

## Legal professionals' knowledge and experience of autistic adults in the family justice system

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**Abstract:** Access to justice is a key theme in the family justice system, especially for those with particular vulnerabilities. Autism, a development condition characterised by difficulties in social communication and interaction, and the presence of rigid, repetitive behaviours, presents particular challenges in this area. This paper reports the findings of a mixed-methods study with legal professionals working in the family justice system, asking about their knowledge of autism, their perceived self-efficacy when working with autistic clients, and their experience of cases involving autistic litigants. The study reports high levels of knowledge, but low levels of confidence, by legal professionals (N=204), and addresses the experiences of particular cases in follow-up discussions (N=10). The paper concludes by making a series of recommendations for legal professionals to assist autistic people to engage fully in family court proceedings.

### Introduction:

Access to justice has been a key theme in the family justice system for some time, with concern in particular about the effects of legal aid cuts on the ability of various groups within society to access the family courts (see, e.g., Eekelaar 2011, Cobb 2013). It is well established in the literature that some groups are particularly affected by legal aid cuts, not least women and those with disabilities (Trinder et al 2014; Flynn 2015, 75; more generally, Gibson 2010), but of course legal aid cuts are only one dimension of a broader concern about access to justice.

The legal aid debates seen in the UK and elsewhere represent a particular manifestation of a concern about the extent to which those who are vulnerable in one way or another are able to gain meaningful access to justice (or not). The concern, as Degener notes in the foreword to Eilionóir Flynn's *Disabled Justice?* (Flynn 2015: ix) is that 'access to justice in most countries is usually available to those who have financial, political or cultural power, whereas minorities or other groups experiencing discrimination and subordination are excluded from it'. Flynn (2015: 107) goes on to

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suggest that prejudice towards those with disability within the justice system ‘is particular prevalent in the context of intellectual and psychosocial disabilities’.

Although much of the focus for research into this issue has been on criminal justice, Flynn points out that studies in the UK and elsewhere have suggested that similar issues play out in the family justice system as much as in criminal law. McConnell and Llewellyn (2002), for instance, conclude that their research shows evidence of children being unnecessarily removed from parents as a result of their parents’ intellectual disabilities. They note that other studies suggest that child protection professionals demonstrated ‘a strong tendency ... to conflate intellectual disability with perceived parenting deficiencies’ (2002: 302), and suggest that the legal representation of parents with intellectual disabilities is often inadequate for various reasons (ibid, 309).

It is for this reason, as Flynn explores in her book, that Article 13 of the UN Convention on the Rights of Persons with Disabilities 2006 (the CRPD) is of such significance:

### **Article 13 - Access to justice**

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

A particular manifestation of this concern is in relation to individuals diagnosed with autism. While autism has been the subject of some (though minimal) consideration in the context of access to justice in the criminal law sphere (Cashin and Newman, 2009, Cooper and Allely 2017; Maras et al 2017), there is a gap in relation to the family justice system (for a practitioner discussion about private law children cases involving children on the autism spectrum, see Desrosiers 2015). There is minimal knowledge about their treatment by the family justice system or how their condition may affect their access to justice in this context.

Autistic people<sup>1</sup> comprise around 1 per cent of the population (Baird et al., 2006; Brugha et al., 2011). Autism is a developmental condition characterized by both social symptoms (e.g., difficulties in communication and interaction) and non-social symptoms (e.g., restricted and repetitive behaviours, atypical sensory sensitivities) (DSM-5, APA 2013). While the manifestation of autistic traits varies considerably from person to person, common features include a difficulty decoding non-verbal

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<sup>1</sup> The term ‘autistic person’ is the preferred language of many individuals on the autism spectrum (Kenny et al 2016), and that is the language that we use in this article, though there is a diversity of views.

cues, and understanding non-literal language and subtext. In addition, a departure from daily routine, and lack of control of the situation can cause autistic individuals a great deal of distress. One concern is that these aspects of autism render individuals with the condition vulnerable to being taken advantage of in negotiation or dispute settings.

This paper reports the findings of a small exploratory study into family legal professionals' understandings of autism, and their experiences of cases involving autistic adults involved in family court cases.<sup>2</sup> We use the family justice system as a case study because family court disputes are particularly likely to be emotionally fraught, and also (since the reduction in the scope of legal aid following the Legal Aid, Sentencing and Punishment of Offenders Act 2012) more prone to litigants being in court without legal representation (Bevan 2013). However, while some of the issues discussed here may be exacerbated by a lack of legal representation, it is worth highlighting that they are not a product of LASPO and are certainly not limited to the context of cases involving litigants in person, as our research findings show.

The family court also makes a strong example because interpersonal relationships are often the foundation of the dispute, and there are well-known complaints made by some organisations, such as Fathers4Justice, that family court decisions favour women (though empirical evidence does not support these claims: see Hunt and Macleod 2008; Harding and Newnham 2015), which is particularly pertinent in the autism context because diagnosis rates for autism are three times higher in men than in women (Loomes, Hull and Mandy, 2017)<sup>3</sup>.

It may be noted that although we have focused in this paper on the family justice system, we draw on work in the criminal justice context to inform our work. Moreover, these two strands of work together are of broader relevance to the justice system in general, and our findings (and those in the criminal context) can no doubt be applied, by analogy, to other areas of legal practice.

