



mental welfare
commission for scotland



The views of people with experience of mental ill health on the barriers that they face in getting legal representation

What people tell us

August 2019



Our mission and purpose

Our Mission

To be a leading and independent voice in promoting a society where people with mental illness, learning disabilities, dementia and related conditions are treated fairly, have their rights respected, and have appropriate support to live the life of their choice.

Our Purpose

We protect and promote the human rights of people with mental illness, learning disabilities, dementia and related conditions.

Our Priorities

To achieve our mission and purpose over the next three years we have identified four strategic priorities.

- To challenge and to promote change
- Focus on the most vulnerable
- Increase our impact (in the work that we do)
- Improve our efficiency and effectiveness

Our Activity

- Influencing and empowering
- Visiting individuals
- Monitoring the law
- Investigations and casework
- Information and advice

The views of people with experience of mental ill health on the barriers that they face in getting legal representation

The views in this paper are an expression of the opinions and experiences of people that the Mental Welfare Commission have consulted on a number of occasions but do not necessarily, in themselves, represent the Commission’s view on any of these issues.

With thanks to the individuals and groups that helped with this report.

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Summary

What were we trying to find out?

We were seeking the views of people on the barriers that they face in the legal system and especially with representation. This was initially due to a request from the Equality and Human Rights Commission as well as a request for some ideas on this subject by the Civil Legal Assistance Office.

What did we do?

We met with 169 people in group meetings and with individuals and asked them what they thought the barriers were. We also received written reports from some individuals and groups. The people we met with consisted of people with experience of mental illness, but also people with dementia and acquired brain injury as well as the friends and family of such people. A small number of workers also contributed to the discussion.

What did we find out?

The biggest barrier people faced was their condition; the fact that it could make them paranoid or unmotivated, that they could be so caught by their delusions or distress that the relevance or need for legal help became irrelevant and also because sometimes they could not organise or understand or participate when distressed.

Many people said that they did not have enough information to find legal representation, that the language used was hard to understand and that they often did not know what rights they had in the first place.

They also said that they were worried about the cost of legal representation and felt that access to legal aid was getting harder. For those who wanted representation, there was a worry that many solicitors did not understand the needs of people with mental health problems and that some did not have enough understanding of legislation related to mental health.

Where they did it, could be hard to find such people, especially for people living in remote or rural areas where transport and the very existence of solicitors with expertise was an issue.

There were a number of issues around access which varied from being able to get legal representation at the time it was needed, to the need for support during legal hearings, the fact that many courts are centrally situated and it is hard to get to such places if physically disabled or anxious about such places. It included the need for safe, quiet places in courts and to have chairs that are not too hard, as well as the language used in court and the trauma that being in court can create.

In addition, many people said that they would not be able to get legal representation themselves as it would be too much for them; they would need the support of friends, relatives or advocates to do this. Some people also experienced discrimination with representation being subject to stigma and sometimes a reluctance of solicitors to take on their cases, seemingly because they had mental health problems which might mean the issues were complex and not worth the legal professional's time. Another form of discrimination raised was about the assumptions made about people with a mental illness in different legal settings, for instance around their parenting ability.

People also raised issues around the fear they had of the justice system which could cause them to avoid it; feelings that it was not effective, and worries about capacity and fitness to plead. Other issues included some people saying that they have never had a problem in getting representation.

Introduction

In the summer, autumn and winter of 2018 and in early 2019, the engagement and participation officer (lived experience) started a round of meetings with groups of people with lived experience of mental ill health and friends and family of people with experience of mental ill health.

One of the topics covered was about the barriers people with mental health problems face in gaining legal representation.

