

INVITED REVIEW

Supporting *young people's* cognition and communication in the courtroom: A scoping review of current practices

Kim Turner¹  | Nathan Hughes²

¹Health Professions, Manchester Metropolitan University, Manchester, UK

²Department of Sociological Studies, The University of Sheffield, Sheffield, UK

Correspondence

Kim Turner, Health Professions, Manchester Metropolitan University, Manchester, M15 6GX, UK.

Email: kim.turner@mmu.ac.uk

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Abstract

Background: A recent meta-analysis suggested that the majority of young people in contact with the criminal justice system have cognitive and/or communication impairments. Over the past 20 years, recognition of these complex needs has resulted in support measures being put in place in courtrooms across the globe. It is therefore timely to review evidence for the efficacy of these measures.

Aims: This scoping review evaluates evidence on support measures employed to facilitate access to court proceedings for individuals with cognition and communication impairments, and considers how this evidence might inform future research and practice.

Methods: Research databases were searched for studies that: directly or indirectly involved a population with a form of functional impairment and/or diagnosed neurodevelopmental disorder; and refer to support delivered to remove barriers or support access to courtroom processes.

Results: Searches identified 3,318 distinct articles. Following review, 37 papers were identified for inclusion. The papers were published between 1993 and 2019, with the majority being published since 2010 ($n = 23$). The majority of papers were from the United Kingdom ($n = 26$); other

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countries represented were Australia ($n = 1$), Canada ($n = 3$), New Zealand ($n = 2$), UK papers don't necessarily state which countries involved ($n = 2$) Scotland specifically state Scotland only and the United States ($n = 3$). No papers met the criteria for an experimental research design.

Conclusions: Whilst the high level of need in this population is well established, which support measures are most effective in enabling engagement in court processes is not currently clear. More robust evaluative research is therefore required to establish the most effective methods of support. Despite this lack of evidence regarding outcomes, both young people and professionals generally view support measures favourably. There is an increasing onus on professionals to adapt their practice rather than to support/enhance the cognition and communication skills of young people.

KEYWORDS

cognition, communication, court, scoping review

1 | INTRODUCTION

A recent systematic review confirmed the substantially higher rates of language impairments among young people in contact with criminal justice systems when compared to their 'non-offending peers' (Anderson, Hawes & Snow, 2016). Indeed, in a number of studies the majority of criminalised young people were found to have a language impairment. Similarly, young people with a cognitive or learning impairment appear to be over-represented throughout criminal justice systems (Hughes, Ungar, et al., 2020), with reported rates of between 7% and 32% (depending on definition of impairment), compared to general population estimates of 2%–4%.

Effective engagement in court processes and procedures is founded on inherent assumptions about an individual's capacities based on chronological age that may not be met by young people with cognitive or communication difficulties (Hughes, Sheahan, et al., 2020). The average age of criminal responsibility across western Europe is 14. Having criminal responsibility means the young person is considered able to understand legal processes and ramifications of any instructions to their lawyer, to retain this information, to weigh and balance potential options and finally to utilise their verbal language skills to communicate their instructions (La Vigne & van Rybroek, 2014). Such tasks can prove difficult in the context of cognitive or communication impairments. In court, a defendant must present their evidence and be questioned on this, yet research has shown that individuals with communication impairments are more likely to have difficulties sequencing their narrative cohesively (Liles, 1993), which can be misconstrued as lying (Maras, Marshall & Sands, 2019). Finally, judges must make a sentencing decision based on the evidence presented, but also based on the presentation of the individual during the court case, yet communication difficulties can lead to 'monosyllabic, poorly elaborated and non-specific responses', 'poor eye-contact and occasional shrugs of the shoulders', which may be misinterpreted as 'deliberate rudeness' and 'willful non-compliance' (Snow & Powell, 2012). Similarly, people with cognitive or communication difficulties may struggle to verbally express remorse; evidence has shown that an individual's demonstration of remorse can affect sentencing (Corwin et al., 2012).

Over the past 20 years, recognition of these complex needs has resulted in support measures being put in place in courtrooms across the globe. Broadly referred to as 'special measures', these include adaptations to normal practice designed to support vulnerable individuals to access court proceedings. These changes have included making the courtroom less formal (removal of wigs and gowns and changes in seating arrangements), reducing the use of jargon and the introduction of individuals to support those with specific needs. In some jurisdictions these measures have been introduced for all, whilst in other areas these have taken the form of specialist courts only available to a certain subsection of the population (Marinos & Whittingham, 2019) or only enacted for the benefit of witnesses or young people (Hoyano & Rafferty, 2017).