As we set out in the methodology below, our study had two elements: a knowledge and attitudes questionnaire for legal professionals, and qualitative discussions with a subset of practitioners who self-identified as having been involved in a case involving one or more autistic litigants. This research is designed to understand the current levels of knowledge about autism amongst family justice professionals and to give insight into those professionals' experiences of cases involving litigants on the autism spectrum. As part of our on-going research, we are also interviewing autistic individuals who have had direct experience of family court litigation, to ensure that our study has input from service users as well as service providers. We intend this study to help understand the present position and develop good practice, and we present preliminary recommendations in the conclusions to this paper.

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<sup>2</sup> While the family justice system is also concerned with autistic children, our focus is in autistic adults who are parties to proceedings and their interactions with the family justice system and the legal professionals working within it.

<sup>3</sup> Note that autism is thought to be under-recognised and under-diagnosed in women and girls, particularly in those with less severe symptoms (Gould & Ashton-Smith, 2011).

## **Methodology:**

### ***Questionnaire***

Legal professionals were invited to take part in a questionnaire that was available online (powered by Survey Monkey), or as a paper copy, between February and July 2016. Participants were recruited through convenience sampling methods, purposively targeting Family Law firms and conferences/seminars for family lawyers in England and Wales, as well as via professional contacts, articles in professional journals, publicity from professional organisations such as the Association of Lawyers for Children and Resolution, and internet snowballing methods through social media. To maximise the sample size, all family law firms and chambers in the Jordan's Law Directory were contacted, via email and/or phone, and invited to take part in the research. The survey contained three sections and took approximately 10 minutes to complete. Part 1 asked questions about participants' background, including demographics (i.e., age, gender, ethnicity, location, legal role, and years in current practice) and information regarding training and experience of autism. Part 2 included a Knowledge of Autism scale, adapted from research with GPs by Unigwe et al (2017) to include aspects of autism that were deemed particularly pertinent for legal practice (e.g. difficulty with changes in routine, trustworthiness as a witness). Fifteen statements assessed participants' knowledge of early signs, descriptive characteristics and co-occurring behaviours associated with autism. Respondents rated these statements as 'true' or 'false', and scores on each item were combined to give a total score. Higher scores reflect greater knowledge about autism.

Part 3 was a Self-Efficacy Scale that asked about legal professionals' beliefs in their capabilities to achieve a particular goal. The scale used in the present study was based on previous scales (Unigwe et al, 2017) but was adapted to assess legal professionals' confidence in various aspects of working with autistic clients. Only six items were generated, in order to take into account the time constraints of the target population. Respondents rated each item on a scale from one ('not at all confident') to ten ('extremely confident'), and scores from each item were averaged to yield a mean self-efficacy score. Higher scores reflected greater self-efficacy.

### ***Follow-up Conversations***

Following our questionnaire study, we spoke to ten legal practitioners who put themselves forward to tell us in more detail about their particular experiences with autistic parties. (Our focus was on cases involving an autistic adult, rather than cases involving an autistic child, since our interest at this stage is in the interaction between autistic individuals and the family justice system.) The sub-sample included six lawyers (two solicitors and four barristers) and four judges. These follow-up conversations were conducted in person or by telephone by one of the authors (CP) and followed a semi-structured format. They lasted between 15 and 42 minutes (mean duration, 24 minutes). Our discussions were recorded and transcribed verbatim, though some details (such as names and court locations) have been removed to ensure anonymity. The principal researchers (RG & AR) then developed an initial coding framework together, before separately coding all the transcripts and adding additional codes during the process based on a grounded methods approach. Once coding was

completed, the researchers met and compared codings. There was a high degree of agreement, and in those cases where differences had arisen these were then agreed through discussion.

## Results:

### *i. Questionnaire Findings*

#### *Demographics*

204 legal professionals completed the questionnaire, and were included in the study. An additional three individuals completed only the demographic information section (but not knowledge or self-efficacy scales) before exiting the survey, and were therefore excluded from subsequent analyses. One respondent did not disclose their profession, two did not disclose age, six did not disclose gender, 43 did not disclose location and ten did not disclose ethnicity. For these cases, the knowledge and self-efficacy scores were included in the group average, but their data were not used in analyses investigating association between demographic aspects and knowledge/confidence. Full background information for participants can be found in Table 1. The sample was mainly comprised of full- and part-time judges, barristers and solicitors and represented a range of locations across England and Wales. Respondents were predominantly female (n = 127, 62%), of a White ethnic background (n=183, 90%) and had been in practice for an average of 18 years.

**Table 1:** Full demographic information for questionnaire respondents.

<b>Background Variable</b>	
<b>Age in Years</b>	<b>Percentage</b>
Under 30	8.8
30-39	21.6
40-49	20.1
50-59	26.0
60 or over	22.5
Missing	1
<b>Gender</b>	<b>Percentage</b>
Male	35
Female	62
Missing	3
<b>Ethnicity</b>	<b>Percentage</b>
White background	89.7
Black Background	0.5
Asian Background	3
Mixed Background	1.5
Other	0.5
Missing	4.8
<b>Profession</b>	<b>Percentage</b>
Judge	25.4
Barrister	32.4 (of whom 5.4% = Recorder/deputy judge)

