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**Court experience of adults
with mental health conditions,
learning disabilities and limited
mental capacity
Report 5: Policy processes, services
and practices**

**Rosie McLeod, Cassie Philpin, Anna Sweeting,
Lucy Joyce and Roger Evans
BMRB and Liverpool John Moores University**

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Report 5 of 6

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The authors

BMRB is the longest established research agency in Britain, having been founded in 1933. Throughout that time the company has built up a reputation for methodological excellence and innovation, and enjoys a reputation for producing strategic work of the highest quality and integrity. BMRB regularly carries out important studies to inform policy-making for major organisations in the public and private sectors.

Roger Evans is Director of the School of Law and Professor of Socio-Legal Studies at Liverpool John Moores University and a Non-Executive Director of a Mental Health NHS Foundation Trust. The team also worked in collaboration with **Neil Hickman**, a practitioner working in community health. The team holds a combination of policy knowledge, research expertise and practical experience of working with the specified vulnerable groups and of researching within the court setting. In the past, the team has collaborated on projects such as Victims' Advocates and a research project into vulnerable and intimidated witnesses for the Ministry of Justice.

This is the fifth in a series of six reports on a research project exploring the court experience of adults with mental health conditions, learning disabilities and limited mental capacity. The research relates to victims and witnesses in criminal cases, and to participants in civil and family cases.

Report 1 outlines the key findings from the research.

Opportunities for identification of court users with these vulnerabilities, and the extent of subsequent support, varied across the courts. A number of relevant policies and processes have been introduced in recent years. However, these tended not to be designed **specifically** for court users with mental health conditions, learning disabilities and limited mental capacity. Furthermore, policies related to particular stages of the court case or to particular agencies, rather than the whole 'journey' of an individual victim, witness or case participant through the justice system. The report therefore recommends a clear support pathway for vulnerable court users, supported by improved systems of accountability and the establishment of small multi-disciplinary teams. Better processes for early identification of conditions, and guidelines to increase awareness of how disclosures can be made, are also recommended. A single point of contact for vulnerable court users throughout a case is proposed, along with increased dissemination of tailored information, improved access to legal representation, additional and improved training for professionals, and improvements to implementation of special measures.

Report 2 outlines the experiences of court users with these vulnerabilities from their first involvement with the justice system until their attendance at court.

Across the courts, conditions were more likely to be identified when a support worker was present with the court user. In criminal cases, experiences varied greatly depending upon police awareness of the court user's support needs. In civil proceedings, a lack of contact with the courts could impede identification, and court users depended on legal representatives or existing support networks to identify needs and provide support. Identification was most likely in family proceedings where assessments and close contact with professionals were common. Court users were unlikely to disclose their condition unprompted. Protocols for support in criminal courts meant that court users were more content with the level of information and support offered than was the case in civil and family proceedings, where no protocols or designation of responsibility for support existed.

Report 3 considers the process of attending court, including arriving at court, waiting to go into the court room, being in the court room and giving evidence.

Generally, court users made their way to the court room alone and were daunted by the formal environment; this stress was significantly reduced by prior familiarisation with the court

process, the presence of a support worker, and the support of the Witness Service in criminal courts. Court users who felt they needed support were willing to disclose their condition, but were not always aware of whether disclosure was appropriate or who was responsible for informing the court. In turn, staff often assumed that identification would already have occurred and did not feel that they had the expertise to carry out this function. Where the judiciary were aware of need, the adjustments which they made were helpful to court users and increased their sense of inclusion in proceedings. In criminal cases, special measures were helpful in supporting court users to give evidence. More specialist support was only required by those who felt unable to manage their conditions.

Report 4 outlines the 'after-court' process, including receiving verdicts in court, leaving the court and making the journey home, awaiting outcomes and receiving news at home, and moving on from the experience.

Hearing a verdict in court and receiving news of the case outcome at home were times of particular stress and low mood for court users. They needed clear explanations to understand their case outcome, and emotional support to come to terms with it. Co-ordination between agencies to ensure that the court user was adequately supported at this point required careful management, but there are few protocols for support provision following court appearances. Many of the court users who were interviewed for this research did not feel any further support was necessary following case closure. However, where it was required, communication and cross-referrals between service providers were important to ensure the court user was not left unsupported.

Report 5 provides an overview of the policies, services and practices in place across the court system to support the needs of adults with mental health conditions, learning disabilities and limited mental capacity.

Two key policy processes within the criminal justice system are relevant. The first aims to better enable vulnerable or intimidated witnesses to give best evidence in court, (including the use of special measures). The second aims to improve the criminal justice system more widely to better meet the needs of victims and witnesses. Special measures has had a significant positive impact on court experience, and early evaluations of intermediary schemes are promising. A range of protocols are used by the police and the CPS to facilitate the identification and support of this group of court users. In the civil justice system, service delivery in this area has been guided by two policy aims: to improve, simplify and speed up the litigation system (assisted by the Civil Procedure Rules), and to strengthen the law in relation to Anti-Social Behaviour Orders, including the extension of special measures to anti-social behaviour cases. In the family courts, policy to harmonise the Family Procedure Rules with the Civil Procedure Rules, and guidelines to support the use of McKenzie Friends for litigants in person, are in place. The overarching policy outputs relevant to the study

are the amended Mental Health Act (2007), the Mental Capacity Act (2005), the Disability Discrimination Act (2005), and the Department of Health's 'No Secrets' (2000) guidance on protection of vulnerable adults.

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

Overall, this research aimed to examine how the court system supports the complex and specific needs of adults with mental health conditions, learning disabilities and limited mental capacity. It explored the direct experiences of victims and witnesses in criminal cases, and case participants in civil and family courts. The project had two phases: a developmental scoping study, and a programme of interviews with practitioners, court users and carers. The methodology was entirely qualitative. Recruitment was conducted in house through contact with a range of networks and support organisations. All study participants voluntarily self-disclosed their conditions, and definitions of conditions followed participants' own usage. A process of informed consent tailored to individual need was used for all interviews.

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1. Introduction

People with mental health conditions and learning disabilities may experience greater difficulties in accessing justice than other groups, and possibly also greater discrimination and disadvantage (Mind, 2001). Current Government policy aims to meet the needs of victims, witnesses and users of the justice systems more effectively and to improve access to justice, particularly for vulnerable people.

The Court Experience of Vulnerable People Research Programme helps deliver this aim by providing evidence to facilitate improvement in Ministry of Justice (MoJ) services. As part of this programme, the MoJ commissioned BMRB and Professor Roger Evans of Liverpool John Moores University to undertake research into the experiences of court users with mental health conditions, learning disabilities and limited mental capacity.

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

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

This report is the fifth in a series of six reports presenting the findings from the research. It provides an overview of the policy processes, services and practices in place across the court system in England and Wales to support the needs of adults with mental health conditions, learning disabilities and limited mental capacity. The review focuses firstly on the criminal court and then looks at the civil and family courts in turn. The overarching policy outputs for all three courts are then discussed.

The information in this report was obtained through the desk research conducted as part of Phase 1. The findings in this report then formed part of the discussion in Phase 2 interviews with policy makers, court staff, judiciary, magistrates, solicitors and practitioners from public agencies and support organisations. Any changes or additions to policy processes, services and practices were introduced after Phase 2.

2. Understanding policy processes, services and practices

Prior to outlining the policies, services and practices in place, it is important to clarify the usage of these terms.

These terms all relate to the **policy process**. The policy process is defined widely and flexibly in the literature. For example Yeatman (1998), referring to the public sector, defined the policy process as:

'All aspects of what is involved in providing policy direction for the work of the public sector. These include the ideas which inform policy conception, the talk and work which goes into providing the formulation of policy directions, and all the talk, work and collaboration which goes into translating these directions into practice.'

The relevant policy areas may be fragmented, and policies formulated in different areas are not necessarily joined up. Policies developed in separate components of the system may not always fit into any overarching policy framework.