The need for specific support for young people with cognitive or communication difficulties is increasingly recognised in international rights legislation (Hughes, Sheahan, et al., 2020). In 2019, the United Nations (UN) Committee on the Rights of the Child (2019), which specifically highlighted the needs of 'children with developmental delays or neurodevelopmental disorders or disabilities', including cognitive and communication impairments. Whilst suggesting young people with disabilities 'should not be in the child justice system at all', Paragraph 40 states that, where criminal justice procedures are necessary, 'Safeguards against discrimination are needed from the earliest contact with the criminal justice system and throughout the trial, and discrimination against any group of children requires active redress'.

Given the obligations such guidance place on all nation states, and the apparent array of safeguards emerging, it is timely to review the range of measures currently employed to support young people with cognitive or communication impairments and consider the quality of evidence for their efficacy. This scoping review aims to answer the following research questions:

1. What types of measures to support young people with cognitive or communication impairments to engage effectively in the courtroom have been evaluated?
2. Is the evidence base for specific types of measures sufficiently strong to inform future practice?

2 | METHOD

Given the context presented above, this scoping review sought to cover any measures intended to remove barriers or support access to courtroom processes when a young person has a cognitive or communication impairment. Measures had to be available to young people under the age of 18, either when an impairment has been diagnosed or is suspected, or generic measures applied to all young people intended to support cognitive and communicative functioning. This includes measures prior to court appearance and within the court setting. The review is inclusive of all national contexts, with no restrictions on date of publication, however only articles written, or available, in English were included. In focusing on the evidence base for such measures, any sources that described a measure but did not provide any form of evaluation evidence were excluded from the review, as were those that did not explicitly state that the measure was available to young people. Studies investigating solely adults were included where these measures would also be available to children and young people. The full review protocol is available on request.

The following databases were searched: Medline (PubMed), Medline (Ovid), PubMed Central, PSYCHinfo, EBSCOhost, JSTOR, Cochrane Library, Web of Science, ASSIA, Scopus, JustisOne, Lexis Library and Westlaw UK. The search terms are given in Table 1. Given the aims of the review, this was complemented by a search of grey literature, including the publications of charities, pressure groups and professional organisations. Whilst this aspect was less systematic, it supported the aims of the study in broadening the scope of the search. Final searches were undertaken in December 2019.

Titles and abstracts were initially screened to remove irrelevant sources. Full texts were then screened, applying the above criteria, by two researchers independently, with discussions with a third researcher, if decisions required

TABLE 1 Search terms

Category	Search terms
Injury	attent* OR concentra* OR memory OR speech OR processing OR language OR expressive OR receptive OR speech OR stutter* OR anxi* OR depressi* OR withdrawn OR verbal OR reasoning OR sensory OR AAC OR (assistive ADJ and ADJ augmentative ADJ communicat*) OR disinhib* OR impulsive* OR hyperactiv* OR anger OR (externalising ADJ behav*) OR (internalising ADJ behav* OR neurodisabil* OR neurodivers* OR (neurodevelopmental ADJ impair*) OR (neurodevelopmental ADJ disord*) OR (neurological ADJ impair*) OR (neurological ADJ disord*) OR communic* OR (mental ADJ health) OR trauma*
Base	Youth justice OR prison OR incarcerat* OR offend* OR crim* OR delinquent OR felon OR convict* OR court OR trial OR prosecution OR legal proceedings.tw,kf,hw.
Intervention/Exposure	intervention OR support* OR aide OR intermediar* OR (communication ADJ assistant) OR (appropriate ADJ adult) OR accessib* OR training OR outreach OR key-worker OR key worker OR adjustment OR augmentative and alternative communication.af.

checking. As a scoping review, designed to give an overview of the current evidence base, the methodological quality of studies is not assessed or used as a criteria for inclusion (Peters et al., 2015).

Following the approach of Arksey and O'Malley (2005, p. 26) data was 'charted' using a narrative review approach, 'recording information about the "process" of each programme or intervention included in the review so that its "outcome" is contextualised and more understandable to readers'. Information extracted for each study included: author(s); year of publication; country; context; type of support (including target group, whether pre- or in court); study methodology; outcome measures; important results.