Solicitor	35.3 (of whom 5.9% = Recorder/deputy judge)
Recorder/deputy judge	4.4 (professional group not specified)
Paralegal/Legal executive	2
Missing	0.5
<b>Years in Practice</b>	<b>Average</b>
For judges, years in practice as legal professional	24.6
For judges, years sitting as judge	12
For legal professionals	18
<b>Location of Practice</b>	<b>Percentage</b>
London	14.7
Midlands	7.8
North Eastern	8.3
Northern	6.4
South East	28
Thames Valley	2
Wales	3.4
Western	8.3
Missing	21.1
<b>Legal Area</b>	<b>Percentage</b>
Family only	57.8
Family and other areas	39.7
Missing	2.5

### *Quantitative Analysis*

The majority of those who completed the survey (n=119, 58%) reported that they had knowingly worked with autistic individuals, whether children or adults<sup>4</sup>. Of these, most indicated that they had worked with fewer than five autistic individuals (43%) or between five and ten individuals (39%). Around a third of participants (28%, n=58) had not knowingly worked with autistic individuals, and 12% (n=25) were unsure.

The respondents overwhelmingly reported that they had never received any training about working with autistic people in the family justice system (n=181, 89%). Of those who had received training (n=19, 9%), only three individuals had attended a session specifically dedicated to autism, while the others had encountered the topic as part of a broader session (e.g. vulnerable witness training). Participants were, on the whole, positive about the training received, with most remarking that it was ‘very useful’ (n = 9) or ‘quite useful’ (n = 8), and only two stating that it was ‘not very useful’.

Almost half the sample had some personal experience of autism (n=93, 46%), the majority of whom had an autistic family member (n=36, 18%) or friend (n=37, 18%).

<sup>4</sup> While our study focused on experience with autistic adult parties, previous research suggests that any prior experience with autism can impact on knowledge and attitudes (Unigwe et al 2017). Therefore, when asking this question, we did not exclude experience working with autistic children.

### *Knowledge of Autism Scale*

Respondents showed a high level of autism knowledge, scoring an average of 80% on the Knowledge of Autism Scale (SD=10, range = 47-100%). Knowledge scores were significantly higher for those who had a personal connection to autism (than those who did not (M= 83% versus M=79%,  $t(200) = 2.75, p = .006$ ). In addition, the knowledge scores correlated with age and length of time in practice: those who were younger ( $r = -.24, p < 0.001$ ) and had been in practice for less time ( $r = -.20, p = 0.01$ ) tended to score slightly higher on the Scale. The scores were unrelated to whether respondents had received training on autism ( $p = .41$ ), and did not differ between any of the professional groups ( $p = .14$ ). Though the overall accuracy scores on the Scale were high, the pattern of incorrect answers was systematic. Over 95% of the sample knew that autism can look different in different individuals: for example, that despite stereotypes, autistic people can feel empathy & affection, can live independently, and can make eye contact. However, there were a small number of questions that were answered incorrectly by a higher percentage of respondents (see Table 2).

**Table 2: Group error rates for each question on the Knowledge Scale (those questions showing higher error rates are highlighted).**

Question	Correct Answer	Error Rate
1. People with autism can be interested in social interaction	TRUE	6%
2. Independent living is not possible for autistic people	FALSE	5%
3. People with autism feel no empathy or affection	FALSE	4%
4. A lack of eye contact is necessary for a person to be considered as autistic	FALSE	3%
5. Autism cannot be diagnosed in adulthood	FALSE	3%
6. Most people with autism also have intellectual disabilities	FALSE	14%
7. Females are more difficult to diagnose with autism than males.	TRUE	62%
8. People with autism always display challenging behaviours	FALSE	12%
9. Autistic people have difficulty with non-literal language and non-verbal communication (e.g. body language and gesturing)	TRUE	11%
10. Additional mental health conditions (e.g. anxiety, depression) are more prevalent in individuals diagnosed with autism than in the general population	TRUE	39%
11. People with autism can show unusual reactions to sensory experiences (e.g. lights, smells and sounds)	TRUE	17%
12. Autism is a very rare condition, affecting only 0.05% of the UK population	FALSE	19%
13. Autistic people are more prone to interpersonal violence than non-autistic people	FALSE	30%
14. Change in routine and uncertainty are often upsetting for autistic people	TRUE	5%

15. Autistic people are more suggestible than non-autistic people (e.g. more easily led when giving evidence)	FALSE	60%
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### *Self-Efficacy Scale*

In contrast to their high levels of knowledge, participants reported fairly low levels of confidence in their abilities. The overall average self-efficacy score was 3.8 (between ‘not at all’ and ‘somewhat’ confident) with a standard deviation of 1.67. For each individual question, responses were similar: all between ‘not at all’ and ‘somewhat’ confident (see Table 3). Legal professionals were least confident in knowing what adjustments can be made to help autistic people, and making these adjustments, and most confident about knowing how to find further information and guidance about working with autistic people.

The self-efficacy scores were significantly higher in those with personal experience of autism ( $t(194) = 2.08, p = .04$ ), those who attended training ( $t(189) = 2.26, p = .02$ ) and those who had knowingly worked with autistic individuals ( $t(169) = 4.95, p < .001$ ). There was no difference between the levels in the various professional groups (judges, barristers, solicitors etc. ( $p = .50$ )).