The outputs of the policy process encompass a wide range of products, including legislation, strategies, written policies, implementation plans, codes of practice, guidance, services and practices.

The term **services** in this research refers to forms of organisation designed to deliver policy objectives. The main services dealt with here are Her Majesty's Courts Service, the Crown Prosecution Service, the police, the Witness Service, the judiciary, legal representatives and third sector organisations. In the process of implementation, policies are almost invariably interpreted and translated to fit with different local needs and conditions, stakeholder interests, organisational imperatives and other factors. Consequently there is often some gap between formal policy and its implementation in practice.

The term **practice** here refers to what service providers do when delivering services. Policy may be just one factor that could influence practice. Other factors may include professional training, occupational cultures, organisational imperatives and so on.

It is important to highlight that while it may be possible to make an analytic distinction between policy, services and practices, in reality they lie on a continuum and are all components of the policy process. There is rarely a straightforward linear progression from policy to implementation to practice.

The following is an empirical account of those policies, services and practices that the interviews with key stakeholders and the desk research have suggested may be relevant,

even if this relevance is only indirect to scoping the court experience of vulnerable court users. This report does not claim to provide a systematic policy review. Rather it is a map of the often-fragmented policy processes that have emerged in relation to different subjects and user groups from a variety of interests and concerns.

3. Criminal justice system

This chapter outlines policy processes, services and practices in place in the criminal justice system which are relevant to the vulnerable court users considered in this project.

3.1 Policy processes

Two key policy processes within the criminal justice system are relevant to the experiences of court users with mental health conditions, learning disabilities and limited mental capacity. These are the Government's commitments to:

- better enable vulnerable or intimidated witnesses to give best evidence in court; and
- improve the criminal justice system more widely to better meet the needs of victims and witnesses.

Enabling vulnerable and intimidated witnesses to give best evidence in court

In 1998, the Government published the report, *Speaking up for Justice* (Criminal Justice Performance, Justice, Victims and Witnesses Unit, 1998). This proposed an integrated scheme to provide appropriate support and assistance for 'vulnerable or intimidated' witnesses. It set out 78 recommendations to improve their treatment within the criminal justice system and to enable them to give best evidence in criminal proceedings. Proposals for support and assistance for these witnesses covered the investigation stage, pre-trial support, the trial and beyond. An implementation plan, *Action for Justice* (Home Office, 1999), was developed to take forward the recommendations in *Speaking Up for Justice*. Some of the measures in the report required legislation, and therefore were included in the *Youth Justice and Criminal Evidence Act 1999* (British Government, 1999).

The definition of a 'vulnerable witness' encompasses children, and adults who have a mental disorder (as defined within the Mental Health Act), or a significant learning disability. It may also include some people with physical disabilities. In practice, the majority of interviewees in this research could be considered 'vulnerable' under this definition.

A set of procedures designed to help vulnerable and intimidated witnesses to give 'best evidence' in the criminal courts were introduced under the Youth Justice and Criminal Evidence Act 1999 (YJCEA 1999). These have become collectively known as 'special measures'. The YJCEA specifies that they may be authorised by the court 'only if they are likely to improve the quality of a witness's evidence'.

The special measures available in criminal cases include:

- screening to ensure that the witness and defendant cannot see one another;
- the option of giving evidence by live TV link;

- clearing the public gallery while the witness gives their evidence;
- requesting the removal of wigs and gowns by judiciary members;
- video recording of an interview to be admitted as evidence to the court;
- video recorded cross-examination or re-examination;
- examination of a witness through an intermediary; and
- allowing a witness to use communication aids (e.g. a symbol book or alphabet board).

Most of the special measures outlined in the *Youth Justice and Criminal Act 1999* were implemented in the Crown Court in July 2002. Evaluations have shown positive impacts for vulnerable and intimidated witnesses. These include a reduction of anxiety and stress (Burton *et al.*, 2006) and a significantly greater likelihood of expressing overall satisfaction with the criminal justice system than among witnesses not offered special measures (Hamlyn *et al.*, 2004). However, these evaluations identified some difficulties encountered by the police in identifying vulnerable and intimidated witnesses, particularly those with learning disabilities or mental disorders (Burton *et al.*, 2006).

The special measure ‘examination of a witness through an intermediary’ was introduced in six pathfinder areas in 2005 and nationally rolled out from April 2008 following positive findings from the evaluation (Plotnikoff and Woolfson, 2007). Intermediaries can communicate on behalf of a victim or witness with communication difficulties, and explain or clarify what other people have said so that he/she can understand it. The intermediary does not act on behalf of the prosecution or defence; they are neutral and their responsibility is to the court and to justice, ensuring that best evidence is obtained. Intermediaries complete an accredited training course and a full assessment process, and comply with Codes of Practice and Ethics, and regular reassessments. They are registered with the Intermediary Registration Board.

Evaluations of the scheme found that witnesses and their carers expressed positive opinions of their experience (Plotnikoff and Woolfson, 2007). Carers felt that intermediaries facilitated communication and also helped witnesses to cope with the stress of giving evidence. A number of benefits were highlighted, including the potential of intermediaries to assist in the process of bringing offenders to justice and to improve access to justice, associated cost savings, assistance in identifying witness needs and the use of appropriate interviewing and questioning techniques. However, some skills gaps were identified among the available intermediaries (Plotnikoff and Woolfson, 2007).

Table 3.1 outlines the different policy outputs discussed above that have helped to enable vulnerable and intimidated witnesses to give best evidence in court. A brief description of each is given, along with a list of the services involved in delivery, and the practices that are relevant to mental health conditions, learning disabilities and limited mental capacity.

Table 3.1 Table of policy outputs in relation to better enabling vulnerable and intimidated witnesses to give best evidence in court

Policy output: description	Services impacted	Practices
<p>Speaking up for Justice.</p> <p>Type of output: Working group report</p> <p>Published by: Criminal Justice Performance, Justice, Victims and Witnesses Unit</p> <p>Date published: 1998</p> <p>Brief summary: Report (of the Interdepartmental Working Group) on the treatment of Vulnerable or Intimidated Witnesses in the Criminal Justice System.</p>	<p>Police and Crown Prosecution Service (henceforth CPS)</p>	<ul style="list-style-type: none"> ● Consult witness and those who know him/ her about the best way to interview witness ● During interviews, a vulnerable witness, particularly someone with learning disabilities, should have the option of being accompanied, preferably by someone familiar to them. This “supporter”, whose role must be clearly defined, should be independent of the police and not a party to the case being investigated. The police should be responsible for ensuring that a support person is present. ● Pass on information regarding specific needs to CPS ● Meet with CPS to agree best way of obtaining statement from witness, in addition to use of special measures in court
	<p>HMCS</p>	<ul style="list-style-type: none"> ● Allow ‘Supporter’ into CCTV room if evidence is given by video link ● Use statutory powers to require court to use appropriate communication methods to achieve best evidence ● Make special measures available to facilitate communication
<p>Action for Justice</p> <p>Type of output: Implementation plan</p> <p>Published by: Home Office</p> <p>Date published: 1999</p> <p>Brief summary: Implementation plan to take forward the recommendations in Speaking Up for Justice report</p> <p>NB: See above – implementation of measures from ‘Speaking up for Justice’.</p>	<p>Police</p>	<ul style="list-style-type: none"> ● Consult witness and those who know him/ her about the best way to interview witness ● Ensure independent ‘Supporter’ is present during interview; consider their advice when establishing special measures usage ● Pass information regarding specific needs to CPS ● Meet with CPS to agree best way of obtaining statement from witness, in addition to use of special measures in court
	<p>CPS</p>	<ul style="list-style-type: none"> ● Meet with police prior to court to discuss best way of obtaining statement from witness and best use of special measures during trial
	<p>HMCS</p>	<ul style="list-style-type: none"> ● Allow ‘Supporter’ into CCTV room if giving evidence by video link ● Use statutory powers to require the court to use adequate communication methods to achieve best evidence ● Make special measures available to facilitate communication

