



Family Justice Council Guidance on Neurodiversity in the Family Justice System for Practitioners

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Table of Contents

FOREWORD	3
PRESIDENT OF THE FAMILY DIVISION AND CHAIR OF THE FAMILY JUSTICE COUNCIL, SIR ANDREW MCFARLANE:	3
PART 1: INTRODUCTION AND SCOPE OF THIS GUIDANCE	4
1. DEFINITION AND TERMINOLOGY	4
2. PURPOSE AND SCOPE OF THIS GUIDANCE.....	6
3. WHAT TO CONSIDER WHEN A PARTY IS NEURODIVERGENT – KEY RESEARCH AND THEMES 7	
RESEARCH	7
KEY THEMES.....	9
WHAT THIS TELLS US ABOUT ACCESSING JUSTICE	13
COLLATED SOURCES USED	14
THE LEGAL BASIS FOR MAKING ADJUSTMENTS.....	14
THE ROLE OF AN INTERMEDIARY IN FAMILY PROCEEDINGS.....	15
PART 2: IDENTIFYING NEEDS AND ADJUSTMENTS - BEST PRACTICE GUIDANCE	17
1. INTRODUCTION	17
2. THINKING ABOUT THIS PERSON	17
STEP 1: LOOKING OUT FOR NEURODIVERGENCE	19
STEP 2: IS FURTHER INFORMATION NEEDED?.....	20
STEP 3: WHAT BARRIERS IS THIS PERSON FACING?	20
STEP 4: WHAT ADJUSTMENTS ARE NEEDED TO OVERCOME THESE BARRIERS?	21
STEP 5: APPLYING FOR REASONABLE ADJUSTMENTS.....	23
STEP 6: TIMING	23
PART 3: OTHER USEFUL RESOURCES	24
ACKNOWLEDGEMENTS	24

FOREWORD

PRESIDENT OF THE FAMILY DIVISION AND CHAIR OF THE FAMILY JUSTICE COUNCIL, SIR ANDREW MCFARLANE:

I would like to thank the FJC Working Group for producing this excellent and informative piece of guidance for practitioners. It is clear that the failure to recognise and accommodate neurodivergence within the Family Justice System leads to parties, witnesses and children not being able to participate fully. Equal access to justice is fundamental to a functioning and fair system.

I approved this workstream as an important step towards a more inclusive system with improved outcomes for children and families. The guidance draws together the existing regulatory framework and sets out important best practice.

The universally applicable principle upon which the guidance sits, is that understanding an individual's needs leads to better participation, and more effective justice. This principle encourages a system that, with relatively light adjustments, can improve participation and outcomes for children and families. I encourage practitioners working within the Family Justice System to read the guidance carefully and to consider how they can adopt best practice.

Guidance for Judiciary will follow later this year.

PART 1: INTRODUCTION AND SCOPE OF THIS GUIDANCE

1. DEFINITION AND TERMINOLOGY

The term neurodiversity was introduced in the 1990s to describe the natural differences across the population in the way people’s brains work and the way they may present. This includes the way people appear to think or process information, how they organise their behaviour, and their ability to perform certain sensory-motor tasks.

People whose brains work in the way that most people’s brains work, or as most of society expects, are referred to as “neurotypical”. They are also sometimes now referred to as the ‘neuro majority’. People whose brains work differently from so called ‘neurotypical’ people are called ‘neurodivergent’ or a ‘neuro minority’.

It is estimated that 15% of the population are neurodivergent due to the way their brain has developed. Such neurodivergence may include specific neurodevelopmental conditions such as autism. It is not uncommon for a person to present with more than one of these conditions. The person may also have other mental health or physical conditions quite separate from their neurodivergence. This may also include learning (intellectual) disabilities. Other aspects of their identity including their ethnicity¹, culture, sex and gender will also impact their lives.

People who are neurodivergent can sometimes be regarded as ‘disordered’ or in need of a ‘cure’. However, this is not the case. Their brains are simply different – and not lesser. Neurodivergent people – like everyone - have particular strengths as well as areas they can find difficult. In the Family Justice System, it is up to practitioners to find ways to support neurodivergent people.

Table 1: Illustrative guide to perceived limitations and strengths of common neurodivergent conditions.

Short summary of perceived limitations, which may include²	Condition	Short summary of perceived strengths, which may include
‘Social and communication’ challenges. Rigidity. Anxiety.	Autism – the preferred term, though sometimes referred to as Autism Spectrum Disorder (ASD) or Autism Spectrum Condition (ASC) . The description previously included Asperger Syndrome. Some people might display some features associated with autism	Values driven; principled. Integrity and honesty. Intense/hyperfocus. Strong visual memory. Analytical.