He met with:

- People with lived experience of mental ill health and friends and family in Mull (Mull Safe and Sound)
- Friends and family of people with experience of mental ill health in Aberdeen (Aberdeen Carers Group)
- People with lived experience of mental ill health in Dumfries and Galloway (Kaleidoscope and UCI)
- People with lived experience of mental ill health and friends and family in Fife. (Bipolar Fife)
- People with lived experience of mental ill health and friends and family in Angus in Arbroath (Angus Voices)
- People with Lived experience of dementia, mental illness and friends and family and workers in Angus in Kirriemuir (Kirrie Connections)
- A person with lived experience of mental ill health in Lochaber
- People with lived experience of mental ill health in Lochaber (Hug (Action for mental health))
- People with lived experience of mental ill health in Highland (Hug (action for mental health))
- A worker from Advocacy Highland
- People with lived experience of mental ill health in Glasgow (Restart)
- People with lived experience of Mental illness, dementia and acquired brain injury and friends and family in Islay, and some professionals (Islay link club)
- People with lived experience of mental ill health and friends and family in Highland (Bipolar Highland)
- People with lived experience of mental ill health in Skye (Rag Tag n Textiles in Broadford and Portree)
- Friends and family of people with lived experience of mental ill health in Edinburgh (Edinburgh Carers Group – Support in Mind)
- People with lived experience of mental ill health and friends and family in Dundee (Dundee Healthy Minds Network)
- A worker from Edinburgh (Consultation and Advocacy Promotion service).

This involved 169 people; primarily people with lived experience, followed by friends and family, and a very small number of workers.

Consultation on barriers to legal representation

The following are some of the barriers that people reported when seeking or needing legal representation, whether that be around mental health law or other legislation.

Mental ill health making it difficult to participate

This was raised in all groups and by one of the advocacy workers.

Many people cannot negotiate the justice system or the legal system as a result of the issues that they experience within their life and with their mental health.

They may be worried about how other people view them:

- *Paranoia can interfere with legal advice*
- *General lack of trust when unwell*

Or their illness may mean that they cannot engage with the system or see the relevance of it;

- *If manic they may "think" they don't need help.*
- *If depressed you may lack motivation to try to find legal representation and may have no idea where to look or even how to access "advice" e.g CAB. Particularly difficult if living alone perhaps with limited mental health support.*
- *If you are suicidal you will not think of getting a lawyer; it's the last thing on your mind*
- *Your head may be too out of it to instruct a lawyer.*
- *You cannot concentrate.*
- *My son has never had legal representation. He has been involved with the police and has had a need of representation but if he is talking of men in space all the time he is in the cells. How does that work? When someone goes into the cells they are now always checked if they need any other services. If you are lifted you will be assessed by a doctor to see if you need a different service.*
- *You may be acting on the basis of delusions.*

They may find it hard to get organised:

- *In terms of being organised to make a phone call, take note of when the appointment is, remember the appointment, get to the appointment.*
- *Then there is the question of how to find a solicitor in the first place. When unwell with mental illness, it can be difficult to be organised.*
- *Inability to file documents or even know if they exist.*

Or find it difficult to understand what is happening or see the importance of it:

- *Cognitively you may not be thinking clearly, you might only be thinking of one thing because of how distressed you are. Legal things may not be on your mind even if you need it.*
- *Being able to understand it in the first place.*

The subjects that people are needing to discuss may be too difficult to talk about and may lead people to avoid contact with the system.

- *People being prepared to speak about things; people want to ignore it and not speak to a solicitor.*

The degree of distress someone is in may prevent them from being able to participate. People will often need support to deal with the system and may need a degree of wellness to participate that they do not actually have.

- *My daughter was told if you don't hear back then phone this number, but there are so many people who will not phone and cannot manage the phone. I can do it as their mother but lots of people cannot manage to organise this.*
- *In hospital they will help you find one. It can be hard to get it together to find one.*

It is clear that one of the biggest barriers that people face in getting legal representation lie in the impairments people have which can affect ability to interact, understand, instruct, participate, engage or even see the need for representation. However, it is possible to see some ways of overcoming these barriers, though they were not mentioned by the groups themselves. They could include basic awareness training for legal professionals, support from friends and family and other professionals in accessing and explaining legal advice, reasonable adaptation to overcome people's fears, i.e. having pleasant rooms to meet in, not having cameras in a room. Giving people space and time and breaks and so on.

Information

In 12 groups, people said a key problem lay in getting information about representation and in knowing what information is helpful and reliable, or just knowing about the sorts of issues they may need representation for.

Other people said that they had no idea what their rights were or that they had a right to legal representation.

