For better
mental health

Achieving justice for victims and witnesses with mental distress

A mental health toolkit for prosecutors and advocates

Equal access to justice?

An assault victim[1]

A woman with experience of anorexia and agoraphobia was assaulted by her neighbour in 2007. The magistrates' court deemed the incident so serious that it issued a bail condition preventing the neighbour from returning home. The case was sent to Crown Court and was heard in 2008. During the trial, the defence barrister asked the victim a series of questions about her mental health and whether she had previously been detained under the Mental Health Act. She was shocked to be confronted with this as the detention had happened prior to the neighbour moving in and had no relevance to the case. The defence also accused her daughter, who had experience of obsessive-compulsive disorder and depression, of lying and fabricating evidence.

The victim gave evidence for two hours in total, during that time experiencing a severe panic attack. Following the hearing the defendant was found not guilty. The victim told Mind:

"If I'd had a broken leg or cancer this would not have been brought up to use against me as the victim in all this… At no point did the barrister representing my daughter and myself, nor the judge, put a stop to these inappropriate and irrelevant questions… Had I known the extent of the cross-examining and the light they showed us in then there is no way I would have continued, due to the effect it has had on both our mental states.

"Do we not have any protection from mental health issues being used against us? We have endured six months of sheer hell and for what?"

A victim of bullying[2]

A boy with experience of depression was bullied at an independent school and subsequently tried to take his own life on a school trip to Greece. He took the school to court for negligence and the case eventually went to the High Court in 2009 (eight years after the incident).

Just before the trial the defence served hundreds of pictures from the son's Facebook site from various trips his parents had sent him on as part of his recovery. His psychiatrist diagnosed that this invasion of privacy triggered a major depressive episode. The judge was made aware of this and all the medical evidence before the trial, so knew the context and the medical risks involved. His parents said:

"The defence continued the vicious and highly personal attack at the trial. Their barrister put it to my son again and again that he was smiling in these pictures so he must have lied about his depression. They even went though pictures of his 21st birthday party, even though this was completely irrelevant to the bullying that happened eight years earlier.

"The unrelenting attack ground my son down and during his first full day in the witness box he broke down completely and the proceedings had to be adjourned. He continued with the trial but was simply not able to put his case articulately under this awful pressure. The judge allowed the hostile cross-examination to continue for the whole of that week and, despite having chronic mental distress, my son was given no support in court. By the end of the second week, he had become suicidal and his psychiatrist advised him to discontinue the trial immediately. There was no verdict and my son was on suicide watch for weeks."

1. Both these case studies were reported directly to Mind and steps have been taken to protect anonymity.

2. While this is a civil rather than a criminal case, the witness's experience in terms of the behaviour of the defence, and the distress caused by both this and the lack of support provided in court, remain relevant.

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Foreword

All prosecutors and advocates need to be equipped to handle cases involving victims and witnesses with mental health issues to achieve equality of access to justice. I am all too aware that this has been highlighted as a challenging area for the CPS in the past and I have made clear my determination to address this. Given that a high proportion of victims of crime are people with mental health issues, it is crucial prosecutors feel they have the confidence and skills to take these cases through the criminal justice process.

Mind has been tirelessly campaigning to achieve this aim since 2007. I have been grateful for their expertise and advice over the past few years in supporting the CPS to develop a new public policy statement and prosecution guidance on cases involving victims and witnesses with mental health issues to drive forward improvements in practice.

In turn, I have been delighted to support the development of Mind's mental health toolkit for prosecutors and advocates. The toolkit is an excellent complement to the CPS's prosecution guidance on mental health, providing practical information, advice, tips and tools to inform decision-making across a range of issues. I urge all prosecutors and advocates to make full use of the toolkit – both as an invaluable training resource and a practical companion to aid day-to-day case handling.

Keir Starmer QC, Director of Public Prosecutions, Crown Prosecution Service

It is fundamental to the proper administration of justice that all witnesses be treated fairly by both prosecution and defence. Yet often when victims and witnesses with mental health problems become involved in court proceedings they are not granted equal access to justice. All members of the Bar, whether prosecuting or defending, need to be aware of the support that such witnesses require in order to enable them to give their evidence fairly and fully. This might include knowing when and how it is appropriate to use psychiatric information as part of their case, and what lines of questioning may be irrelevant and discriminatory. It is for these reasons that I am strongly supporting Mind's mental health toolkit. I hope that all members of the Bar will welcome this guidance and find it of real value.

Nick Green QC, Chairman of the Bar Council

Mind has established itself as an important stakeholder in the criminal justice field in recent years, successfully putting the case for agencies to urgently address the barriers to justice still faced by victims and witnesses with mental health problems. In line with the Law Society Charity's commitment to promoting the particular needs of excluded, under-represented or disadvantaged groups, as part of our aim to maintain high standards of legal education in the profession, we were delighted to support the production of a much-needed mental health toolkit for prosecutors and advocates, given Mind's record and expertise. We are sure the toolkit will bring about improvements for both legal professionals – who will be equipped with the right skills to handle what can be challenging cases more easily – and victims and witnesses – who will feel supported rather than marginalised when accessing the justice system.

Nigel Dodds, Chair of the Law Society Charity

Terminology

Mental distress – Mind generally uses this term as it more accurately reflects the broad spectrum of fluctuating symptoms people may experience and the fact that some people may not have been diagnosed with a condition. The term also avoids both the diagnostic implications of 'mental health conditions' and the negative connotations of 'mental health problems'. People with experience of mental distress have told Mind they prefer this terminology. However, at points in the toolkit we use the term 'mental health condition' where it is more appropriate, such as in the context of diagnoses or symptoms, seeking expert evidence etc. Both terms effectively reflect the CPS's chosen definition of 'mental health issues'.[3]

Prosecutors and advocates – We use both terms to reflect the toolkit's wide relevance for Crown Prosecutors (who may be involved at various stages of a case) and independent barristers or solicitors who prosecute cases for the CPS. At times we use only 'prosecutors' when referring to prosecutorial obligations under the Code for Crown Prosecutors.

OIC – We use the common acronym for 'officer in the case' to refer to the police role.

Relevant prosecution guidance – As the toolkit is designed to be a complement to the CPS publication *Victims and witnesses who have mental health issues and/or learning disabilities: Prosecution Guidance*, unless otherwise specified 'relevant prosecution guidance' refers to this document, to avoid lengthy repetition when cross-referencing.

3. Crown Prosecution Service (2010), *Victims and witnesses who have mental health issues and/or learning disabilities: Prosecution Guidance*, 'Introduction'. http://www.cps.gov.uk/legal/v_to_z/victims_and_witnesses_who_have_mental_health_issues_and_or_learning_disabilities_-_prosecution_guidance/

Introduction – background and purpose

Research by Mind in 2007 found that while people with experience of mental distress are disproportionately the victims of crime, they are also too often denied access to justice.[4] The High Court case known as FB v DPP[5] confirmed that one reason for this was insufficient understanding among prosecutors of how to handle cases involving victims or witnesses with mental distress appropriately. This has led to various barriers to justice such as:

- cases not being pursued because of misconceptions about how mental health impacts on credibility and reliability
- insufficient support being put in place to help witnesses withstand trial and give their best evidence
- inappropriate or aggressive questioning by the defence going unchallenged by prosecution advocates.

Mind welcomes the commitments made by the Crown Prosecution Service in the wake of FB v DPP to address these barriers to justice. This mental health toolkit acts as a complement to the CPS public policy statement *Supporting victims and witnesses with mental health issues* [6] and associated relevant prosecution guidance.[7] Alongside these legal documents, Mind's toolkit offers practical information and advice about mental distress and its implications, including tools to mitigate these and grant victims and witnesses equal access to justice. It is designed to be both a useful training resource to improve mental health awareness and an aide-memoire that can be flicked through in any order with ease to support day-to-day decision-making and case handling.

Ultimately, the toolkit is intended to help you prosecute cases fairly, robustly and successfully. We hope it will prove useful to prosecutors involved at all stages of case preparation and those conducting cases at court, including both Crown Prosecutors and independent advocates.

4. Mind (2007) *Another assault: Mind's campaign for equal access to justice for people with mental health problems*. http://www.mind.org.uk/campaigns_and_issues/report_and_resources/894_another_assault
5. R (on the application of B) v DPP (2009) EWHC
6. CPS (2009) *Supporting victims and witnesses with mental health issues*. http://www.cps.gov.uk/publications/docs/supporting_victims_and_witnesses_with_mental_health_issues.pdf
7. CPS (2010) *Victims and witnesses who have mental health issues and/or learning disabilities: Prosecution Guidance*

Mental health – experiences and implications

Key points

- Everyone is different – avoid assumptions and always ask the victim or witness first about their own experiences.
- Avoid thinking in terms of diagnoses – people may have one or more of a range of experiences and symptoms, whether or not they have a diagnosed condition.
- Remember mental distress is fluctuating – people may have periods where they experience no symptoms at all and the difficult days or times of day can be avoided.[8]
- Never generalise about the impact of mental distress – for each case consider when these experiences are present; any aggravating or alleviating factors; the specific impact on thought, concentration, recall, expression and interaction at given times.
- Always bear in mind potential triggers – be honest, open and sensitive in asking questions about what might help reduce distress.

Introduction

Mental health exists on a spectrum and affects everyone. Most people will experience distress at some point in their lives, for various reasons and to varying degrees. It is when mental distress becomes more than temporary and begins to adversely affect someone's ability to live their life to the full that people may develop and/or be diagnosed with a mental health condition.

Contrary to popular myth, mental distress is very common, with one in four people experiencing a mental health problem in any one year.[9] Mental distress includes a range of conditions, from anxiety, depression and panic attacks to psychotic conditions like bipolar disorder and schizophrenia.

This section gives some generalised guidance about people's experiences of mental distress, but it can never be a substitute for proper evidence-gathering about an individual's situation. Many mental health conditions have fluctuating symptoms and people with the same diagnosis will experience symptoms in a different way. While it is true that some symptoms occur more frequently with some diagnoses – so hallucinations and hearing voices are associated with schizophrenia – none are mutually exclusive and they can occur in people with no mental health condition, for example hallucinations that naturally occur as one is waking up or falling asleep.

