

# “Our normal is different”: Autistic Adults’ Experiences of the Family Courts

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**Key Words:** autism; family justice system; access to justice

## **ABSTRACT**

This article reports the findings of a small-scale qualitative study exploring the experiences of autistic adults who have had experience of the family justice system. While participants related some positive elements to their experiences, in particular with regard to the willingness of professionals to try to learn more about their clients’ needs, the overall picture showed significant concerns. The reports given showed significant misunderstandings about autism, and a system which struggled to make appropriate adjustments which would allow autistic court users to have access to justice on an equivalent basis to non-autistic litigants. This situation stands in contrast to the position regarding other disabilities in the Family Justice System, but also to the relatively greater level of provision for autistic people within the Criminal Justice System. Based on participants’ experiences and existing good practice in other areas, we make recommendations that could be adopted by the Family Court.

## **INTRODUCTION**

Ensuring that all people, irrespective of background or ability, are able to effectively access and navigate the family courts has long been a key concern in the family justice system (Eekelaar 2011; Cobb 2018; Maclean and Eekelaar 2019). Currently, it is accepted that this access is more challenging for particular minority groups within society, for example those with disabilities (Flynn 2015). Not only do legal aid cuts disproportionately affect this group of individuals (a higher percentage of whom are unemployed: National Autistic Society 2016) but this is compounded by persisting

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stereotypes and stigma surrounding disability whereby impairments are presumed to equate to inadequate parenting (McConnell and Llewellyn 2002).

This paper explores how access issues manifest for autistic individuals<sup>1</sup>, a specific group for whom the family courts may prove particularly challenging. Autism is a developmental condition that affects approximately 1% of the UK population (Baird et al., 2006; Brugha et al., 2011) and is associated with both social (e.g. difficulties in communication and interaction) and non-social (e.g. restricted and repetitive behaviours) atypicalities (American Psychiatric Association, 2013). Though not part of the diagnostic criteria, many autistic people also have areas of strength where they show superior performance compared to non-autistic individuals. This is often linked to visual and auditory perception (Remington and Fairnie 2017; Remington, Swettenham and Lavie 2012), memory, music or mathematics (Howlin, Goode, Hutton, & Rutter, 2009). For example, some autistic people may have the ability to memorise large amounts of information about a particular topic. It is important to note, however, that while there are common characteristics, those on the autistic spectrum vary greatly in their preferences, challenges and abilities. Some have high IQ and excellent communication skills while others have co-occurring intellectual impairment and minimal verbal language.

Existing literature has revealed that autistic people often struggle to access the services they require. For example, autistic adults are more likely to have unmet health needs due to difficulties navigating healthcare systems (Bradshaw, Pellicano, van Driel, & Urbanowicz, 2019). One barrier to access may be professionals' lack of training – and therefore reduced confidence – regarding working with autistic individuals. Recent research has revealed that a minority of healthcare professionals (such as General Practitioners (Unigwe et al 2017) and dental professionals (Eades et al, 2019)) has received specific autism training, and even those who have do not always feel confident in knowing how to treat their autistic patients. In line with this, our previous research which surveyed over 200 lawyers and judges, has shown that family law professionals have even lower levels of confidence in their ability to work

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<sup>1</sup> We use the term 'autistic person', rather than 'person with autism' as it is the preferred language of many individuals on the autistic spectrum (Kenny et al. 2016).

with autistic clients, and knowing what adjustments can be made to help overcome any difficulties encountered (George et al, 2018).

While there has not yet been any research into autistic people's experiences as users of the family justice system, the nature of the condition suggests that accessing the family courts may be particularly challenging for autistic individuals. Three aspects in particular may be emphasised. First, altered communication (such as difficulty understanding non-literal language or decoding non-verbal cues such as intonation, emphasis and facial expressions) may undermine the ability to effectively give instructions to a legal representative, give evidence in court, or to respond appropriately to questions being asked. Autistic people also often show reduced affect (e.g. monotone voice, subdued emotional reactions) which is often incongruous with the emotions actually being felt and can be misinterpreted as apathy or insensitivity. While these characteristics of autism may affect all areas of the law, they are particularly noticeable in areas like family law, where emotion and interpersonal relationships are a focus of the law's interests (see, e.g., Dewar 1998), and may lead to behaviours or language being misunderstood or misinterpreted, for example by social workers, Cafcass or family court judges

Second, a preference for sameness, rule-based systems and certainty might make deviating from daily routine to attend the family courts (with their inherent unpredictability) extremely distressing. Again, while these may affect any area of law, the potential impact may be higher in family law, particularly in relation to public law children proceedings for example. Not only are there court hearings to attend, often at short notice in the early stages, but the involvement of other professional groups is high and may necessitate a high number of meetings, assessments, and other new situations with little opportunity to prepare or control the situation.

