



**Ensuring victims, witnesses and defendants  
with autism are treated fairly by the courts**

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# Crown Prosecution Service



- Code for Crown Prosecutors
- Core Quality Standards
- Prosecutors Pledge

# Code for Crown Prosecutors



- Full Code Test
  - Sufficient evidence to provide a realistic prospect of conviction
  - Public interest

# Autism and Evidence



- Accuracy, reliability, credibility of witnesses
- Reliability of confession
- No assumptions
- Knowledge facilitates justice

# What does the CPS need to know and why?



What does the witness need to give their best evidence?

- Consult the witness
- Self/lay advocate
- Police/witness care
- Carers
- Assessment of Needs
- Expert evidence

# Competence



At every stage in criminal proceedings all persons are (whatever their age)  
competent to give evidence

UNLESS

It appears to the **court** that he is not a person who is able to understand questions  
put to him as a witness and give answers to them which can be understood

S 53 Youth Justice and Criminal Evidence Act 1999.

# Determining Competence



- Competence can be raised by any party or by the court;
- Party calling the witness must satisfy the court it is more likely than not that the witness is competent;
- Competence decided in the absence of jury;
- Expert evidence may be given;
- Any questioning of witness will be conducted by the court in the presence of the parties.

# Competence Test



Are there any techniques or measures that can assist the witness to give evidence ?

- Appropriate advocacy
- Adapting court procedures e.g. slower pace, breaks
- Intermediary
- Court supporter

Court Decides whether a witness is competent.

Court will decide whether a witness is credible and reliable.

# Special Measures



“Vulnerable and intimidated witnesses”

Vulnerable=

- Children
- Witnesses with a “mental disorder” MHA definition “any disability or disorder of the mind” or
- Significant impairment in relation to intelligence and social functioning or
- Physical disability.

S 16 Youth Justice and Criminal Evidence Act 1999

# Special Measures



- Screens;
- Live Link;
- Testify in private;
- Removal of wigs and gowns;
- Video Recorded Interview;
- Intermediary;
- Aids to communication.

# CPS and Victims and Witnesses



- Pre Trial Witness Interviews;
- Special Measures application;
- Witness Care – referral to Witness Service to be informed and supported;
- Pre court familiarisation visit
- Memory refreshing of statement/ view video recorded evidence at court;
- Communication at court;
- Protecting victims from unwarranted or irrelevant attacks on their character – seek court intervention where XX oppressive or inappropriate;
- Reporting Restrictions on children's evidence
- Sec 49 Children and Young Persons Act 1933 ( youth court)
- Sec 39 Children and Young Persons Act 1933 ( adult court)

# Public Interest



“It has never been the rule in this country and I hope it never will be that suspected criminal offences must automatically be the subject of prosecution”

Sir Hartley Shawcross, Attorney General 1951

- Identify and Balance the factors in favour of and against prosecution;
- Prosecution will proceed unless the prosecutor is sure that the factors against prosecution outweigh those in favour or that the public interest can be satisfied by out of court diversion.

# Public Interest : Diversion



- Formal Diversion:
  - Caution, conditional caution, penalty notice (adults)
  - Reprimand , Warning (youths)
- Informal Diversion:
  - Restorative Approach, Acceptable Behaviour Contract, No formal criminal justice action, triage disposal

# Trial Process : Fitness to Plead



Crown Court Procedure:

- Judge decides, on medical evidence of 2 practitioners whether the defendant is fit to plead and stand his trial, if unfit
- Jury decides whether the defendant did the act or made the omission of the offence with which he is charged; if he did
- Court makes hospital order, supervision order or absolute discharge.

# Right to a Fair Trial



Article 6 European Convention on Human Rights :Right to a Fair Trial

Every defendant has the following minimum rights:

- To be informed of the nature and cause of the accusation against him;
- To have adequate time and facilities to prepare a defence;
- To defend himself in person or through legal assistance of his own choice, or if he has insufficient means to pay for legal assistance, to be given it free if the interests of justice require;
- To examine or have examined witnesses against him and to be able to call witnesses on his behalf under the same terms as witnesses against him
- To have the free assistance of an interpreter if he cannot understand or speak the language used in court.

# Practice Direction



- All possible steps must be taken to assist a vulnerable defendant ( one with a mental disorder under the Mental Health Act 1983 or any other significant impairment of intelligence) to understand and participate in criminal proceedings

# Fair Trials for children



- It is essential that a child charged with an offence is dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities and that steps are taken to promote his ability to understand and participate in the proceedings
- It is essential that children with special needs are tried in a specialist tribunal which is able to give full consideration to and make full allowance for the handicaps under which he labours and adapt its procedure accordingly

(SC v UK (2004))

## Minimum Requirements of a Fair Trial (1)



- The defendant had to understand what he is said to have done wrong;
- The court had to be satisfied that the claimant when he had done wrong by act or omission had the means of knowing that was wrong;
- The defendant had to understand what, if any defences were available to him;
- The defendant had to have a reasonable opportunity to make relevant representations of he wished;
- The defendant had to have the opportunity to consider what representations he wished to make once he had understood the issues involved;
- The defendant had to be able to give proper instructions and participate by way of answering questions and suggesting questions to his lawyers in the trial as the arose.
- (TP v West London Youth Court [2005] EWHC Admin 2583)

# Procedural Fairness



- Young age and/or special needs does not automatically preclude a fair trial;
- Adapt proceedings to enable trial participation;
- Live links for evidence for youths and vulnerable defendants (s 33 Youth Justice and Criminal Evidence Act 1999)
- Court may direct any measures that would assist defendant to participate (C v Sevenoaks Youth Court [2009] EWHC 3088 (Admin)) including an intermediary
- Proactive and Positive approach throughout the trial.

# The Role of the Expert Witness



- Provide independent and impartial evidence on an issue that is outside the knowledge of the judge and jury;
- Duty is always to the court and overrides duty to the client instructing and/or paying the expert;
- Experts can give their opinion;
- Court decides who is an expert;
- Expert opinion is not conclusive, it is part of the evidence;
- The weight attached to expert evidence is a matter for the court;
- Decisions will be made on all of the evidence in the case
- Courts will decide whether the defendant is having a fair trial;
- Courts will have direct exchange with defendant;
- Courts will consider other evidence e.g. reaction on arrest, behaviour and responses at interview and in court.

# Conclusion



- No assumptions on the basis of autism
- Information and expert opinion used only to facilitate fair treatment

Fair treatment means that

- The human rights of victims, witnesses and defendants are respected and protected;
- The decision to prosecute is fair;
- The trial process is fair;
- Victims have access to justice;
- Victims and witnesses are treated fairly.