ensure it covered a broad sample and range of experiences. However, an attempt was also made to ensure that common difficulties such as dyslexia were not over-represented. The reports that follow use the term 'learning' throughout to refer to both 'difficulties' and 'disabilities' as defined above.

Court users were asked to self-define their learning disability status. In order to facilitate the recruitment process for practitioners, the broad definition based on DSM IV and the AAMR was used, as follows: 'Significantly sub-average intellectual functioning existing concurrently with related limitations in two or more of the applicable adaptive skill areas: Communication; Self-care; Home living; Social Interpersonal Skills; Use of community resources; Self-direction; Functional academic skills; Work; Leisure; and Health and Safety.'

Examples were provided of learning disabilities such as Down's syndrome, autism or literacy problems. In addition, the question about the level of support received (discussed above in relation to mental health) was also asked of court users with learning disabilities. This provided additional information about the nature of their disability.

Definition of limited mental capacity

Court users were also asked to self-identify their mental capacity status, and asked about the support they received. A broad definition of limited mental capacity was provided to assist practitioners and court users. This was "A lack of capacity could be because of a severe learning disability, dementia, mental health problems, a brain injury, a stroke or unconsciousness due to an anesthetic or a sudden accident. This would include anybody who may have functioned normally at one point in their life but due to the above illnesses, have capacity that is compromised".

As a result, in this research most of the people who could be regarded as having limited mental capacity were in this situation as a consequence of their mental health condition or learning disability. In addition, as discussed in section 4, it was very difficult for court users to self-define as having a limited capacity. Attempts were made to recruit court users through their carers (for example through care homes). However, carers were reluctant to participate and assist in the recruitment. Therefore, limited findings could be drawn from the research with regards to those with limited capacity.

5.3 Recruiting key stakeholders and practitioners

During Phase 1, the research team negotiated access to key agencies via the Ministry of Justice, through the recommendations of stakeholders and the project advisory group, and in a series of interviews. Members of the Judiciary and court staff in the two case study areas were accessed through liaison with court managers, who played pivotal roles in the identification and willingness of practitioners to become involved in the research.

5.4 Recruiting court users and carers

During Phase 2, a total of 61 court users were recruited who self-identified as having experience of a mental health condition, learning disability or limited mental capacity and who had been through a part or all of a justice process within the last three years. Court users who were currently involved in 'live' cases were excluded for ethical and legal reasons. This research did not include the experiences of defendants. The study also recruited 23 carers. Carers were defined as relatives, friends or other unpaid individuals who had supported a court user through the process.

Quotas were set for recruiting court users to ensure the research covered a range of experience across criminal, civil and family courts as well as across mental health conditions, learning disabilities and limited mental capacity. The quotas set and the extent to which these were met is shown in Appendix A. A number of court users self-defined as having more than one condition at the point of recruitment. These participants were recruited by the condition which they believed had most impact on their day-to-day lives. Also, during interviews, several court users disclosed an additional condition which had not been mentioned during the recruitment process. These additional conditions are not included in the table in Appendix A.

The recruitment of court users and their carers posed a number of challenges, including the absence of specific records, court users not always being identified during their experience of court, the lack of specific support organisations for this group of court users, the sensitive nature of the research, and the difficulty in defining people from these groups. To increase recruitment rates, the initial stipulation of recruitment within the two case study areas (London and the North East) was later extended to recruitment across England and Wales.

Approaches to recruitment

As there was no single access route to suitable participants, a number of different methods were employed to achieve quotas and access the widest range of individual experience within the sample. These are outlined below.

Omnibus data

BMRB's Omnibus data gave access to over 400 individuals in London and the North East. However, only 34 of these households had any experience of going to court in the past three years and, of these, only five had someone within the household with a mental health condition, learning difficulty or limited mental capacity. Due to the high cost and low yield of this approach, it was decided not to run the questions again across England and Wales.