¹Term recommended by GOVUK 2021

² Each of these can overlap and some may apply to more than one type of neurodivergence.

	but will not meet diagnostic criteria.	
Difficulty concentrating. Inattentiveness. Hyperactivity. Impulsiveness. Emotional regulation. Following instructions and organisational sequencing.	Attention Deficit Hyperactivity Disorder (ADHD) or Attention Deficit Disorder (ADD)	Intense energy. Multitasking/task switching. Memory and observational skills. Creative.
Challenges in reading words and spelling. Sequencing, processing information and working memory.	Dyslexia	Creative thinking and problem solving. Strong verbal skills.
Challenges in arithmetical skills. Simple intuitive grasp of number concepts.	Dyscalculia	Problem solving. Strategic thinking. Practical ability. Creativity.
Challenges in physical coordination of daily activities affecting motor coordination and balance (e.g. clumsiness).	Developmental coordination disorder (DCD) (Including dyspraxia)	Creative. Strategic thinking. Holistic or 'outside the box' thinking. High literacy.
Challenges in turning thoughts into written language. Erratic handwriting. Fine motor skills. Spatial perception. Difficulty writing and thinking at the same time.	Dysgraphia	Creative. Leadership skills. Problem solvers. Oral memory and communication.
Involuntary sounds and movements called tics.	Tourette's Syndrome	Enhanced memory and language skills. Rapid processing of information. Enhanced self-control. Skill acquisition.

Table 1 is only a guide. In reality, the way in which a person's neurodivergence is expressed will vary. For instance, people with a diagnosis of ADHD may not always show signs of hyperactivity. A person with DCD may express this more through the way they struggle to organise their thoughts, rather than having difficulties with motor-coordination.

People often develop ways of coping with or managing the impact of their condition. This includes a state known as 'masking' when someone uses strategies to make signs of their neurodivergence less obvious to other people. 'Masking' can often be a

difficult and exhausting process. With or without 'masking', neurodivergence is often not obvious from the outside.

It is important to recognise that individuals may or may not self-identify as neurodivergent. Some may have been diagnosed in childhood, others in adulthood and others may believe they have 'traits', or others recognise 'traits' but are yet to be assessed or be diagnosed.

Some people do not accept their diagnoses and do not wish to be identified as neurodivergent. Some may accept their diagnosis, but do not wish it to be disclosed widely. For others, a diagnosis is embraced and their neurodivergence forms an important part of their identity and something they want to share with others.

Each neurodivergent person will have their own unique profile and support needs with a wide range of presentations. Unhelpful stereotypes and inaccurate assumptions may compound problems in identifying neurodivergence, especially people in minority ethnic groups, women, and older people.

Research looking at the experiences of autistic adults in family court proceedings suggested that autistic adults struggled to obtain the support which they needed and that some autistic adults worried about sharing their diagnosis for fear that it might negatively affect the outcome of the case.³

2. PURPOSE AND SCOPE OF THIS GUIDANCE

This guidance is primarily intended for legal practitioners working within the Family Justice System. Separate guidance will be prepared for the Judiciary.

The evidence available suggests that neurodivergence is overrepresented among court users and the fact that it is often underdiagnosed is likely to further mask its prevalence in those accessing family justice. Failure to recognise and take into account neurodivergence impacts children and families within the Family Justice System in two key, and intertwined, ways:

- (a) Assessments undertaken before, during and after proceedings, or as part of dispute resolution; and
- (b) Barriers to participation in proceedings, which in turn restricts access to justice and to a fair trial.

Failure to recognise and accommodate neurodivergence within the Family Justice System leads to parties, witnesses and children not being able to fully participate in proceedings and dispute resolution, potentially compromising their Article 6 and Article 8 of the European Convention of Human Rights (ECHR)⁴ and/or Article 12 of the

³ Rob George, Laura Crane & Anna Remington (2020): '[Our normal is different': autistic adults' experiences of the family courts](#), *Journal of Social Welfare and Family Law*, DOI: 10.1080/09649069.2020.1751928

⁴ The European Convention on Human Rights (ECHR) protects the rights of individuals against the State, in all its manifestations, including local authorities and the courts. The ECHR includes Article 6 - the right to a fair trial - and Article 8 - the right to respect for private and family life. Breaches of these rights can mean that the court process is undermined and lead to appeals. Breaches can also give rise to free standing claims against a public body.

United Nations Convention on Rights of the Child.⁵ A lack of recognition and unmet support needs can also lead to distressed behaviour, which can significantly impact proceedings through a lack of understanding and tolerance.

Identifying and/or diagnosing neurodivergence can be complex and can take time. As a result, neurodivergent adults or children may not have the benefit of a full understanding of their functioning. This underlines the importance of practitioners being aware of neurodivergence and how it affects individuals, especially children. That awareness is vital when considering if the parenting of a child meets the 'good enough' standard as well as what support families might need in providing a particular child with 'good enough' parenting.

The scope of this guidance is to consider the second of these issues: barriers to participation in proceedings and access to justice and a fair trial. This guidance identifies potential barriers and access to justice issues and considers best practice to better recognise and accommodate neurodivergence within the Family Justice System. The aim is to ensure access to justice and fair treatment for neurodivergent adults, children and families. This guidance aims to assist in identifying the needs of neurodivergent people. It also describes adjustments required to meet those needs and remove barriers to participation.

We hope that this guidance will help to overcome any lack of awareness which can lead to professionals lacking confidence and the needs of neurodivergent people not being met within the Family Justice System. The importance of recognising and meeting the needs of neurodivergent people in the Family Justice System is demonstrated in *D and E (Parent with Autism)* [2020].⁶

The accommodations and adjustments that might help neurodivergent individuals are likely to also help everyone. It is anticipated that much of this guidance will be useful for other people who are entitled to reasonable adjustments, which could include other conditions such as mental or physical illness, learning disabilities and cognitive impairments.