Reliance on generic information may result in misleading and inaccurate assumptions being made about a witness's ability to withstand the investigation and court process and/or give credible and reliable evidence. It is therefore essential to ask a victim or witness about their own experiences – people with mental distress are often experts in their own symptoms, strengths and support needs, and when they occur.

8. To achieve this, prosecutors and advocates might consider relevant reasonable adjustments (see later section) and/or seek to arrange for the witness to give evidence at certain times when symptoms are less acute.

9. Goldberg D., Huxley P. (1992), *Common mental disorders – a bio-social model*, Routledge

Debunking myths about mental distress

Myths and negative stereotypes about mental health are widespread, with around nine out of 10 people with mental distress experiencing stigma and discrimination.[10] Paragraph 2.4 of the Code for Crown Prosecutors requires prosecutors to be "fair, independent and objective", so it is crucial to understand the reality behind the myths.[11]

Myth	Fact
Mental health conditions are very rare.	Mental health conditions affect one in four people.[9]
People experiencing mental distress are different from normal people and less able to participate in everyday life	We all have mental health, like we all have physical health. People with mental distress come from all walks of life and some of the most able and talented people in history had diagnosed mental health conditions – people such as Sir Charles Darwin and Sir Winston Churchill.
People with mental health conditions never recover.	People with mental health conditions can and do recover.
People with mental health conditions are violent and unpredictable.	Research shows people with mental health conditions are 14 times more likely to be a victim of a violent crime than to be arrested for such a crime.[12]
People with psychotic conditions, like schizophrenia, constantly experience severe symptoms like hallucinations and delusions.	A third of people diagnosed with schizophrenia only ever have one experience of it, and a further third have only occasional episodes. Many people diagnosed with schizophrenia recover.[13]
People with certain diagnoses, particularly psychotic conditions, can never be relied upon to remember and report events accurately.	There is no known mental health condition which prevents everybody with that condition from accurately remembering and reporting something that has happened.

10. Time to Change (2008), *Stigma Shout: Service user and carer experiences of stigma and discrimination*. Mind and Rethink. http://www.time-to-change.org.uk/challenging-discrimination/what-discrimination/research

11. CPS (2010), *The Code for Crown Prosecutors*, p. 3. http://www.cps.gov.uk/publications/code_for_crown_prosecutors/

12. Walsh E et al. (2003), 'Prevalence of violent victimisation in severe mental illness', *British Journal of Psychiatry*, vol. 183, pp. 233–8

13. Mind (2008), *Understanding schizophrenia*. http://www.mind.org.uk/help/diagnoses_and_conditions/schizophrenia

Experiences of mental distress

The table below sets out the common diagnoses and the various symptoms and experiences of mental distress. These are simply listed with no explicit connections made, since people with any one of the listed diagnoses (or none) may have one or more of the listed experiences at any given time.

Diagnoses	Experiences (not linked to particular diagnoses)
• agoraphobia • anxiety • bipolar disorder (manic depression) • dementia • depression • eating disorders – anorexia, bulimia and compulsive eating • obsessive compulsive disorder • panic attacks • personality disorder • post-natal depression • post-traumatic stress disorder • phobias • psychosis • schizoaffective disorder • schizophrenia.	• apathy • compulsive activities or behaviour • delusions – beliefs or experiences not in line with accepted reality • distractibility or difficulty concentrating • distress or intense emotionality • disturbed or illogical thought patterns • emotional flatness • euphoria, elation or excitability • fear or panic • feelings of guilt and despair • flights of thought or unusual speed of thinking • grandiose ideas or feelings of self-importance • hallucinations – hearing voices, seeing images or experiencing sensations which others do not • intrusive thoughts or feeling thoughts are being controlled • insomnia • irritation and agitation • lethargy or lack of energy • loss of appetite or compulsive eating habits • low motivation and a loss of interest in everyday activities • paranoia • rapid speech • repetitive thoughts • self-doubt, worthlessness and hopelessness • suicidal thoughts • wanting to avoid people • wanting to be protected.

Any medication the victim or witness is taking as treatment for their condition may have further effects on mental or physical health. However, it can be difficult to separate symptoms of a condition and side-effects of medication in some cases. People taking any type of the listed medication may have one or more (or none) of the listed experiences at any given time.

Major psychiatric medication	Possible effects
• Antidepressants (sometimes prescribed for depression or anxiety disorders). • Antipsychotics (sometimes prescribed for schizophrenia or bipolar disorder). • Anxiolytics; eg, benzodiazepines (sometimes prescribed when people have experienced trauma). • Mood stabilisers; eg, lithium (sometimes prescribed for bipolar disorder).	• blurred vision • dizziness • drowsiness • loss of mental sharpness • memory problems • muscle stiffness • poor concentration • rapid heart beat • reduction in libido • shaking or muscle spasms • sleep disturbance • slowed thinking • slurred speech • suicidal thoughts • weight gain.

Impacts of mental distress

The key witness tasks can be summarised as cognition, concentration, recall, expression and interpretation of the actions of self and others. The experiences of mental distress described above may impact on any one of these functions, though it is impossible to generalise. A person's ability to give best evidence will depend very much on the severity of their symptom(s) and any side-effects at the time of the incident, subsequent interview(s) and trial. The impact on function may vary at these material times, fluctuating in severity on certain days or at particular times within one day, and, crucially, can be neutralised or overcome in many cases. Greater awareness of the potential impacts of mental distress should be used as a tool to determine support needs and widen access to justice – not as a means to deny people their right to take part in the criminal justice process as a witness.

The key considerations in relation to how experience of mental distress affects each individual victim or witness are:

- when are/were these experiences present?
- if they come and go, what are the triggers, what exacerbates and what relieves?
- at any particular time, what is the impact on the witness's ability to think, to concentrate, to recall, to express and to interact with others?

ACTION

- Facilitate early discussion of these issues with the victim or witness to inform decision-making about credibility and reliability and any support needs.
- Where possible, hold a pre-trial witness interview or special measures meeting to explore these issues face to face, as advised in relevant prosecution guidance;[14] otherwise instruct the OIC or Witness Care Officer to have these discussions.
- With the witness's permission, a family member, carer or health professional may also be consulted.

The table below sets out some examples of how mental distress may affect cognition, concentration, recall, expression and interaction. **But remember: conclusions about the impact of a person's mental distress on their ability to give evidence must always be determined on a case-by-case basis and at each of the material times.**[15]

14. CPS (2010) *Victims and witnesses who have mental health issues and/or learning disabilities: Prosecution Guidance*, 'Meeting witnesses' and Annex A 'Supporting victims and witnesses' and 'Credibility and reliability'.
15. Where this might include the date of the offence, the prosecution may determine this by consulting the witness directly about their own experiences of distress, seeking the views of third parties, and, where necessary, obtaining expert evidence (see later sections for advice on this).

Memory	Difficulty in remembering things is a symptom associated with depression. Memory can also be affected by some types of medication. Memory problems can become more acute when people feel under pressure or anxious and may affect the consistency of testimony. But there is a difference between recalling details and the underlying reliability of an account. For example, people may have difficulty remembering precise dates and times, but this does not necessarily call the whole account into question. Memory problems may just affect the level of detail or precision, not the reliability or credibility of the testimony as a whole.
Interpretation of events	Interpreting events relies on a person's ability to put experiences into a wider context. If a person is experiencing thought disorder, paranoia or delusions they might find it difficult to interpret events because they will be experiencing a reality which is different to that of other people. Other symptoms such as low motivation, agitation and racing thoughts might also have an impact on the ability to interpret events. Again these symptoms will vary in severity and are likely to fluctuate over time.
Concentration and attention	Difficulty with concentration is a common symptom of many mental health conditions. However, there is a difference between finding it difficult to concentrate and being unable to concentrate, and it should not be assumed that difficulties preclude a person's ability to give evidence. If someone is experiencing obsessive thoughts or hallucinations then it can be very challenging to concentrate on anything beyond these experiences. Other symptoms such as lack of energy or feelings of despair can make it difficult to pay full attention to situations. The right support measures can help overcome these challenges.
Response to questioning and cross-examination	This might prove difficult for people experiencing a range of different symptoms. Feelings of anxiety and low self-esteem may be exacerbated and witnesses might become agitated or distressed. Anxious witnesses may also be eager to please and/or willing the experience to be over, so give quick answers that they believe the interviewer wishes to hear. It may be difficult for people to remain focused and give a measured response if they are experiencing the positive symptoms associated with schizophrenia and psychosis, such as hearing voices – they can be very distracting, like listening to two conversations at once. Thought disorder, intrusive thoughts or paranoia may also have an impact on the clarity or tone of responses.
Ability to communicate	A number of the symptoms outlined above might affect people's ability to communicate. If people have low self-esteem they might find it difficult to speak up in public, and some of the physical adverse affects of certain medications can make speech slurred. If judges and lawyers are made aware of this, they should provide appropriate adjustments – as for someone with a more obvious physical disability such as cerebral palsy. This may simply mean modifying the style and tone of addressing the witness, such as speaking more slowly or avoiding bullying language. More severe symptoms, such as thought disorder or obsessive thoughts, can make it difficult for people to follow the thread of a conversation and may impair communication.
Interaction with other people	Again this might be affected by a number of different symptoms. Personality disorders will often be diagnosed because people find interaction with other people challenging. If someone is hearing voices, is feeling threatened or paranoid, or is feeling very low, then interaction with other people will be more difficult than it might be otherwise. People with mental distress may have fears about or prior experience of difficulties with authority figures, which can make interaction with criminal justice professionals particularly distressing or challenging.

CAUTION

Impact of mental distress on function may be separate from the issue of credibility and reliability of evidence. Although someone with schizophrenia may be hearing voices and therefore find it difficult to concentrate, this does not have an automatic bearing on the believability or consistency of their testimony. Exercise caution in considering these issues and avoid making assumptions or generalisations.

Triggers for mental distress

Many of the common features of the court environment and criminal justice process can be triggers for mental distress and exacerbate symptoms. Prosecutors and advocates should be alert to this as it may have an impact on the witness's ability to give best evidence and/or may suggest the person has a support need.[16]

When indications of mental distress come to light, either through direct observation or notification by the OIC, it is an essential principle to ask the victim or witness about their own experiences and needs. Yet sometimes the person may not know what is difficult for them or bothering them, or be too hesitant to say, particularly given the associated social stigma. Prosecutors and advocates can alleviate these barriers and display sensitivity by showing an awareness of the types of issues that might be difficult.