**Table 3:** Average self-efficacy levels for each item.

Item	Mean	Std. Deviation
Recognising the signs and symptoms of autism	3.77	1.92
Working with autistic clients/managing cases involving autistic parties	3.89	1.97
Communicating with autistic witnesses	3.65	1.93
Knowing where to find further information and guidance for working with autistic people	4.28	2.31
Knowing what adjustments can be made to help autistic people in the family justice system	3.47	2.10
Making adjustments to help autistic people in the family justice system	3.56	2.10

### *ii. Practitioners’ Experiences*

We asked a sub-sample of practitioners to tell us in more detail about a case in which they had been involved where one of the parties was (or was suspected by the practitioner to be) autistic. Our sample, based on self-selection and opportunity sampling, included seven women and three men; to preserve anonymity, we refer to all our participants with female pronouns. We have also changed some minor details of cases reported to us to ensure the anonymity of all involved. In Table 4 below, we also indicate how long each participant has been in practice, but again to preserve anonymity we have set these out as ranges of five years.



**TABLE 4: Participants in the follow-up discussions, setting out each participant’s qualification, time in practice, area of work, and personal experience of and professional training about autism**

Participant	Time in practice (lawyer)	Time in practice (judge)	Area of work	Personal experience of autism	Professional training about autism
Lawyer A	35-39	-	family only	friends with autistic child	training course on autism and Asperger’s
Lawyer B	5-9	-	family only	no	no
Lawyer C	5-9	-	family only	family member, not diagnosed	no
Lawyer D	15-19	-	family only	no	seminar on autism
Lawyer E	30-34	-	family only	no	training course on vulnerabilities
Lawyer F	0-4	-	family only	no	no
Judge W	20-24	5-9	family only	family member, diagnosed	no
Judge X	20-24	10-14	mostly family	no	training course on learning psychiatric difficulties
Judge Y	15-19	15-19	mixed work including family	yes (not specified)	no
Judge Z	15-19	5-9	mostly family	no	workshop on autism

Our participants were free to talk about any type of family court case involving an autistic adult, however, as noted on Table 5, the focus in all our discussions was on cases involving Children Act proceedings.<sup>5</sup> Three of our lawyers were discussing cases in which their own client was the party in the proceedings who was autistic, while the other three represented other parties.

**Table 5: Type of proceedings discussed with each participant.**

Participant	Type of proceedings	Relationship between participant and autistic individual	Means by which participant came to know of autism
Lawyer A	private law children	representative of the other side	suspected by own client
Lawyer B	care proceedings	representative of the local authority	known beforehand and confirmed by clinical psychologist during proceedings
Lawyer C	private law children	client	suspected by solicitor
Lawyer D	care proceedings	representative of the local authority	pre-diagnosed before proceedings began
Lawyer E	care proceedings	Client	suspected by barrister
Lawyer F	care proceedings	Client	pre-diagnosed before proceedings began
Judge W	care proceedings	Judge	diagnosed during proceedings
Judge X	care proceedings	Judge	pre-diagnosed before proceedings began
Judge Y	private law children	Judge	disclosed by individual at start of proceedings
Judge Z	private law children	Judge	suspected by judge, ‘confirmed’ during proceedings

<sup>5</sup> Two of our participants, Lawyer A and Judge W, also told us about other cases in which they had been involved, but where the main issue was about a child with suspected or diagnosed autism.

Participants noted a number of characteristics of autism in their cases, including physical behavioural traits such as hand-flapping (Lawyers C and E), a rigidity of approach (Judges W and Y, Lawyer E) or a lack of emotion or affect in presentation (Judge X). One comment made by some participants related to whether there were unseen difficulties which the autistic individual was facing. Judge Z, for example, commented that, looking back on the case with the advantage of hindsight and “*having learnt more*”, she wondered whether the father in her case was experiencing sensory sensitivities (caused by lighting or background noise, for example) which might have contributed to his stressed and anxious presentation. However, perhaps because of the nature of legal proceedings and the lawyers’ / judges’ roles, most of these elements were commented on but they were not usually seen as problematic.

By far the most commonly cited feature of autism, and the one which did cause participants difficulty, was in relation to communication. The issues raised were in two main regards: the ways in which the autistic person was going to be able to communicate effectively with others (such as with giving instructions to lawyers or giving evidence in court), and with making their own communications with the autistic person understood and effective.

Communication issues came through in a variety of ways. For example, lawyers commented that there were difficulties in taking instructions, such as with Lawyer C, whose client had sent her “*lots of notes on what he wanted me to argue and what he wanted me to say*” in advance of the hearing, but “*the difficulty was that I wasn’t able to get extra bits out of him*” during the course of the day at court. A different form of communication issue was noted by Lawyer E:

*“part of her [the client’s] difficulty was with communication, [asking] very, very repetitive questions. She kept on asking, obsessively asking me repetitive questions and having a sort of unquenchable anxiety really which ... with all the effort and care in the world I found very difficult to manage”.*

A related point was commented on by Judge Z, whose case involved an autistic father who was acting as a litigant in person; here, the father was noted to over-communicate and “*doesn’t pick up on sort of cues to stop*”, demonstrating a common characteristic of autism in not readily understanding about turn-taking in communication. A slightly different but potentially important issue was raised by Lawyer B, who noted that while the autistic father in the case she was discussing had shown some communication difficulties in general, the issue mainly arose out of court:

*“not during the hearing, but during the course of proceedings – so, for example, there were issues with him calling a doctor or GP or police when he should have done.”*

In responding to these challenges, participants reported making a number of adjustments. A major concern for several of our participants was about the autistic individual giving oral evidence in proceedings. Lawyer B, for example, spoke of devising questions for cross-examination which were “*far more straightforward, they*

*were shorter, they were more precise and more clearly formulated*<sup>6</sup>; she went on to note that she approached cross-examination with an expectation that she would not deviate from the questions she had prepared. In that case, the autistic parent had come to court assisted by an intermediary<sup>6</sup> or advocate (Lawyer B used the terms interchangeably), who had offered general guidance to the lawyers and the court about cross-examination in advance of the evidence being given.