3. WHAT TO CONSIDER WHEN A PARTY IS NEURODIVERGENT – KEY RESEARCH AND THEMES

RESEARCH

Research in this area has been limited, though there is more underway, including research by the University of Bath into autism and the Family Justice System. Other research being undertaken includes research on learning disabilities and on neurodivergence in family court users.

Research has tended to be small scale and qualitative, enabling us to learn directly from participants' experiences of the Family Justice System. Much of the research undertaken to date has focussed on autism, but it is thought that some of the

⁵ [Article 12](#) of the United Nations Convention on Rights of the Child (UNCRC) concerns respect for the views of the child) Every child has the right to express their views, feelings and wishes in all matters affecting them, and to have their views considered and taken seriously.

⁶ [D and E \(Parent with Autism\) \[2020\] EWFC B18 \(11 May 2020\)](#).

conclusions of the research in relation to autism are likely to be useful in relation to other forms of neurodivergence. Reframing the narrative around neurodivergent people - from disordered to different and equally valid ways of experiencing the world - is an important element of much of the available research.

We note that within the Criminal Justice System efforts have been made to better meet the needs of autistic witnesses, partly as a result of several high-profile cases in which autistic people had very poor experiences of the Criminal Justice System.⁷ 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 criminal justice system. A number of these Special Measures are equally applicable to family proceedings.

A review on neurodiversity in the Criminal Justice System conducted by the Criminal Justice Joint Inspection in 2021 identified evidence that some neurodivergent conditions have been better understood than others, for instance autism compared to ADHD.⁸ Overall, the review concluded that there was a need for more effective assessment of need, adaptation of services, and better training of staff, in order to support those with neurodivergent conditions. It is further noted that it is usual for those who are neurodivergent to have more than one form of neurodivergence and that neurodivergent people are more likely to experience anxiety before they even enter the proceedings.

While there is guidance and a procedure for supporting vulnerable parties and witnesses in family proceedings,⁹ neurodivergence is an area of vulnerability which often goes unseen and/or unrecognised. It therefore goes unaddressed. Guidance from Massachusetts Chapter Association of Family & Conciliation Courts (MAAFCC) highlights the importance of recognising neurodivergence as a broad range of brain functioning, while taking a strengths-based approach, as opposed to a pathology orientation.¹⁰

Court proceedings are stressful for everyone, yet the additional layers of difficulties that exist for those who are neurodivergent are clear. A picture emerges through the available research about the anxiety experienced by neurodivergent participants in the Family Justice System. Neurodivergent participants may become anxious due to tensions between enduring difficulties and discomfort, which is then made worse if adjustments are not available and the attitudes of others are negative or dismissive. This could then result in a participant feeling concerned that a request for adjustments may be used against them.

The issue of invisible disabilities is also apparent, with participants in research reporting that they felt neurodivergence was ignored or treated differently than other, more obvious, disabilities would have been regarded. The Hidden Disabilities Sunflower scheme provides an example of an initiative designed to deal with this

⁷ [The Commissioner of Police for the Metropolis v ZH \[2013\] EWCA Civ 69 \(14 February 2013\)](#)

⁸ Criminal Justice Joint Inspection (2021), [Neurodiversity in the Criminal Justice System: A review of evidence](#)

⁹ Family Procedure Rules (FPR) Part 3A and PD3AA; and, the Advocates Gateway Toolkits available at: [Toolkits | Advocate's Gateway](#)

¹⁰ [Considerations regarding child and parent neurodiversity in family court \(maafcc.org\)](#)

issue.¹¹ This is a simple tool for someone to voluntarily share that they have a neurodivergence or disability that may not be immediately apparent. His Majesty's Courts and Tribunals Service (HMCTS or the Court Service) has joined the sunflower scheme, which means that sunflower lanyards are now available to collect in all court buildings for court users, staff and judicial office holders, to make it easy for people to show that they may need additional help or time.¹²

It is clear that there are many elements of family proceedings that can be overwhelming for those who are neurodivergent. For instance, cross-examinations can be lengthy, rigorous and stressful, and when giving evidence, witnesses may be referred to various statements and other written evidence, often being asked to read and process information quickly. Neurodivergent participants may struggle to follow proceedings and remain engaged. Such pressures may result in people becoming flustered or agitated, which may in turn lead a Judge to draw adverse inferences or conclude that the witness was not telling the truth.¹³ Such obstacles carry the risk that an individual might not be able to give their 'best evidence', which undermines the fairness of the process.

There has not been any research into how the misunderstanding of neurodivergence and failures to make necessary adjustments have impacted outcomes in family proceedings. However, there are clear reports of this affecting how individuals experienced the family court process. It is easy in these circumstances to imagine how outcomes might be adversely affected by a lack of understanding and a lack of appropriate adjustments.

Research which looked at legal professionals' knowledge and experience of autistic adults in the Family Justice System suggests that there is a lack of confidence amongst legal professionals in working with autistic adults.¹⁴ It noted the positive effect that training and personal and professional experience of autistic adults can have in increasing professionals' confidence and in ensuring effective access to justice. Research has yet to look at this in relation to the wider picture, but it is thought likely that this will be true of other types of neurodivergence.

KEY THEMES

The issues which have been identified in the available research and existing guidance describe some key themes that impact neurodivergent individuals in family proceedings. These include:

¹¹ [The Hidden Disabilities Sunflower Scheme](#).