3 | RESULTS

Searches identified 4,326 articles. Following removal of duplicates and secondary searches 3,318 were screened for inclusion. Sixty-two papers were reviewed at full-text level. Twenty-five papers were rejected at this stage, reasons included: discussion of supports provided unrelated to the court environment or processes; no reference to supports; theoretical papers; and discussion of linguistic complexity of court language. This left 37 papers which are reported below. An overview of these papers is presented in Table 2.

The 37 papers were published between 1993 and 2019, with the majority being published since 2010 ($n = 23$). The papers included in the review were all written in English, but included one paper from a non-English speaking country: Sweden. The majority of papers were from England and Wales ($n = 26$), other countries represented were Australia ($n = 1$), Canada ($n = 3$), New Zealand ($n = 2$), Scotland ($n = 2$) and the United States ($n = 3$). One paper was a multi-national study covering both the United Kingdom and Australia. Papers included expert commentaries, individual case studies, interviews with professionals and clients and evaluation studies. Only one paper reported an experimental research design (Collins, Harker & Antonopoulos, 2017).

There were 10 papers focused on individuals with an intellectual disability (ID). Five of these papers were from England and Wales and the others from Canada, New Zealand, Scotland, Sweden and the United States. These papers included discussion papers, individual case studies, interviews with professionals who had supported individuals with an ID at court and interviews with individuals with ID who had experience of court proceedings. Other impairments specifically addressed in the papers were Autism ($n = 1$) and foetal alcohol spectrum disorders (FASD; $n = 2$).

Several different approaches to supporting individuals were addressed in the literature, as shown in Table 3. Support measures can either be employed prior to the court case commencing or used during the case.

TABLE 2 Overview of papers

First author and year	Country	Study overview	Selection criteria	Sample size (total and/or groups)	Key findings and recommendations
1 Beckene (2017)	England and Wales	Semi-structured interviews with witnesses with LD and their carers who had been through a trial	Purposive sampling through expert witness	4 and 4	<p>Court was traumatising over and above the offence, with fluctuating support provided through the process. There was mutual misunderstanding with interviewees not understanding the process, legal professionals not understanding LD.</p> <p>Training about the rights and needs of people with intellectual disabilities is recommended for advocates, judges, juries and court staff.</p> <p>A formal procedure is required to ensure a systematic means of assessing, amongst other things, barristers competence to support vulnerable witnesses.</p> <p>Establishment of a specific court for sexual abuse cases.</p>
2 Callender (2019)	England and Wales	Pilot evaluation study of training for court staff to support vulnerable female defendants	Opportunity sample	100	<p>Brief training on vulnerabilities for magistrates was deemed useful in impacting sentencing decisions and request for expert reports. Training was found to be low cost and effective.</p> <p>A national roll out of the training programme for magistrates was recommended.</p>
3 Collins (2017)	England and Wales	Experimental design to evaluate credibility of child witnesses based on age and presence of intermediary	University students matching jury criteria	100	<p>The children's behaviour and the quality of the cross-examination were more highly rated when the intermediary was involved during cross-examination. Older children's cross-examination was rated as more developmentally appropriate.</p> <p>Having an intermediary in court has positive implications for jury perceptions of children's testimony.</p> <p>Need to examine whether or not the intermediary accommodation can enhance the fairness of the process.</p>
4 Cooke (2001)	England and Wales	Commentary on the application of special measures for vulnerable witnesses	N/A	N/A	<p>The success of any action depends on the ability of the police and the courts in identifying those requiring the special measures and the readiness of judges to sanction their use.</p> <p>Systematic set of questions required to identify witnesses with LD. Suggestion of required questions contained within the article.</p>

(Continues)