Common triggers include:

- noise
- interruptions
- room environment and unfamiliar surroundings
- too many people or conversations
- over-stimulation or sensory overload
- being given lots of (new) information
- being asked to concentrate – including reading, writing and talking (especially for long periods)
- time pressures, demands and deadlines
- long sessions (interviews, meetings and court sittings)
- unfamiliar dress and unknown rules
- presence of technology such as CCTV that may provoke mistrust or paranoia
- change of arrangements or personnel
- authority figures and official procedures
- questioning or interrogation
- feelings of not being listened to or believed
- loss of control or choices, feeling excluded from decision-making
- feeling of being pushed, rushed or hushed
- shocks and sudden changes
- having personal or psychiatric history made public.

16. The impact of triggers can be mitigated by appropriate forward planning, via the Witness Service or Witness Care Officer, to manage the witness's expectations and/or put in place reasonable adjustments – see p. 31.

Asking about mental distress

In some cases victims and witnesses may not disclose a mental health condition, but something in their behaviour may indicate they are experiencing distress.

- Does the witness appear distressed, disturbed or distracted?
- Are they talking incoherently or laughing incongruously?
- Do they appear to be having illogical thought processes?
- Do they seem over-excited, euphoric, irritable or aggressive?
- Do they appear dazed, withdrawn or shut down?
- Are they fidgety, restless or jumpy?
- Do they keep repeating themselves or obsessing?
- Do they appear to be taking information in?
- Do they seem to be responding to experiences, sensations or people not observable by others?

ACTION

- If you observe any of these indicators and suspect a person may be experiencing distress, do not make any assumptions but ask the person first.
- It is best to be honest, open and sensitive, asking questions about how the person feels and what might help, such as:

'You appear to be experiencing some discomfort, is anything in particular causing you to feel like this?'

'You appear to be distressed by this situation, is there anything that might help reduce your anxiety?'

'You seem to be behaving a little oddly, is anything troubling you at the moment? Is there any way I can help?'

'Do you have anything you would like to tell us about how you are feeling at the moment?'

CAUTION

If you ask a direct question about mental health, be careful not to put the witness in a position where they would have to lie if they did not wish to disclose their condition:

"I need to ask if you are experiencing any kind of mental distress or have a mental health condition. If you want to tell me, say yes. If you either haven't or you don't want me to know, say 'no comment'."

CAUTION

Asking about mental health should not be done before a jury. If concerns arise at a late stage and questions need to be asked of a witness, a voire dire on the issue in the absence of the jury should be held to safeguard the witness's credibility and the case.

If the witness is unable or reluctant to talk about their own experiences, you may wish – only with the witness's permission – to speak to a family member, carer or health professional. But do not take for granted the objectivity of any information they may provide. Family and support workers may well have their own subjective judgements of the person's symptoms, ability to give evidence and handle the investigation and court case, and any support needs (and potentially, the impact that might have on their own time). Information from third parties should be weighed sensitively, as advised in relevant prosecution guidance.[17]

17. CPS (2010), *Victims and witnesses who have mental health issues and/or learning disabilities: Prosecution Guidance*, 'Assessing needs'

Making decisions about credibility and reliability

Key points

- Make no assumptions that mental distress will undermine credibility and reliability.
- Follow existing legal models and adopt a case-by-case and functional approach – reassessing credibility and reliability at all material times where necessary.
- Take care not to conflate credibility, reliability, competence and capacity – all have different implications on ability to give evidence.
- Consult the witness – people are often experts in their own strengths, support needs, when they may appear to lack credibility or reliability and how to work around this.
- Pursue a merits-based approach to the evidential test – assess if the evidence is sufficient to merit a conviction, rather than the likelihood of conviction by the jury.[18]

18. See p.18 'Merits based v bookmakers approach' and R (on the application of B) v DPP (2009) EWHC

Introduction

The Code for Crown Prosecutors requires the prosecutor to consider any concerns over the 'accuracy, reliability or credibility' of the evidence of any witness, as part of the Evidential Stage of the Full Code Test (paragraph 4.7g).[19] Clear legal principles govern decisions in relation to assessing the credibility and reliability of a witness and warn against making assumptions. These state that:

1. "The starting point for prosecutors should be that a witness is credible and reliable."[20]
2. "A mental disorder does not preclude the giving of reliable evidence."[21]

Yet when faced with a witness where mental distress has come to light, a common starting point is to seek evidence on how the mental health condition in question affects people, to inform prosecution decisions. This generalised, condition-based approach assumes mental distress will always impact in some way on credibility and reliability of evidence. This approach is inappropriate and misleading, given that:

- **mental distress is individual** – people may experience one or more of a wide range of symptoms and diagnoses are not definitive
- **mental distress is fluctuating** – so the impact of any condition on reliability and credibility will not be constant
- **mental distress may be irrelevant** – symptoms may have varying or absolutely no impact on credibility or reliability.

19. CPS (2010), *The Code for Crown Prosecutors*, p. 9.
20. CPS (2010), *Victims and witnesses who have mental health issues and/or learning disabilities: Prosecution Guidance*, 'Credibility and reliability'
21. Criminal Justice System (2007), *Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses and Using Special Measures*, paragraph 3.33. http://www.cps.gov.uk/publications/docs/Achieving_Best_Evidence_FINAL.pdf

As prosecution guidance clearly states, 'credibility or reliability should only be questioned in the same circumstances as for any other witness',[22] that is, if something particular comes to light which calls their evidence into question, or something in the witness's presentation – such as inconsistencies, discrepancies or evasion – undermines their account. Decisions about the evidential test should never be taken solely because of the existence of mental distress or a particular condition, as recent case law confirms (see case study below). Where specific evidence or behaviour does detract from the account of the witness, prosecution decisions should be taken as they would for a witness without mental distress, while considering whether support would help the witness to give their best evidence.[23]

Definitions

It is important to distinguish between credibility, reliability, competence and capacity, which may all have an impact on a witness's ability to give evidence, but with very different implications. These are separate issues and should be considered against their appropriate legal frameworks. **Crucially, mental distress is distinct from mental capacity and a link between the two should never be assumed.**

Credibility – is the witness's testimony believable?

Reliability – is the witness's testimony consistent? For more on credibility and reliability, see appropriate decision-making processes outlined in this section and in relevant prosecution guidance.[24]

Competence – can the witness understand questions and be understood? See section 53 Youth Justice and Criminal Evidence Act 1999.[25]

Capacity – does the witness have capacity to take decisions in their best interests? See Mental Capacity Act 2005 and related Code of Practice.[26]

Case study: poor practice by the prosecution (FB v DPP)[27]

FB was a victim of assault whose case was dropped by prosecutors in 2007 on the grounds that he had schizophrenia and was therefore an unreliable witness. This decision relied on a condition-based assessment and expert evidence which generalised about the impact of schizophrenia on FB's "reliability as a witness of the truth". In 2009 the High Court found the CPS to be in breach of article three of the European Convention on Human Rights for failing to uphold the state's duty to protect people from inhuman or degrading treatment, by denying FB the right to see his assailant tried in court. The judge stated:

"The conclusion that [FB] could not be put forward as a credible witness, despite the apparent factual credibility of his account, suggests either a misreading of Dr C's report (as though it had said that FB was incapable of being regarded as a credible witness) or an unfounded stereotyping of FB as someone who was not to be regarded as credible on any matter because of his history of mental health problems. For those reasons I conclude that the decision to terminate the prosecution was unlawful."

Case study: poor practice by the defence[28]

In a case heard in 2009, an eyewitness to an offence of witness intimidation had a diagnosis of schizophrenia. The Crown had applied for special measures and, in so doing, had mentioned his symptoms which included hallucinations. The defence line of questioning raised the issue of his mental health condition, not specifically in relation to the incident in question, but as a general proposition to undermine his reliability. A prosecutor involved in the case said:

"While giving his evidence the defence encouraged him to agree that he often saw images which were not real. As far as the court was concerned, he could not be treated as a reliable witness but in reality his condition had been used to exploit his evidence."

22. CPS (2010), *Victims and witnesses who have mental health issues and/or learning disabilities: Prosecution Guidance*, 'Credibility and reliability'
23. See p.25-7 'Using expert evidence' on when and how it is appropriate to seek further advice to inform decisions.
24. CPS (2010), *Victims and witnesses who have mental health issues and/or learning disabilities: Prosecution Guidance*, 'Credibility and reliability'
25. http://www.opsi.gov.uk/acts/acts1999/ukpga_19990023_en_1
26. http://www.dca.gov.uk/legal-policy/mental-capacity/mca-cp.pdf
27. R (on the application of B) v DPP (2009) EWHC
28. This case was reported to Mind as part of survey research to inform this toolkit and steps have been taken to protect anonymity.

A case-by-case and functional approach – existing legal models

A mental health diagnosis should not in itself be grounds for questioning credibility and reliability, as all citizens have equal rights to access to justice. Rather than a condition-based approach, it is helpful to consider credibility and reliability in the context of existing legal frameworks which are based on functional tests. These tests are what the law requires in another setting and are practical models to follow when assessing credibility and reliability.

1. Testamentary capacity

In order to make a valid will, a person must be able to:

1. know what they own (assets, mortgage etc) but not in detail
2. know who might expect to have a claim
3. not be influenced by delusions.

This is a very functional test which makes no reference to any diagnoses.

2. Fitness to plead

The fitness to plead test does not ask about conditions or symptoms – eg, whether a defendant gets anxious, hears voices, or experience delusions.[29] It is explicitly task-based, requiring defendants to be able to understand charges, instruct a solicitor, follow the evidence, challenge jurors, and cross-examine witnesses. Advocates should apply this well established legal standard for defendants to victims and witnesses, to guard against assumptions and secure their right to attend trial and give their best evidence before a jury.

29. Although the fitness to plead test does require evidence from two doctors, which will refer to condition(s) and symptoms, these are considered specifically in relation to the functions required to stand trial.

A test for credibility and reliability

In relation to the evidential test, the functions in question are whether the victim or witness is able to give credible (believable) and reliable (consistent) evidence at material times. The fact that a victim or witness is experiencing or has a history of mental distress may or may not have a bearing on their ability to perform these functions. Equally, a person without any history of mental distress may not be able to give credible and reliable evidence. Given the fluctuating and varied nature of mental distress, it is impossible to be prescriptive about the likely impact on a witness's credibility and reliability.

