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Articles

Autistic individuals and the family justice system: research findings and good practice

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About the authors

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There is much work being done at the moment on vulnerable individuals' interactions with the family justice system, both looking at their experiences and considering ways in which things can be improved. This article fits within that broader literature, reporting the findings of our recent research into legal professionals' knowledge and experience of autism in the family justice context. Here, we offer a summary designed to relay the key findings and our suggestions for best practice; a fuller report of our research is published in February this year ('Legal professionals' knowledge and experience of autistic adults in the family justice system' [2018] *Journal of Social Welfare and Family Law*)

Autism

Autistic people (as people on the spectrum generally prefer to be known) comprise around 1% of the UK population. Autism is a developmental condition characterised by both social symptoms (eg, difficulties in communication and interaction) and non-social symptoms (eg, restricted and repetitive behaviours, atypical sensory sensitivities). While the manifestation of autistic traits varies considerably from person to person, common features include a difficulty decoding non-verbal 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.

Our research is motivated by a desire to improve understanding the experiences of autistic people in the family justice system. While autistic people interact with all aspects of the justice system, the family law context is of particular interest for a number of reasons. For example, disputes tend to be emotionally fraught, and the reduction in the availability of legal aid means that parties are more likely to be representing themselves (though as we will see, the difficulties are exacerbated rather than caused by a lack of representation).

Methodology of our study

Our project, as reported here, had two elements. The first was a questionnaire to determine family

law professionals' knowledge and understanding of autism, where we received 204 responses. 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. A quarter (25.4%) were full-time judges, while a further 15.7% sat part-time as Records or Deputies. Barristers and solicitors each comprised around a third of our sample (32.4% and 35.3% respectively), with the remainder identifying as paralegals or legal executives.

The questionnaire was followed up with short recorded discussions with ten professionals (four judges, six lawyers) who volunteered to talk to us about cases with which they had been involved where one or more of the parties was autistic. These discussions were qualitative in nature, and are not intended to be in any sense 'representative'; they are designed simply to give colour to our understanding of legal professionals' experiences.

We also draw in this research on work by others, particularly in the criminal justice context, such as the recent work of Maras et al ('Brief report: Autism in the courtroom: Experiences of legal professionals and the autism community', *J Autism Dev Disord* (2017) 47: 2610).

Questionnaire findings

The first part of our questionnaire asked about participants' knowledge about autism, using a modified Knowledge of Autism Scale involving 15 true/false questions about autism. These are set out in Table 1, together with the correct answers and the error rate amongst respondents.

Table 1: Group error rates for each question on the Knowledge Scale (those questions showing higher error rates are in bold)

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 (eg body language and gesturing)	TRUE	11%
10. Additional mental health conditions (eg 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 (eg 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 (eg more easily led when giving evidence)	FALSE	60%

It can be seen that many questions were answered correctly by the vast majority of participants, with error rates in single figures. The overall average error rate was 20%, showing that respondents to this study generally had a high level of knowledge about autism.

However, it can also be seen that some questions were routinely answered incorrectly, and two groups can be highlighted in particular. Questions 7 and 10 (62% of participants unaware that

females are harder to diagnose with autism than males, and 39% unaware of the correlation between autism and other mental health conditions such as depression and anxiety) suggest that there may be a general underestimation of the prevalence and needs associated with autism. (The 19% who thought autism to be present in only 0.05% of the population, when in fact it is 20 times as common, fits with this picture.)

Similarly, questions 13 and 15 (60% thinking that autistic people are more suggestible and 30% thinking that they are more prone to interpersonal violence than non-autistic people) suggest a misunderstanding of the condition. These points are particularly concerning, as in fact they are both specifically untrue: autistic people often have a strong sense of ‘justice’ and will strongly resist attempts to have a story told in a way which they think does not fit with the truth and, far from being perpetrators of violence, they are statistically more likely to be the victims of violence than non-autistic people.

The second part of the questionnaire asked about participants’ confidence in relation to working with an autistic individual. In contrast to their high levels of knowledge, participants reported fairly low levels of confidence in their abilities. On a scale from 1 (‘not at all confident’) to 10 (‘very confident’), 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 2).

Table 2: 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

Follow-up discussions with legal professionals

We asked 10 practitioners to tell us about a case in which they had been involved where at least 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 of them with female pronouns. We have also changed some minor details to ensure the anonymity of all involved. We refer to our lawyer participants by the letters A to F, and to our judge participants by the letters W to Z. Our participants all chose to talk about children

proceedings (a mixture of public and private law matters); of the six lawyers, three were talking about cases where it was their own client who was autistic while the other three were involved representing other parties. Some of our participants reported observing some of the more physical traits of autism in their cases, such as hand-flapping, while others noted aspects such as a rigidity of approach. While these aspects were notable, they did not generally cause particular difficulties from the perspective of our participants.