Judges too noted the adjustments that they made to assist the autistic litigant in giving evidence. Judge W, in particular, thought that her experience of autism away from her professional life had made a difference to the way the case progressed:

*“I have more understanding of autism than the average judge. I reworded some of their [the lawyers’] questions ... to ensure that I was getting the best evidence from that witness.”*

This judge also reported making some physical changes, such as getting the witness to sit facing him and away from the ‘*sea of faces*’ in the court room which made the witness uncomfortable. Judge X similarly spoke of having a ‘ground rules hearing’ (The Advocates Gateway (TAG) 2016a; Judicial College 2013, 59) in advance to make sure that everyone understood how the process was going to be conducted and what adjustments needed to be made.

Adjustments were also needed, following on from this point, in relation to a judge’s assessment of an autistic witness. Judge Y reported consciously thinking differently about the individual to try to account for their autism:

*“I took it into account. Assessing a witness is a difficult process and it is different in every single case, [but] I think I was less inclined to be critical of, for example, unhelpful responses to questions because I understood that the way he expressed himself was perhaps not as nuanced as I was expecting from someone who did not have an autistic condition.”* (Judge Y)

A different form of adjustment reported by many of our participants was the need for clear planning and a defined structure to their interactions with the autistic individual. Two of our lawyers whose clients were autistic spoke specifically about meeting the client particularly early and having a written agenda to use to structure their discussion:

*“I kind of gave her [the client] an agenda when we started off in the conference, so I said, ‘Okay, I’ve got five things I want to talk to you about, these are those things ... is there anything else you would like to*

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<sup>6</sup> Registered Intermediaries – trained professionals who facilitate communication between vulnerable witnesses and members of the justice system – are appointed in criminal proceedings as a ‘special measure’ under s 29 of the Youth Justice and Criminal Evidence Act 1999. Although occasionally used in a formal way in the family courts, according to the Judicial College’s guidance (2013, 57), ‘The Ministry of Justice will provide a Registered Intermediary only where there is a direct link to a criminal case in which the witness is involved and where one has already been provided through the Witness Intermediary Scheme.’

*cover?', and she said yes so I put it on the list as well... I think I was probably much more structured..." (Lawyer F)*

Lawyer C had also used a written document to set out the issues she wanted to discuss with the client in conference before court, which she found was *"helpful because I could refer him to point one, point three, point five, but it was still very difficult"*.

While these adjustments can be linked to the communication theme, they also draw out another aspect of autism which is the intolerance of uncertainty and the need for structure and a clear outline plan for what is coming up. In addition to the use of written documents like the agendas, participants spoke of taking additional steps to inform their clients throughout the course of a hearing what was happening and giving information as best they could about what was going to happen next (and when it was likely to happen). While lawyers could often do this themselves, they also reported taking steps to have things formally set out to the clients by the court, such as Lawyer C's case where she asked the Legal Advisor to explain in court why the case was being adjourned and what the new timetable was.

Another way in which participants made adjustments to respond to the autistic individual's intolerance of uncertainty was with advanced planning, consultation and familiarisation. Good examples of this were of lawyers arranging familiarisation visits to the court so that the client was able to physically see the courtroom before the hearing started:

*"mum is autistic and there are allegations of domestic violence towards father so she was very frightened of coming into court and hearing his voice, so we had a familiarisation visit before... ..So essentially I arrived about an hour and a half before... she came up a separate entrance and there was a booked conference room. I then went into court with mum [with no one else there]" (Lawyer F).*

Lawyers also spoke of their clients wanting to be familiar with, and have control over, documents which were being put before the court:

*"He [the client] wanted to see my position statement in advance which is actually fairly unusual... It kind of went a little bit beyond that when he said that he wanted me to put certain things in the position statement and when I sent it to him there were specific sentences that he reworded and things. It was not like anything I had come across [with other clients]." (Lawyer C)*

For those lawyers who were representing an autistic client, a common theme was that they needed to allow more time for taking instructions and feeding back decisions to clients. The lawyers spoke of arriving at court especially early (Lawyers C and F), and of needing to spend considerably more time with the client than they normally would (Lawyer E).<sup>7</sup>

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<sup>7</sup> It may be noted that this additional time will usually not be remunerated in a publicly funded case, and may impose higher costs for the client in a privately paying case.

In most of our cases, perhaps as a result of the self-selecting sample of participants, the general story told was of adjustments which were made and which were perceived by the legal professionals involved as being reasonably successful. However, one of our lawyers reported a case that can be seen to highlight some of the concerns that can arise when the need for adjustments is not recognised or accepted by all those involved.

Lawyer F was relating her experience of representing an autistic mother at a case management hearing in care proceedings, where the client also had the assistance of an advocate at court. The principal matter that the court was dealing with was an application on behalf of the mother for a further parenting assessment to be conducted by an expert trained in assessing autistic parents, so autism was at the very forefront of the hearing. The first issue was a dispute between the judge and Lawyer F about the advocate being present in court, which the judge opposed on the basis that it was “*not appropriate*”; the other parties had no objection and the judge eventually relented. Lawyer F then reported that she was pressured by the court about time, with the judge being “*very strict*” about timing and not allowing her the extra time she was requesting outside court to explain things to her client.