TABLE 2 Continued

First author and year	Country	Study overview	Selection criteria	Sample size (total and/or groups)	Key findings and recommendations
5 Cooke (2002)	England and Wales	Focus groups with children and adults with LD	Purposive sampling through partner schools	11	Plan to develop a virtual reality tool to introduce court and pilot tool as a way to support children and individuals with LD to understand court processes and lessen anxieties about the new setting.
6 Cooper (2013)	England and Wales	Discussion on the use and availability of intermediaries for vulnerable defendants	N/A	N/A	Current defendant intermediary criteria lack clarity and consistency. The use of non-registered intermediaries for defendants means that there are quality and availability issues. Potential that inequity in intermediaries could be against Human Rights Legislation and could lead to quashed convictions. Recommends creation of a scheme that would provide matched, trained, regulated intermediaries for all parties. Further research is required to gain a greater understanding about the most appropriate interview techniques for vulnerable suspects.
7 Cooper (2015)	England and Wales	Proposal for all individuals accessing a ground rules hearing	N/A	N/A	Potential for a structured tool to make the ground rules hearings as effective as possible.
8 Cooper (2016)	England and Wales	Commentary on special measures—with case examples	N/A	N/A	Checklist to be used in all ground rules hearings for equity. There exist a range of special measures that can be employed in a variety of ways to support vulnerable witnesses and defendants. Psychiatrists must be aware of the special measures available, for pertinent report recommendations.
9 Cooper (2017)	England and Wales, Australia	Review paper on the intermediary role	N/A	N/A	There is a distinct lack of empirical research into the intermediary role. After 10 years in England and Wales the role of intermediary is still not well understood. When an intermediary is present for a young witness the quality of cross-examination was more highly rated. Need for standard guidance and assessment protocol, to assist practitioners to recognise the need for an intermediary assessment and, conversely, how the decision is reached when establishing that an intermediary is not required. Need for research to evaluate the efficacy of the intermediary role.

TABLE 2 Continued

First author and year	Country	Study overview	Selection criteria	Sample size (total and/or groups)	Key findings and recommendations
10 Ellison (2002)	England and Wales	Discussion paper on the language used in court	N/A	N/A	<p>There exists a conflict between the basic linguistic strategies of cross-examination and the needs of those with limited linguistic capacity that is only partially addressed by the introduction of Intermediaries. This has a significant adverse effect on the ability of witnesses to provide accurate and coherent testimony.</p> <p>Majority of solicitors and barristers have not received training on intellectual and developmental disabilities.</p> <p>Choice of question type and language used in court has a significant impact on proceedings.</p>
11 Fairclough (2018)	England and Wales	Qualitative interviews with criminal justice practitioners regarding the use of special measures	Purposive sampling	13	<p>There is a stark disparity in the use of special measures, with significantly less use for defence witnesses. Legal provisions were not the sole driving force behind defence special measures decisions. Intermediaries were seen as useful but legal, organisational and moral frames differ between defendants and witnesses.</p> <p>Defence solicitors often do not spend a significant amount of time pre-trial with a defendant and therefore are not well placed to identify vulnerability.</p> <p>Several changes to the legal field will need to accompany legal reform to reduce discretion in the use of special measures:</p> <p>(1) Specific training for defence practitioners and the judiciary on the potential benefits of special measures.</p> <p>(2) A reformulation of the standard special measures.</p> <p>(3) A series of forms, for the police and defence solicitors, prompting them at the pre-court stage to consider the accused's vulnerability.</p>
12 Flannigan (2018)	Canada	Semi-structured focus groups with professionals working with adults with FASD	Snowball sampling of local justice professionals and service providers	18	<p>Health and justice working collaboratively was found to; build capacity, humanise the offender, create bridges and move from punishment to care.</p> <p>Potential limitations around longer-term support for clients were raised.</p> <p>More research required to investigate how health and justice can work together and the consequent long term outcomes for clients.</p>

(Continues)

TABLE 2 Continued

First author and year	Country	Study overview	Selection criteria	Sample size (total and/or groups)	Key findings and recommendations
13 Gerry (2017)	England and Wales	Discussion paper on effective participation of vulnerable individuals in court.	N/A	N/A	A re-determination of the concepts of criminal responsibility is required based on advances in understanding of physical and mental disability and cognitive function, particularly those with reduced IQ and/or who have an autism spectrum disorder (ASD). Certain cases should be removed from the system altogether through a recognition that some vulnerabilities do not and should not lead to criminalisation.
14 Green (2001)	England and Wales	Case report on a young adult witness with LD	N/A	1	Need to assess both IQ and adaptive functioning when considering vulnerability. Benefits of joint working extend beyond an individual case. Recommendation that special measures should be used judiciously and in addition to professional support.
15 Gudjons-son (2014)	England and Wales	Discussion on best practice for interviewing adults with LD	N/A	N/A	A problem exists with identifying vulnerable people entering the criminal justice system and providing protection. Individuals with a learning disability (LD) can give credible evidence, with the right support. Research shows what type of questioning is best for individuals with LD, this needs to be implemented. Need for improved identification of LD and improved access to supports. More legal reforms are needed to protect vulnerable people being cross-examined in court.
16 Hall (2007)	England and Wales	Observation of court cases and interviews regarding the use of special measures	Unclear	247 court cases observed 23 inter-views with criminal justice staff	Of the witnesses observed in the study 11% had special measures, the vast majority were children. All adults were female and the victim or prosecution witnesses. The use of special measures did not result in increase in time talking when compared to peers, however the use of pre-recorded evidence did. Interviews suggest that sometimes special measures were not wanted/required by the witness and led to poorer/no evidence rather than 'best evidence'. Recommendation that witnesses should be given the opportunity to decide whether they want to use the special measures they are offered. Recommendation that pre-recorded interviews to be extended to vulnerable adults. Lots of issues reported with the use of technology that require addressing.