ACTION

- Assess each case on an individual basis and against the functions in question.
- Use the following principles and process to determine credibility and reliability in a fair, objective and unbiased manner.

CAUTION

Decisions should be specific in relation to the credibility and reliability of evidence at the material time, as ability to give evidence will often fluctuate in line with symptoms of mental distress. It may be necessary to reassess credibility and reliability at various stages of the process. For example, the witness may have given a credible and reliable account of the incident when they reported it, but the trauma of the experience could exacerbate their mental distress and affect their testimony at a later stage. Post-traumatic stress disorder can occur months after an event and may result in repression of associated memories, creating difficulty in recalling and recounting the experience consistently. This should not, however, undermine the credibility and reliability of the evidence as a whole and, where necessary, expert evidence should be obtained to account for reasons for inconsistency.

1. Principles

Credibility and reliability – first principles

- A witness must be assumed to be credible and reliable unless it is established that they are not.
- A witness is not to be treated as unable to give credible or reliable evidence:
  - unless all practicable steps to help them to do so have been taken without success
  - merely because they have difficulty giving evidence
  - merely because they act in a way you feel is unwise.
- A witness should not be treated as never able to give credible or reliable evidence merely because at one time they have been unable to.[30]

- As the starting point, consider what tasks are required of the witness:
  - to be credible and reliable at material times?
  - to withstand trial and give good evidence?
- If aspects of a witness's presentation or behaviour suggest they may have problems with these tasks, this should be explored fully with the witness to determine how they can be minimised, in line with prosecution guidance.[31]

Witnesses have a right to expect to be consulted personally about their own ability to give evidence, and are often experts in their own strengths, support needs, when (if ever) they may lack credibility or reliability and how to work around this. Prosecutors should seek the intervention of a **mental health advocate** – a non-legal expert in helping people with mental distress to represent and communicate their wishes and needs – for witnesses who have difficulty expressing their views. They can mediate communication and also give the witness reassurance and confidence. Further advice on standard principles to follow, including, where possible, holding a **pre-trial witness interview**, can be found in the Code for Crown Prosecutors and relevant prosecution guidance.[32]

Merits-based v bookmakers' approach

The case of FB v DPP concluded that the decision to discontinue the prosecution was a misapplication of the evidential test in the Code for Crown Prosecutors. To avoid this in future, the judge established that prosecutors should use a 'merits-based' rather than a 'bookmakers' approach' when applying the 'realistic prospect of conviction test'.[33]

A **'bookmakers' approach'** is predictive, based on past experience of similar cases – tantamount to a 'best guess' or a gamble about the jury's likely response to the evidence. Post-FB v DPP, prosecutors should not be taking decisions on the assumption the jury will write off the witness as unreliable because of their condition.

With a **merits-based approach**, the prosecutor acts as a fact finder and considers whether, on balance, the evidence is sufficient to merit a conviction, taking into account what is known about the defence case. In FB v DPP, had the prosecutor applied the merits-based approach he could not have rationally concluded the victim had more likely than not hallucinated that the defendant had wounded him, on the basis of the medical evidence.

Key points

- Instead of asking what is the likelihood of conviction, ask whether the evidence would merit a conviction, taking into account what you know about the defence case.
- Proceed on the basis of a notional jury wholly unaffected by stereotypes or prejudice.

30. The principles are an adaptation of the statutory principles of the Mental Capacity Act, which is a good model of a functional, case-by-case and time-specific test. http://www.dca.gov.uk/legal-policy/mental-capacity/mca-cp.pdf, p. 19
31. CPS (2010), *Victims and witnesses who have mental health issues and/or learning disabilities: Prosecution Guidance*, 'Pre-trial witness interviews'
32. Ibid., Annex A 'Credibility and reliability' and CPS (2010) *The Code for Crown Prosecutors*, p. 9
33. R (on the application of B) v DPP (2009) EWHC, paragraphs 49–50.

2. Process

Notification or observation of something you feel may impact on the witness's ability to perform the tasks required to give good evidence.

Is there something specific (aside from their diagnosis) which calls their evidence into question

- inconsistencies?
- poor short-term memory?
- difficulty retelling the event?
- willingness to please in responding to questions?
- difficulty following questions or discussion?

Explore issues of credibility and reliability, clarify any details of evidence that you may have concerns about, and determine any necessary support to mitigate these.

Best practice – conduct a pre-trial witness interview in line with paragraph 4.8 of the Code for Crown Prosecutors. If this is unfeasible, instruct the OIC or Witness Care staff to approach the witness to explore these issues.

Where a witness has difficulty representing their own views, seek the intervention of a **mental health advocate** to ensure the witness is involved in discussions about any potential issues around credibility or reliability.

Consider asking the OIC to seek supporting information from third parties, such as family, carers, support workers or health professionals.

If concerns remain, or notice is received that the defence intends to use credibility and reliability issues in their case, **seek the witness's permission*** to obtain expert evidence from a qualified mental health professional involved in their care (GP, psychiatrist, community psychiatric nurse).

On the basis of the specific evidence gathered in relation to this witness (and not generalised assumption about mental health conditions), use a **'merits-based' approach** to apply the realistic prospect of conviction test.

⚠ Make no assumptions about how (or whether) this may impact on credibility and reliability.

Ask the witness:

- about their personal experience of mental distress
- whether and when it impacts on their ability to think, recall, concentrate, express and interact.

⚠ Do not take for granted the objectivity of third parties in assessing the witness's credibility, reliability or capacity to give good evidence and handle the court case.

*See relevant CPS Guidance on how to proceed if permission is refused (footnotes 31 and 32).

Relevance and duty of disclosure

Key points

Aim for a commonsense, sensitive approach, within the disclosure regime framework:

- **Do not make assumptions** about the relevance of mental health to the case and the need to seek medical evidence.
- **Seek informed consent at all times** and explain the implications to the witness of medical evidence used by either prosecution or defence.
- **Resist disclosure unless strictly necessary under CPIA rules**, particularly where evidence is neutral and there is no duty to disclose to the defence.
- **Avoid a risk-averse approach** – do not disclose information automatically to err on the side of caution, in the anticipation of a possible appeal on grounds of non-disclosure.
- **Make early decisions about admissibility**, where possible before the trial or in a closed session.
- **Always challenge disclosure of psychiatric evidence** by the defence during the trial, where it is irrelevant, sensitive and/or used inappropriately to discredit the witness.

Introduction

Relevance and disclosure of psychiatric evidence is a thorny issue. Legal duties to pursue all reasonable lines of enquiry, disclose material which undermines the prosecution case or assists the defence, and ensure a fair trial are paramount. Yet these duties must be balanced with patients' rights to confidentiality, the article 8 right to privacy under the European Convention on Human Rights, and the impact disclosure may have on victims and witnesses with experience of mental distress – in the courtroom and beyond.

Prosecutors and advocates have further duties under the Code for Crown Prosecutors and the Core Quality Standards to protect the victim or witness and ensure everyone has a fair trial – not just the defendant. At all times, the relevance of psychiatric information to the specific case in question, and the longer-term ramifications of disclosure on a victim or witness, must be carefully weighed as part of decision-making, within the framework of the disclosure regime.

Case studies – unnecessary disclosure

Mind's research has uncovered reports of irrelevant psychiatric information being passed to the defence automatically, causing considerable distress to the witness and their family or friends and in some cases influencing the outcome of the trial.[34]

A woman walking along a pavement was hit by a motorcycle which mounted the curb and knocked her into the road where she was then hit by a cab. During the court case in 2005, the woman's mental health history was disclosed. As she had attempted to take her own life in the past, the defence suggested she had deliberately put herself in the way of

34. These cases were reported directly to Mind and steps have been taken to protect anonymity. While we do not know everything about the facts of these cases and it is feasible that the mental health information *may* have been relevant, in each case this conclusion would be very tenuous and implausible.

danger (even though she was hit while on the pavement). The case was dropped and she received negligible compensation for her injuries.

Mind knows of other cases such as:

- a victim of assault finding their history of depression was passed to the defence although this was not a factor in the case
- a victim of fraud who had attempted suicide 10 years before finding this information was disclosed to the defence.

Balancing duties with the impact of disclosure

Prosecutors must comply with the duty of disclosure under the Criminal Procedure and Investigations Act 1996 (CPIA) and should refer to the CPS Disclosure Manual and the Criminal Procedure Rules 2010 for detailed instruction.[35] The relevant prosecution guidance also includes extensive advice in the context of mental health about dealing with material that falls within the CPIA disclosure test, obtaining appropriate consent, and handling third-party material.[36] Crucially, the guidance cautions prosecutors against assuming that psychiatric information is always relevant and must always be disclosed. Prosecutors are instructed to make decisions about relevance at an early stage, to avoid disturbing confidentiality unnecessarily and obtaining highly sensitive information that may subsequently have to be disclosed to the defence as unused material.

35. CPS (2005), *Disclosure Manual.* http://www.cps.gov.uk/legal/d_to_g/disclosure_manual/;
Ministry of Justice (2010), *Criminal Procedure Rules: Guidance for Court Users, Staff and Practitioners.* http://www.justice.gov.uk/criminal/procrules_fin/
See also HM Courts Service (2006), *Disclosure: a protocol for the control and management of unused material in the Crown Court.* http://www.hmcourts-service.gov.uk/cms/files/disclosure_protocol.pdf
36. CPS (2010), *Victims and witnesses who have mental health issues and/or learning disabilities: Prosecution Guidance*, 'Medical records – the duty of disclosure' and Annex B. See also CPS (2010), *Guidance Booklet for Experts. Disclosure: Experts' Evidence, Case Management and Unused Material*, which emphasises the early role played by the case management principles in the Criminal Procedure Rules (1, 3 and 33), alongside duties under the CPIA. http://www.cps.gov.uk/legal/d_to_g/disclosure_manual/annex_k_disclosure_manual.

In addition to considering relevance, prosecutors should always balance legal duties of disclosure against the potential impact of disclosure on the victim or witness. During the trial, discussion of highly sensitive psychiatric information can lead to considerable distress for the witness, which may impede their ability to give their best evidence. Disclosure of psychiatric information to the defence can lead to inappropriate lines of questioning and gratuitous attempts to undermine the credibility of the witness, either of which may unfairly prejudice the jury or magistrates against the witness.