Further difficulties arose as the hearing went on:

*“Then I went back into court and ... I spoke about the next hearing and I said ‘I think we’ll need to make provision for a video link’, and the judge said ‘well I can’t possibly do that, I don’t know why [I should do that]. This mother, if she chooses not to engage in the proceedings, I’m not going to be giving her any special treatment’, and I said ‘I think you’re bound to give her special treatment as she has a disability’, and the judge made some flippant sort of comment about ‘well, if that’s the route she wants to take’, and essentially said ‘if this is before me, there will not be a video link’ and I said ‘well, I’ll speak to my instructing solicitors and it may well be that they’ll have to make a formal application’ and they said ‘fine’ and that was the end of the hearing.”*

This case was on-going at the time of the interview, but Lawyer F noted that her advice to her solicitor after the hearing was that the case needed to be moved away from that judge, because of the judge’s “*very firm view*” and inability “*to distinguish between the mother just being difficult and her autism*”.

While Lawyer F’s experience was the most extreme case in our sample, there were other examples of scepticism about claims relating to autism. Some participants reported that either they or others involved in their cases had been sceptical about whether the litigant in fact was autistic at all (these were all in cases where there was no formal medical diagnosis), or reported that steps to accommodate autism were questioned or denied. Examples of this varied. For example, Judge Y was not aware that autistic people often struggle to read black text on white paper because of sensory sensitivities, and so questioned why documents needed to be provided to the father on blue coloured paper. Lawyer D’s case involved a recommendation from an expert for an intermediary to be provided to assist the mother, but this was never provided. In a

case referred to in passing by Lawyer A (not the main case she was recounting), a judge had reportedly refused to allow the sister of an autistic father to attend court as a McKenzie friend, leaving him struggling to represent himself.<sup>8</sup>

Of course, before steps can be taken to make adjustments to accommodate a person's autism, it is necessary for legal professionals to know what challenges an individual is experiencing. As shown on Table 5, we asked our participants how they came to know that autism was a feature in the case they were discussing. In some cases the issue was specifically raised by the individual him or herself, as in Judge Y's case: the Judge reported that the father in the case highlighted the issue to the court, and later produced a letter from his GP confirming the diagnosis. In other cases, there was a diagnosis made or confirmed during proceedings (Lawyer B, Judge W), while in some cases there was never any formal diagnosis and our participants were relying on their own assessment (Lawyer C, Lawyer E) or basing their view on what they were told by their own client (Lawyer A). Some participants commented that they might have approached the case differently if they had known about the autism from the start:

*“if I had known from the very beginning, rather than just suspected ... then I would have taken the opportunity to ask him and have a conversation with him about what would help him and what he would like to be done differently and whether he needed to be in a different environment and whether he needed any adjustments to be made, rather than just me guessing” (Judge Z).*

This point raises a number of questions to consider, as previous research in the criminal justice field has suggested that autistic people are not always likely to disclose their diagnosis to professionals in that context (Crane et al, 2016). Many of our participants noted that they had little or no training or experience in identifying or dealing with cases involving autism. Two of our participants (Judge Z and Lawyers A and D) reported attending local courses on autism awareness, while others (Lawyer E, Judge X) noted that issues relating to autism had come up in the context of other, more general training. Others (Lawyer B, C and F, Judges W and Y) reported receiving no specific training in relation to autism, though some took the opportunity of the case about which they were reporting to learn more. Lawyer F, for example, made reference to the use of “advocates’ toolkits” ([www.theadvocatesgateway.org](http://www.theadvocatesgateway.org)), which include guidance about questioning autistic individuals (TAG 2016b) and highlighting issues about memory and sensory issues in autism (TAG 2015a). These toolkits are valuable and participants reported finding them helpful, but their focus is on criminal law proceedings (which have some aspects which differ from family proceedings) that may affect their direct applicability to the cases in our study.

Towards the end of our discussions, we asked participants whether they thought that the fact that one of the parties in the case was autistic had affected the outcome of the case. Some of our lawyer participants were clear that they had steered the case in a particular direction: Lawyer C was concerned about how her case would go if her client was asked to give evidence, which was also commented on by Lawyer D in

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<sup>8</sup> Given that litigants in person can presumptively take a McKenzie friend into court with them to assist, and a Judge would normally refuse it only with good reasons, there may be more to this story than was reported to us.

relation to her case (though it was not her client). In terms of overall outcome, though, most participants thought that the autism itself had not affected their cases.

There may, however, be questions about whether our participants were always able to assess the impact that autism might have had on the case. To illustrate that point, we can take the example given by Judge X, which related to care proceedings which ended with the child being adopted. The local authority had previously been involved with concerns about the mother's older children based on her ability to care for them, the present concern being about her on-going relationship with a man considered risky for the children. As the Judge put it: *'the dominant issue was her complete inability to recognise this man, who was a drug addict and a violent offender, as somebody she should not enter a relationship with'*. The Judge twice differentiated between what she perceived as two aspects:

*'So it [the case] was less about the impact on her parenting of any autistic tendencies than it was about [the fact that] I couldn't be satisfied that she would ever be able to keep the child safe.'*

*'The factual basis of the case ... wasn't really about her autism but it was the fact that she couldn't recognise risks in others and she was putting herself in situations of danger.'*

While the practical effect from the court and the children's perspectives might be the same, it could be questioned whether the inability to recognise the risks here was entirely unconnected to the mother's autism. This may be similar to the difficulty raised by McConnell and Llewellyn (2002) of disambiguating inadequate parenting skills from intellectual disability, which can, but do not necessarily, occur together.