¹² HM Courts & Tribunals Service (2023), [HMCTS joins the Hidden Disabilities Sunflower network - GOV.UK](#)

¹³ Maisie Lockyer (2022), [Neurodiversity and proceedings in the family court | Resolution](#)

¹⁴ Rob George, Laura Crane, Alice Bingham, Clare Pophale & Anna Remington (2018), [Legal professionals' knowledge and experience of autistic adults in the family justice system](#), Journal of Social Welfare and Family Law, 40:1, 78-97, DOI: 10.1080/09649069.2018.1414381

Misunderstandings, stereotypes and stigma

- Stigma, misconceptions and negative stereotypes remain pervasive. For instance, there continues to exist the view that autistic people avoid relationships, lack empathy and may be more aggressive.¹⁵ George's research reveals that autistic people have and value relationships, can have huge amounts of empathy (perhaps shown in different ways) and apparent 'aggression' may be distressed behaviour caused by overwhelm.
- For those who appear to show reduced affect or reactions which are often incongruous with the emotions actually being felt, this may be misinterpreted as being apathetic or insensitive. For example, many autistic people have alexithymia, which means it is difficult for them to identify and express their own emotions.
- Venting frustration can lead to being labelled as aggressive, even though this frustration can be caused by unmet needs creating overwhelm. Frustration can often be avoided through proactive planning for challenging or negative outcomes, which involves the autistic person and their support network
- Even amongst legal professionals with a good understanding of the core features of autism, there can still be preconceptions that might disadvantage people who are going through the family courts. For instance, misconceptions about innate tendencies towards violence or suggestibility.¹⁶

Communication

- Altered communication styles and needs, including: difficulties understanding non-verbal communication; not knowing how to answer questions; difficulties processing questions or information delivered using speech alone; or difficulties with understanding 'social rules', such as conversational turn-taking.
- Feeling unable to properly express themselves, be properly understood, or give clear instructions, particularly if their preferred/accessible modes of communication are not made available. This can lead to a sense that their voice is not being heard, which is in turn detrimental to their participation and faith in the justice system.
- Understanding that autistic people communicate in different but equally valid ways can help professionals find ways of communicating that work for everyone. This is likely to involve the use of alternative modes of communication, rather than reliance on the spoken word. Many autistic people find spoken language abstract and hard to process, making written and visual forms of communication essential.

¹⁵ Ibid.

¹⁶ Ibid.

Social interaction and presentation

- Different preferences regarding eye contact, which may be interpreted as an individual not listening or participating. Making eye contact can make synchronous thinking or communicating almost impossible. It can also be painful.
- Emotional regulation may be managed through “stimming”¹⁷ behaviours, which others may misinterpret. Acceptance and understanding of stimming as a means of self-regulation is helpful (unless the stim used is harmful to the individual or others).
- Autistic people may have a particularly strong sense of justice and may find anything perceived as untrue or inaccurate particularly frustrating. They may also not recognise hierarchies, which may lead them to interact in socially unexpected ways and appear rude.

Anxiety

- Anxiety is more prevalent amongst those who are neurodivergent, as they seek to make sense of a society that is designed for neurotypical people. Anxiety is exacerbated by the stresses of court proceedings, and any lack of clarity.
- Some research participants reported ‘ASD symptoms’ becoming worse as a result of the family proceedings. For example, some neurodivergent people may become situationally mute, whilst sensory input may become less tolerable, leading to quicker overwhelm and distressed behaviours.
- A study from the Criminal Justice System referenced defence lawyers having significantly heightened concerns about the risk of self-harm.

Engaging in proceedings

- Neurodivergent people may find it challenging to process exactly what is being asked of them, especially if questions are convoluted or unclear, or there are multiple tasks for them to complete, or several questions are grouped together. Accommodating these differences in processing information can be proactively prepared for by professionals.
- People with autism may recall information less well when given very open and unfocussed questions. Specifying the information needed and using visual aids to help prompt answers in a non-leading way can be helpful.¹⁸

¹⁷ Stimming is self-stimulating behaviour usually characterised by repetitive movements of the body, for example, rocking or arm and hand flapping or repetitive use of an object, for instance, flicking a rubber band or clicking a pen.

¹⁸ University of Bath (2021) ‘Conducting an investigative interview with an autistic person’. Available at [Autism Investigative Interview 2021 V2\[1\].pdf](#)

- It can be difficult as a lay person to follow what lawyers (and the Judge) are saying and what this means; ADHD or difficulty processing information, due to speed, volume or complexity can compound this.
- ADHD may make it difficult for individuals to wait their turn to speak; create difficulty inhibiting the first response they think of; and lead to problems remaining focussed, with the result that they might miss key evidence or arguments.
- Individuals with ADHD can also have strong shifts in emotion which can make them present as reactive and interfere with their ability to take on board and process information. They often react to the first thing that has been said and become quickly activated, which can again be interpreted as aggression.
- People with ADHD are likely to struggle to sustain their attention during proceedings and their focus may easily be diverted by small distractions. They may become intensely focussed upon something that is not relevant, for example, fiddling with a cup instead of listening to the proceedings. This intensely focussed attention (or 'hyper-focus') is often mistaken as a sign that a person does not have ADHD. However, ADHD impacts upon the appropriate modulation of attention, thereby making it difficult to give the right amount of attention to the right thing at the right time. When in hyper-focus, people with ADHD and autistic people will struggle to shift their attentional focus from one thing to another.
- The length of proceedings can be difficult as managing the different demands of proceedings can be particularly exhausting for neurodivergent people. Tiredness and/or medication wearing off can lead to a reduced ability to self-regulate, after which support needs may increase. People may be or may become more restless, have excess energy, present as fidgety, or feel the need to leave their seat.
- Energy may be expended in lengthy or intensive hearings and may result in the person disengaging or disrupting proceedings. A phenomenon known as 'shut down' or 'melt down' may occur. These are states of overwhelm that are distressing for the individual and take time to recover from. These elements should be factored into the planning of sessions.