Table 3.1 Table of policy outputs in relation to better enabling vulnerable and intimidated witnesses to give best evidence in court (continued)

Policy output: description	Services impacted	Practices
<p>Youth Justice and Criminal Evidence Act 1999</p> <p>Type of output: Act (Mandatory) Published by: British Government Date published: 1999 Brief summary: The Act has two main purposes. Firstly it creates a new sentence for young people convicted in court for the first time and pleading guilty which is a referral to a youth offender panel. Secondly it legislates the use of some of the special measures as recommended in <i>Speaking Up for Justice</i> report.</p>	Police	<ul style="list-style-type: none"> ● Complete interview planning form prior to interview ● Use Achieving Best Evidence guidelines to plan and conduct interview ● Communicate the use of a planning form to the CPS ● Gain video evidence in familiar setting where possible ● Communicate needs to CPS using MG2 form
	CPS	<ul style="list-style-type: none"> ● The CPS are responsible for ensuring witness is competent
	HMCS	<ul style="list-style-type: none"> ● Provide material (e.g. communication aids) to assist witnesses with a disability ● Approve intermediary
<p>Vulnerable Witnesses: A Police Service Guide</p> <p>Type of output: Guidelines Published by: Home Office Date published: 2004 Brief summary: This guidance is intended to be a practical guide for operational police officers and any other staff employed by the service who come into contact with members of the public, to identify and deal appropriately with vulnerable and intimidated witnesses.</p>	Police	<ul style="list-style-type: none"> ● The guidance provides a list of behavioural, physical and social characteristics that police officers should be aware of, to help them identify vulnerable witnesses ● Use communication techniques outlined in the guidance to gain statement, e.g. simplify language, ask witness to repeat back ● Seek advice from local or national agencies following identification of any difficulties to assist evidence gathering ● Consult witness about whether they would like a 'Supporter' present and who this should be ● Facilitate attendance of 'Supporter' ● Facilitate early special measures meeting with CPS ● Communicate any competency concerns to CPS

Table 3.1 Table of policy outputs in relation to better enabling vulnerable and intimidated witnesses to give best evidence in court (continued)

Policy output: description	Services impacted	Practices
<p><i>Achieving Best Evidence in Criminal Proceedings: Guidance on vulnerable or intimidated witnesses including children</i></p> <p>Type of output: Guidelines Published by: Home Office Communication Directorate. Date published: 2002 Brief summary: This document describes good practice in preparing for and conducting interviews with vulnerable and intimidated witnesses. The aim is to enable vulnerable and intimidated witnesses to give the best evidence possible.</p>	Police	<ul style="list-style-type: none"> ● Adhere to appropriate interview techniques (e.g. pacing and phrasing of questions, building rapport) ● Use specific techniques for people with autism or learning disabilities ● Offer witness a series of short interviews rather than one long one ● Where capacity is in question, obtain expert assessment from psychiatrist / clinical psychologist ● Adapt behaviour in interviews according to guidelines to facilitate optimum evidence gathering
	Judiciary	<ul style="list-style-type: none"> ● Approve special measures ● Rule out inappropriate questioning by defence or other party
	Legal representatives	<ul style="list-style-type: none"> ● Draw attention of judge to inappropriate questions from defence or other party ● Outline potential negative consequences of adjournment to the well-being of the witness
<p><i>Early Special Measures Meeting between the police and the Crown Prosecution Service and meetings between the Crown Prosecution Service and Vulnerable or Intimidated Witnesses: Practice Guidance</i></p> <p>Type of output: Guidance Published by: Home Office, CPS, ACPO Date published: 2001 Brief summary: This document provides the national blueprint for local protocols between the police and CPS relating to the special measures outlined in the Act.</p>	Police	<ul style="list-style-type: none"> ● Inform CPS at meeting about the reasons why special measures might be appropriate ● Consider inviting expert witness to advise on witness competence ● Consider inviting witness ● Record meeting on form provided in guidance documentation
	Therapists	<ul style="list-style-type: none"> ● Attend early special measures meeting with police ● Contribute to discussion on grounds for special measures ● Ask witness to confirm views about special measures ● Inform witness of binding nature of court direction ● Record meeting on form provided in guidance documentation

Table 3.1 Table of policy outputs in relation to better enabling vulnerable and intimidated witnesses to give best evidence in court (continued)

Policy output: description	Services impacted	Practices
<p><i>Provision of Therapy for Vulnerable or Intimidated Adult Witnesses prior to a Criminal Trial: Practice Guidance</i></p> <p>Type of output: Guidelines Published by: Home Office, CPS, Department of Health Date published: 2002 Brief summary: Speaking Up for Justice stated that vulnerable or intimidated witnesses should not be denied the emotional support and counselling they may need both before and after the trial. The Department of Health, the CPS and the Home Office produced this guidance for therapists, those who commission or arrange therapy and lawyers involved in making decisions about the provision of therapeutic help for vulnerable or intimidated adult witnesses prior to a criminal trial.</p>	CPS	<ul style="list-style-type: none"> ● Identify where therapy may have an impact on the evidence ● Safeguard confidentiality of witness ● Deal with case at earliest possible opportunity
	Therapists	<ul style="list-style-type: none"> ● Decide whether therapy is appropriate ● Aim to use preventative approaches and build coping skills ● Do not guarantee confidentiality at beginning of therapy ● Keep records of therapy ● Appear in court if requested by CPS

Improving the criminal justice system to meet the needs of victims and witnesses more effectively

The general aims of placing the needs of victims and witnesses at the heart of the justice system, and improving access to justice (see introduction) have led to the implementation of a number of policy outputs in the justice sector. These are not specifically focused on the needs of the court users with mental health conditions, learning disabilities or limited mental capacity. However, they outline the more generic support available, and include some specific requirements for vulnerable and intimidated witnesses (court users with mental health conditions, learning disabilities and limited mental capacity are included).

Table 3.2 outlines the relevant policy outputs. A brief description of each is given, along with a list of the services involved in delivery, and the practices that are relevant to vulnerable and intimidated witnesses. This includes court users with mental health conditions, learning disabilities and limited mental capacity. There is some duplication between the practices listed for each policy output. However, this detail has been included in order to provide a comprehensive account.

Table 3.2 Table of policy outputs in relation to improving the criminal justice system to meet the needs of victims and witnesses more effectively

Policy output: description	Services impacted	Practices
<p>Criminal Procedure Rules</p> <p>Type of output: Procedure rules Published by: Ministry of Justice Date published: 2005 Brief summary: The Criminal Procedure Rules set out an overriding objective that courts and everyone involved in a criminal case must pursue: to deal with the case justly. They give courts explicit powers to actively manage the preparation of criminal cases waiting to be heard, to eliminate unfair and avoidable delays, and to promote certainty about what is happening for the benefit of everyone involved (Ministry of Justice, 2005).</p>	<p>HMCS and 'all other parties involved in criminal proceedings (e.g. CPS)</p>	<ul style="list-style-type: none"> ● Applications for special measures must be made in writing in the form set out in the Rules ● A party wishing to oppose a special measures application must notify the applicant and the court within 14 days; the court will then arrange a hearing ● After the special measures hearing the court must, within three days, notify the parties in writing whether special measures have been granted
<p>Criminal Case Management Framework</p> <p>Type of output: Framework Published by: Office for Criminal Justice Reform Date published: 2007 Brief summary: The Criminal Case Management Framework is a step-by-step guide for participants in the criminal justice process, setting out best practice in case management so that cases are prepared and conducted appropriately, in accordance with the Criminal Procedure Rules and brought to a conclusion efficiently and with the minimum of delay.</p>	<p>Police</p>	<ul style="list-style-type: none"> ● Applications for special measures must be made in writing in the form set out in the Rules ● A party wishing to oppose a special measures application must notify the applicant and the court within 14 days; the court will then arrange a hearing ● After the special measures hearing the court must, within three days, notify the parties in writing whether special measures have been granted
	<p>Witness Care Unit (see below)</p>	
	<p>HMCS</p>	<ul style="list-style-type: none"> ● Where the court has been notified that a vulnerable or intimidated witness or victim is involved, ensure that the WCU is informed of: <ul style="list-style-type: none"> – decisions of all case hearing dates – out of court decisions – adjournments and postponements – outcome of the trial ● In cases where there are vulnerable or intimidated witnesses or victims, this must be done no later than one working day after the date is set for. It must be done no later than three working days after the date is set in other cases. ● Ensure, as far as possible, that cases involving a vulnerable witness are given priority when listing ● When notified by the parties, ensure that appropriate facilities, including video links, are available for any witness with special needs