Survey data

Access to HMCS survey data was briefly explored, but the yield was extremely low due to the large number of restrictions on eligibility applied to the sample. Court databases and Crown Prosecution Service case files were also considered, but accessing the information necessary to retrieve these data involved high resource costs for court staff. Also, users might not be identified during the court process as having a vulnerability, or this information might not be noted in their file.

Data from the Children And Family Court Advisory Support Service (CAFCASS)

Sample data for 500 parents who were involved in family proceedings related to mental health conditions and learning disabilities was accessed through CAFCASS. Having gained approval from the CAFCASS research committee, an opt-out letter was sent to users, with a week's grace in which they could request removal from the contact list. However, the time taken to gain approval and to access data limited the numbers recruited. In addition, recruitment from this sample was complicated by the inclusion of children as well as adults.

In-court recruitment

During Phase 1, links were built with the Personal Support Unit (PSU), a charitable drop-in support service located within the Royal Courts of Justice (RCJ). A researcher attended the unit for a day's observation, joining volunteers at the help desk. Volunteers at the units based at the RCJ and Wandsworth and Manchester County Courts were also briefed in order to continue recruiting users themselves. Because of the large number and high turnover of voluntary staff, recruitment guidance material, including posters and leaflets, was permanently on display in the office.

This method did not yield many participants directly, mainly because of the number of cases relating to language problems or physical disabilities, and the exclusion of live cases. However, the strong link with the PSU was helpful in raising awareness of the research, which contributed to recruitment.

Web-based recruitment

Following advice from stakeholders and free-find searches, a wide range of user-led and charitable sites with a general mental health or learning disability focus were identified. By joining discussion forums and posting adverts on notice boards such as Mind, Rethink, Shaping our Lives and the Carers UK forum, information was disseminated directly to a large population. This unintrusive approach encouraged self-identification and volunteering for the research, but still resulted in a limited number of interviews. This was mainly because service users had misunderstood the remit of the project, and were not eligible for reasons such as being defendants, or having been involved in cases too long ago.

Notices were also circulated among professional networks via email bulletins, through contacts in national charities and forums such as the Foundation for Learning Disabilities and the Mental Health Service Providers Forum. These encouraged professionals to identify eligible service users and provide them with contact details, or make contact on their behalf.

Recruitment contracted to Central England First

A user-led learning disability charity was contracted to use its own staff to recruit users to the research, a method successfully employed on a previous study. Although staff had been confident that they could access suitable participants, yield was lower than expected due to the high specificity of the quotas, and the time taken to identify individuals.

Referral through posters in courts and support organisations

With the agreement of court managers, posters in easy-read format were displayed in courts in case study areas. Again, these resulted in few interviews, as those who contacted BMRB did not fit the recruitment criteria. Due to the nature of the conditions considered, it seemed that self-referral was problematic. Potential participants often needed a verbal explanation of the details of the project rather than being able to respond to written information.

In and out of court support organisations

Extensive free-find searches, professionals' advice and snowballing were used to generate a database of voluntary sector organisations which provided support inside and outside court. This database was continually expanded over the recruitment period. Recruiters made an initial phone call to organisations, and those willing to assist in advertising the research were sent posters and information leaflets prepared in an easy-read format. Staff were able to identify and refer consenting service users to the project, or provide them with information enabling them to make their own contact. This method facilitated the arrangement of interviews, which could be conducted at staff offices or community centres. Carers groups were identified and contacted using the same methods as other support groups.

Public agencies

The research team gained the support of the local managers of Mental Health Community Teams and Community Learning Disability Teams in several London boroughs, who then authorised them to advertise the research in health centres and circulate information about the research among staff. The number of interviews obtained through staff signposting service users to the research was relatively low, due to staff time constraints, though the effort was warranted as it engaged teams with the work.