Needs around predictability

- Those with a preference for sameness, rule-based systems and certainty find the deviation from daily routines in order to attend the family courts extremely distressing. This distress will be compounded by a reduced opportunity for them to prepare for or control the situation. This can make neurodivergent people feel more anxious and less safe. It may also drive some neurodivergent people to seek ways to gain or establish control, which could be misunderstood or misinterpreted.

Sensory issues

- Many autistic people have sensory differences for example extreme sensory sensitivity. This may present as increased sensitivity to lights, sounds, touch and/or smells due to the way their brains process information. This can be exhausting, highly distracting, and experienced by some as acutely physically painful.
- Sensory distractions can prevent people concentrating on what is being said to and/or asked of them.

WHAT THIS TELLS US ABOUT ACCESSING JUSTICE

The available research highlights the need for professionals in the Family Justice System to recognise that being neurodivergent can create barriers to accessing justice. The Criminal Justice Joint Inspection (2021) recommended more routine screening to identify neurodivergence in service users, which would in turn provide a more accurate assessment of the prevalence of neurodivergence and inform service planning.

The research highlights patterns of inconsistency in respect of intermediaries being provided. Some participants were instead taking a friend, family member or someone from their local support service to act as a McKenzie friend, to court. Sometimes intermediaries are provided for some hearings but not others. Neurodivergent people have found that the burden of asking for support fell to them, and they were not sure whether they could ask for support, what support they could ask for, or who to ask. The research indicated that requests were often ignored or misunderstood, and individuals described being worried that it would be used against them.

Having additional guidance for these court users about practicalities, the court lay out and expectations inside court, would be helpful in reducing some uncertainty and therefore anxiety. Research by George et al (2020) recommended that each court should have a dedicated member of staff aware of the needs and issues associated with autism (though we believe this should be extended to cover a greater range of neurodivergence). They would meet people at court, offer guidance, provide support and answer questions. Such postholders should receive additional training.

Just treatment requires that the behaviour of neurodivergent people is not judged through a purely neurotypical lens, which risks adverse assessments or inferences being made about those who may respond differently. This is a major way in which professionals can address their practice to better provide just treatment.

COLLATED SOURCES USED

- [The Commissioner of Police for the Metropolis v ZH \[2013\] EWCA Civ 69](#)
- Criminal Justice Joint Evidence Review (2021) [Neurodiversity in the Criminal Justice System: A review of evidence](#)
- The [Ministry of Justice published its action plan](#) in response to the report on 30 June 2022.
- Maisie Lockyer (2022) [Neurodiversity and proceedings in the family court | Resolution](#)
- Family Procedure Rules (FPR) [Part 3A](#) and [PD3AA](#).
- [Considerations regarding child and parent neurodiversity in family court \(maafcc.org\)](#) Daniel B Pickar, Family Court Rev. 2022; 60:492–506.
- Rob George, Laura Crane & Anna Remington (2020): [‘Our normal is different’: autistic adults’ experiences of the family courts](#), Journal of Social Welfare and Family Law, DOI: 10.1080/09649069.2020.1751928
- Rob George, Laura Crane, Alice Bingham, Clare Pophale & Anna Remington (2018) [Legal professionals’ knowledge and experience of autistic adults in the family justice system](#), Journal of Social Welfare and Family Law, 40:1, 78-97, DOI: 10.1080/09649069.2018.1414381

THE LEGAL BASIS FOR MAKING ADJUSTMENTS

The mechanism for making adjustments for neurodivergence in most family proceedings is the regime set out in Part 3A and PD3AA of the Family Procedure Rules 2010, because someone who has additional needs or is facing barriers due to neurodivergence will be a vulnerable person as defined in Part 3A of the FPR.

Part 3A and PD3AA provide a clear mechanism for making adjustments to ensure that someone who is vulnerable can participate fully in proceedings and paragraph 1.2 of PD3AA says:

“This Practice Direction sets out the procedure and practice to be followed to achieve a fair hearing by providing for appropriate measures to be put in place to ensure that the participation of parties and the quality of the evidence of the parties and other witnesses is not diminished by reason of their vulnerability.”

The Family Court may only make orders which interfere with someone’s Article 8 rights of the ECHR when it is necessary and proportionate to do so. Article 6 of the ECHR provides an absolute right to a fair trial for everyone. Sometimes adjustments are needed to ensure that Article 6 rights are upheld and extend beyond the courtroom. For instance, Munby J (as he then was) said in *Re L (Care: Assessment: Fair Trial)* [2002] 2 FLR 730 at Para 113: *“The fair trial guaranteed by Art 6 is not confined to the ‘purely judicial’ part of the proceedings. Unfairness at any stage of the litigation process may involve breaches of Art 8 and Art 6. Art 6 rights are absolute: they cannot be watered down or qualified”*.