Moreover, the long-term effects of public disclosure of mental distress can be extremely damaging to the individual concerned and to their friends and family. Social stigma and discrimination can lead to exclusion from employment opportunities or community activities, worsening or recurrence of symptoms of distress, breakdown of family relationships, and further harassment and abuse for many people. Research by Time to Change documents the devastating impact public disclosure of mental distress can have on people's lives.

Long-term effects of disclosure (reported to Time to Change)[37]

- Nine out of 10 people reported that discrimination has a negative impact on their lives, while seven in 10 had stopped doing things because of stigma.
- On friends, participants said that they "don't want to know me" when a mental health condition is disclosed.
- On neighbours, participants felt "they label me", "they are afraid of me", and "they are rude to me – they snigger when I walk by, they say and do bad things towards me".
- Work colleagues excluded participants from events and team meetings, and wouldn't talk about the impact of a mental health condition. Other research shows fewer than four in 10 employers are willing to take on someone with a history of mental distress.[38]

"Reaction is usually one of shock, horror, followed by avoidance; most people have no idea how hard it is. This leaves me feeling very isolated and with low self-confidence."[39]

37. Time to Change (2008), *Stigma Shout: Service user and carer experiences of stigma and discrimination*, Mind and Rethink
38. Department for Work and Pensions (2001), *ONE Evaluation*
39. Respondent to Time to Change's *Stigma Shout* survey

ACTION

- Decide whether information is relevant, or is likely to be so, before and after obtaining it, and only disclose what is strictly necessary under CPIA rules. Neutral evidence need not be disclosed.
- Always bear in mind the likely impact on the witness in the short and long term.

CAUTION

Avoid a risk-averse approach when making decisions about whether to disclose to the defence – fears of a possible appeal after securing conviction on grounds of non-disclosure of relevant information are not sufficient reason to disclose all psychiatric information to the defence as a matter of course.

Making early decisions about admissibility

The prosecution and the court should do everything in their power to protect a witness from unnecessary adverse effects of disclosure and to make sure that any psychiatric evidence that is used is relevant before it is made public.

- **Where the prosecution knows about psychiatric evidence before the trial**, ensure its admissibility is always determined before the trial begins, bearing in mind any implications of fluctuating mental distress, to minimise any harm caused as a result of unnecessary disclosure of a witness's mental health condition in an open courtroom.

Clearly it is not always possible for prosecution advocates to know whether defence lawyers have information about a person's mental health history from their own witnesses.

- **Where the defence discloses unanticipated psychiatric information** about a prosecution witness during the trial, ask for an adjournment so its admissibility can be considered before cross-examination is allowed to continue. Ask the judge or magistrate to ensure discussions about the relevance of the evidence take place in closed court without the jury present, or in chambers. Challenge inappropriate or irrelevant use of such evidence and, where appropriate, seek expert opinion on how, if at all, the defence information impacts on credibility and reliability.

Achieving informed consent

Types of consent

Consistent with the confidentiality principle, related article 8 rights and section 11 of the Police and Criminal Evidence Act (PACE), the circumstances in which psychiatric information can be released to police, prosecution or defence are very limited.[40] Relevant case law governing disclosure of medical or other records includes:

- **R. (on the application of B) v Stafford Combined Court [2006] EWHC 1645 (Admin)** – when an application for a witness summons is made to require disclosure of a patient's medical records, the patient should be given notice of that application and the opportunity to make representations.
- **R. v. J. [2010] 3 Archbold Review 2, C.A. (04/03/2010)** – a judicial order for disclosure of social service documents relating to a witness does not give either prosecution or defence carte blanche to use the documents in any way they see fit.

It is imperative that prosecutors seek informed consent from the victim or witness at all times – both in relation to accessing medical records or expert evidence, and any subsequent need to disclose such information to the defence. The witness may give:

- **full consent** – the police and prosecutor can access records, serve them as evidence and/or disclose to the defence as unused material, as appropriate under CPIA rules
- **qualified consent** – permission is given for records to be disclosed to the police and prosecutor, but not to the defence
- **no consent** – no permission is given for the release or service of medical records and the witness has the right to make representations to the court as to this decision.

40. For further guidance see CPS (2010), *Victims and witnesses who have mental health issues and/or learning disabilities: Prosecution Guidance*, 'Medical records – the duty of disclosure', 'Social Services records' and 'Third party material – defence requests for witness summons'.

ACTION

- When applying the disclosure test in all these scenarios, assess the relevance of the information and take account of the impact on the witness. See relevant prosecution guidance for detail on the correct process to follow in each scenario.[41]
- Always keep the witness informed of your decisions and give them the opportunity to make oral or written representations about their wishes where appropriate.

CAUTION

A witness has the right to withhold consent to release their medical records, and a decision to refuse access should never be used in itself as evidence to discredit their testimony. Mind has heard of cases where a witness has refused access to their medical records and this has counted against them as evidence that they have something to hide. Remember that credibility and reliability should only be questioned in the same circumstances as for any other witness. It would be inappropriate, intrusive and discriminatory if, by virtue of disclosure of mental distress, witnesses are expected to provide evidence to prove their credibility and reliability via their medical records. People with mental distress may have very good reason to be cautious about disclosing their mental health history, particularly where it is likely to be used in a public courtroom. Such a decision should not act to discredit them further.

Keeping the victim or witness informed

To achieve truly informed consent it is important to stress to the victim or witness what the long-term consequences of disclosure and involvement in the criminal justice process are. People with mental distress have told Mind that this explanation may not be given, so they feel unable to proceed with prosecutions. This means people are denied access to justice because they are not given the opportunity to make informed decisions about their participation in the process.

It is important that early discussions take place between the police and the victim or witness about the consequences of a) proceeding with the case and b) refusing disclosure – in relation to the case and their life in the longer term. This should include discussion of the worst case scenario, for example that it may be more difficult to control disclosure by the defence where they have obtained psychiatric information themselves. A mental health advocate could be appointed to assist with these discussions.

ACTION

- Do not leave these discussions solely to the police – while it is the responsibility of the OIC to have initial discussions about participation and disclosure, the prosecutor should be involved throughout the process as consent needs to be reviewed.
- Where necessary, seek renewed consent to check the witness understands the implications of proceeding at all times, or if the circumstances around evidence and disclosure change (such as new defence evidence comes to light).

Ultimately, victims and witnesses are more likely to co-operate with the proceedings and give their best evidence if they understand the process and its implications, and trust the prosecutor and other staff involved. Safeguarding the witness's mental health is also an imperative and prosecutors should have regard to paragraph 4.17g of the Public Interest Test in the Code for Crown Prosecutors in this context.[42]

41. Ibid, Annex B.

42. CPS (2010) *The Code for Crown Prosecutors*, p.14

A process for achieving a fair trial for all

Notification or observation that mental health may be relevant to the case

Consult the witness to explore any issues of concern (via the OIC where necessary)

Ask the witness:

- what is their personal experience of mental distress?
- in what ways might it be relevant to the facts of the case in question?

In all cases seek informed consent to access medical records or gather expert evidence. Ensure implications of not providing consent and how information may be used are fully explained to the witness.

If the witness refuses consent but you must proceed, ensure the reasons for overriding their right to confidentiality are explained and the witness is signposted to appropriate support.

Ask specific questions of the relevant expert or when interpreting medical records (see next section).

Psychiatric evidence is relevant ➜ disclose to the defence under CPIA duties, but only release an edited version. Where possible agree this in consultation with the witness (evidence may contain sections which are irrelevant and particularly sensitive).

Psychiatric evidence is neutral ➜ do not disclose any part to the defence.

If neutral evidence becomes relevant at a later stage, in light of new evidence from the defence, explain to the witness and seek renewed consent before disclosing.

Using expert evidence and medical records

Key points

- Gathering expert evidence can be intrusive – do not assume it is always necessary where a witness has mental distress.
- Consult the witness – about who the expert should be and the implications of any evidence provided, as appropriate.
- Avoid generalisations – ask specific questions of experts and analyse medical records robustly in relation to the context of the case.
- Be aware of limitations – medical records can be disputed: one expert's opinion is not definitive; stigma or difficult relationships can cloud professional judgement.
- Use expert evidence in various ways – to satisfy concerns about credibility and reliability, as rebuttal evidence, or to bolster applications for support or adjustments.

Introduction

Gathering evidence from experts[43] and medical records can be useful but also highly intrusive, so the need to seek detailed psychiatric information about a witness should be weighed carefully. If someone's story is entirely consistent or there are no specific grounds to suspect a testimony is unreliable or not credible, then their mental health condition is irrelevant, and further investigation into their psychiatric history should not be pursued. This stands even where you have been made aware of mental distress already by the witness or a third party and support needs may be under consideration. Relevant prosecution guidance is clear that prosecutors should not assume expert evidence needs to be sought in every case and be wary of disturbing confidentiality or the article 8 right to privacy unless strictly necessary.[44]

Where it is appropriate to obtain expert opinion, questions to experts must always be centred on the specific context and the individual's experience of mental distress, not generalisations about diagnoses and their symptoms.[45] Equally, it is important to subject expert evidence to robust analysis and not simply accept the information provided as definitive. Prosecutors should consider the implications of an

43. While recognising the formal legal definition of 'expert evidence', we use the term throughout this toolkit in its broader sense, meaning people involved in the witness's care who can provide expertise on any support needs or issues in relation to credibility and reliability, to ensure prosecution decisions are taken on the basis of specific information about that individual. This does not of course preclude these professionals being 'experts' in the proper legal sense in some cases.
44. CPS (2010), *Victims and witnesses who have mental health issues and/or learning disabilities: Prosecution Guidance*, 'Medical records – the duty of disclosure'. It states: "Do not assume you have to ask. Decide if the record is, or is likely to be, relevant, Decide if it is appropriate to 'disturb' confidentiality."
45. The General Medical Council provides guidance on acting as an expert witness which can usefully be referred to: http://www.gmc-uk.org/guidance/ethical_guidance/expert_witness_guidance.asp.

expert report carefully in relation to the specific incident, each of the material times, and the functions required to be a witness, while observing the caveats outlined below.