Solicitors and Citizens Advice Bureaux

Court users in civil cases proved very hard to access because they tend to lack support from any key organisations that could be used as an indirect route to participants. In order to overcome this, CABs and solicitors' offices were contacted and asked to display posters and inform any suitable clients of the project. However, this approach did not result in any referrals, perhaps because of the heavy workload of the practitioners and the low number of relevant cases during the recruitment period.

Victim Support and Witness Care Unit

Victim Support gave consent for its area managers to assist in the identification of eligible court users who used their services. However, Victim Support reported difficulties in recruiting court users with mental health conditions, learning disabilities and limited mental capacity. A variety of reasons were given, including the potential that this group of court users often did not reach court due to lack of good evidence. It was also felt that this group of court users tended to have established contact with other support agencies and so did not require care from Victim Support.

The Witness Care Unit were unable to access records of their users without the name of the defendant in the case, which closed this route for recruitment.

Snowballing

Interviews with practitioners and carers provided researchers with an opportunity to ask participants about any court users they knew of, and to contact them to suggest participation in the study. This recruitment route worked particularly successfully, as participants tended to understand and support the research, so were able to reassure the individuals they approached that the work was valuable.

Most useful approaches

Having explored a variety of routes for recruiting this particularly hard-to-reach group, it was found that the most successful means of engaging participants was through individual staff from local support organisation offices and advocacy centres, with an interest in and commitment to the study. As well as identifying users, these individuals acted as local conduits within and between organisations, gaining the support of other practitioners working in the field. This motivation was important to overcoming 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. Key factors in developing relationships with a large number of individuals within organisations were:

- drawing on existing relationships;
- taking a proactive approach to establishing contacts at the earliest stage possible and maintaining regular telephone contact;
- readily providing detailed information about the study to reassure individuals of the integrity of the project; and
- showing flexibility and a readiness to adapt recruitment approaches to the individual needs of the organisation, such as through customising information leaflets further where requested.

A reluctance to encourage users to participate stemmed from a concern that ‘reliving’ distressing experiences could have an adverse emotional impact. However, recruiters emphasised that participants were not expected to discuss the crime or subject of the case itself, and reassured them that researchers were well trained and would allow participants to shape the interview. It was also found that the opportunity for participants to discuss their experiences could be therapeutic and empowering, and could constitute an incentive for participation.

5.5 Process for ensuring informed consent

The sensitivity of this research area, especially in relation to participants’ vulnerabilities, required an extremely thorough process to ensure court users gave informed consent to participate in interviews. This process for gaining informed consent was tailored according to individual needs to ensure that participants fully understood what they were consenting to.

Informed consent was gained at the point of interview directly from participants. To aid communication, the researcher explained the details of the research verbally, and using leaflets written in an easy-read style specifically for the project (including information in written and picture formats). Where present, carers and support workers were encouraged to assist in explanations, but consent was always gained from the participant rather than a third party. Researchers also led participants through a consent form which checked their comprehension of the subject of research and what the interview would involve. These questions were initially designed as part of a development research study conducted for the Department of Health which led and enabled the first ever national survey of people with learning disabilities.

5.6 Fieldwork

All the fieldwork was conducted by experienced qualitative researchers with extensive expertise in both interviewing skills and knowledge of this policy area. Interviews were conducted in a range of venues. Practitioner interviews tended to be conducted at the place of work. Court users who were recruited through support providers or public agencies could take place in the offices of the relevant organisation. The choice of the most comfortable and secure environment was taken by the participant.

Researchers guided the interview using a topic guide, or aide–memoire, that allowed questioning to be responsive to the issues arising. Separate topic guides were developed for each phase and for different participant groups within each phase; separate guides for practitioners, carers and court users were also developed, with specific documents relating to court type. Court user interviews also included a journey mapping exercise as a facilitating tool to explore the participant's experience of the court system. Interviews were recorded using digital recording equipment, and tapes were transcribed for analytical purposes.