- *Use of jargon by the legal adviser – lack of 'easy read' information about the topic.*
- *Even when not unwell, people may not realise importance of things like Wills or Power of Attorney.*
- *I didn't know I could get legal representation if I was detained.*
- *Knowing our rights – knowing you need one in the first place.*

People suggested that the right to representation and people's rights should be mentioned routinely to people at meetings as one way of increasing awareness about what they were entitled to and how to get it.

Cost

In nine groups, and the advocacy workers; people said that a key barrier to legal representation was cost, and also ignorance about cost.

People had experienced situations where they felt that they could not get representation because they did not have enough money to pay for this, and tended to be ignorant of what their rights were regarding this.

They commonly thought that it was increasingly getting harder to get legal aid for representation. Some people knew they could get free legal representation if they wanted when detained under the Mental Health Act.

- *People do not understand [...] – they worry about cost.*
- *If you are on benefits, then it is a passport benefit to legal aid. I was told it would cost £10,000 for the custody hearing. I said "I don't have the money" and they said "Then you will not win the case." I said "I will somehow pay it anyway" but would need time. He said*

it would take three years to pay it back. A week later he told me I was on a passport benefit and that it would be free. Lots of people have no idea that this is the case.

- *Solicitors cost money: legal aid is much harder to get nowadays.*
- *...the legal system itself can still be very difficult to navigate and costly/discriminatory if people do not qualify for legal aid and cannot afford fees.*
- *I would also have needed money; cost would have been an issue because I was still employed.*

The knowledge of staff

Eight of the groups and one of the advocacy workers said that a major problem was that staff in the legal system did not have enough knowledge of people with a mental illness or of mental health law and that this could lead to unnecessary problems.

People also mentioned that they can come to need legal representation, for instance around detention under the Mental Health Act, but they may also need representation at the same time in other areas of their lives for which they would hope there would also be expertise.

- *It is difficult because lawyers have little experience of mental illness; or sheriffs and judges. I was lucky that the judge who dealt with my custody case had sat in a High Court case with a bipolar mother.*
- *We need specialists in mental health; they need to know mental health law and understand people with mental health problems.*
- *They are often unfamiliar about mental illness and asking your wishes.*
- *I've seen lawyers at the door in [hospital] and the lawyer sent a letter to a mother because a patient said her clothes had been stolen by her mother. The lawyer did not know this person and that they did say this sort of thing when they were unwell. Their mother was very upset when she got the letter. They need to take time to build up a picture but that is very difficult when you have just been sectioned.*
- *Do solicitors want normal clear cut cases? Are they prepared for the complications and the problems that can come with representing someone in this situation?*

However there were a number of other organisations mentioned who could and do provide support around situations needing legal representation, who may assist both the person and the legal professionals.

- *I should have mentioned other organisations that assist e.g. Victim Support, Women's Aid, in court advisors; social work, housing advice and of course independent advocacy.*

Access to specialist solicitors

In seven groups people had concerns about getting a solicitor with enough expertise in mental health and in finding out who was a good one.

- *There are mental health specialist lawyers (five or six in [City]) but they usually have not spoken to the person and don't have a picture to make a useful comment.*
- *I was trying to access one re employment law because I was losing my job due to diagnosis and ill health. It was incredibly difficult to find anyone prepared to take it on or who knew anything about it.*

People talked of being given a list of solicitors but having no idea about the quality of the service on offer, and being told that they could not be recommended anyone, by professionals. People also talked of information overload where solicitors touted for business which some people found offensive and off-putting.

- *Hard to choose someone. You are just given a list; ideally you would know something about them.*
- *There is a list of solicitors in hospital but they can't recommend one.*

In addition, solicitors with this expertise are often based far from the person concerned.

- *I got one but they took a time to come because they were based in Fife. There are no specialist ones in Dumfries. Most of them are based in Glasgow.*
- *It's even more difficult finding a local/appropriate solicitor in Caithness and Sutherland! It's often a solicitor in Inverness or Glasgow/Edinburgh, depending on the legal representation needed.*

Access

In six groups and in CAPS, people said that access to legal advice was limited at some points, such as at night or in the evening, and that this was especially difficult if people were having to deal with a mental health crisis. People also said that lawyers were often needed immediately, but that at the same time they needed a good knowledge of the person they were seeing in order to act effectively.