Third, the physical environment at court or in other places where a family court litigant is required to go (solicitors' office, local authority office, Cafcass meeting room, etc) may be a source of difficulty. Many autistic individuals experience altered sensory experiences compared to non-autistic people (Crane et al 2009). This can manifest as increased sensitivity to lights, sounds and smells. For example, fluorescent lighting or background noise may cause physical pain, often likened to the

experience of a migraine. In the family courts where future-oriented assessments of issues like parenting capacity are a central focus, and a judge's ability to assess the personality of individuals is key, the potential impact on an autistic person's ability to operate effectively has potential to impact on case outcomes to a significant degree.

Aside from the challenges linked to autistic traits, it is also possible that stigma and negative stereotypes held by legal professionals may prove a further barrier to access to justice. For example, persisting myths about autism include the (incorrect) presumption that autistic people do not wish to form personal relationships, have diminished empathy and a lack of ability to care for others. Likewise, it is untrue that autistic people have an increased tendency to perpetrate interpersonal violence, or are more suggestible (e.g. easily led when giving evidence) than non-autistic people. Yet, concerningly, both these statements were endorsed by many family lawyers and judgeship who participated in our previous research (George et al 2018). These incorrect assumptions may bias the expectations of, assessments, processes and outcomes for autistic people in the family justice system.

In depth discussions with legal professionals who have prior experience working with autistic clients in the family justice system (George et al 2018) confirmed that the potential issues raised here did indeed arise for autistic family court users. Family justice professionals reported observing the impact of altered communication, preference for routine and sensory sensitivities on the court processes. Likewise, some spoke of misconceptions and stereotypes held by others within the system that they had encountered.

In many cases, however, adjustments and supports were also mentioned – with a view amongst our research participants that these had successfully ameliorated many of the challenges. However, the individuals who took part in the discussions were a self-selecting sample, and therefore may have been those with the higher levels of autism knowledge and experience, or those who felt they had effectively supported their autistic clients. While the professionals to whom we spoke were often willing to comment on areas in which, in retrospect, they felt they or the system could have done better, in general participants were relatively positive about the effectiveness of adjustments. Only one lawyer in our sample spoke specifically of concerns about the

failings of the system to accommodate the needs to her autistic client. As such, while it is valuable to have gained the perspective of family lawyers and judges on these issues, it is now crucial to investigate the first hand experiences of autistic individuals who have interacted with the family justice system.

Within the criminal justice system (CJS), efforts have been made to better meet the needs of autistic witnesses and suspects/defendants. This has, in part, been due to several high profile examples whereby autistic people's encounters with the CJS have been less than favourable (e.g., *The Commissioner of Police for the Metropolis v ZH* [2013] EWCA Civ 69). Encouragingly, some positive developments have been observed. The Youth Justice and Criminal Evidence Act 1999 introduced a range of 'Special Measures' to support vulnerable and intimidated witnesses (including autistic witnesses) in the CJS. These include the provision of Registered Intermediaries and, in court specifically, the use of screens, live link, and removal of wigs and gowns. Research has also begun to explore how to best support autistic people in the CJS broadly, focusing on, for example, investigative interviewing (e.g., Henry et al 2017; Maras & Bowler 2010; Maras et al 2014) and identification line-ups (e.g., Wilcock et al 2019). However to date there remain very few studies on autism within the criminal courts.

The issue seems even less developed within the Family Justice System. To our knowledge, the current study is the first to explore the experiences of autistic individuals in the family courts, and will provide vital insight into barriers that remain, and adjustments that can reduce these challenges and facilitate autistic people's access to justice.

## **METHODS**

Autistic adults (over 18 years of age) who had experience of the UK family courts were invited to take part in the research. Participants were recruited via convenience sampling through social media, the researchers' own networks and participant mailing lists held by the UCL Centre for Research in Autism and Education and University of Cambridge Autism Research Centre.

Participants took part in a semi-structured interview during which they were asked about their experiences of the family courts, with a particular focus on when/if they disclosed their autism, how legal professionals responded to their condition and whether they felt being autistic impacted on the process. To ensure the interview was accessible to those with a variety of communication preferences, participants were offered the choice of taking part in person (one participant), over the telephone (seven participants) or in writing (two participants). Telephone interviews lasted between 20 minutes and 1 hour 15 minutes, were audio recorded and transcribed verbatim. The principal researchers (RG & AR) read these, together with the written interview responses, multiple times in order to develop an initial coding framework. This framework was then used to code all interview responses. There was a high level of initial agreement between the coders, and any discrepancies were resolved by further discussion. All procedures were carried out in accordance with the British Psychological Society code of ethics, and were approved by the UCL Institute of Education Research Ethics Committee. All participants gave written informed consent prior to participation.