Seeking expert advice

It is appropriate to seek expert evidence or medical information in the following scenarios:

1. If the witness uses their mental distress to explain why they should not be treated in the same way as everyone else either:
   - in relation to retelling the incident accurately or coherently, or
   - in relation to withstanding cross-examination and giving evidence at trial.
2. If the OIC or the prosecutor notes the witness's presentation or behaviour indicates issues relating to credibility and reliability, and discussions with the witness have not satisfied these concerns.

Outside these scenarios, medical records should be considered confidential and irrelevant. Moreover, inconsistencies or other potential indications of unreliability do not provide carte blanche to access a witness's medical records or seek expert advice. Processes set out in relevant prosecution guidance should always be adhered to.[46]

Who are the 'experts'?

The most appropriate person to approach will depend to some extent on the witness's condition and the level of treatment they are receiving. After achieving informed consent it is good practice to ask the witness who they suggest would know their condition best, professionally. The expert should always be someone who is closely involved in the witness's care, to avoid gathering generic information. It might include one or more of the following:

- psychiatrist
- GP
- counsellor or psychotherapist
- community psychiatrist nurse (CPN)
- support worker
- social worker
- the person's personal assistant
- mental health advocate.

46. Ibid, 'Medical records – duty of disclosure', 'Expert evidence' and Annex A.

Asking the right questions

The following are the minimum questions that should be asked of any expert, to ensure expert evidence is as robust and specific as possible (adapted as necessary).

1. What is the nature and extent of the witness's mental health condition, with particular reference to the symptoms experienced by the witness? How does any treatment they are receiving affect the witness?
   a) What specific symptoms does the witness experience – of the condition and/or the treatment?
   b) When do these symptoms occur?
   c) Are there any particular triggers for these symptoms?
   d) Are there any alleviating or aggravating factors?
2. Might the nature or extent of the witness's mental health condition significantly affect their (i) perception (ii) understanding or (iii) recollection of an incident? If so, in what specific way(s) might it affect (i), (ii) or (iii)? To what extent would (i), (ii) or (iii) be affected in comparison to someone without this mental health condition?
3. With reference to the incident in question, might the witness's mental health condition affect their (i) perception, (ii) understanding or (iii) recollection to the extent that it could undermine the credibility or reliability of their account given:
   a) at the time the incident occurred?
   b) at the time they reported the incident to the police?
   c) at the time of subsequent interviews?
   d) at the present time?

   In what specific ways might it impact on the credibility or reliability of the witness's account at each of these times? Are there any aggravating or alleviating factors? Are there any measures which can be taken by the prosecutor to mitigate these and support the witness to give credible and reliable evidence?
4. How might the nature or extent of the witness's mental health condition affect their ability to give evidence and withstand cross-examination, particularly with reference to their:
   a) response to questioning and interrogation
   b) concentration and attention
   c) ability to communicate
   d) interaction with other people.

   Are there any aggravating or alleviating factors? Are there any measures which can be taken by prosecutors to support the witness to give their best evidence and ensure cross-examination does not cause further distress and/or exacerbate their condition?

Analysing expert evidence

Expert evidence gathered this way may illuminate decisions about relevance, credibility and reliability, and ability to withstand trial. Nevertheless, a number of caveats should be observed:

- There are limitations to expert evidence and often it is an expression of a single opinion.
- In the field of mental health, there can be no definitive answers or objective opinions.
- Medical records can be controversial, as diagnostic labels are fluid and disputed, so people may be given a number of different diagnoses over time.
- A difficult relationship may exist between the witness and the health professional, which may cloud the expert's judgement and distort their assessment.
- There is evidence of stigma about mental distress even among psychiatrists and other medical experts.

ACTION

- Always weigh expert evidence carefully and do not presume that information is necessarily objective or authoritative.
- Discuss any expert evidence with the witness and seek their views about how their mental distress might affect their credibility and reliability, as they will often be experts in their own strengths and weaknesses.

Using expert evidence

While expert evidence which bolsters the credibility or reliability of a witness's evidence can not be served as part of the prosecution case, it may be usefully used in a number of ways:

- to inform decisions about the evidential test and realistic prospect of conviction
- to bolster the confidence of the prosecutor and witness in proceeding with the case
- to be served as rebuttal evidence if the defence calls the witness's credibility or reliability into question in court
- to inform and strengthen applications for special measures and reasonable adjustments, where it includes indications of support needs.

ACTION

- If the evidence satisfies the disclosure test, do not disclose the whole report or medical record automatically.
- Edit expert evidence so only the necessary parts of it are passed to the defence, to ensure sensitive and irrelevant medical information is not released unnecessarily. Where feasible, involve the witness in the editing process.

Case study – using expert evidence for case preparation[47]

In a domestic violence case the reviewing lawyer was made aware by police that the victim had experience of mental distress. A statement from the victim's GP was sought to assist the application for special measures. The prosecutor conducting the case said:

"I met the victim for the first time on the day of the trial. The GP statement was useful for me when I had to go and speak to her about the trial, to prepare her in terms of what would happen, what her needs were and whether I could be of any reassurance (without discussing the evidence itself, of course)."

47. This example was reported to Mind as part of survey research to inform this toolkit and steps have been taken to protect anonymity.

Supporting people to give their best evidence

Key points

- Avoid assumptions – just as mental distress may fluctuate, so too will any support needs so make assessments on a case-by-case basis.
- Identify any potential needs early and always explore them with the witness – take care not to force unwanted support on people.
- Think beyond special measures – always consider them but also bear in mind reasonable adjustments and informal support measures.[48]
- Finding the right support is key to ensuring best evidence – in relation to the witness's credibility or reliability and their ability to withstand trial.
- The four key aims of support are: achieving best evidence; preparation and reassurance; managing expectations; minimising further distress.

48. See p. 31 'Reasonable adjustments'

Introduction

Prosecutors have a duty under Standard 7 of the CPS Core Quality Standards to ensure witnesses with mental distress have adequate support during the trial. This is a basic practice of law issue in relation to proper treatment of a witness and achieving best evidence. Prosecutors and advocates will already be familiar with existing information and guidance about legal duties to provide witnesses with special measures and reasonable adjustments, where needed, under the Youth Justice and Criminal Evidence Act 1999 and the Equality Act 2010, respectively.[49] While formal special measures are available for witnesses who have a mental disorder as defined under the Mental Health Act 1983 ("any disorder or disability of the mind"), people with mental distress who fall outside this definition (for example, because they have no formal diagnosis) can and should be offered other support as required.

In relation to mental health, ensuring the right support measures are in place can be particularly crucial both to:

- overcome any potential barriers to giving credible or reliable evidence
- minimise any triggers for distress and help the witness withstand the trial process.

Yet often witnesses with mental distress are not afforded special measures protection, either because their mental health needs are not identified early enough to facilitate applications, or the relevance of special measures for mental health may not be adequately understood. Even where formal special measures applications are inappropriate or unsuccessful, possible reasonable adjustments and informal support should be explored with the witness at an early stage, to facilitate best evidence.

49. The Equality Act 2010 upholds the duties previously enshrined in the Disability Discrimination Act 1995 to provide disabled people with reasonable adjustments, where necessary to ensure equal access to services.

Assessing support needs

Witnesses with mental distress should be identified as early as possible so that they can be afforded special measures protection and appropriate pre-trial support and preparation. Prosecutors and advocates should work closely with the OIC and Witness Care Officer to ensure this happens in a timely and appropriate manner and the right questions are asked. However, knowledge of a mental health condition should not lead to assumptions about what, if any, support needs a witness may have – the witness should always be consulted first, to explore these issues, at an early special measures meeting or pre-trial witness interview.[50]

ACTION

- Use face-to-face meetings as an opportunity to reduce potential anxiety that might affect the quality of the witness's evidence, by providing reassurance and managing their expectations about the trial.

Asking the witness – key principles

- Just as people's experiences of mental distress vary and fluctuate, so too will any associated support needs.
- People are often experts in their own strengths and when, if ever, they may require additional support to give their best evidence.
- Take care not to pressurise witnesses with mental distress into accepting special measures or reasonable adjustments they feel are unnecessary or inappropriate.
- Some people with mental distress may be very robust some or all of the time and may not wish to be afforded special treatment and therefore labelled as 'vulnerable' or 'different'.

50. These should ideally be standard practice where a witness has mental distress, in line with relevant prosecution guidance and the Core Quality Standards.

Special measures to minimise mental distress

Within the broader legal definitions of eligibility,[51] special measures have particular relevance for many symptoms of mental distress, helping to minimise courtroom triggers that might exacerbate anxiety or panic and mitigate against the internal or external factors that might interfere with the witness's ability to give best evidence. Early applications should always be considered, in consultation with the witness. In line with the CPS Core Quality Standards prosecutors should "offer to meet witnesses personally to discuss their need for special measures" in appropriate cases (paragraph 7.6).[52]

Special measure	Relevance for mental health
Video-recorded evidence. Evidence via live link	Can be useful for people who find interaction with other people challenging, perhaps because they are hearing voices, feel threatened or paranoid, or have a personality disorder. Some people are unable to speak up in public due to chronic low self-esteem so may need to give evidence away from the courtroom.
Screens	Can help people to focus and concentrate on cross-examination, particularly important where people may be experiencing obsessive thoughts or hallucinations.
Giving evidence in private	Important for people who may have difficulties with strangers or crowds of people, may reduce feelings of anxiety or panic. Particularly useful where sensitive information about a witness's mental health history is being disclosed.
Removal of wigs and gowns	May reduce the risk of a person becoming anxious, distressed or experiencing feelings of paranoia or panic, particularly where people have difficulties with authority figures or unfamiliar procedures and environments
Use of intermediaries	To assist with interpreting questions and answers appropriately, in particular where cross-examination can exacerbate feelings of anxiety, low self-esteem, paranoia or panic, or where positive psychotic symptoms like hearing voices can make a measured and/or coherent response difficult. As intermediaries always stand next to the witness in the box (or sit with them in the live link room), they can also provide crucial reassurance. [53]
Aids to communication	People on medication which affects their speech, or who experience disordered, obsessive or intrusive thoughts which make following the thread of conversation difficult, may require a communicator to help give clear, coherent evidence. The use of written or predetermined questions may also help.