5.7 Analysis

This study was wholly qualitative in nature, so it is not possible to provide any numerical or statistical data. A qualitative approach was adopted to allow people's views and experiences to be explored in detail. It should be noted that qualitative methods neither seek nor allow data to be given on the numbers of people holding a particular view nor having a particular set of experiences. The aim of qualitative research is to define and describe the range of emergent issues and explore linkages, rather than to measure their extent.

Transcripts were analysed through a technique called Matrix-Mapping. Based on the topic guide and researchers' experience of conducting interviews, a thematic matrix was constructed and the transcript material was then summarised into this framework. Researchers then reviewed the material and identified features within the data, mapping the range and nature of phenomena, finding associations, and providing explanations. This approach identified themes that emerged from the interviews, as well as highlighting differences between different groups

Following completion of all fieldwork and full analysis of the data, journey maps were chosen from the full user sample to reflect the full range of user experience in a 'snapshot'. Events and key junctures were taken directly from the transcript, summarised and mapped by the researcher, in order to visually chart levels of satisfaction through the process. Structuring the template was minimised in order to keep it flexible enough to incorporate a range of timescales for case duration, complexity and recall of specific events. Key issues and underpinning features were then used to construct the reports. Verbatim quotes were also used to illustrate and illuminate the findings.

6. Outline of reports

As outlined initially, this is the final report of a series of six reports detailing the methodological approach and findings of this study. The reports are structured according to the stages of the court process from the court user's perspective, drawing on findings from across the criminal, civil and family courts.

- **Report 1** – Overview and recommendations: this report presents overall conclusions from across the findings.
- **Report 2 –** Pre-court: this report presents the findings of court users' 'pre-court' experiences of the process, before any appearances in court.
- **Report 3 –** At court: this report presents the findings of court users' 'at court' experiences.
- **Report 4 –** Post-court: this report presents the findings of court users' 'post-court' experiences.
- **Report 5** – Policies, services and practices: this report provides an overview of the policy processes, services and practices in place to support court users with mental health conditions, learning disabilities and limited mental capacity.

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Appendix A

Final quota: Phase 1 fieldwork

Face-to face-interviews

Respondent type	Number of respondents
Court Staff	7
Judge (x3)	
Barrister	
Solicitor*	
Civil Magistrate**	
Criminal/Family Magistrate*	
Central Government Agencies	5
Ministry of Justice (x2)	
OCJR (x2)	
HM Court Service	
Agencies with a wider involvement in court processes	5
Local Authority/Social Services (CSIP)	
Psychiatric Social Worker	
Liverpool – Witness Support, Preparation and Profiling	
Police	
CPS	
(Voluntary) support organisations	4
Victim Support	
Witness Service	
Personal Support Unit	
Civil Mediation Council	
Support organisations outside court	5
Mind	
Revolving Door	
Voice UK	
Mencap	
RCJ Advice Bureau	
Academic	1
Family Justice	
TOTAL	**27**

Area Directors	(E = Email, F = Follow up)
North & West Yorkshire	E,F
Cumbria and Lancashire	E,F
North Wales	E,F
Devon & Cornwall	E,F
London (civil and family)	F
Birmingham, Coventry etc	F
London - North & West	E,F
Lincolnshire, Leicestershire etc	E,F
Derbyshire, Nottinghamshire	E
Humberside and South Yorkshire	E
Merseyside and Cheshire	E
Dorset, Gloucestershire and Wiltshire	E
Bedfordshire, Essex etc	E
Cambridgeshire, Norfolk etc	E
Surrey and Sussex	E
Thames Valley	E
Mid and West Wales	E

Final quota: Phase 2 fieldwork

Practitioners – North East

The following table outlines the quotas set for practitioners and in brackets the final sample achieved in the North East for Phase 2 practitioner interviews.