## **SAMPLE**

Our research involved ten autistic adults with direct experience of the family justice system, all of which had involved at least two court hearings. Table 1 shows the pseudonyms which we have given to our participants for the purpose of our analysis, together with their ages at the time of interview (if disclosed), when they received an autism diagnosis (if disclosed), as well as a summary of the type(s) of family court proceedings in which they were involved.

**Table 1: research participants, showing pseudonym, age at time of interview, age at time of diagnosis, and type of family court proceedings**

Pseudonym	Age (at time of interview)	Age at time of diagnosis (if applicable / if disclosed)	Type of family court proceedings

Claudia	51	38	Private Law Children, Family Law Act 1996 (occupation order)
Abigail	Not disclosed	Not disclosed	Public Law Children
Donna	40	20	Private Law Children
Nancy	41	41	Financial Remedies
Margaret	46	35	Financial Remedies, Private Law Children, Family Law Act 1996
Josh	50	47	Family Law Act 1996 (non-molestation order), Private Law Children, Financial Remedies
Zoey	25	Not disclosed	Public Law Children
Toby	30-something	Not disclosed	Private Law Children
Leo	33	21	Private Law Children, Family Law Act 1996 (non-molestation order)
Samuel	50	44	Financial Remedies, Private Law Children, Family Law Act 1996 (non-molestation and occupation order)

## **RESEARCH FINDINGS**

### **The manifestation of autistic traits in the family justice context**

Participants in our sample spoke of numerous ways in which they felt that particular aspects of their autistic characteristics were relevant to their experiences within the family justice system.

#### *Communication*

Perhaps unsurprisingly, communication issues were frequently cited by study participants. Margaret summarised it as being ‘a reason problem with communicating’, and suggested that in many cases where an autistic person ‘ended up in a family court it’s because their communication difficulties were part of what led

them there and things escalated'. The challenges were expanded on by several of our participants.

Abigail spoke about a difficulty for her arising from the fact that legal professionals 'don't ask direct questions, which means I don't give them the answers they might be looking for'. Other participants noted a particular challenge with verbal communication. Nancy noted that when she was 'asked questions that weren't written down or I hadn't thought about, that was a bit of a problem'. She explained that she had tried to put her points in her written statements so as to minimise the need to address things which she had not had time to think about, though she acknowledged that this meant that she had submitted a lot of evidence – 'probably too much, but that's how I dealt with that'. Zoey similarly noted that 'verbal communication is too difficult for me', and thought that 'using physical movement and sign language would have made it easier to communicate'.

Leo spoke about his perception that his communication style led to him being misunderstood in the court process. He was particularly concerned that at times when he considered that he was 'just venting my frustration' about the process, that would look 'from one perspective like I'm an aggressive male', and that assessment would then be used to determine the outcome of his application to spend time with his children. Leo recalled experiences where judges then responded back to him in 'a stronger tone', and he tried to explain that his reaction was a result of his autism. Leo felt that although the point was acknowledged by judges, no adjustments were then made as a result. Josh similarly expressed concern that misunderstandings of his communication might colour the judge's assessment of his behaviour more broadly.

### *Social interaction*

Several participants spoke about difficulties that they had faced as a result of atypical social interactions which were traits of their autism. Margaret spoke about a judge 'getting irate' and 'making unfair comments and shouting at me later' as a result, in her view, of her staring at the judge too much or, conversely, listening while looking away. She found this particularly difficult 'because nobody told me! I was only told to tell the truth in court. And I did!'

### *Affect and emotional expression*

A related issue raised by some participants concerned their own affect and emotional presentation, and how that might be (mis-)interpreted in the family justice system.

Margaret explained her experience in detail:

My communication can come across as confusing and people don't really bother to listen. Because they hear the word 'autism', they see me stim [make repetitive movements e.g. hand flapping], cry, talk very fast, get angry ... and people instantly take that as evidence of me being "simple" and having "mental health problems". They think that I don't understand but they do. It is very frustrating, especially when it's actually often the opposite.

Leo thought that because he might 'say things in a different way', he might be misinterpreted; Claudia likewise was concerned that 'if I'm really stressed out, my responses don't sound natural because I'm in lockdown because I don't want any of my internal conflict to show'.

### *Anxiety*

While it is fair to say that many people find family court proceedings to be stressful and anxiety-inducing, our study participants expressed themselves in markedly strong language in this regard. Josh acknowledged this point specifically: 'I know it's stressful for people without autism but it's even more stressful for someone like me'. Donna said that she 'just became a nervous wreck', while Claudia spoke about the fact that, in order to try to get any adjustments, 'you're expected ... to tell people how to operate you when you're in a state of absolute stress and distress'.