In one group, there was a perception that courts are shifting to seven day a week/ 24 hour service and that there would be a consequent need for legal advice at such times.

- *If it is Friday and you need legal advice. By the time you get it, things have already happened – you have been admitted or released – there has not been time to get legal advice then.*
- *They are always contacted at the last minute.*
- *They usually don't have time to know you*
- *In on Friday then not in court till the Monday: going 3 or 4 days without legal counsel.*

People also said that it could be hard to get a lawyer and that this was especially the case in rural areas and that even if there were people available, transport to get to see them could pose barriers.

- *When legal aid was more taken into account they used to be delighted to take on work and now there is a shortage of solicitors. There is no one north of Inverness who will take on legal aid cases. I have to go to Edinburgh for representation – legal aid is not attractive.*
- *CAB can be helpful and so could unions; but none of them could find a lawyer.*

People also talked about other access issues such as the language that is used in court and by legal staff, the fact that people may need safe quiet places for when they are feeling vulnerable or distressed, that they may be frightened of what they will encounter; perhaps having rarely been in contact with the legal system.

- *May be difficult to find somewhere quiet to wait, private, away from reception.*

People mentioned that some people would not be able to visit a lawyer or solicitor on their own and may need a home visit.

They talked of a number of access issues specific to courts to do with the environment, information provided and physical access.

- *Formal environment may be both reassuring and intimidating.*
- *Accessibility: courts are often in old buildings which are sited centrally and difficult to park at. Some may not have lifts.*
- *People may attend as a victim of crime or be involved/facing charge in the criminal justice system, or be there for a civil matter only. There can be different arrangements for all, even in how to find the court.*
- *Signage and arrangements for finding courts vary. They could have more information on websites.*
- *There is little reference to human rights and reasonable adjustments: court often starts early and people have to wait in crowded areas for long periods.*
- *Details for next court appearance are read out in court: the court does not send out letters, so people may have to rely on remembering or, if they do have a solicitor, hope the solicitor will let them know.*
- *Seating is often very hard and uncomfortable for any duration, except in the vulnerable witness area for victims of crime.*

Help and support to get representation and as witnesses

In five groups people said that people can need help if they are a witness and are vulnerable or if they are the defendant or victim. There can be a need for support before during and after a trial and there may be a need to have different ways of providing testimony in order to keep people as safe as possible.

- *We need the victim support role from home to court; to avoid conflict, and to help, if you are a vulnerable witness: a screen video link. A statement to count as evidence.*

There was a feeling in one group that change in these areas was already occurring.

There may also be a need for support to enable a person to seek representation in the first place.

- *A person with mental health problems or a learning disability may not be able to seek legal representation, or approach a solicitor, without support from someone e.g. a friend, relative, carer, or advocate. So this is an additional barrier for them.*
- *Help from an advocate can be really helpful to help people understand and support them in this situation.*
- *My daughter and I went and spoke to a lawyer for him but he wouldn't have been capable to doing it... you need someone to do it. He was in a bad place and not thinking clearly and not able to grasp the severity of it.*
- *With me it is the communication. I would need someone in. My mum has power of attorney: she could step in and speak for me.*

Applying for legal aid and accessing legal firms that do legal aid

In three groups and with one of the advocacy workers, people said it has become harder to get legal aid and harder to get solicitors who do legal aid work, especially in rural areas.

- *There is nowhere in [island area] to get legal aid for civil cases and we are not able to travel to get this.*
- *Fewer solicitors now do legal aid work.*
- *It takes time to apply; solicitors have to give a view on prospects to the legal aid board. Delays may mean more times at court. Firms that focus on mental health may not specialise in other areas of law.*
- *Children and families; lawyers may be able to support people in court, but not be funded to support people at Children's Hearings.*
- *Legal aid may not cover all travel/time; so, for example, people may be asked to attend appointments and court in Edinburgh, who live in other part of Lothian. Travel is costly if not reimbursed.*

People also said that applying for legal aid was difficult (but it was hard to gather whether it was difficult for them or the solicitor).