Table 3.2 Table of policy outputs in relation to improving the criminal justice system to meet the needs of victims and witnesses more effectively (continued)

Policy output: description	Services impacted	Practices
<p>The Code of Practice for Victims of Crime</p> <p>Type of output: Code of practice</p> <p>Published by: Office for Criminal Justice Reform</p> <p>Date published: 2006</p> <p>Brief summary: This sets out the minimum standards of services to be provided by criminal justice agencies to victims of crime and includes statements on enhanced services for vulnerable witnesses.</p>	Police	<ul style="list-style-type: none"> ● Identify vulnerability (see report 3) ● If a victim is eligible for special measures, explain the measures available to them and record on the Manual Guidance 2 form any views the victim expresses about applying for special measures ● Notify vulnerable victims of any developments in the case (e.g. concerning arrests, bail conditions, case progression etc.) within one day (rather than five days which is the case for other victims)
	CPS	<ul style="list-style-type: none"> ● Identify vulnerability ● Notify a vulnerable and intimidated victim within one working day (rather than five days for other victims) if the Crown Prosecutor decides there is insufficient evidence to bring any proceedings ● Notify a vulnerable and intimidated victim within one working day (rather than five days for other victims) if the CPS takes a decision to alter substantially or drop any charge ● Have systems in place to assist prosecutors in considering whether or not to make an application to the court for a special measures direction (see report 3)
	HMCS	<ul style="list-style-type: none"> ● Identify vulnerability ● In cases where there is a vulnerable victim, HMCS must notify the police and Witness Care Unit (WCU) of the following within one working day (rather than three days, as for other victims) <ul style="list-style-type: none"> - All hearing dates - Decisions relating to first hearings/bail applications - Decisions relating to all subsequent hearings - All adjournments and postponements of scheduled hearings to without a court hearing ● Ensure the availability of special measures as far as possible for cases where they have been granted

Table 3.2 Table of policy outputs in relation to improving the criminal justice system to meet the needs of victims and witnesses more effectively (continued)

Policy output: description	Services impacted	Practices
<p>Every Witness Matters</p> <p>Type: Handbook Published by: Her Majesty's Courts Service Date published: 2007 (New edition Feb 2009) Brief summary: This handbook is a resource and toolkit for HMCS staff. It is intended that the document will be kept and updated at court level. Includes practical guidance and information, all aimed at ensuring that HMCS, working with other agencies, meets its obligations to, and the expectations of, witnesses.</p>	<p>HMCS (all those with a role in serving and supporting victims and witnesses, including Witness Liaison Officers, Case Progression Officers and Ushers)</p>	<ul style="list-style-type: none"> ● Defines disability according to the Disability Discrimination Act 2005 and highlights key points within it ● Has a summary of special measures available for vulnerable and intimidated witnesses
<p>No Witness, No Justice</p> <p>Type: Programme Published by: Criminal Justice System Date published: 2004 Brief summary: The programme is designed to ensure that the service provided to victims and witnesses is properly tailored to the needs of each individual so that they are able to attend court. The programme is part of a wider programme called the Criminal Case Management.</p>	<p>Police</p>	<ul style="list-style-type: none"> ● Complete the Manual Guidance II form, including initial assessment of victim/witness needs and ask officers to indicate whether consent for referral to Victim Support or the Witness Service has been given
	<p>CPS: charging lawyers</p>	<ul style="list-style-type: none"> ● Consider witness needs at point of charge; this might include special measures
	<p>Witness Care Unit - introduced as part of the programme</p>	<ul style="list-style-type: none"> ● Act as a single point of contact ● Identify witness needs and issues from the time that a suspect is charged until the completion of the case ● Undertake a detailed needs assessment for every witness in cases where a not-guilty plea is entered (this includes the identification of potential vulnerable and intimidated witnesses, in addition to the police code of practice requirement – it is another opportunity to identify vulnerable and intimidated witnesses)

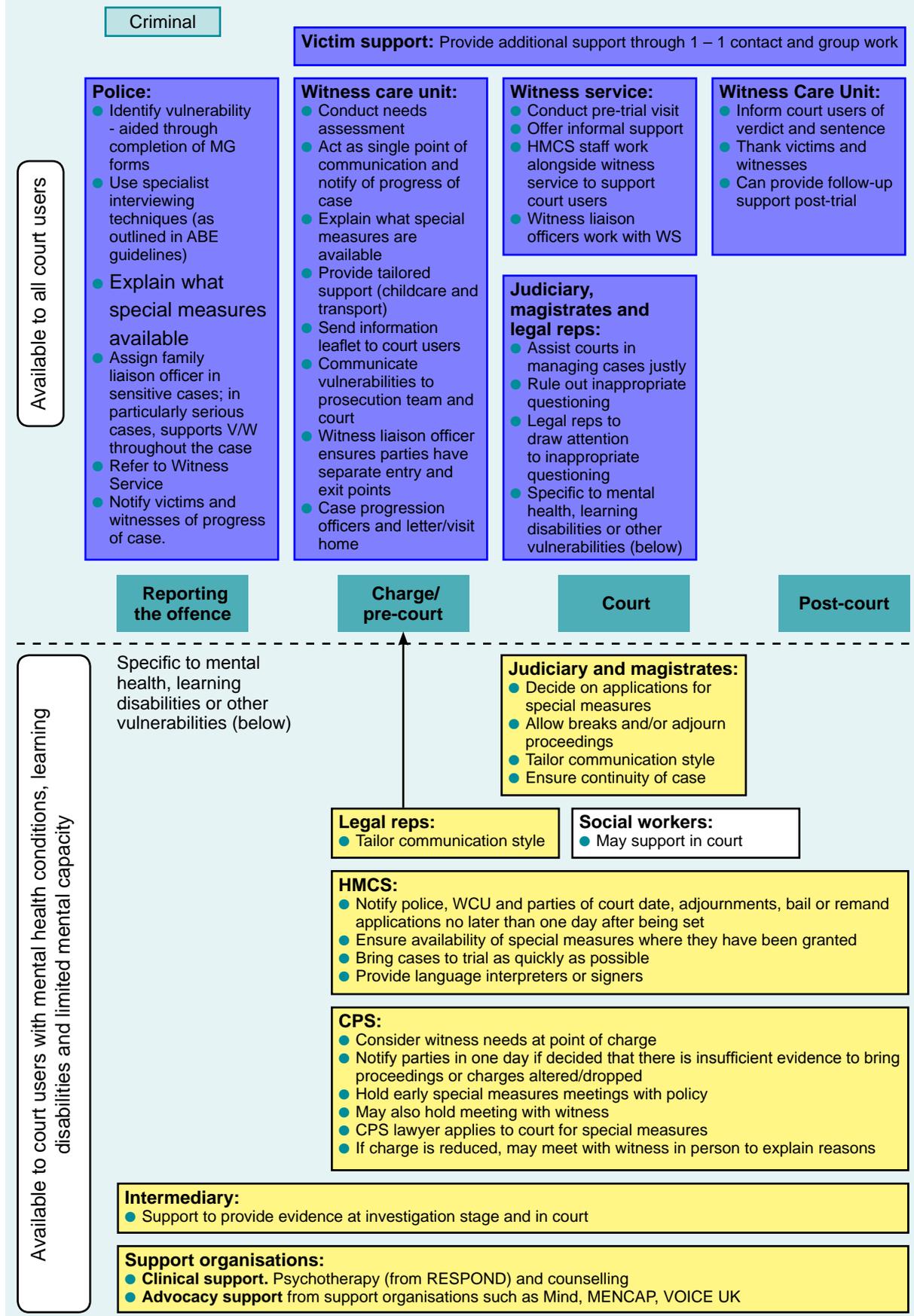
Table 3.2 Table of policy outputs in relation to improving the criminal justice system to meet the needs of victims and witnesses more effectively (continued)