A particular way in which Claudia's anxiety showed itself was that 'in order to control myself in the [court] room, I needed to look to my solicitor before I responded to anything'. This created a particular difficulty at one hearing where her regular

solicitor was unable to attend and another lawyer was there in her place: 'I couldn't process what's being said to me because I was in such a state of panic'.

### *Sensory sensitivities*

While a number of our participants stated that they had not experienced particular sensory sensitivities as a result of their involvement in family court proceedings, others reported significant concerns. Abigail spoke of two particular issues that she experienced:

[There was a] buzz constantly and then I found it very difficult to filter out the buzzing noise and it was all I could concentrate on at times. The judge himself kept bringing coffee into the hearings and I can't bear the smell of coffee. That was not very nice, and the room was quite echoey.

Nancy made similar comments about the environment in the court building, with 'lots of things going on and every couple of minutes they have a speaker announcement calling people into court so ... it's really busy and unpleasant', though she did later say that she understood why that was necessary despite the difficulty that it caused her.

Nancy also had a short experience of 'a room with no windows and that was not very good', but most of her court hearings were in rooms with natural light (which sounded, from her description, like a District Judge's chambers, rather than a conventional court room). Conversely, Zoey's account was that the court was 'too bright, smelt awful and [was] too loud'.

### *Difficulty with perceived 'untruths', lies and factual errors*

One characteristic of autism which played out in several of our accounts was a difficulty with factual accounts given by others within the system – the other party, their own lawyer, a social worker, the judge – which the participant considered to be wrong, whether intentionally or otherwise.

One manifestation of this trait was in the difficulty which many autistic people have in telling lies themselves. As Claudia explained, 'I'm not saying that autistic people can't lie, but we're really not very good at it and it's a lot less likely'. Consequently, she considered that an account which she gave of events was going to be (at least broadly) correct, and so if she was accused of making things up 'it's hugely frustrating'.

On the other side, participants spoke of the difficulty from their perspective of other people misrepresenting things, which they often ascribed to having malicious intent. Margaret, for example, described herself as 'go[ing] to the core of the problem and it baffles and confuses me why people don't deal with truths on full view. ... "Harmless little lies" aren't so harmless.'. For Donna, it was important to be 'understood and believed', while she noted that 'when you mix lies and truth, the whole thing becomes very blurred'.

#### *The impact of the proceedings on autistic traits*

A particular concern that arose in several of our participants' accounts was the fact that their experiences within the family justice system exacerbated the manifestations of some autistic traits. Claudia, for example, noted that she was 'not the sort of person who has meltdowns ... [or] who is violent or shouty, but if you put somebody in an extremely stressful situation that sort of thing can happen'. As she noted later, she felt an anxiety about 'whether or not you will actually cope with the process, the whole stress of actually being in the courtroom and being under that scrutiny'.

Margaret, reflecting a strong difficulty with what she perceived to be factual inaccuracies, referred to 'having a breakdown because the lawyer got the facts wrong', and noted that she could not sleep the night before a hearing because of her level of anxiety. Samuel had a similar experience:

It's only when I get in a high stressed environment that my autism can sometimes ... kick in, and that is especially in the family courtroom, when you're hearing the lies from the other side. You've got a judge who is

really not interested in your rights, you know? That's when the autism kicks in.

### **Disclosure of autism**

One question facing many autistic people involved in the family justice system is whether to disclose their diagnosis and, if so, when. (For some people, the issue may be obvious from external traits, but for many autism is a hidden disability where there is control over disclosure.)

All but one of our participants had a diagnosis prior to the court proceedings beginning, but Zoey 'had to fight to get the right to be assessed, [the local authority] tried to stop me'.

For some participants, there was a clear decision to make a disclosure up front. Leo, for example, said that he was 'never really shy' about telling people, and readily told the legal team on the other side and the court.

For others, there was at least an initial decision not to tell anyone. For some, this was because they thought that it simply did not matter: as Abigail put it, 'it really didn't occur to us to say anything'. Others approached it as a tactical decision based on the fear that knowledge of their diagnosis would disadvantage them.

Another experience that some of our participants reported was of their diagnosis being disclosed within the proceedings by their former partner, without their being consulted about that decision. Samuel reported how his ex-wife had received a copy of his assessment by email prior to their separation, 'and then she did mention [it] in the first ever court hearing'. Similarly, Claudia had decided to tell her own legal team about her autism and had discussed the pros and cons about making a disclosure (though it seemed as if her lawyer had pressured her not to disclose it) – however, then her ex-husband 'was using the autism card in court, he was saying that I was autistic and therefore I was a rubbish person ... so he was playing to stereotype', so the matter became public in that way.