51. Eligibility for special measures is defined by Section 16 of the Youth Justice and Criminal Evidence Act 1999. 'Vulnerable witnesses' include people with a mental disorder as defined under the Mental Health Act 1983, which is "any disorder or disability of the mind". http://www.cps.gov.uk/legal/s_to_u/special_measures/

52. CPS (2010), *Core Quality Standards*, p. 33

53. See Criminal Justice System (2007), *Achieving Best Evidence in Criminal Proceedings* for detail of intermediaries and other special measures.

Case study – importance of intermediaries[54]

"Witnesses with a mental disorder are eligible for an intermediary where the use of an intermediary would maximise the quality of their evidence."
paragraph 3.79, *Achieving Best Evidence in Criminal Proceedings*

This case illustrates the multiple benefits of using intermediaries in cases involving witnesses with mental distress, to produce good evidence in challenging circumstances.

Witness Care staff identified that a witness would benefit from the involvement of an intermediary because a serious head injury some years previously had left the witness with anxiety, depression and problems communicating. The intermediary prepared a report based on consultation with the witness and relevant third parties, which made recommendations about necessary special measures (screens) and reasonable adjustments (time to read his witness statement before trial in a quiet environment; specific style of questioning; regular breaks). At a brief pre-trial conference on the day, an application to allow the intermediary to stand next to the witness while he gave his evidence was opposed by the defence but granted by magistrates, on the grounds that the quality of the evidence would be adversely affected without the intermediary's assistance. During cross-examination the intermediary stood next to the witness box to offer reassurance and assistance, to understand the questions put to the witness and to help communicate his replies, where necessary. The witness gave excellent evidence without explicit assistance and a conviction was obtained.

The prosecutor involved in the case thus regards the value of the intermediary as four-fold:

1. They provide a **'friendly' face for the witness**, amid the alarming, unfamiliar formality of the court. While behaving in a professional manner they will have met the witness beforehand and the witness will know the intermediary is aware of their mental distress and is there to help.
2. They can offer **advice to the advocates** on how best to phrase questions effectively and get the necessary evidence from the witness, particularly where understanding of language is affected. They can also intervene to assist the witness, should it be necessary to moderate the defence approach to the witness in cross-examination.
3. They are **experts in their field** and will be able to tell the court what difficulties the witness faces much more effectively than advocates could. They can communicate the issues in detailed and authoritative terms and their independence is assured as they are appointed by the court.
4. Their **visible presence near to the witness** during their testimony gives support to the witness during a traumatic and difficult time, and, crucially, provides a constant reminder that the witness needs special consideration and may not always express themselves in the absolute, certain terms that the court may expect of other witnesses.

54. This case was reported to Mind as part of survey research to inform this toolkit and steps have been taken to protect anonymity.

Reasonable adjustments to minimise mental distress

Where special measures are unavailable or inappropriate, a range of reasonable adjustments can be put in place both before and during the trial, to mitigate any triggers for distress, minimise anxiety and help the witness give their best evidence. As preparation for seeking agreement from the court for any adjustments, it can be helpful to use the reasonable lines of enquiry process to seek supporting evidence from third parties about the necessity of any proposed measures.

Which, if any, reasonable adjustments are appropriate will vary from person to person. Standard forms of support as advised in The Witness Charter and the relevant CPS prosecution guidance should be considered. Some of these standard procedures can be particularly helpful for reducing anxiety and distress, such as pre-trial court familiarisation visits and attendance of family or supporters at interviews and hearings. Prosecutors and advocates should work closely with the Witness Care Officer to ensure these needs are identified at an early stage during case preparation. The independent Witness Service provided by Victim Support is also an important source of help and support at trial and witnesses should be signposted appropriately.[55]

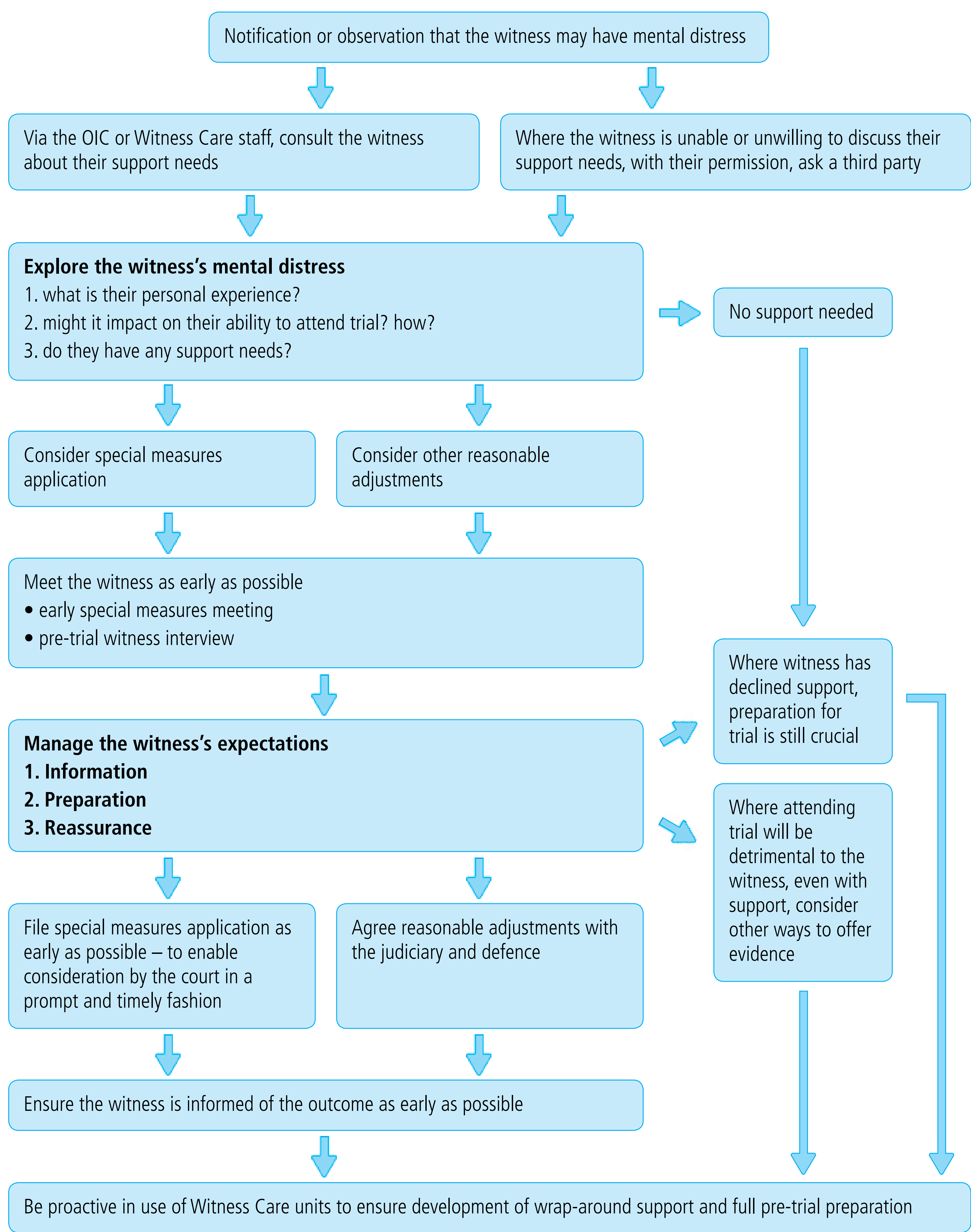
In addition, people with mental distress have told Mind the following reasonable adjustments can be helpful, in addition to standard procedures. These are only a guide and advice from the witness themselves should always be sought about their particular needs.

55. http://www.victimsupport.org.uk/Help%20for%20witnesses

Reasonable adjustments

- Interviews and hearings taking place in rooms with natural light.
- Shorter sittings and/or the opportunity to take regular comfort breaks.
- Staying seated while giving evidence and during cross-examination.
- Permission to get up and walk around if this reduces discomfort, as some medication can cause restlessness.
- Allowing a supporter or carer to accompany the person at all times – including to stand alongside the witness box, where possible.
- Ensuring witnesses are comfortable with court procedures and environment, such as explaining why there are CCTV cameras present or switching them off.
- Asking police officers to remove hats and helmets to reduce distress caused by unfamiliarity or authority figures (as with wigs and gowns).
- Requesting the judiciary, clerks and defence address the witness directly and display patience and sensitivity when explanation is necessary or distress becomes acute.
- Requests to clear the courtroom where sensitive medical information is raised for the first time and relevance needs to be determined.

A process for determining and securing the right support



Firefighting on the day in court

Key points

- Advocates play a key role in protecting the witness, ensuring that the trial process is fair and there is equal access to justice.
- Ultimately, this also helps to present the prosecution case in its best light, as witnesses will be able to give their best evidence.
- Always be robust in seeking the judge's or magistrate's intervention to:
  - permit further explanation or short breaks where the witness is distressed
  - discount irrelevant information
  - challenge aggressive or oppressive cross-examination
  - challenge unwarranted personal attacks on a witness's character or credibility
  - clear the courtroom where necessary.

Introduction

Early preparation for a trial involving a witness with mental distress will not always be possible and the prosecution may have been unable to explore thoroughly a witness's mental distress, their credibility and reliability, and any support needs before a trial begins. Advocates may meet witnesses for the first time at the door of the court, especially in magistrates' hearings, or mental distress may only come to light on the day of the trial (via information from the witness or their supporters, or indications of distress noted by advocates or other court staff). Mental health may also be raised as a factor for the first time by the defence, raising possible issues around inappropriate or aggressive cross-examination, irrelevant (and potentially unlawful) disclosure of sensitive confidential information, or unwarranted attacks on character where psychiatric evidence is used to discredit a witness.

In such circumstances, advocates must be armed to firefight on the day to protect the witness. With the duties in the CPS Core Quality Standards in mind, be alert, confident and robust in seeking last-minute reasonable adjustments or challenging inappropriate and discriminatory practice by the defence.

Core Quality Standards – relevance for mental distress

The Standards place duties on advocates to:

- treat witnesses and defendants in court respectfully and ask the court to intervene to stop inappropriate questioning of prosecution witnesses (6.4c)
- challenge any defence mitigation that is derogatory to a victim's character (9.5b)
- promote equality of access to justice (7.1)
- in very exceptional cases ask the court for permission to withhold the identity of a witness where this can be justified (7.7)

Trouble-shooting checklist

When meeting the witness…

✓ Are there any indicators of mental distress? (see p. 13)

✓ Ask the witness (or if needed, their supporter) about any support needs.