The single main characteristic of autism noted in our discussions – probably unsurprisingly – was in relation to communication issues, and this was more commonly a cause for concern amongst participants. Two aspects were raised in particular: the autistic person's ability to make their own points effectively, whether in giving instructions or in giving evidence; and the legal professional's ability to ensure that they were communicating the points that they needed to get across to the autistic individual in an effective way. Some of our lawyers talked about the difficulty of getting instructions, and also of making effective use of the time at court, as this quotation from Lawyer E shows:

'[P]art 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.'

Other participants noted that communication issues might also manifest themselves away from the court hearings, such as in care proceedings where a client struggled with the expectations on him or her as to interactions with the local authority, police or other services.

Participants reported addressing these issues in a number of ways. For example, lawyers devised cross-examination which was more tightly planned and with simpler, more straightforward questions (Lawyer B). Similarly, judges reported not only attempting to improve the questions asked by the lawyers to ensure best evidence (Judge W), but also of holding ground rules hearings (Judge X), making physical adjustments to the court to help the witness (Judge W), and trying to take the witness's autism into account when assessing what had been said in evidence (Judge Y).

We also heard numerous reports of the need for more time and clearer planning of meetings (whether before or at court) between participants and autistic individuals. One approach, employed by several of our lawyers, was to use a written agenda to give clarity to a meeting and help to focus the communication, while also reducing the anxiety and uncertainty for their client. As Lawyer F explained:

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

Similarly, some lawyers spoke of arranging familiarisation visits to court ahead of the first hearing (or early on the day of the hearing) to attempt to reduce their clients' anxiety about the change of routine in attending court. Generally, the accounts given by our participants were positive, discussing things which had been done and which, from the professionals' perspective at least, had appeared to help. However, one of the lawyers in our study reported a more concerning hearing, which was an early case management hearing in a care case where the mother was autistic, and where her autism was indeed one of the central elements of the case.

After explaining some of the early difficulties which she had in getting permission for an intermediary who was at court to be present for the hearing, Lawyer F spoke about a difficult interaction with the judge in planning the next hearing. Because of the nature of the parents' relationship, the mother struggled with being in a room with the father, the effect of which was to increase her anxiety to a point where she found it difficult to manage. As it was possible that evidence would be heard at the next hearing, Lawyer F was thinking about how to achieve that

effectively:

‘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.’

As this case remained ongoing, the final outcome was not known to the participant when we spoke to her, but her report of this hearing raises a number of concerns, including the interpretation of a request for special measures as ‘non-engagement’ and a refusal to allow those special measures.

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.

Discussion and recommendations

From our research, together with that of others, a number of suggestions can be made for good practice for legal professionals in family court cases involving autistic parties or witnesses. We focus here on three main areas where adjustments can be made.

1. Communication

All communication needs to be as clear and unambiguous as possible. Avoid indirect or non-literal language (such as sarcasm or idioms). Autistic people often answer the exact question asked, without the kind of elaboration which a non-autistic person might think it natural to offer. (For example, if asked: ‘Did you call an ambulance?’, an autistic person may simply answer ‘No’, in circumstances where a non-autistic person would naturally think to add ‘because my partner was already doing that’.) Cross-examination requires particular thought, and it is often advisable to stick to the planned questions to ensure that phrasing is as clear and precise as possible.

2. Avoiding uncertainty

Visual aids like a written agenda, with pictures if appropriate, can help to make communication clearer while also reducing anxiety. (Providing photos in advance of people who will be at a court hearing with a brief explanation of who they are and their role can be particularly helpful.) It is also important, as far as possible, to make realistic promises. It is easy to say ‘I’ll be back in 5 minutes’ even though you might actually be 15 or 20, but this can be very distressing to an autistic person. Giving a range of times is fine (‘I hope to be back in 5 minutes, but it may be as much as 20’), but whatever you promise try to make sure you stick to it. Failing to do so can be distressing, and can also mean that you lose the person’s trust.

3. The sensory environment

Many autistic people have particular sensory sensitivities, and while it is not always possible to remove the causes of these, it is helpful to be aware of them. The best way to find out is to ask, as they may not be at all obvious – simply asking ‘Is there anything about the environment here that is bothering you?’ will often suffice to get the information. Possible measures include things like

turning off fluorescent lights (which both buzz and flicker) or air conditioning (which is often noisy and can blow on the skin in a way which irritates some people). Ensuring that there is a private conference room available at court is also important if possible, to avoid the noise and distraction of a public waiting area.

Inevitably, this is a short and simplified set of recommendations, and more detail is found in our full paper. However, we hope that it provides a useful first port of call for family law practitioners.

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