## **Relationships with family justice professionals**

While all family court users of course have dealings with at least one judge or Bench of magistrates, not all have experience of lawyers (MOJ 2018: in private law proceedings, only 20 per cent of cases have legal representation for both parties, and in 35 per cent of cases neither party is represented). However, in our sample, most participants in fact had legal representation for at least part of the time, with a mixture of private funding and legal aid, though some did act at least some of the time as litigants in person.

While our participants often had positive things to say about their own lawyers, they universally reported an almost total lack of prior knowledge or understanding about autism or its potential relevance to the proceedings. As Leo put it, ‘most legal practitioners ... haven’t got a sodding clue’, while Toby found any knowledge that the legal professionals did have was ‘dated and hugely inaccurate’. Participants spoke of having to educate and train their own lawyers, often having to overcome significant stereotypes and misunderstandings to do so. As Leo went on to describe, ‘if there’s anything you need, they expect you to tell them ... [whereas] really it’s for them to adjust to me and learn’. While Claudia was generally praising of her main solicitor, she also commented that ‘this did take a number of years’ to get her to understand Claudia’s autism fully, and when a substitute solicitor attended court on one occasion ‘they hadn’t got a clue’. Several participants had the experience of having to change lawyer midway through proceedings, as of course is not uncommon. However, the consequences for our participants were often described as being ‘pretty tough’, as Abigail put it.

As mentioned above, a particular issue which several participants raised in relation to family justice professionals – both their own lawyers and others in the system – was the preconceptions and misunderstandings held about the nature of autism. For example, several of our participants had degree-level qualifications, which led to people doubting that they actually had autism. Donna’s solicitor was paraphrased as saying, ‘how can you be autistic and dyslexic when you’ve got this many qualifications?’ This approach fitted with other stereotypes and stigmas which participants reported experiencing. Margaret reported that her solicitor, despite having

an autistic family member herself, ‘brushed all autistics with the same brush’. Several participants reported that as soon as court proceedings started, they were required to have supervision for contact; whether this was in fact related to their autism or not is difficult to gauge, but certainly participants’ perceptions were that this was the cause.

Two particular concerns were raised by our participants. One was regarding assumptions about whether they were safe to see their children unaccompanied, whether they were likely to be aggressive, and their level of intellectual functioning, as well as gendered expectations that autism was a condition which affected only men and boys, and not women or girls. Participants experienced both an expectation that they would not be able to understand the issues in their cases because of their autism, and a scepticism about the truth of their autism when they had intellectual achievements like university degrees. Margaret reported an interaction with a member of court staff who ‘made noises about making reasonable adjustments for my disability but acted in a way that showed that she thought I was not that disabled after all’.

A second issue which was raised by several participants was a perception that autism was treated differently – invariably, taken less seriously and given less respect – than other forms of disability, particularly physical disabilities. Josh, for example, was astounded that the question of what adjustments would be provided appeared to be at the discretion of the individual judge:

You wouldn’t expect the judge to make the decision as to whether you provide court papers in braille, or an induction loop for a deaf person, or an interpreter for someone who speaks a foreign language, so why should it be that a judge makes the determination ‘yes’ or ‘no’ about an appropriate adult? It should be very simple: you show evidence that you’ve got autism, the court service provides an appropriate adult.

This difference of treatment compared to other disabilities was raised in relation to numerous aspects of our participants’ experiences of the family justice system.

The judges who had heard our participants' cases were generally not perceived well by participants, seemingly regardless of how cases had turned out. Margaret spoke for several participants in saying that the judge in her case 'doesn't know about autism' and that when it was brought up 'it seemed so boring to him, he didn't want to know'. Nancy raised a broader issue about the approach of the court system in general, which was 'that it sees people going in as completely equal'. She explained that the hidden nature of autism as a disability meant that it was easy to overlook: 'I've got lots of issues that aren't visible and [people working in the justice system] do sort of make assumptions about people'.

Those who had other professionals involved in their cases, such as social workers or Cafcass officers, had similar experiences. Abigail reported that the social worker involved in her care proceedings was quite interested in a physical disability that she had, but 'it appeared as though anything that would help them understand me and [help] me to be understood was ignored'. In relation to autism, Abigail's view was that her social worker 'just didn't get it at all'.

## **Responses of the family justice system**

### *Adjustments that were made*

Some of our participants' stories had positive elements about how the family justice system had responded to their needs, largely fitting with the kinds of examples given by our legal professionals interviewed for our earlier research (George et al, 2018).

Samuel had had previous experience in the criminal courts, where he had been provided with an intermediary. Armed with this prior knowledge and documentation from those proceedings, he was able to secure an intermediary to assist him with his family court matter as well. His experiences were mixed, though, and he often had to bring a family member or a friend with him to act as 'appropriate adult' if he was not sure that one would be provided for him. Josh likewise reported organising for friends or his mother to attend to act as his appropriate adult when no court-provided person was expected.