In addition, the court, the local authority and Cafcass/Cafcass Cymru (as service providers to the public) must all function within the terms of the Equality Act 2010 which means that where necessary, reasonable adjustments should be made.

Part 3A of the Family Procedure Rules and case law make it clear that courts and the court process need to adapt to the needs of vulnerable parties and witnesses. Lady Justice Hallett said in *R v Lubemba; R v JP* [2014] EWCA Crim 2064 at paragraph 45, “*Advocates must adapt to the witness, not the other way round*”.

The overriding objective found in part 1 of the Family Procedure Rules makes clear the importance of cases being dealt with justly, fairly and ensuring that the parties are on an equal footing.

THE ROLE OF AN INTERMEDIARY IN FAMILY PROCEEDINGS

It is especially important to consider the assistance a vulnerable party could be entitled to when faced with the daunting prospect of giving evidence. In addition to the resources already referred to within this document is the potential availability of an intermediary appointed by the Court.

Part 3A.1 of the family procedure rules defines an intermediary as follows:

“Intermediary’ means a person whose function is to:

- Communicate questions put to a witness or party;
- Communicate to any person asking such questions the answers given by the witness or party in reply to them
- To explain such questions or answers so far as is necessary to enable them to be understood by the witness or party or by the person asking such questions.”

The President of the Family Division has recently issued Practice Guidance on the use of Intermediaries, Lay Advocates and Cognitive Assessments in the Family Court¹⁹.

It is the court that authorises the appointment of an intermediary and if it is persuaded by the need for such an appointment, it is then HMCTS who will fund the attendance of the intermediary, at least during attendance at court. The Legal Aid Agency, subject to merit and prior authority, may fund an intermediary to cover sessions between a party and their representative outside of court attendance.

In the case of *West Northamptonshire Council (acting via Northamptonshire Childrens trust) v KA (Mother and anor) (Intermediaries)* [2024] EWHC 79 (Fam), Mrs Justice Lieven considered issues involving the appointment of an intermediary for the duration of a 5-day final hearing and provided the following observations:

- a. It will be “exceptionally rare” for an order for an intermediary to be appointed for a whole trial. Intermediaries should not be appointed on a “just in case” basis.
- b. The Judge must give careful consideration not merely to the circumstances of the individual but also to the facts and issues in the case.

¹⁹ [Practice Guidance by the PFD: The use of Intermediaries, Lay Advocates and Cognitive Assessments in the Family Court - Courts and Tribunals Judiciary](#)

- c. Intermediaries should only be appointed if there are "compelling" reasons to do so.
- d. In determining whether to appoint an intermediary the Judge must have regard to whether there are other adaptations which will sufficiently meet the need to ensure that the defendant can effectively participate in the trial.
- e. The application must be considered carefully and with sensitivity, but the recommendation by an expert for an intermediary is not determinative. The decision is always one for the Judge
- f. If every effort has been made to identify an intermediary but none has been found, it would be unusual (indeed it is suggested very unusual) for a case to be adjourned because of the lack of an intermediary
- g. Consideration needs to be given to relevant steps that can be taken to assist the individual to ensure effective participation where no intermediary is appointed. These include having breaks in the evidence, and importantly ensuring that "evidence is adduced in very shortly phrased questions" and witnesses are asked to give their "answers in short sentences".

As has already been stated, it will be for the legal parties and the Court to adapt themselves to the witness and not the other way around. Whilst all parties, aided by the opinion of an expert may support the appointment of an intermediary because it will make the hearing, potentially, "easier" that is not the test the Court applies and the Judge has to consider whether the appointment is "justified".

PART 2: IDENTIFYING NEEDS AND ADJUSTMENTS - BEST PRACTICE GUIDANCE

1. INTRODUCTION

It may be helpful to have a framework for thinking about understanding and responding. A socially valid framework, developed initially for autism but which has been applied across other neurodivergent groups, is called **SPELL**.

This mnemonic concerns the inter-related domains of S - Structure; P - Positive attitudes, approaches and expectations; E - Empathy; L - Low arousal, and L - Links.

2. THINKING ABOUT THIS PERSON

Domain	Purpose	Examples	Questions (examples)
Structure	Reduce anxiety through clarity and removal of ambiguity.	Visual instructions – not relying on oral communication alone. Physical mapping of process – such as a timetable.	Does the person know: What will happen? What will it look like? Where? When will it start <i>and</i> finish? What happens next?
Positive attitudes, approaches and expectations	Respectful narrative, acknowledge and play to strengths. Clarity of communication.	Respectful inclusive dialogue. Instructions given that are clear and unambiguous.	Have we included the person in discussion and decisions? Have they understood? Are questions and processes clear and understood? What would it take for them to understand?
Empathy	To understand the person's experience from their perspective.	Get to know and reflect on possible difficulties in communication and known stressors, such as	How is this person experiencing this? Are there any known or predictable stressors?