Policy output: description	Services impacted	Practices
<p>Witness Charter</p> <p>Type: Set of standards</p> <p>Published by: Criminal Justice System</p> <p>Date Published: 2008</p> <p>Brief summary: A set of 34 standards which outline the level of service witnesses can expect to receive at every stage of the criminal justice process and the standards necessary to provide an enhanced service for vulnerable witnesses.</p>	Police	<ul style="list-style-type: none"> ● Undertake initial needs assessment and seek witnesses' views on measures that might help ● Ask the witness if they would like to be referred to the Witness Service for further support
	WCU	<ul style="list-style-type: none"> ● Undertake follow-up needs assessment ● Explain which special measures are available
	CPS	<ul style="list-style-type: none"> ● Prosecution lawyers will ask the court to give cases involving vulnerable witnesses priority in respect of the times and dates of hearings
	Defence lawyers	<ul style="list-style-type: none"> ● If the person is a defence witness and identified as vulnerable, the defence lawyer will seek to provide them with as much assistance as their professional rules allow
	HMCS	<ul style="list-style-type: none"> ● For vulnerable witnesses, court staff will seek to review entrance and exit routes to limit the opportunity for them to come into contact with the other parties ● For vulnerable witnesses, court staff may allow them to be able to wait somewhere near the court until they are needed to give evidence ● If the court has granted an application for one or more special measures to help a vulnerable witness give evidence, court staff will ensure the special measure is available and provide any assistance required ● Cases involving vulnerable witnesses should be brought to trial as quickly as possible ● Seek to meet the special needs of a witness, where advance notice of this is given ● An interpreter, intermediary or signer will be provided for any witness with language or communication needs, either by lawyers or court staff, subject to advance notification
Witness Service	<ul style="list-style-type: none"> ● The Witness Service, where permitted by the court, can accompany a vulnerable witness in the live TV link room 	

3.2 Services and practices

Figure 3.1 provides a process map of the services in place in the criminal justice system and the practices they undertake according to the policy outputs described above and those described in the stakeholder interviews. The map outlines the services and practices that provide generic support (grey boxes above the court process arrows) and those that provide specific support to court users with mental health conditions, learning disabilities and limited mental capacity (white boxes below the court process arrows).

Figure 3.1 Map of support services and practices in the criminal justice system (2009)



4. Civil justice system

This chapter outlines the policy processes, services and practices in place to support adults with mental health conditions, learning disabilities and limited mental capacity in the civil justice system.

4.1 Policy processes

Two key policy processes within the civil justice system are relevant to this research project. These are the Government's drives to:

- improve, simplify and speed up the litigation system; and
- strengthen the law in relation to Anti-Social Behaviour Orders.

This section discusses these policy processes, provides a brief background and describes the various relevant policy outputs.

Improve, simplify and speed up the litigation system

In 1996, Lord Woolf's report '*Access to Justice*' (Woolf, 1996) recommended a range of reforms ('Woolf Reforms') to the civil justice system. Their aim was to develop a civil justice system that was just, fair in the treatment of litigants, easily understood and able to operate more quickly, efficiently and economically. The recommendations were incorporated into the *Civil Procedure Rules 1998*.

The Rules defined detailed procedures and protocols to be followed in civil cases, with the over-riding objective of enabling the court to deal with cases 'justly'. This included ensuring that parties are on an equal footing and that cases are dealt with expeditiously and fairly.

The main consequence of the reforms is more 'active' management of cases by the courts. Much of the procedural decision-making is taken away from the parties to a case and control of proceedings is transferred to the court. The aims of this transfer are, amongst other things, to ensure that cases do not reach court unnecessarily, to encourage alternative forms of dispute resolution and to oblige parties to conduct litigation reasonably. The court can impose strict timetables for litigation and encourage co-operation between parties.

The Rules did not include the special measures available to vulnerable witnesses in criminal proceedings (described above). This is because civil (and also family) cases are regarded as less adversarial. However, special requirements can be applied to civil and family case in certain circumstances (see below).

However, the Rules defined a 'protected party' as someone who lacks capacity (within the meaning of the Mental Capacity Act 2005) to conduct proceedings, and stipulated that a protected party must have a 'Litigation Friend' to conduct proceedings on their behalf. A Litigation Friend is the legal guardian of a client who cannot undertake proceedings for

himself or herself. As well as ‘protected parties’, clients who are under the age of 18 would normally be required to have a Litigation Friend. This person has a duty to conduct the proceedings fairly and competently on behalf of the child or person lacking capacity.

Table 4.1 provides an overview of the content of the Civil Procedure Rules 1995.

Table 4.1 Table of policy outputs in relation to improving, simplifying and speeding up the civil justice system

Policy output	Services impacted	Practices
<p>Civil Procedure Rules 1998</p> <p>Type of output: Rules Published by: HMSO Date published: In force 1999 Brief summary: Detailed procedural code and practice directions to be followed by the court in civil matters</p>	HMCS	<ul style="list-style-type: none"> ● The overriding objective of the Rules is for the court to manage cases actively throughout the process and to achieve this justly. Dealing with a case justly includes: <ul style="list-style-type: none"> - ensuring parties are on an equal footing; - dealing with cases proportionately; - dealing with cases expeditiously and fairly. ● Individuals who lack capacity (within the meaning of the Mental Capacity Act 2005) to conduct proceedings are defined as ‘protected parties’ and must have a Litigation Friend appointed to act on their behalf in the proceedings. ● The Rules encourage alternative dispute resolution where possible, to avoid full court hearings. ● The Rules encourage co-operation between parties and the reasonable conduct of litigation
	Legal Reps	<ul style="list-style-type: none"> ● The Rules require legal representatives to assist the court to further the overriding objective of managing cases justly.
	Parties in civil cases.	<ul style="list-style-type: none"> ● The Rules require parties in civil cases to assist the court to further the overriding objective of managing the cases justly.

Strengthen the law in relation to Anti-Social Behaviour Orders

The Serious Organised Crime and Police Act 2005 (British Government, 2005) introduced an amendment to the law which enables special measures (as described above) to apply in civil Anti-Social Behaviour Order applications in Crown Court and magistrates’ courts. Vulnerable and intimidated witnesses in civil anti-social behaviour cases can now benefit from the range of supportive and protective measures that were previously only available in criminal cases.

This amendment was part of a range of new measures to strengthen the existing law in relation to Anti-Social Behaviour Orders (introduced by the Crime and Disorder Act 1998).

A document entitled Supporting Victims and Witnesses in Anti-Social Behaviour Court Cases: A Comprehensive Guide to Civil Courts (Home Office, Communities and Local Government and the Ministry of Justice) was published in 2008 and provided further detailed guidance and examples of best practice on supporting victims and witnesses through court cases involving anti-social behaviour. Table 4.2 provides an overview of this guide as well as the Serious Organised Crime and Police Act 2005.