TABLE 2 Continued

First author and year	Country	Study overview	Selection criteria	Sample size (total and/or groups)	Key findings and recommendations
17 Hardy (2016)	England and Wales	Pilot evaluation study on training of magistrates to support vulnerable adults	Purposive sampling from local courts	78	Training led to an improved ability to recognise vulnerable defendants and request appropriate support Further research needed to compare use of alternative sentencing options by magistrates pre and post training.
18 Henderson (2014)	England and Wales	Report of instruction by the court of appeal for vulnerable witnesses	N/A	N/A	Report suggests a new model is required to approach cross-examination of children, to ensure fair trials. The proposed model of cross examination suggests the elimination of: (1) Developmentally inappropriate language. (2) Use of suggestive questions. (3) Use of cross-examination to confront the witness.
19 Henderson (2016)	England and Wales	Qualitative interviews with professionals about the progress of the Court of Appeal's reform initiative for vulnerable witnesses in sex offence cases	Unclear	25 specialist judges, 16 advocates and 10 registered intermediaries	Interviewees state judges plays a key role in ensuring ground rules hearings (GRH) rulings are followed. Intermediaries reported lack of intervention from judges. Judges recognised that they have difficulties knowing when they need to intervene. Interview findings suggest a degree of success in inculcating a new attitude towards judicial management of the cross-examination. Mandatory training on vulnerable witnesses for all defence advocates was recommended.
20 Hoyano (2017)	England and Wales	Discussion paper on use of intermediaries	N/A	Two case studies	Author suggests inequity of provision of intermediaries between victims/witnesses and defendants, exacerbated by 2016 ruling of 'extremely rare' use of intermediaries for the whole trial. Consideration due as to whether the 2016 judgement may be contrary to the Human Rights Act, 1998. Recommendation that an intermediary should be employed by each Crown Court.

(Continues)

TABLE 2 Continued

First author and year	Country	Study overview	Selection criteria	Sample size (total and/or groups)	Key findings and recommendations
21 Konstantareas (1998)	Canada	Case report with a non-verbal, autistic child	N/A (?)	1	Findings indicate allegations made via facilitated communication (FC) were not credible when compared to the client's performance on cognitive and language tests. Where allegations are made via FC a systematic assessment of the individual's cognitive and language capabilities must be taken to check these are in line with the reported allegations. No current evidence supporting the use of FC with non-verbal clients.
22 Kuosmanen (2015)	Sweden	In-depth interviews with professionals who work with individuals with LD who are victims of prostitution	Snowball and purposive sampling of professionals with required experience	21	Study found individuals with an intellectual disability (ID) were not given the same access to the justice system in Sweden as the rest of society. Due to a lack of knowledge and professional competence among criminal justice professionals, inadequate laws, policies and legal processes, and a view that individuals with ID were unreliable as informants and witnesses. Recommendation that access to justice for individuals with ID is facilitated through use of trained professionals in an advocacy role and better collaboration among professionals.
23 Lipovsky (1997)	USA	Discussion paper on preparing a child witness for court	N/A	N/A	Preparing a child for testifying at court enables them to answer questions more accurately, increases their ability to be perceived as a credible witness and reduces secondary trauma. Minor adaptations in the courtroom may also be beneficial to a child; different chair, microphone, use of visual aids, a support person by their side when they give evidence.
24 Lount (2018)	New Zealand	Semi-structured interviews with juvenile defendants	Opportunity sample from one NZ youth justice residence	8	The main finding was that the young people struggled to understand much of what happened in court and resulted in them expressing a sense of having no control or 'voice'. Lack of control attributed to not understanding what was going on in the courtroom, not having the confidence to participate, limited strategies, lack of trust and shared language. Recommendation for the introduction of intermediaries in New Zealand to address these findings. Speech and language therapy services to assess the language skills of young people in the YJ system to guide further support.