		<p>communication style:</p> <p>-directness is often misunderstood as rudeness.</p> <p>-Anxiety or stimming presenting is often misunderstood as disrespectful.</p>	<p>Are proceedings too complex, too long, understandable for the person?</p> <p>What will a plan look like to address these?</p> <p>Have we taken steps to ensure 'unusual' or unconventional behaviours are accepted and accommodated?</p>
Low arousal	<p>Recognition of sensory sensitivities and needs. Avoid confrontation.</p>	<p>Audit the process and environment for known or potential stressors. Check with the person/family or support network on anxiety producing factors or sensory requirements.</p>	<p>What adjustments can be made to the environment to reduce problematic sensory factors: light, heat, space, noise, touch?</p> <p>Is there a quiet space for the person to use?</p> <p>Do they know this in advance?</p> <p>Could a pre-court visit help identify the reasonable adjustment needs?</p>
Links	<p>Consistency.</p> <p>Connection.</p>	<p>Include person in decisions; provide practical guidance and ensure the person knows where and how to get help. Do not assume they know.</p>	<p>Does the person know where to get help and how to go about it?</p> <p>Is there a named individual looking after arrangements for them?</p>

STEP 1: LOOKING OUT FOR NEURODIVERGENCE

In every case, at the earliest stage, thought should be given to whether someone might be neurodivergent. If there is an existing diagnosis, this should be accessed (if the individual concerned agrees to this). If there is an existing diagnosis further information may also be required (which can include expert assessment when necessary) in order to understand that person's needs, strengths and the barriers which they might face.

If there is no existing diagnosis the first step for a practitioner is undertaking the exercise described below in circumstances where neurodivergence may present.

The Advocates Gateway – Toolkit 10 'identifying Vulnerable Witnesses' para 2.2²⁰ is a useful checklist for identifying if someone might be vulnerable. However, if neurodivergence is suspected, some or all of the following areas can be explored with an adult, child, or witness (adjusted to consider their age and understanding of content) to identify if there might be issues for that person or their child.

The following questions do not constitute screening but may be helpful in identifying people who *may* be neurodivergent. They are not scored but are there to give an overall impression and ideas for further action that will be helpful in understanding the person or further steps. They do not indicate a diagnosis or a need for a diagnosis.

- Do you receive PIP or DLA? Have you ever received PIP or DLA?
- Have you ever been referred for a Community Care Act assessment? If so, what for and what was the outcome?
- Have you ever received any extra professional support (from health services, social services or charities)?
- Did you struggle with reading, writing or maths in school?
- Did you receive extra help in school?
- Do you find it difficult to concentrate or pay attention?
- Are you a slow or fast reader?
- Are you able to understand and remember what you read?
- How easy do you find writing by hand?
- Do you find noisy and crowded spaces difficult?
- Do you get worried by change?
- Do you feel able to express your thoughts easily?
- Do you ever feel like you have too many thoughts at once?
- What do you feel when you go to a new environment?
- How do you find talking to people that you don't know?
- Do you ever struggle with understanding turns of phrase, sayings or metaphors?
- Do you struggle with numbers or telling the time?
- Do you have any problems with coordination or balance?
- Do you have any problems when trying to speak?
- Do you feel anxious for long periods?

²⁰ [Advocates Gateway Toolkit 10: Identifying vulnerability in witnesses and parties and making adjustments](#)

- Have you ever been diagnosed with any psychological or mental health condition?
- Have any of your family members been diagnosed with any psychological or mental health condition?

The purpose of the exercise should be clearly explained before starting.

This exercise should be undertaken in a calm and private space when the person is not preoccupied or likely to be distracted. Allow at least 45 minutes and be prepared to pause the meeting if the person becomes distressed or anxious or lacks the energy or willingness to proceed.

Questions should be asked sensitively, empathically and at a manageable pace for the participant. Before the exercise is begun, it should be made clear that some or all of the information gathered may need to be shared with the other parties, professionals and the court. Depending on your role, you will need to ensure that you have the appropriate consent to share any information obtained during the exercise with any other parties or professionals (including the court).

STEP 2: IS FURTHER INFORMATION NEEDED?

The above exercise or being made aware that there is an existing diagnosis, will often result in further information being needed. This further information might include:

- Further information, with any necessary consent, from health, education or social services.
- Further information, with any necessary consent, from friends, family or carers.
- Formal assessment as to whether someone is neurodivergent or if they have an existing diagnosis, formal assessment of their needs and profile.
- An assessment of someone's communication needs by an intermediary.

STEP 3: WHAT BARRIERS IS THIS PERSON FACING?

Use all the information available about the person's needs and preferences to consider what barriers the person might face in relation to the Family Justice System:

- away from court.
- at court generally.
- at court and during a hearing, but not giving evidence.
- at court and giving evidence.

Once you have made this list, discuss it with the person to see if they agree, disagree, or have any other barriers to add. This list is likely to need to be kept under review as the person has more exposure to the proceedings and the court environment.

You will need to be aware that external assessment may be necessary as not everyone will have insight into their needs and appropriate accommodations.

STEP 4: WHAT ADJUSTMENTS ARE NEEDED TO OVERCOME THESE BARRIERS?

There are a wide range of adjustments that can be made and the right adjustments will always depend on the person's individual needs as opposed to any label or diagnosis. A one size fits all approach should be avoided. The vast majority of adjustments are straightforward and simple and will already be familiar to those working in the Family Justice System.

For example, some Judges at Milton Keynes have seen success with participation directions that are led by the needs of the individual where, unless there is a very good reason not to, the adjustment is allowed.

The three types of adjustments are most commonly needed are:

- Adjustments to communication.
- Adjustments to the environment.
- Adjustments to the structure and timing of different aspects of the process, for instance, the court day or client conferences.