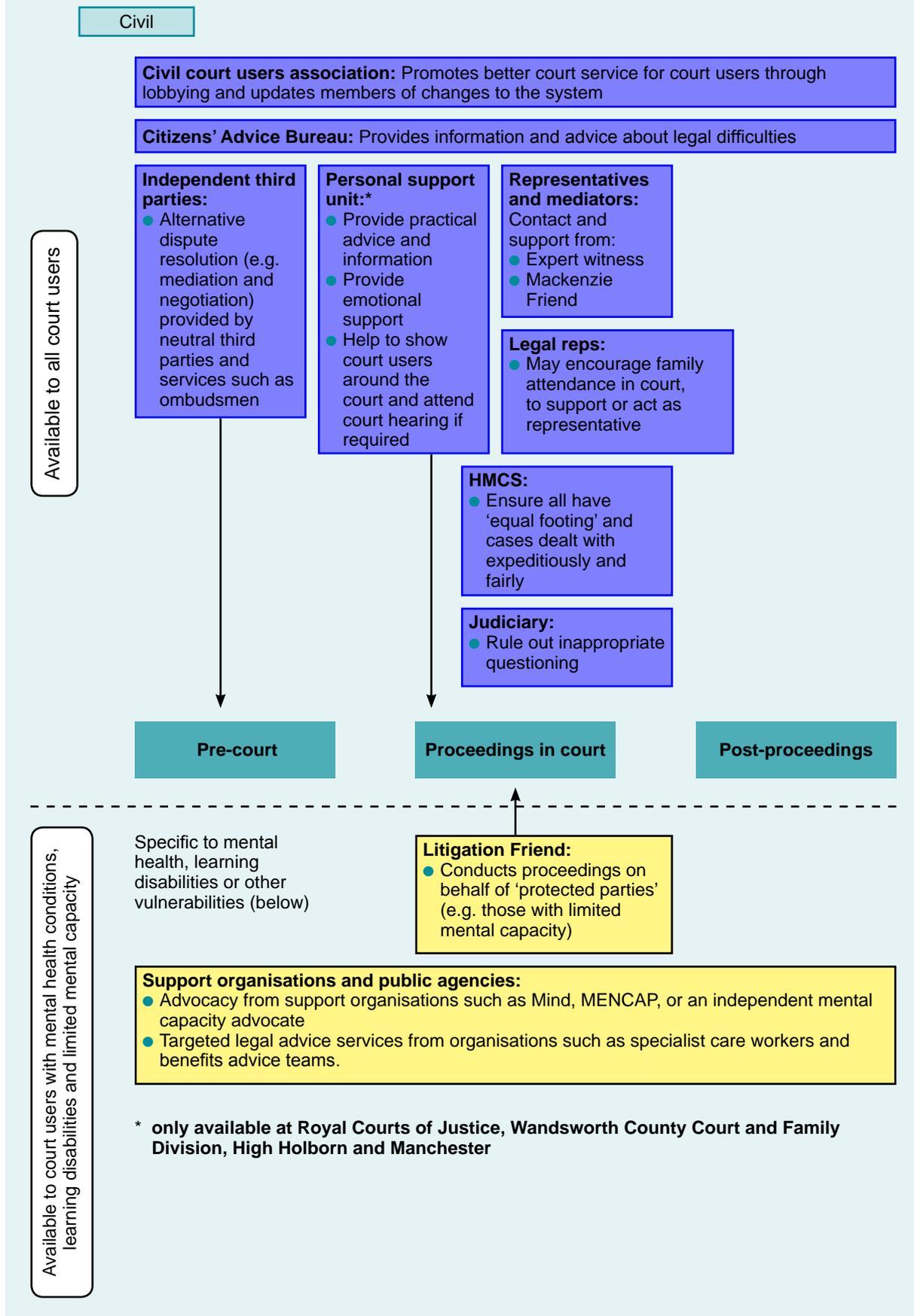
Table 4.2 Table of policy outputs in relation to strengthening the law concerned with Anti-Social Behaviour Orders

Policy output	Services impacted	Practices
<p>Serious Organised Crime and Police Act 2005</p> <p>Type: Statute Published by: HMSO Date published: 2005 Brief summary: A range of statutory powers to combat crime and disorder</p>	HMCS	<ul style="list-style-type: none"> ● The Act extended the availability of special measures for vulnerable or intimidated witnesses (previously only available in criminal cases) to include witnesses in civil anti-social behaviour cases. For example: <ul style="list-style-type: none"> - screening the witness from the accused; - witness evidence provided by video link or in private; - providing communication aids; - removal of wigs and gowns by judges / legal representatives
<p>Supporting victims and witnesses in Anti-Social Behaviour Court Cases: A Comprehensive Guide to Civil Courts</p> <p>Type: Guidance Published by: Home Office, Communities and Local Government and the Ministry of Justice Date published: May 2008 Brief summary: Guidance and best practice for the support of victims and witnesses through cases involving anti-social behaviour. Also includes guidance on restorative justice.</p>		<ul style="list-style-type: none"> ● Guidance for all parties concerned including: <ul style="list-style-type: none"> - definitions of witnesses and victims; - how to encourage witnesses and victims to come forward; - how to gather evidence effectively; - an explanation of the court process; - guidance on restorative justice. ● Additional detailed guidance for experts in the field on evidence, special measures and witness intimidation.

4.2 Services and practices

Figure 4.1 provides a process map of the services in place in the civil justice system and the practices they undertake to support court users according to the policy outputs described above and those described in the stakeholder interviews. The map outlines the services and practices that provide generic support and those that provide specific support to court users with mental health conditions, learning disabilities and limited mental capacity.

Figure 4.1 Map of support services and practices in the civil justice system (2009)



5. Family justice system

This chapter outlines the policy processes, services and practices in place in the family justice system to support adults with mental health conditions, learning disabilities and limited mental capacity.

5.1 Policy processes

One key policy process within the family justice system is relevant to this research project:

- to harmonise the Family Procedure Rules along the lines of the Civil Procedure Rules (discussed above) so that there is a single set of rules for all tiers of the family courts.

In addition, an increase has been recognised in the number of litigants in person, and the advantages to the court of allowing a ‘McKenzie Friend’ to attend court with the litigant. A litigant in person is an individual, company or organisation who is not represented by a solicitor or barrister in court, but nevertheless has the right to address the court in person. A McKenzie Friend is not a legal representative, but can assist a litigant in person in various ways during the court process. These include the provision of moral support, non-legal advice, and assistance with sourcing legal forms and editing documents.

Harmonising the Family Procedure Rules with the Civil Procedure Rules

The Family Proceedings Rules 1991 (British Government, 1991) came into force on 14 October 1991. The rules are currently in the process of reform and development in order to harmonise along the lines of the Civil Procedure Rules. The first of the new rules (*Family Procedure Rules (Adoption)*) were published in 2005 (British Government, 2005) and the intention is to create new procedure rules for all areas of family law. The overriding objective of the new rules mirrors the *Civil Procedure Rules 1998* (British Government, 1998) discussed above, and includes similar provisions regarding protected parties and the use of litigation friends.

Table 5.1 outlines the policy output that has occurred to harmonise the *Family Procedure Rules 2005* along the lines of the *Civil Procedure Rules 1998* and its aims and objectives.

Table 5.1 Table of policy outputs in relation to harmonising the Family Procedure Rules along the lines of the Civil Procedure Rules

Policy output	Services impacted	Practices
<p><i>Family Procedure (Adoption) Rules 2005</i></p> <p>Type of output: Statutory instrument Published by: Her Majesty’s Stationery Office Date published: In force 2005 Brief summary: Detailed procedural code and practice directions to be followed by the court in adoption cases in the family courts</p>	<p>HMCS (family courts)</p>	<ul style="list-style-type: none"> ● Individuals who lack capacity within the meaning of the Mental Capacity Act 2005 are defined as ‘protected parties’; a Litigation Friend must be appointed to act on their behalf in the proceedings ● The rules have the same overriding objective as the Civil Procedure Rules to deal with cases justly etc. (see discussion under civil justice, above)

The increase in the number of litigants in person and use of McKenzie Friends

The first use of a McKenzie Friend was in the family court, and they are generally associated with family proceedings. However, they have also been used in some civil and criminal cases. The role has no legal basis or professional standing and, in practice, McKenzie Friends are simply friends or assistants. They have no rights to address the court but can accompany, quietly advise and assist the court user through the proceedings. Case law has established that if the assistance of a McKenzie Friend is available to a court user, in the interests of fairness there would generally be no objection to a McKenzie Friend being present and there is no need to make a formal application for permission for their attendance. The court does have the discretion to refuse, but this would only occur in extreme circumstances, where there were concerns over security, or over the need to maintain order or do justice. With the increase in the number of litigants in person in the family court, the *President Guidelines: McKenzie Friends* (President of the Family Division, 2008) have recently been updated. This document provides guidelines for the use of McKenzie friends in the family courts.