TABLE 2 Continued

First author and year	Country	Study overview	Selection criteria	Sample size (total and/or groups)	Key findings and recommendations
25 Malbin (2004)	USA	Case study of a child with FASD	Unclear	1	Findings suggest 'success' was obtained by making adaptations and modifying targets rather than trying to 'change' the client. Recommendation that judges should consider FASD and its potential impact on behaviour and supports.
26 Marinos (2019)	Canada	Reflection on the use of problem-solving courts for individuals with intellectual and developmental disability (IDD)	N/A	N/A	Currently identification of individuals with IDD is an issue. Initial findings suggest problem-solving courts appear to produce a reduction in recidivism and increased satisfaction among individuals with IDD accessing this route. Three potential models are suggested: (1) Persons with IDD continue to be seen in the regular court. Court professionals receive increased training regarding how to identify and interact with someone who has an IDD. Case managers will help persons with IDD to participate in criminal proceedings. (2) Persons with IDD are addressed in mental health courts, and the above mentioned considerations are taken into account. (3) Persons with IDD have a separate court with specialist staff.
27 McGhee (2011)	Scotland	Exploratory interview study with parents with a learning disability (LD) and professionals engaged in care proceedings in a non-adversarial setting	Parents were self-selecting through voluntary groups	n = 25 Seven parents, seven lawyers, eleven panel members	Participants felt LD goes unacknowledged in the court proceedings; material supplied pre-court was not always accessible; 'big words' used in the courtroom were difficult to understand; panel members did not necessarily have the skills to adapt their language. Having a supporter/advocate who understood legal proceedings was seen as helpful. Children's hearings felt to be far more supportive than traditional court proceedings, as the hearing was deemed more supportive, but could be seen as more demanding as requires direct participation. Recommendation that all staff involved in cases require training to enable them to adapt their communication skills to support individuals with LD.

(Continues)

TABLE 2 Continued

First author and year	Country	Study overview	Selection criteria	Sample size (total and/or groups)	Key findings and recommendations
28 Mirfin-Veitch (2014)	New Zealand	In depth qualitative interviews with individuals with an intellectual disability (ID) and professionals	Purposive sampling	n = 68 40 people with ID, 15 lawyers, 13 judges	<p>Potential for non-adversarial settings; deemed beneficial for engaging individuals with LD but advocacy support is required for full participation.</p> <p>Individuals with ID raised four key elements integral to quality legal representation: accessible communication; positive relationship; trust; and openness. Lawyers identified three key elements for working with individuals with ID: a need for additional time (which has cost implications); timely identification of needs; effective communication. Judges identified three elements to support cases involving individuals with ID: early and accurate identification of clients requiring support; additional time and adaptation of communication (communication during cross examination identified as a particular issue); adaptation of processes (less formal attire, change in seating arrangements, scheduling cases at quieter times and judgements written in plain English). Recommendations from individuals with ID included: ID specific training for lawyers and judges, peer support around legal processes for individuals with ID, specialist support at time of arrest.</p> <p>Recommendations from lawyers included: the development of specialisation in ID; a specialist disability court; mandatory training on ID and relevant policy; development of a screening tool to identify mild ID; a review of legal aid allocations. Recommendations from judges included: disability support professionals and family to assume more prominent roles within the court; a non-adversarial approach for individuals with ID; they repeated the lawyers' calls for the development of specialisation in ID; and a specialist disability court.</p>

TABLE 2 Continued

First author and year	Country	Study overview	Selection criteria	Sample size (total and/or groups)	Key findings and recommendations
29 O'Mahony (2010)	England and Wales	Interviews with intermediaries	Purposive sampling through expert witness	5	Interviewees felt that the intermediary scheme should be extended to defendants. Professionalisation of the intermediary role is required to avoid issues with availability. Intermediaries felt that it was necessary to sit with the defendant throughout, to facilitate communication. Recommendations included: further training for police officers and other professionals which covers—the role of the intermediary, cognitive impairment and learning disabilities; ongoing research is required measuring the impact of the use of intermediaries with defendants; legislation should be amended so that the term vulnerable person explicitly includes cognitive impairments; additional training for intermediaries assigned defendant cases; explore role of intermediaries at the investigative interviewing stage; and enhanced consultation with learning disability services in further reviews of PACE (1984).
30 O'Mahony (2012)	England and Wales	Case study of a vulnerable defendant	Unsure	1	Findings suggest defendant struggled to understand court processes and language. No structured advice was available on when an intermediary should intervene. Recommendations: lawyers need support to recognise complex language used when cross-examining; research is required to examine intermediary interventions.
31 O'Mahony (2016)	England and Wales	Interviews with intermediaries for defendants	Purposive sampling	6	Intermediaries talked about the difficulty in remaining impartial in the intermediary role as their professional healthcare role also includes carer/enabler type roles. Currently if an intermediary for a defendant oversteps their boundaries there is no route for a complaint as the role is unofficial. Recommendation that health and care professionals undertaking this new role (?) should receive psychological training about professional identities. Additionally, intermediaries for defendants need to be registered for oversight.
32 Rees (2011)	England and Wales	Commentary review on largely non-verbal witnesses	Review of court cases	4	Findings were that when witnesses are non-verbal if they can understand the questions posed they should be allowed to present their evidence through whatever method they require. Recommendation that largely non-verbal individuals with consistent responses may require solely an intermediary to participate, where individuals are inconsistent psychologist may additionally be required