The adjustments needed should be broken down into four scenarios:

- Adjustments required away from court.
- Adjustments required at court generally.
- Adjustments required during court hearings.
- Adjustments required when giving evidence.

There will usually be a significant overlap in the adjustments required in each of the above four scenarios.

When considering what adjustments can be made for someone, consider if someone's strengths can be used to help them overcome barriers they are facing.

Some examples of communication adjustments are:

- Contact by email, rather than phone call.
- Written material being presented in a different format, avoiding black writing on a white background. People may have their preferred tint for background, such as pale green. 'Aktiv Grotesk' or similar font may help.
- Avoiding the use of abstract or metaphorical language and double negatives.
- Using shorter sentences or questions.
- Formulating questions in a way that considers any tendency to answer questions in a very literal or overly short way.
- Allowing more time to consider information and answer questions.
- Allowing more time for instructions to be taken and advice given.
- Building in strategies to check the person is understanding and whether the communication adjustments need to be amended.
- Detailed advanced planning of examination in chief or cross examination to ensure that the communication needs of the witness are met during oral evidence.

Some examples of adjustments to the environment are:

- Removing a loudly ticking clock.
- Adjusting lighting, if possible, to switch off harsh or down lighting.
- Providing a different chair, for example, one that can allow for movement or is softer.
- Giving permission to move around.
- Allowing the use of a fidget toy or stress ball or preferred item of comfort, as demonstrated by Milton Keynes Family Court.
- Making sure someone feels comfortable to use “stimming” behaviours, if needed.
- Giving access to a private and quiet area to wait and ensuring this is known about in advance.
- Providing the chance to familiarise themselves with new places in advance, for instance, the court or the room where they are to have assessment sessions or contact.

Some examples of adjustments to structure and timing are:

- Having important discussions or giving evidence at a particular time of day.
- Taking regular breaks.
- Sticking to a pre-agreed visual/ written timetable as much as possible. Give warning if there is likely to be a change.
- Taking extra steps to make sure that someone is clear about what will happen and when, and who all the people involved with the proceedings are. For instance:
 - Providing the person with pictures of the lawyers and other professionals along with a description of their role in the proceedings.
 - Using agendas or visual aids to make clear the timetable for the day or proceedings.

Once a list of adjustments has been drawn up, the next step is to consider which adjustments will be required in each of the four scenarios, namely:

- away from court;
- at court generally;
- during court hearings; and
- when giving evidence.

When doing this, you might find you think of some additional adjustments.

Once you have a draft list of the adjustments proposed in each of the four scenarios, check that all barriers have been addressed. The person who is to benefit from the adjustments should have the chance to consider the draft list, make changes to it and ask questions about it.

Once the person is happy with the list of proposed adjustments this can be shared with the other parties and the court. The court can be asked to adopt the list and adjudicate on any measures which are not agreed.

Many people involved in the Family Justice System will already be aware of some of the more common adjustments when a vulnerable party is giving evidence, such as: changes to questioning style and mechanism; regular breaks; and evidence being

given with the support of an intermediary. But often more specific and creative adjustments can be invaluable for neurodivergent people. A good example of this is seen in the case of *C (Children: Welfare) (No.2)* [2020] EWFC B36,²¹ where a unique procedure was devised with the help of an intermediary to enable a party to type their answers when giving evidence.

STEP 5: APPLYING FOR REASONABLE ADJUSTMENTS

There is no standard format for a request for reasonable adjustments to be made to the court but the Court Service (HMCTS) provide guidance on what a reasonable adjustment is, what can be provided and how to arrange for the adjustment.²²

STEP 6: TIMING

Whether adjustments are needed should be considered at the earliest stage of proceedings or at the start of any pre-proceedings process. If adjustments are made, they must be kept under review throughout the course of the proceedings to ensure that they continue to meet the individual's needs.

Adjustments should be explicitly reviewed at a ground rules hearing before the person gives any evidence, as anticipated in paragraph 5 PD 3AA FPR.

²¹ [C \(Children: Welfare\) \(No.2\) \[2020\] EWFC B36 \(24 August 2020\)](#)

²² [Equality and diversity - HM Courts & Tribunals Service - GOV.UK](#)

PART 3: OTHER USEFUL RESOURCES

- [The advocates gateway](#).
- [PD3AA para 5.7](#): All advocates are expected to be familiar with and to use the techniques employed by the toolkits and approach of the Advocacy Training Council.
- [Toolkit 3](#): Preparing to question someone who is Autistic.
- [Toolkit 5](#): Planning to question someone with 'hidden' disabilities: specific language impairment, dyslexia, dyspraxia, dyscalculia and ADHD.
- [Toolkit 13](#): Vulnerable Witnesses in the Family Court.
The guides to autism and the family court produced by Professors Rob George and Anna Remington at University College London.
- Family Law Advice for the Neurodivergent community, flanc.org.uk
- [What to expect coming to a court or tribunal - GOV.UK \(www.gov.uk\)](#)
- [HMCTS who's who: civil and family court - GOV.UK \(www.gov.uk\)](#)
- [Going through security at a court or tribunal building - GOV.UK \(www.gov.uk\)](#)
- [Equality and diversity - HM Courts & Tribunals Service - GOV.UK](#)
- Is That Clear?: Effective communication in a neurodiverse world ([Book by Zanne Gaynor, Kathryn Alevizos and Joe Butler](#))

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