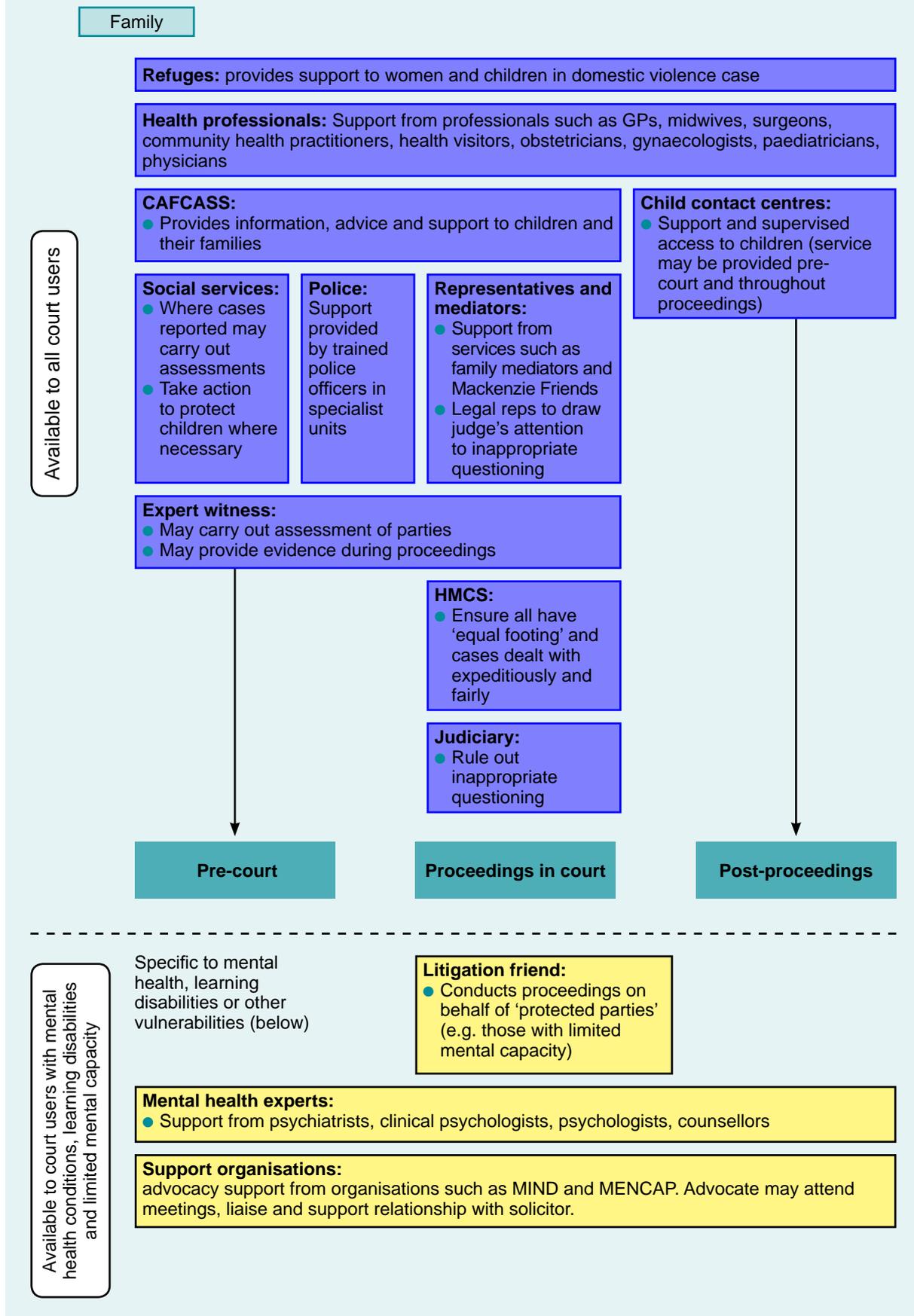
Table 5.2 Table of policy outputs in relation to the growth of litigants in person and use of McKenzie Friends

Policy output	Services impacted	Practices
<p>President's Guidance: McKenzie Friends</p> <p>Type: Guidance Published by: President of the Family Division Date published: 2008 Brief summary: Guidance on the role of McKenzie Friends and the factors for a court to consider their use has been requested</p>	HMCS	<ul style="list-style-type: none"> ● Guidance for the court on the role of McKenzie Friends and factors to consider when considering a request for a McKenzie Friend to attend court ● Mckenzie Friends can sit with the court user, take notes and offer quiet advice and support; they cannot represent the court user and are not allowed to address the court

5.2 Services and practices

Figure 5.1 provides a process map of the services in place in the family justice system and the practices they undertake according to the policy outputs described above and those described in interviews. The map outlines the services and practices which provide generic support, and those which offer specific support to court users with mental health conditions, learning disabilities and limited mental capacity.

Figure 5.1 Map of support services and practices in the family justice system (2009)



6. Across all three systems

A number of overarching policy outputs are relevant to the experience of court users with the conditions considered, or where there are concerns over a person's capacity to make a decision, or their level of vulnerability. These policy outputs are discussed in this chapter.

6.1 Mental Capacity Act 2005

The Mental Capacity Act 2005 (Department of Constitutional Affairs, 2007) came fully into force in April 2007 and provides the statutory framework for decision-making on behalf of people lacking capacity. The relevant key principles of the Act are:

- capacity to make a decision is presumed unless a lack of capacity can be established and all practicable steps have been taken to aid the person to make a decision; and
- any act or decision made on behalf of a person must be in their best interests and the aim of the act or decision must be achieved in the least restrictive way.

The Act establishes a new Court of Protection to deal with all issues concerning individuals who lack capacity. These include decisions over provision of medical treatment, the appointment of deputies to act on behalf of a person lacking capacity, and resolution of disputes over whether a person lacks capacity, or over a particular decision. The Act also establishes a new official role of 'Public Guardian', invested with a range of general monitoring and supervisory functions under the Act. These include the provision of advice and support to the public and to persons carrying out functions under the Act. The Public Guardian also acts as the 'gateway' to the Court of Protection by recommending alternative methods of resolving disputes (for example, mediation) without the need for an application to the court.

Where a serious decision is involved, a person lacking capacity has a right to an Independent Mental Capacity Advocate. The role of the Advocate is to gather information, try to establish the wishes and feelings of the person concerned, and explore alternative options. This role is likely to extend to assisting a person involved in civil proceedings.

The Act does not expressly address the position for people lacking capacity in a court setting. However, there are clear areas of overlap with the *Civil Procedure Rules 1998* which have been amended to take account of the *Mental Capacity Act 2005*.

6.2 Mental Health Act 2007

The Mental Health Act 2007 (Department of Health, 2007) provides the statutory framework for the reception, care and treatment of people suffering from a mental disorder. The Act covers the detention and treatment of 'civil' patients and also patients involved in criminal proceedings or under sentence from the criminal courts. There are no specific provisions

concerning the position of a person with mental health conditions involved in other civil or family proceedings. However, the Act contains a number of safeguards for detained patients, one of which is access to a Mental Health Review Tribunal. This is a court with the power to review detentions under the Act and to order the discharge of a patient where the legal grounds for detention are no longer met.