Claudia's experience was similar, and she brought a counsellor from her local autism service to meetings with her solicitors and with the local authority in relation to the care proceedings. For Claudia, that relied on the counsellor being able and willing to travel with her, as the service was in a different town from the meetings, but having that support was 'unbelievably good'.

The benefits of having an intermediary were explained clearly by Samuel, who thought that there was real value in reducing the stress of the experience for him 'knowing that there was going to be somebody in that courtroom with one sole purpose, which was to cater for my autistic issues if they cropped up in the courtroom'. Margaret's experience of the one hearing that she had where a support worker attended with her was that the support worker enabled her to access a separate waiting room, which was otherwise inaccessible to her throughout the proceedings.

#### *Problems that participants encountered*

Sadly, these positive examples were relatively unusual in our participants' experience, with several of our participants clearly stating that there was nothing provided for them by way of assistance or adjustments. Leo, for example, reported that he told the judge that he had autism, 'and he says "well, that's fine, I understand that"', and then [the hearing] still moves on. It doesn't adjust.' Donna reported that she had written to the court three times, but 'there is no support'.

A consistent theme for our participants was of the struggle they faced seeking support and adjustments. Invariably, the burden to ask for support and adjustments fell on the individual, with our participants having to explain what the issues were and what they were seeking. For some, this task in itself presented a significant obstacle – as Margaret explained, 'nobody asked me if I needed [support] and I didn't know who to ask for it'. On another occasion, Margaret was told to tell the court clerk about her autism, but no one then identified who the clerk was for her to do so. Even once she did work out who to talk to, the response was not positive: 'if I ask for help it's met with "well, that's a nuisance" and, of course, "no"'. Donna said that when she raised issues about her autism 'it was just swept under the carpet', while Claudia spoke of

the difficulty of explaining what her needs were ‘when you’re in a state of absolute stress and distress’.

Even when participants did manage to explain their needs, they often reported that those requests did not result in any adjustments being made – the word commonly used was ‘ignored’. Samuel had explained on the court application form that he needed help with communication in court because of his autism, ‘but they always ignored that’.

A particular concern was that some participants felt that asking for support or adjustments would be viewed negatively and consequently impact on their cases. Claudia recalled a conversation with her solicitor about the risks of disclosure and asking for adjustments: ‘she said the thing is if you use the autism card then you are effectively admitting that it affects you, which gives [the other side] a handle ... [and] he can use it against you’. Margaret was concerned that ‘there would be a retaliation against me’ if she had asked for too much by way of adjustments. These concerns were echoed in other participants’ accounts, where they reported that the other party had tried – sometimes successfully – to use the autism against our participant. Leo, for example, was in litigation about contact with his niece and nephew, whose mother was ‘making all these accusations which aren’t actually true and then she’s going to the courts and saying “he has autism, he’s a very dangerous character”, and all this, which is not right at all’. Claudia’s former partner ‘was basically saying “I’m going to prove to people that you’re a loony, I’m going to take the children from you, I’m going to get you sent to a loony bin” sort of thing’.

Although as noted some participants did sometimes manage to have an appropriate adult with them for court hearings, the provision of it was ‘inconsistent’, as Samuel described it. Josh reported having a court-provided appropriate adult for 9 of 26 hearings, and that only after his MP took the matter up on his behalf, which led to a formal assessment and then approval of the provision by the judge. For several of our participants, the need for assistance from an intermediate was often challenged (see also George et al, 2018: 88). As Samuel explained:

people say, “well, why do you need an appropriate adult or intermediary in court when you’ve already got a lawyer?”, and what you need to try and get across to them [is that] the lawyer is there for the legal part of life [and] the intermediary or appropriate adult ... is there to support you with your welfare.

We earlier quoted Josh’s comparison of the approach to other disabilities, and the fact that provision of adjustments to accommodate a blind or deaf litigant would be automatic, whereas provision of an appropriate adult or intermediary is at the discretion of the judge.

Samuel similarly reported finding it odd that the decision was made by judges and not by the court office on an administrative basis. Samuel’s experience of this was that although he had an intermediary supplied by the court for a period of time, ‘then they’ve not supplied it, saying they don’t think I need it’. This unpredictability was linked in Samuel’s account with his experiences of what he called ‘the vagaries of whether I will or won’t get legal aid’, meaning that both his legal representation and his welfare support varied and were unpredictable from one hearing to the next. His experience of the family courts was in direct contrast with his experiences with the police, where provision of an appropriate adult was a requirement and happened automatically, whereas in the family justice system there were clear budgetary limitations which impacted on the provision of support.