## **Discussion and Recommendations**

The findings from our study paint a picture of a group of professionals who interact with autistic individuals and have fairly good knowledge of the key features of autism, yet have low confidence in their own ability to work with this group (as also found in other professional groups, e.g., Unigwe et al 2017). This may reflect the absence of training in this area (only 9% reporting any previous autism education, even as part of a broader session), and highlight the need for more appropriate training, in compliance with article 13 (2) of the CRPD, to ensure effective access to justice for this group. Indeed, those who had received training showed higher self-efficacy scores (as did those who had encountered autistic people in either a personal or professional capacity).

The legal professionals in our survey were knowledgeable in the main, demonstrating a good understanding of the core features of autism (overall accuracy rates of 80%). However, the systematic pattern of errors seen on only six of the 15 questions suggest that there may be some preconceptions that might disadvantage those with the condition who are going through the family courts. These errors point to two themes: firstly, errors revealed two misunderstandings that might adversely affect case outcomes: many respondents responded that autistic people are more prone to interpersonal violence, and are more easily led when giving evidence than non-autistic people. These statements are both untrue: autistic individuals are no more

suggestible than those without the condition (Bruck et al., 2007; Maras & Bowler, 2012; North et al., 2008 ) and there is no support for the view that violence is common in autism (Ghaziuddin et al 1991). In fact, autistic people are more often the victim of violence, rather than the perpetrator. Secondly, there seemed to be an underestimation of the presence and impact that autism may have in the family justice system. In the UK, one in every 100 people is thought to be autistic, yet 19% of respondents believed that it was an extremely rare condition, affecting only 1 in 2000 people. Similarly, 62% did not know that it is harder to identify autism in females (Gould & Ashton-Smith, 2011), which can mean that many autistic females remain undiagnosed, despite living with the condition. Many respondents were unaware that for those on the autism spectrum, additional mental health conditions and sensory sensitivities are common. Both of these can be debilitating and affect all aspects of daily life.

This theme was echoed in the follow-up discussions that were conducted. Responses revealed that, in some cases, family justice professionals showed scepticism regarding the genuineness and severity of the needs of autistic individuals. This is perhaps related to the fact that unlike a physical impairment, autism is an 'invisible disability' where the impact of the condition is not immediately obvious. This is compounded by a reduced level of affect sometimes displayed by autistic individuals, which can also mask the outward manifestation of any internal distress. This makes some aspects of autism and the appropriate adjustments less well known than for other conditions, again highlighting the need for raising awareness and the provision of appropriate training and guidance. The discussions also indicated, however, that many of the characteristic behaviours associated with autism were evident in the court process, and in some cases made proceedings difficult. Issues raised included communication difficulties (both when the autistic individual was expressing their views, and concerning how legal professionals give information to their autistic clients), anxiety, intolerance of uncertainty, and the need for routine.

In many cases there was also a clear willingness to address these difficulties, which is very encouraging. As such, there were many reports of adjustments that were made to help overcome these challenges. Drawing on these practical examples, together previous research in the criminal justice sphere, there are a number of recommendations which we make with regard to the family court and working with autistic individuals to promote effective access to justice. Given the apparent lack of knowledge amongst family law professionals in this area, there is an extent to which we are drawing on existing materials from the criminal justice context in this discussion, though we are grounding it in our own research and tailoring it to the work of family justice professionals.

In making recommendations, we would highlight that every person on the autism spectrum is different and the adjustments which are going to be helpful will vary from individual to individual. Consequently, some of what we suggest will not be applicable to particular individuals, and the best advice for knowing what will help in a particular case is to ask the person concerned.

*Communication:*



As it stressed in various pieces of guidance for criminal law (for example, on children and vulnerable witnesses generally, see Judicial College 2013, 64; on autism in the criminal context, TAG 2016b, 13-15), it is important that communication is as clear and unambiguous as possible. Avoiding indirect and non-literal language such as idioms or colloquialisms, sarcasm or double-negatives (or, in fact, any negatives at all) will make communication more effective. Many autistic people struggle to understand the stresses in a sentence (Diehl and Paul 2012), so avoid questions or comments where the meaning of the speaker relies on an understanding of emphasis. It should also be borne in mind that an autistic person will often answer precisely the question asked and not offer any further information which might have been impliedly called for. For example, if asked, “did you call an ambulance?”, the person may answer simply “no”, which is the correct answer to the question but fails to show the whole picture because the non-autistic person would say, for example, “no, I was helping my child and I knew my partner was calling the ambulance”.

Visual aids can also be of great assistance with communication, representing an appropriate and effective accommodation that can enable access to the substantive content of the case, and court procedures. We saw the example in our study of lawyers providing clients with a schedule or agenda of things to talk about at a conference or before court, and that example can be broadened out more generally. A piece of (potentially coloured) paper with a clear agenda for the day, including visual representations or pictures to illustrate the main points can be helpful in facilitating communication, but also in reducing the anxiety and stress likely to be being experienced by the autistic individual. For example, it may be possible to provide a piece of paper with a photograph and the name of all the main people involved in the case in advance, so that the person with autism has a clear idea in advance of who s/he will be meeting and what their roles will be in the day. Visual aids can also be used to assist with cross-examination, as set out in other contexts (eg Judicial College 2013, 58; TAG 2015b).

