

Factsheet 4

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Issues to consider in relation to court proceedings

Preparing to go to court

Before going to court, you should be familiar with the client's vulnerabilities and have a clear understanding of their capacity and communication needs¹. If you are instructed by a solicitor or OISC-registered adviser, ensure you have discussed any vulnerabilities and additional needs with them. A rapport session prior to going to court can help clarify any last-minute details, and ease the effectiveness of communication whilst at court. It also, crucially, provides the client with an opportunity to raise any concerns they may have.

When preparing your client for court, make sure you explain what your role will be, and be clear about what you can and cannot do for the client. This will establish boundaries, manage expectations and address any misconceptions. If known, provide the client with an estimation of how long the session is likely to be, what will happen at each stage of the process, including the questions they are likely to be asked (if any), and what will happen at the end.

Your client may be nervous and apprehensive about appearing in court. Where possible you could consider holding a pre-trial conference with your client to foster trust, understanding and offer reassurance. You could also direct your client towards materials provided by government departments and awareness raising bodies, such as Rights of Women and Citizens Advice, to help them prepare for court and know what to expect.

Pre-trial familiarisation visits have been shown to be beneficial, particularly for those with learning disabilities and stress or anxiety problems, providing that they are conducted in a reassuring manner². If you arrange such a visit, be sensitive to possible sources of anxiety, and consider the adjustments that can be made to alleviate this.

If your client has accessibility requirements, check arrangements at the court beforehand, or if a solicitor is instructed check that they have made sufficient enquiries. For example, if there is no lift access, a request could be made to have the hearing on the ground floor. If your client needs an interpreter, you or the solicitor may need to request one from the court interpreting service. Make sure this is done in good time, and it is advisable to check the request has been processed a few days prior to the hearing.

1. Competency 1.11 of the [Professional Statement](#) expects barristers to ensure they are fully prepared, including being familiar with their clients' circumstances and goals, so as to be able to supply a good standard of work.

2. Advocacy Training Council (2011) [Raising the Bar: The handling of vulnerable witnesses, victims and defendants at court](#)

Many clients attend court with their children, yet there is often a lack of provision for this. If your client has children, you could make enquiries as to arrangements for childcare on the day of the hearing. If the client is unable to make arrangements, you or the solicitor could check whether there are provisions in place at the court. If not, alternative arrangements may need to be considered to avoid potential disruption on the day.

If an intermediary or other third party is involved, consider the need for a pre-hearing meeting to clarify details and roles.

Good practice example

Peter is appealing the Home Office decision to refuse him asylum. Peter's barrister has been provided with information by the instructing solicitor, including that Peter requires an interpreter, is overly deferential to authority and is very apprehensive about appearing in the tribunal.

Before the court date, the barrister arranges a pre-trial conference with Peter and his solicitor. An interpreter has also been arranged and is present. The barrister introduces themselves, and explains their role i.e. that they will be putting Peter's case forward to the court. The barrister sits next to Peter, rather than behind a desk, to ensure Peter feels they are on an equal footing. The barrister explains what will happen during the court process at each stage, and prepares Peter for the types of question that he will be asked. The barrister explains where everyone will be sat to help familiarise Peter with the setting. The barrister then asks questions about Peter's day to day life to build rapport, which he hopes will encourage effective communication at court. This additionally allows the barrister to build an understanding of Peter's capacity for understanding and communication needs. Before the end of the conference, the barrister provides Peter with further sources of information about the court process and what to expect.

Before the hearing, the barrister checks that all relevant documents have been disclosed and that the court has appointed an interpreter.

At court

You should seek to ensure that other lawyers and the judge are aware of any issues related to language, literacy or learning disabilities during proceedings. This will ensure that they are mindful to avoid using language that is likely to confuse or not be understood by your client. If your client has a hearing impairment, you may need to advise the court that a hearing loop is required or ensure that a sign language interpreter is available.

If your client struggles with their attention span due to learning difficulties, mental health issues or other factors, you may want to consider excusing their attendance at court during lengthy arguments or submissions, or asking the judge to take breaks where appropriate. This is advised in [Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance](#).

The positioning of your client in court can also be important. Some clients may feel reassured being sat closer to the judge, whilst others may need to be closer to the questioner if, for example, they have hearing difficulties. Ask your client about their preferences, and try to accommodate these as far as possible. This will encourage confidence and effective communication during the session.

If you meet your client for the first time on the day of court, you will be limited in your ability to identify and properly assess any needs and vulnerabilities. As such, it is crucial that you seek information from the solicitor, OISC adviser, intermediary or anyone else involved beforehand, to ensure you are informed on the day and are able to respond appropriately to your client.

Key questions to ask yourself

- Have the client's issues and needs been sufficiently explored and considered before going to court?
- Is a rapport session or pre-trial conference required?
- Do special arrangements need to be made e.g. does an interpreter need to be arranged? Does a hearing loop or sign language interpreter need to be present? Does the client need to take breaks?
- Have accessibility requirements been considered and prepared for e.g. does the client need lift access or should the hearing be on the ground floor?
- Have other parties been made aware of any specific requirements or issues?
- Does my client know what to expect and is he/she sufficiently prepared?

Further information

- ▶ [Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance](#)
- ▶ Justice (2017) [*Mental health and a fair trial*](#)
- ▶ The Advocacy Training Council (2011) [*Raising the Bar: The handling of vulnerable witnesses, victims and defendants at court*](#)
- ▶ The Advocate's Gateway (2015) [*General Principles from Research, Policy and Guidance: Planning to Question a Vulnerable Person or Someone with Communication Needs: Toolkit 2*](#)