Other participants had similar experiences in relation to other adjustments that they had sought. Zoey reported simply that ‘my reasonable adjustments were not adhered to’, and Toby said that his request for adjustments ‘was ignored’, including his ‘request to adjourn which was backed by a GP letter of that day’.

### **Effect on case process and outcome**

It is, of course, difficult to assess whether any particular issue affected an individual case, particularly in terms of case outcomes. Nonetheless, most of our participants thought that being autistic had affected the way their cases were conducted (not meaning deliberate adjustments designed to help them), as well as the outcomes.

For a couple of our participants, the case was at least in part *about* them being autistic – they were involved in care proceedings which arose in part because of the local authority’s concern about their parenting. However, it is open to question whether these concerns were in themselves based on stereotypes and assumptions. Abigail, whose child was also autistic, was concerned that her parenting and her son’s development were being judged through a non-autistic lens, whereas for herself and her son, ‘our normal is quite different to other people’s normal’. Zoey recorded that the outcome of her proceedings was that because of her autism, ‘it gave social services ground to say I am too expensive to support’.

For most of our participants, though, their autism was not at the heart of the proceedings, though it may have been a relevant factor within those proceedings. Margaret was sure that the judge’s view in her case was that ‘everything that comes out of my mouth is just gibberish because I’m autistic’, while Toby thought that his disclosure of his autism led to ‘a huge amount of bias and as a minimum an appearance of bias’.

Nancy was not sure whether her autism had actually affected the outcome of her proceedings, but she did consider that her former partner had managed to use the threat of more proceedings to pressure her because she was ‘just petrified about going back into that system again’. The impact of her experience in terms of her later access to justice was therefore significant, and led to her bargaining in circumstances where her main aim was to avoid going to court.

### **Recommendations from study participants**

A final theme of our interviews was about what participants thought might improve their experiences of being involved with the family justice system. Perhaps unsurprisingly, one common answer was to have someone available who understood both autism and the family courts, ‘who can explain to me what they meant and who can explain to them what I meant’, as Abigail put it. Participants stressed the importance of realizing that being autistic in the family courts was a unique experience that was accompanied by distinct needs: as we quoted previously, Abigail

described how ‘our normal is quite different to other people’s normal’. Two of our participants linked this to legal support in particular, with discussions about the availability of legal aid; Leo talked about this issue in general, while Samuel thought that, at least for some autistic people, trying to access legal aid on the basis of a mental capacity assessment was worth thinking about.

Nancy’s experience of struggling with attending the court building and dealing with the ‘newness’ of the situation led her to suggest that there be someone available who could meet autistic litigants and guide them to where they needed to be.

Margaret focused on ways to help with communication. She suggested that asking the autistic person to clarify, to stay on point, and to focus on the most pertinent aspects of the case, was part of making reasonable adjustments. She thought that the use of bullet pointed lists was a helpful way to enable an autistic person to focus on the points that needed to be covered. In relation to lawyers’ communication with their own clients, she thought that she at least ‘would appreciate bluntness and directness’. Acknowledging that an autistic client might come across as wanting to over-communicate with their lawyer, Margaret argued that either there was a valid point that the lawyer was not successfully understanding, or ‘it is also very possible that your autistic client misunderstood something and once you clarify things, the obsessive attempts to contact you will stop right away’. Either way, a straightforward and respectful message would likely resolve the issue, in Margaret’s view.

## **DISCUSSION AND CONCLUSIONS**

The present study revealed, for the first time, the direct experiences of a group of autistic adults who had participated in Family Court proceedings. Though they spoke about a variety of cases, there were striking commonalities between their experiences. It was evident that they felt there were a number of ways in which being autistic has impacted on their journey through the courts.

Many of these were closely linked to characteristics of autism, such as challenges around communication, social interaction, sensory sensitivities, altered affect and emotional expression. Additionally, co-occurring anxiety was a significant feature of

participants' accounts. While family court litigation is inherently stressful for all involved, it is known that there is a higher prevalence of anxiety disorders in the autistic population compared to non-autistic people (van Steensel et al 2011). Another recurring theme centred on the difficulty with situations where information or events were presented in such a way that was perceived to be inaccurate or deliberately untrue. This is in keeping with the fact that many autistic individuals rely on adherence to rule-based processes when navigating communication and social interaction, and therefore can find it distressing when faced with a violation of their knowledge or expectations (National Autistic Society 2017). Taken together, some participants felt that all these factors impacted on the outcome of their case, even if autism was not – or should not have been – the focus of the proceedings.

Interestingly, some participants also felt that the nature of the court process itself exacerbated their autistic traits leading to challenges (e.g. meltdowns or extreme anxiety) that they did not usually encounter in daily life. This highlights the importance of considering an autistic individual's developing needs as the court process proceeds.