(Continues)

TABLE 2 Continued

First author and year	Country	Study overview	Selection criteria	Sample size (total and/or groups)	Key findings and recommendations
33 Ruegg (2006)	USA	Discussion paper on the use of narrative elaboration therapy (NET) with children with LD	N/A	N/A	Previous research suggests NET helps children with LD recall more information and could then be used to prepare them for the witness stand. Recommendation that the NET technique could be used with children with LD who will testify in court to support recall.
34 Scott (1994)	Scotland	Invited commentary on child witnesses	N/A	N/A	There are a variety of special measures available for child witnesses under 16 in court. A strength of this system compared to other courts is its timely nature (criminal cases must take place within 110 days).
35 Talbot (2010)	England and Wales	Review of available supports for defendants in England and Wales supplemented with the voice of defendants	N/A	N/A	The study suggests there is a lack of parity between vulnerable witnesses and vulnerable defendants. There is a general recognition in the law that defendants must be able to understand and participate effectively, this is not currently the case. There are steps the legal teams can take to support the defendant in court and alternative disposals that can be considered, but there is a need for adequate service provision.
36 Williams (1993)	England and Wales	Discussion paper on adult victims with a learning disability (LD)	N/A	N/A	Recommendations include: liaison and diversion schemes should include learning disability expertise; arrest screening should ensure the identification of suspects (and defendants) with learning disabilities; appropriate support should be provided for defendants with known LD to ensure effective participation in court proceedings; diversion away from the criminal justice system and into health care should be considered.
37 Wurtzel (2017)	England and Wales	Case study of a vulnerable young adult defendant	N/A	1	Finding that there were fewer convictions in cases involving victims with LD. They were seen as less credible and sometimes not permitted to provide evidence. Recommendation that victims and witnesses with LD can be supported to give evidence but this requires preparation and support to facilitate communication.
					Recommendation for compulsory training for advocates around simplifying language.

Abbreviations: FASD, Foetal Alcohol Spectrum Disorder; IQ, Intelligence quotient; LD, Learning Disability; PACE, Police and Criminal Evidence Act 1984 (PACE) codes of practice; YJ, Youth justice.

TABLE 3 Summary of approaches

Approach addressed	Overview	Recommendations	Articles
Training	As supports for vulnerable individuals at court are a relatively new advancement, training was advocated to raise awareness for all parties	Face to face training to raise awareness of available supports and development of skills for legal professionals, healthcare professionals and individuals in contact with the criminal justice system and their families should be provided	Beckene, Forrester-Jones and Murphy (2017), Hardy et al. (2016), Henderson (2016), Marinos and Whittingham (2019), McGhee and Hunter (2011), Mirfin-Veitch et al. (2014), O'Mahony (2010), O'Mahony et al. (2016), Wurtzel (2017)
Preparation for court	It was recognised that vulnerable individuals may require additional support to prepare for court; however, evidence demonstrates overwhelmingly that it is easier and more efficient to adapt the setting rather than 'change' the individual.	Court can be an intimidating and unfamiliar setting, an opportunity to experience the setting prior to the case commencing can be beneficial. Individuals with communication difficulties may benefit from teaching in narrative elaboration therapy to support them to provide a coherent account	Cooke et al. (2002), Lipovsky and Stern (1997), Ruegg (2006), Williams (1993)
Assessment of vulnerability	There exist a variety of methods for identifying individuals who require support, most of which are currently informal and rely on professionals recognising need without the support of a structured tool	A need for a systematic means of assessing individuals on contact with the criminal justice system A structured assessment tool for use by criminal justice professionals Assessment should be completed at the earliest possible opportunity	Beckene et al. (2017), Cooke and Davies (2001), Cooper and Wurtzel (2013), Fairclough (2018), Gudjonsson and Joyce (2011), Mirfin-Veitch et al. (2014), Talbot and Jacobson (2010)
Ground Rules Hearing Checklist	A Ground Rules Hearing (GRH) are held prior to the court case commencing to discuss how the vulnerable individual will be supported to give their best evidence. They are good practice in any case with a vulnerable individual who has a communication need.	Although some legal systems permit a GRH to take place there are currently no rules about how these should proceed The development of a checklist would ensure that these meetings were more standardised and all areas covered	Cooper, Backen and Marchant (2015), Fairclough (2018)