✓ Ask the witness if they have reason to believe the defence may use their mental health condition as evidence in the trial.

During cross-examination…

✓ Observe and respond to any indicators of mental distress

✓ Request intervention by the judge or magistrate in the interests of best evidence and proper treatment of a witness:

- Request a short adjournment
- Consider reasonable adjustments
- Ask for modification in defence style of questioning.

✓ Challenge immediately if mental health is brought up by the defence or other witnesses and seek intervention by the judge or magistrate

Did you have prior knowledge of the witness's mental distress?

If no:

- request a break to speak to the witness
- ask the judge to clear the courtroom to determine admissibility and relevance in private.

If yes,

- Challenge use of mental health information to discredit the witness.
- Use expert report as rebuttal evidence or call expert witness to prove reliability or credibility, where possible.

Communicating with the witness

Where rapid decision-making during the trial is necessary to minimise distress and achieve best evidence, communication, awareness and responsiveness are crucial.

To enable good communication with the witness and ensure you get the evidence the court needs to hear, the prosecution, defence and judiciary should adopt the following best practice:

- Establish and maintain eye contact in a natural way (bearing in mind cultural differences where necessary).
- Allow plenty of time for response, repeat questions if necessary, and explain further if the witness is confused or distressed.
- Use plain language and avoid jargons and legal terminology.
- Ask straightforward questions in a logical time-sequence such as "what happened first?", "what did you do next?", "what was the last thing you remember?" rather than compound questions like "before the man ran away, did you notice anything?"
- Make no assumptions that because someone needs a support worker with them, they are unable to comprehend questions or participate in discussions.
- Where a witness is accompanied by a carer, mental health advocate or intermediary, address remarks to the witness rather than to the person accompanying them.

Recap: Mental health – experiences and implications

Key points

- Everyone is different – avoid assumptions and always ask the victim or witness first about their own experiences.
- Avoid thinking in terms of diagnoses – people may have one or more of a range of experiences and symptoms, whether or not they have a diagnosed condition.
- Remember mental distress is fluctuating – people may have periods where they experience no symptoms at all and the difficult days or times of day can be avoided.
- Never generalise about the impact of mental distress – for each case consider when these experiences are present: any aggravating or alleviating factors; the specific impact on thought, concentration, recall, expression and interaction at given times.
- Always bear in mind potential triggers – be honest, open and sensitive in asking questions about what might help reduce distress.

Indicators of mental distress

- Does the witness appear distressed, disturbed or distracted?
- Are they talking incoherently or laughing incongruously?
- Do they appear to be having illogical thought processes?
- Do they seem over-excited, euphoric, irritable or aggressive?
- Do they appear dazed, withdrawn or shut down?
- Are they fidgety, restless or jumpy?
- Do they keep repeating themselves or obsessing?
- Do they appear to be taking information in?
- Do they seem to be responding to experiences, sensations or people not observable by others?

Asking about mental distress

- "You appear to be experiencing some discomfort, is anything in particular causing you to feel like this?"
- "You appear to be distressed by this situation, is there anything that might help reduce your anxiety?"
- "You seem to be behaving a little oddly, is anything troubling you at the moment? Is there any way I can help?"
- "Do you have anything you would like to tell us about how you are feeling at the moment?"
- "I need to ask if you are experiencing any kind of mental distress or have a mental health condition. If you want to tell me, say yes. If you either haven't or you don't want me to know, say no 'comment'."

Recap: making decisions about credibility and reliability

Key points

- Make no assumptions that mental distress will undermine credibility and reliability.
- Follow existing legal models and adopt a case-by-case and functional approach – reassessing credibility and reliability at all material times where necessary.
- Take care not to conflate credibility, reliability, competence and capacity – all have different implications on ability to give evidence.
- Consult the witness – people are often experts in their own strengths, support needs, when they may appear to lack credibility or reliability and how to work around this.
- Pursue a merits-based approach to the evidential test – assess if the evidence is sufficient to merit a conviction, rather than the likelihood of conviction by the jury.

Credibility and reliability – first principles

- A witness must be assumed to be credible and reliable unless it is established that they are not.
- A witness is not to be treated as unable to give credible or reliable evidence unless all practicable steps to help them to do so have been taken without success.
- A witness is not to be treated as unable to give credible or reliable evidence merely because they have difficulty giving evidence.
- A witness is not to be treated as unable to give credible or reliable evidence merely because they act in a way you feel is unwise.
- A witness should not be treated as never able to give credible or reliable evidence merely because at one time they have been unable to.

Recap: relevance and duty of disclosure

Key points

Aim for a commonsense, sensitive approach, within the disclosure regime framework:

- Do not make assumptions about the relevance of mental health to the case and the need to seek medical evidence.
- Seek informed consent at all times and explain the implications to the witness of medical evidence used by either prosecution or defence.
- Resist disclosure unless strictly necessary under CPIA rules, particularly where evidence is neutral and there is no duty to disclose to the defence.
- Avoid a risk-averse approach – do not disclose information automatically to err on the side of caution, in the anticipation of a possible appeal on grounds of non-disclosure.
- Make early decisions about admissibility, where possible before the trial or in a closed session.
- Always challenge disclosure of psychiatric evidence by the defence during the trial, where it is irrelevant, sensitive and/or used inappropriately to discredit the witness.

Recap: using expert evidence and medical records

Key points

- Gathering expert evidence can be intrusive – do not assume it is always necessary where a witness has mental distress.
- Consult the witness – about who the expert should be and the implications of any evidence provided, as appropriate.
- Avoid generalisations – ask specific questions of experts and analyse medical records robustly in relation to the context of the case.
- Be aware of limitations – medical records can be disputed: one expert's opinion is not definitive; stigma or difficult relationships can cloud professional judgement.
- Use expert evidence in various ways – to satisfy concerns about credibility and reliability, as rebuttal evidence, or to bolster applications for support or adjustments.

Recap: supporting people to give their best evidence

Key points

- Avoid assumptions – just as mental distress may fluctuate, so too will any support needs so make assessments on a case-by-case basis.
- Identify any potential needs early and always explore them with the witness – take care not to force unwanted support on people.
- Think beyond special measures – always consider them but also bear in mind reasonable adjustments and informal support measures.
- Finding the right support is key to ensuring best evidence – in relation to the witness's credibility or reliability and their ability to withstand trial.
- The four key aims of support are: achieving best evidence; preparation and reassurance; managing expectations; minimising further distress.

Asking the witness – key principles

- Just as people's experiences of mental distress vary and fluctuate, so too will any associated support needs.
- People are often experts in their own strengths and when, if ever, they may require additional support to give their best evidence.
- Take care not to pressurise witnesses with mental distress into accepting special measures or reasonable adjustments they feel are unnecessary or inappropriate.
- Some people with mental distress may be very robust some or all of the time and may not wish to be afforded special treatment and therefore labelled as 'vulnerable' or 'different'.

Special measures to minimise mental distress

Formal special measures are available for witnesses who have a mental disorder as defined under the Mental Health Act 1983 – "any disorder or disability of the mind":

- video-recorded evidence
- evidence via live link
- screens
- giving evidence in private
- removal of wigs and gowns
- use of intermediaries
- aids to communication.

Reasonable adjustments to minimise mental distress

- Interviews and hearings taking place in rooms with natural light.
- Shorter sittings and/or the opportunity to take regular comfort breaks.
- Staying seated while giving evidence and during cross-examination.
- Permission to get up and walk around if this reduces discomfort, as some medication can cause restlessness.
- Allowing a supporter or carer to accompany the person at all times – including to stand alongside the witness box, where possible.
- Ensuring witnesses are comfortable with court procedures and environment, such as explaining why there are CCTV cameras present or switching them off.
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- Requests to clear the courtroom where sensitive medical information is raised for the first time and relevance needs to be determined.

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Janey Antoniou	mental health service user consultant
Simon Deacy	former lead on Victims and Witnesses, Association of Chief Police Officers
Dr Louise Ellison	Senior Lecturer in Law, University of Leeds
Mary-Ruth Johnson	Senior Crown Prosecutor, Crown Prosecution Service
Jackie Kerr	Senior Policy Advisor, Crown Prosecution Service
Bernadette Lynch	mental health service user consultant and trainer
Rachel M. Spearing	barrister at 3 Pump Court Chambers Equality, Diversity and Disability representative, Bar Council
Rose Thompson	Lead Tutor on Mental Health and West Midlands Area Lead on Hate Crime, Mental Health, Disability and Elder Abuse, Crown Prosecution Service
Mandy de Waal	former consultant with the Judicial Studies Board
Charlotte Walker	probation officer

Jackie Kerr and other CPS colleagues were particularly helpful in ensuring the toolkit reflects and complements existing law and prosecution guidance. Sincere thanks are also due to Dr Tony Zigmond from the Royal College of Psychiatrists for his considerable input and advice in relation to mental distress in a legal context, credibility and reliability, and expert evidence.

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About Mind

Mind has been speaking out for better mental health for over 60 years and is now the leading mental health charity in England and Wales. We work in partnership with around 200 local Mind associations to improve the lives of people with experience of mental distress.

Mental illness affects people from every ethnic background and walk of life – one in four people experiences mental distress in any one year and a third of all GP visits relate to mental health. Depression and anxiety, two of the most common forms of mental distress, can severely affect people's everyday lives and careers, and place a strain on close relationships. Everyone has the right to live a full life and to play their full part in society.

Mind believes everyone is entitled to the care they need. Our vision is of a society that promotes and protects good mental health for all, and that treats people with experience of mental distress fairly, positively, and with respect.

Mind is an independent organisation supported by donations. We campaign to influence Government policy and legislation, work closely with the media and are the first source of unbiased, independent mental health information via our publications, website www.mind.org.uk and phone service Mind*info*Line 0845 766 0163.

For details of your nearest local Mind association and of local services, contact Mind's helpline, Mind*info*Line on 0845 7660 163, Monday to Friday 9.00am to 5.00pm. Speech impaired or deaf enquirers can contact us on the same number (if you are using BT Text direct, add the prefix 18001). For interpretation, Mind*info*Line has access to 100 languages via Language Line.

Mind, 15–19 Broadway, London E15 4BQ
T: 020 8519 2122 F: 020 8522 1725
w: www.mind.org.uk

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