Alongside the impact of specific aspects of autism, those we spoke to also discussed the process of deciding whether or not to disclose their diagnosis as part of the court proceedings. Some were keen to disclose early in the process in order to facilitate greater understanding of their position and/or seek relevant adjustments. Others chose not to disclose: either because being autistic was deemed irrelevant, or because it was feared that a diagnosis might negatively affect the outcome of the case. This diversity of opinion and approach is echoed in the wider literature regarding the variable impact of disclosure in different situations such as in the Criminal Justice System (Crane et al 2016). However, for all these individuals, having the right to decide whether or not to share information about their diagnoses was important. Conversely, some of our participants highlighted that this decision had been taken away from them when another party unilaterally revealed the information. In these cases, our participants felt not only that their autonomy had been compromised, but also that it was an attempt to use their autism to negatively influence the case.

A major theme that emerged from our discussions was the relationship between the autistic people and the family justice system professionals. It was encouraging to note

that many participants were positive about their own legal teams, particularly flagging up a willingness to try and understand the unique needs of their clients even in the absence of prior knowledge or experience working with those on the autistic spectrum. This finding can be linked to our earlier work with family law professionals, who showed generally good knowledge about autism and a willingness to learn more when working on an individual case, but low levels of confidence about their knowledge and about their ability to provide the required support for an autistic family court user (George et al, 2018: 82-84).

By contrast, there were a number of criticisms leveled at professionals other than their own lawyers. There was also a concern that many of these professionals held negative assumptions regarding autism, for example that an autistic person could not safely care for children. This finding can be linked to one area of concern from our previous research, whereby a high proportion (30%) of family justice system professionals in our questionnaire sample wrongly believed that autistic people are more prone to interpersonal violence than non-autistic people, whereas there is no evidence to suggest that violence is more common amongst autistic people (George et al, 2018: 90). In addition, they felt that judges and social workers were dismissive of their needs and considered requested modifications to be an unnecessary inconvenience. Again, this attitude is reflected in some of the experiences of legal professionals who participated in our previous research (George et al, 2018: 88).

In a minority of cases, the participants were successful in receiving adjustments, such as being provided with an intermediary. More often, they spoke of having to arrange their own support by bringing in an appropriate adult or counsellor. Moreover, in a number of cases participants recounted that their requests for adjustments or additional support had been denied or ignored. Based on these responses, they feared that any further requests would result in them being perceived as “a nuisance” and might negatively impact the case.

This stood in stark contrast to how they believed other disabilities would be treated within the family courts (see also George et al, 2018: 90-91; Flynn, 2015). Further, participants recognised the limited offering compared to what might be found within the Criminal Justice System. Some of the support requests they had made (and which

were subsequently denied) were based on their own prior experience of successful requests made during criminal proceedings.

Interestingly, this picture painted by our participants of a struggle to receive (minimal) adjustments is at odds with our previous work where almost all the legal professionals we spoke to were actively making modifications to support their autistic clients. It is likely that those who chose to be involved in the previous research were those who were more knowledgeable and experienced in this area, and therefore represent examples of best practice rather than the norm. Indeed a similar pattern was seen within research in the Criminal Justice System. One of the few studies on this topic used online surveys to examine the views of 33 judges, barristers and solicitors, which were considered alongside the views of autistic adults (N=9) and parents of autistic children (N=19), all of whom had experience of autism in the criminal courts (Maras et al, 2017). While caution should be taken when generalising results from a small sample, the findings showed that though half the justice professionals were satisfied with experiences of professional encounters with autistic people, many autistic people expressed dissatisfaction.

Finally, the individuals we spoke to had a number of recommendations for ways in which autistic people could be supported within the family courts. First, an emphasis was placed on the need for court staff and legal professionals to understand the unique needs and experiences of autistic litigants. Second, they suggested having a dedicated, trained, member of court staff to meet and guide those on the autistic spectrum through the process. Lastly, the need for a specific mode of communication was highlighted. This should be direct but respectful, and overtly address any misunderstandings that arise.

In conclusion, the present research begins to highlight the first-hand experiences of autistic individuals within the family justice system. It is evident from the findings that those we spoke to were very insightful about their own challenges, ways in which autism might impact on the court process, and what might ameliorate the difficulties encountered. Legal professionals should also be encouraged to consult their autistic clients, or those who appear before them, in order to understand any specific support needs or necessary adjustments. Ultimately, there is no better expert than the

individual themselves. Subsequent research should also use these accounts to develop best-practice guidelines and corresponding training for those working in the family justice system. Together, these can help improve legal professionals' knowledge and confidence when working with their autistic clients, and promote the best possible outcomes for those on the autistic spectrum who find themselves in the family courts.

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