Professionals/ practitioners** (n=70)	County/High court/Court of appeal	Crown	Magistrates	Total
Court staff, including: Area Director Court Managers Clerks, ushers, reception Diversity managers	At least 6 (4)	At least 6 (8)	At least 6 (6)	18 (18)
	Civil	Family	Criminal	Total
Legal representatives Solicitors/lawyers Barristers Magistrates Judges	At least 6 (5)	At least 6 (4)	At least 6 (4)	18 (13)
	Across proceeding type			Total
In court supporting voluntary sector organisations and charities, for example: Witness Service Personal Support Unit National mediation service	10 (7)			10 (7)
Public agencies, for example: Local Authority – including Housing Social Services Police (including appropriate adults services) CPS NHS Trusts/Mental Health Teams Court diversion service Witness Care Unit Local Criminal Justice Boards Intermediaries CAFCASS	12 (13)			12 (13)
	Across type of vulnerability			Total
Support organisations outside court, for example: Victim's support CAB Patient advocacy Mind VOICE UK Respond National autistic society Rethink Mencap The National Centre for Learning Disabilities	12 (9)			12 (9)
Additional interviews 2 Judges from the North East specialising in family and mental health 1 Expert witness (a witness who has expertise, training or skills in a specific subject)	3			3
Total				70 (63)

Practitioners – London

This table outlines the quotas set for practitioners and in brackets the final sample achieved in London for Phase 2 practitioner interviews.

Professionals/ practitioners** (n=70)	County/High court/Court of appeal	Crown	Magistrates	Total
Court staff, including: Area Director Court Managers Clerks, ushers, reception Diversity managers	At least 6 (4)	At least 6 (6	At least 6 (7)	18 (19)
	Civil	Family	Criminal	Total
Legal representatives Solicitors/lawyers Barristers Magistrates Judges	At least 6 (5)	At least 6 (9)	At least 6 (7)	18 (21)
	Across proceeding type			Total
In court supporting voluntary sector organisations and charities, for example: Witness Service Personal Support Unit National mediation service	10 (10)			10 (10)
Public agencies, for example: Local Authority – including Housing Social Services Police (including appropriate adults services) CPS NHS Trusts/Mental Health Teams Court diversion service Witness Care Unit Local Criminal Justice Boards Intermediaries CAFCASS	12 (13)			12 (13)
	Across type of vulnerability			Total
Support organisations outside court, for example: Victim's support CAB Patient advocacy Mind VOICE UK Respond National autistic society Rethink Mencap The National Centre for Learning Disabilities	12 (17)			12 (17)

Court users and carers

This table outlines the minimum quotas set for court users and carers and brackets the final sample achieved.

SOUTH/EAST/WALES: Court Users/ Carers (n=60)	Criminal	Civil	Family	Total
Court users: Mental Health Problem (5) Learning Disability/Difficulty (14) N.B. no more than 5 with learning difficulty Limited Mental Capacity (2) At least 10 male/10 female (7M, 14F) At least 10 18-30/30+ (7 18-30, 14 31+) No. of dropped cases: (1) (No experience of giving evidence used in the case) No. of guilty pleas: (1) (No experience of giving evidence in court) No. of defence witnesses: (2)	14 (8)	14 (3)	14 (10)	42 (21)
Carers	6 (4)	6 (1)	6 (1)	18 (6)
NORTH/WEST: Court Users/Carers (n=60)	Criminal	Civil	Family	Total
Court users: Mental Health Problem (21) Learning Disability/Difficulty (16) N.B. no more than 5 with learning difficulty (2) Limited Mental Capacity (3) At least 10 male/10 female (15M, 25F) At least 10 18-30/30+ (7 18-30, 26 31+) No. of dropped cases: (3) (No experience of giving evidence used in the case) No. of guilty pleas: (1) (No experience of giving evidence in court) No. of defence witnesses: (1)	14 (18)	14 (7)	14 (15)	42 (40)
Carers	6 (7)	6 (7)	6 (3)	18 (17)

Ministry of Justice Research Series 13/10
Court experience of adults with mental health conditions, learning disabilities and limited mental capacity. Report 6: Technical report

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

The research explored the direct experiences of victims and witnesses in criminal cases, and case participants in civil and family courts in 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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