6.3 Disability Discrimination Act 2005

The Disability Discrimination Act 2005 (British Government, 2005) provides protection for disabled people by making an act of discrimination unlawful in employment, the provision of goods, facilities or services, and the provision and management of premises. The Act does not deal specifically with the rights of a disabled person involved in court proceedings. However, as a government agency, HMCS are bound by the Act and must provide the same service to a disabled person as they would to a non-disabled person and must not make it impossible or unreasonably difficult for a disabled person to use the service.

6.4 No secrets

No secrets: Guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse (Department of Health, 2000) was published in 2000 following recommendations in the report, *Speaking up for Justice* and the Government White Paper, *Modernising Social Services* (Department of Health, 1998). The former highlighted concerns about the identification and reporting of crime against vulnerable adults in care settings, and proposed the development of a national policy to protect these individuals. It was subsequently agreed that local multi-agency codes of practice should be put in place.

No secrets provided a structure for the development of these local inter-agency policies, procedures and protocols. It was intended for use by agencies responsible for investigating and taking action when a vulnerable adult, including those with mental health conditions or learning disabilities, was believed to be abused. It proposes that these policies should include guidance relating to support with criminal justice issues, including those at court.

In 2008 a consultation on the guidance was launched. Its findings were published in *Safeguarding Adults – Report on the Consultation on the Review of ‘No secrets: Guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults’* (Department of Health, 2009). As part of the consultation, the Association of Chief Police Officers (ACPO) led a review across the Police Service in England and Wales. This highlighted the need for a national guidance document supported by an inspection framework and a national database of recommendations from serious case reviews.

Improving information-sharing was regarded as key to improving the effectiveness of prevention work. The review also consulted voluntary sector organisations working within the criminal justice system. They recommended that crimes against vulnerable adults should be taken seriously and

dealt with as crimes, and requested permission to provide support and advocacy for vulnerable people in the criminal justice system. They also suggested that their own involvement with the police and Crown Prosecution Service training in this area could be beneficial.

The Government is considering these findings, as well as other evidence from the review, and working to develop a response.

6.5 Overall

Table 6.1 outlines the four overarching policy outputs relevant to the research project.

Table 6.1 Overarching policy outputs

Policy output	Services impacted	Practices
<p><i>Mental Health Act 1983 (as amended by the Mental Health Act 2007)</i></p> <p>Type: Statute Published by: HMSO Date published: 1983 Date enforced: 1983 (amendments in force in 2008) Brief summary: The statutory framework for the care and treatment of mentally disordered patients</p>	<p>NHS and local authorities</p>	<ul style="list-style-type: none"> ● To hold Mental Health Review Tribunals (under the Act) ● To hear appeals against detention in hospital (under the Act) ● To discharge patients from detention in hospital if the Tribunal judge says that the legal grounds for detention are no longer met
<p><i>The Mental Capacity Act 2005</i></p> <p>Type: Statute Published by: HMSO Date published: 2005 Date enforced: 2007 Brief summary: The statutory framework for decision-making on behalf of adults who lack capacity.</p>	<p>NHS and local authorities</p> <p>The Court of Protection and the Public Guardian</p>	<ul style="list-style-type: none"> ● To govern decision-making on behalf of individuals lacking capacity ● To offer legal jurisdiction over the health, welfare and finances of persons lacking capacity (Court of Protection) ● To provide administrative and supervisory functions in the operation of the Act (Public Guardian) ● Establishment of Independent Mental Capacity Advocates
<p><i>The Disability Discrimination Act 2005</i></p> <p>Type: Statute Published by: HMSO Date Published: 2005 Date enforced: 2005/2006 Brief Summary: Statutory framework to prevent discrimination and uphold the rights of disabled people in a range of areas including education and access to goods and services.</p>	<p>Employers / employees</p> <p>The Employment Tribunal</p> <p>Public Authorities (HMCS in particular)</p>	<ul style="list-style-type: none"> ● To ensure public authorities (e.g. HMCS) provide the same standard of service to a disabled person as they would to any other court user. ● To ensure public authorities make reasonable adjustments to avoid discriminating against a disabled person (e.g. providing interpreters, hearing loops, materials in Braille)

Table 6.1 Overarching policy outputs (continued)

Policy output	Services impacted	Practices
<p><i>No Secrets: Guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse</i></p> <p>Type: Guidance Published by: Department of Health Date Published: 2000 Brief Summary: Guidance to local agencies with responsibilities to investigate and take action when a vulnerable adult is believed to be suffering abuse. The guidance provides a structure for the development of local inter-agency policies, procedures and protocols.</p>	<p>NHS and local authorities</p> <p>Police</p> <p>Other stakeholders involved in the care of vulnerable adults</p>	<ul style="list-style-type: none"> ● To hold Mental Health Review Tribunals (under the Act) ● To hear appeals against detention in hospital (under the Act) ● To discharge patients from detention in hospital if the Tribunals judge says that the legal grounds for detention are no longer met

7. Conclusion

This report was produced as part of the scoping exercise conducted in Phase 1 of the research and was then updated from findings from Phase 2 interviews. It does not claim to be a systematic review of all policies relevant to the court experience of court users with mental disorders, learning disabilities or limited mental capacity. Rather, it attempts to identify those policies identified by key national stakeholders as relevant.

In the introduction, some important characteristics of the policy process and its products were identified. It was noted that elements of this process might be fragmented, not well joined up, and developed in different contexts in relation to different subjects and user groups with different interests and concerns.

In many respects the map of policies presented here illustrates these points. For example, the strategies to help enable vulnerable and intimidated witnesses in criminal cases give best evidence emerged out of the inter-departmental report *Speaking Up for Justice* (Criminal Justice Performance, Justice, Victims and Witnesses Unit, 1998). No equivalent strategy was developed for the civil justice system, apart from the extension of special measures to anti-social behaviour proceedings. Similarly, special measures are not normally offered in the family courts, although, arguably, the nature of public law family cases means that vulnerabilities may be more likely to be identified and supported by other routes.

It was also noted above that general policies may be interpreted and implemented according to specific organisational or local needs. So, for example, the 2007 Mental Health Act is potentially relevant to criminal, civil and family courts. Yet we believe that only around a third of criminal courts have developed specific mental health liaison schemes, which apply only to defendants rather than victims or witnesses.

We draw three very general conclusions from the account of the policy process and the map of policies provided here. First, policy makers may benefit from examining systems across different types of court, to see whether good practice in one area can be adapted for use in others. Second, a 'policy on policies' could be useful, in an attempt to achieve a uniform approach and to join up the different components of the policy process, including strategy, legislation, guidance and implementation plans. Third, there may also be benefits to seeking a 'virtuous circle' of policy development, implementation and evaluation, again in an attempt to ensure a uniform approach to the interpretation and implementation of policy in practice.

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Court experience of adults with mental health conditions, learning disabilities and limited mental capacity. Report 5: Policy processes, services and practices

This is Report 5 in a series of six reports on a research project exploring the court experience of adults with mental health conditions, learning disabilities and limited mental capacity. The research relates to victims and witnesses in criminal cases, and to participants in civil and family cases. This report provides an overview of the policies, services and practices in place across the court system to support the needs of this group of court users.

In the criminal courts, key policy processes are the aims to better enable vulnerable or intimidated witnesses to give best evidence in court (including the use of special measures) and to improve the criminal justice system more widely to better meet the needs of victims and witnesses. In the civil justice system, service delivery has been guided by the policy aims of improving, simplifying and speeding up the litigation system, and strengthening the law in relation to Anti-Social Behaviour Orders. In the family courts, policy to harmonise the Family Procedure Rules with the Civil Procedure Rules, and guidelines to support the use of McKenzie Friends for litigants in person, are in place. The overarching policy outputs relevant to the study are the amended Mental Health Act (2007), the Mental Capacity Act (2005), the Disability Discrimination Act (2005), and the Department of Health's 'No Secrets' (2000) guidance on protection of vulnerable adults.

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