- *The forms and stuff for legal aid are complicated, with drop down menus etc; it is done incrementally. It is one of these 'tear your hair out' forms, but the lawyers should be used to it all.*

No problem

In three groups some people said they had never experienced any major barriers to getting representation and that this situation was better than it was in the past.

- *I got one no bother; she was so nice.*

Discrimination

In three groups people talked about how a diagnosis of major illnesses could prejudice people against the person concerned.

They felt their diagnosis could appear to represent a person's instability and the risk they posed, rather than the reality of their lives. They felt sometimes interventions were taken against people when instead support could be put in place to lead a more independent life.

- *People get different treatment: someone's daughter had a child that was going to be taken to a care home. The judgement would never have been made if she didn't have that condition [schizophrenia] – the issue is about the child and the mum and what could be put in place when they are not coping.*

A different form of discrimination occurs when legal staff stigmatise people with a mental illness or refuse to take on cases because people have a mental disorder, perhaps because they see it as too complicated.

- *I took out my autistic card with the solicitor; you could almost see him pushing me out the door. They pushed me onto CAB so now I am left high and dry with no representation.*

Fear of the justice system

In three groups, people talked of their fear of the legal system and of solicitors who they often assumed had very different life experiences and backgrounds to them and who they have little connection with or desire to connect with. Dealing with people in authority who may judge people is an issue for some people.

- *You don't see yourself as clever or as worthy of people like this.*
- *My sense is that people in this critical situation are feeling so misunderstood and so badly approached that they assume that there is nothing for them and that the whole system is against them. They are just trying to survive. People [solicitors] who are often in the services should be trained in how to relate to people with mental health problems.*

They may not be effective

In three groups people talked about getting representation to no good end result.

In one group a person commented on their experience of independent advocacy which he felt was not effective enough, and wondered if a solicitor or lawyer might have been more effective.

- *Independent advocate was good but had limited bargaining power and was not really listened to; she was just quashed. I don't know if a solicitor or a lawyer would be treated better.*

But in two groups people commented on their experience of legal representation which they also felt was not effective and therefore became something that they could see little purpose to getting.

- *They are on a CTO. They feel that they are taking a lot of meds and are overmedicated and they have felt that they were not listened to by the tribunal and when it is being reviewed. They got a solicitor and again it didn't go their way; it can be a bad experience.*
- *If I am in hospital and know I am well and they tell me I am unwell I can get a lawyer and if I feel unwell and they don't agree I can't get a lawyer. It can feel like a waste of time; that it won't make a difference.*
- *If you are ill you are ill, it won't make any difference.*

Consequences

In two groups people worried that if they revealed their mental health problems that this would be used against them in any court case, rather than being taken into account in a positive way.

- *People play down mental illness so that you will be seen in a good light.*
- *They call for so many reports because of you, so you do not say how you really are for fear of what will happen.*
- *Getting a lawyer to change a psychiatrist just meant that he stayed in hospital longer to sort it out.*

Trauma

In two groups and one of the advocacy workers, people said that people may have had negative experiences with the courts before which may put them off getting representation or

engaging. They also said that that court can be triggering for people who have experience of trauma and may indeed traumatise people.

- *There is scope for vulnerable witnesses to use a screen and other options, but people may still feel intimidated about giving evidence or being cross-examined in court.*
- *Having to sit in a criminal case court area waiting for the case to be called may risk exposure to triggers for people who have experience of trauma, when hearing other charges (for example in relation to domestic violence; abuse of children).*

Capacity

In two groups issues around capacity were raised. This included the fact that if someone did not have capacity they would be given legal representation to speak on their behalf, but also included discussion around whether solicitors had enough knowledge to know if someone had the capacity to instruct. Finally, people mentioned that they felt that there was too high a threshold to cross before a person was seen as unfit to plead.

- *It's the very high bar required to be unfit to plead in criminal justice – it is too high.*
- *Solicitors can be dismissive of statements that a person feels unfit to plead.*

Other suggestions and issues that people face

A number of other issues were mentioned by people in one or more groups.