As was pointed out by participants in our study, again reflecting the experience of other legal contexts (TAG 2016b), cross-examination requires careful preparation. In addition to the points we highlighted earlier regarding straightforward, literal questions and the need to avoid things like idioms and double negatives (TAG 2015a, 13), it is also helpful to signpost topics clearly and to move through the issues in a logical and chronological order (TAG 2016b, 14). Questions should be precise and to the point, and are also helpfully prefaced with the person’s name so that it is clear that the question is directed to them. Interruptions to the questioning are generally best avoided and, if necessary, should be signposted: “Mr Smith, I am going to ask the Judge a question now and then I will come back and ask you more questions.” This kind of technique may not come naturally to advocates, whose training emphasises a focus on, and deference to, the court (such as, for example, asking the Judge for permission to turn around and check a point with one’s own client or solicitor during cross-examination, but not explaining that to the witness as well).

A point that was highlighted by lots of our study participants was the need to allow extra time at all stages of a case, but this may be particularly true in relation to cross-examination. Autistic people often take longer than non-autistic people to process information (Grandin, 1995), and so there may be what appears to be a significant gap between a question being asked and the answer being given. It is usually better simply

to wait for the answer, as repeating or (especially) rephrasing the question can add to the overall amount of information which the person is processing and can add further time or lead to ‘overload’ whereby processing effectively stops altogether. For similar reasons, additional breaks will often need to be factored in; this can be especially important if it was not possible to reduce problems with sensory sensitivities so that the sensory environment is also adding distress to the person (see below).

#### *Avoiding uncertainty:*

There are many things which can potentially be done to reduce the stress and anxiety which an autistic person may feel as a result of uncertainty inherent in the court process, though it is important to acknowledge that even adherence to best practice in this regard can only reduce rather than remove the problem. Good strategies seen from participants in this study included the use of familiarisation visits to the court and the advanced viewing of documents. In the criminal justice context, Registered Intermediaries can be used to assist vulnerable witnesses (Youth Justice and Criminal Evidence Act 1999, s 29), with privately funded intermediaries also sometimes used by vulnerable defendants, and so criminal justice professionals routinely make these kinds of arrangements. However, use of intermediaries in the family courts is limited, only rarely being provided with funds coming from the state and not common even when privately funded (Judicial College 2013, 57).

It is also important to give as much accurate information about the timings for the day as possible, but it is better to under-promise and over-deliver. It is common for a lawyer to need to leave the client for a period to discuss matters with other advocates or get on with other aspects of the case, and to say to the client “I’ll be back in a few minutes”. With a client who has autism, try to be precise, but make sure that you adhere to whatever you promise: saying “I’ll be back in 10 minutes” will cause serious anxiety in the client if you do not return for 20 minutes. The risk can be avoided by saying something like “I expect to be back in 10 minutes but I may be as long as 30 minutes”, thus giving a clear range of times and making sure that the promise is achievable.

#### *The sensory environment:*

The context of family court proceedings is not always conducive to adjustments which help with the sensory environment. For example, many autistic people find fluorescent lighting and air conditioning systems distressing because of the flickering of the light tubes and the noise of the pipes, but it can be difficult to turn these systems off. That said, sometimes it is possible: if one court room has windows with sufficient natural light to allow the case to be conducted without artificial lighting, that room should be used in preference to an internal court room. Similarly, a waiting room with windows may be preferable to an internal one. Alternatively, it may be possible to turn fluorescent lights off and bring in stand-alone lighting. We also saw in our study the example of coloured paper being requested. While such requests were reported as appearing somewhat ‘precious’ to legal professionals, the sensory sensitivities involved can be debilitating for those who experience them. Making these kinds of environmental changes can be an effective way to help an autistic person to engage fully with the materials being provided, though it is worth re-

stressing our earlier caveat about the spectrum nature of autism which requires a focus on each individual's needs.

Another issue is about waiting rooms. Taking instructions in public (and usually noisy and somewhat chaotic) waiting areas can be problematic, and booking private rooms in advance is highly advisable where this is possible. Where booking in advance was not possible, it may be worth asking for a room, as the court is required to make reasonable adjustments and this might include asking someone else to vacate a conference room to make it available for an autistic party and his or her legal representative.

#### *Understand hidden disabilities:*

A key characteristic of autism is that there is often no physical manifestation of the challenges that an individual on the autism spectrum may be experiencing at any given moment. As such, it is important not to inadvertently underestimate the impact of the condition. We suggest that legal professionals ask their client what specific needs they have, and take any requests into consideration whenever possible. As mentioned above, a lack of affect might mask the severity of distress being experienced.

#### **Conclusions**

Taken together, the findings from this study offer a first step in raising awareness of the challenges encountered by family law professionals when working with autistic clients, and provide some examples of good practice that promote access to justice for this vulnerable population. We have already commenced work on the next stage of our project, interviewing autistic adults who have been involved in family court litigation to ask about their experiences. A further question, given the current focus on non-court dispute resolution, might be about the extent to which our findings apply to the mediation or arbitration setting.

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