Issue	Views
Taking time to develop relationships	<i>There is insufficient time for the legal adviser to build a relationship with the person, when the person might benefit from having someone they have got to know and can trust.</i> <i>Time available for a solicitor; they might not have much time to give.</i>
What are people trying to do?	<i>What people understand by taking instruction varies. People may feel the solicitor's role is to take their instruction – the solicitor may see their role is to give their advice.</i>
Pressure and timescales	<i>Quite often some decisions about how to plead are being made on the day of court, perhaps (but not always) after previous discussion with the solicitor before the day of court. People can feel very pressured if it is a short timescale to then decide, and find it hard to disagree with what solicitor is proposing. At the same time, the solicitor may have managed to negotiate something on the day that was not available before then; so to ask to stop this short notice negotiation could mean missing an opportunity. But it can be [...] a challenge.</i>
Not having met the legal representative	<i>On the day of court, quite often the solicitor from the firm may be covering several cases, so the lawyer may be elsewhere for much of time. Sometimes the solicitor from the firm may be meeting the</i>

	<i>person for the first time, as they are covering for a colleague who conducted the initial meetings. This can be hard when it takes time to build trust.</i>
The help sheriff clerks can provide	<i>Sheriff clerks can potentially assist e.g. if people are representing themselves. What this actually means could be clearer/more consistent.</i>
Acknowledgement of the need to liaise with care professionals	<i>He had no representation to deal with his learning disability and personality disorder when he was in court. He was given bail that stopped him living in his local area. This denied him access to a care giver. I wrote to them and new bail conditions were set. No one had communicated to social work from the courts.</i>
Ease of getting representation	<i>People said it was easier to get representation when they were in-patients as the hospital would organise this.</i>
The needs of people with dementia	<i>People said that it could be difficult to navigate the legal system when affected by dementia as patients; family members and workers often had limited knowledge of issues such as of powers of attorney and Wills and only sought legal help when it was 'too late' and applications now had to be made for guardianship.</i>
Family relationships	<i>There can be extra difficulty if "family" relationships are not good; might going to a solicitor make things worse?</i>
The role of other professionals	<i>The MHO sometimes doesn't inform you that you should get legal representation. If someone is admitted to hospital; if they are manic or psychotic then, at this point, it is a really important. They may be told they have the right to legal representation but cannot take it in, but they need told when they get better that they still have rights to legal representation.</i>
Paperwork	<i>For many people; dealing with paperwork is frightening and intimidating. People will sometimes not deal with the issue if it means they do not need to deal with forms.</i>
Mackenzie friends	<i>In England there is as system of Mackenzie friends; volunteers who stay with you when you are in custody. My knowledge is that it is quite good; I knew one. It is someone who is adequately informed, who will know if your human rights are being breached and will stand up for you. It should be something like that or better.</i>
End of the day busyness	<i>Times may have to fit around solicitors court commitments. The end of the day is a busy time to travel on public transport and can be a barrier.</i>

Inequitable vulnerable witness provisions	<i>Vulnerable Witness (legislative) provisions (as used for victims of crime) also apply to people who are facing charges but these provisions seem to be seldom used for defendants, though often people involved with criminal justice as defendants may have experience of mental health issues.</i>
Alternatives to sentencing	<i>The range of options for 'disposal' may include attendance at courses thought to be beneficial. Most therapeutic options are offered on an opt-in basis. So to what extent can these be viewed as voluntary when offered in the context of sentencing? It may be helpful to be clearer on alternatives to sentencing.</i>
The culture of tribunals	<i>All the hearings systems (e.g. Children's, Welfare Benefits, Mental Health) had their origins in the hearings developed as an alternative to court for young people involved with criminal justice. Some people who have experience of mental health issues continue to describe feeling 'punished' in relation to decisions that are made at tribunals. (For example the legal representative on a benefits tribunal may be referred to as a judge). I wonder if there is more could be done to reduce this association with crime and punishment.</i>

Further consultation

A final message was given about the need to consult more widely on this subject – this was one of the many and valuable suggestions made by CAPS

- *Many people who are involved in court, either in civil matters such as divorce, custody and placement of children – or in criminal justice, as victims of crime or facing charges, who have experience of mental health issues, may also have a history of adverse childhood experiences and/or negative adult experiences. I believe there is a lot of scope to improve things all round and merit in consulting more widely, especially the views of people who have direct experience.*



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