(Continues)

TABLE 3 (Continued)

Approach addressed	Overview	Recommendations	Articles
Special measures	Across jurisdictions there are a range of different special measures that can be implemented these include; the removal of gowns and wigs, giving evidence via video link, additional breaks, advocate support	<p>Legal and healthcare professionals should be aware of the special measures that can be implemented so these can be recommended in reports and at a GRH.</p> <p>Individuals should be consulted about the use of special measures to ensure they will be supportive.</p> <p>The courtroom should be modified to support the individual's specific needs.</p> <p>Guidance for the use of special measures would be helpful.</p>	Cooper and Grace (2016), Cooper and Mattison (2017), Green (2001), Hall (2007), Lipovsky and Stern (1997)
An advocate	Advocates who support an individual at court have a range of titles across the world including; peer supporter, communication assistant and intermediary. An advocate may be present to provide emotional support and/or support to access the court proceedings	<p>An advocate is neutral and therefore should not be a lawyer. May need to be supplemented with psychological support (peer/professional)</p> <p>All intermediaries should be registered for governance and to uphold standards</p> <p>Court to directly employ intermediaries to reinforce neutrality.</p>	Beckene et al. (2017), Collins et al. (2017), Dehaghani and Newman (2019), Hoyano and Rafferty (2017), Kuosmanen and Starke (2015), Lount et al. (2018), Marinos and Whittingham (2019), Mirfin-Veitch et al. (2014), O'Mahony et al. (2016)
Plain, clear language	'Legalese' is recognised as often complex and arcane, making the language used in the court room difficult to access for the majority	<p>Simplifying language can lead to fairer questioning and better cross examination</p> <p>Psychology and linguistics research provides evidence for how to simplify language</p>	Cooper et al. (2015), Gudjonsson and Joyce (2011), Henderson (2014), O'Mahony (2012)
Specific court	Rather than implementing modifications for each individual, others advocate the use of a specific court for vulnerable individuals with supports embedded within the model	<p>Non-adversarial system</p> <p>Must recognise the extra language load of a non-adversarial system, may require increased advocate support</p>	Beckene et al. (2017), Marinos and Whittingham (2019), Mirfin-Veitch et al. (2014)

TABLE 3 (Continued)

Approach addressed	Overview	Recommendations	Articles
Legal reform	Authors offered a variety of reforms to the current system which varied from small procedural changes to wholesale changes, removing some individuals from the criminal justice system entirely	<p>Reduce the extent of the defence's discretion over how to proceed and the use of special measures</p> <p>Reformulation of the standard special measures direction</p> <p>Legal reforms to protect vulnerable people being cross-examined in court</p> <p>Development of specialisation in intellectual disability law</p> <p>A re-determination of the concepts of criminal responsibility, certain cases should be removed altogether through a recognition that some vulnerabilities do not and should not lead to criminalisation</p>	Fairclough (2018), Gerry and Cooper (2017), Gudjonsson and Joyce (2011), McGhee and Hunter (2011), Mirfin-Veitch et al. (2014)

3.1 | Preparation for court

Two papers specifically described pre-court support measures, both originating from the United States. Lipovsky and Stern (1997) argues that preparing a child for testifying in court enables them to answer questions more accurately, increases their ability to be perceived as a credible witness and reduces secondary trauma. They refer to a limited empirical evidence base which indicates reducing the child's distress increases the ability to provide a credible testimony and recommend an interdisciplinary approach to support the child's mental well-being through the court proceedings. Similarly, from the studies specifically related to individuals with an ID, common themes were the requirement for additional time needed to prepare individuals with ID for a court case, and a general lack of knowledge and understanding of ID amongst professionals working in a courtroom.

Ruegg (2006) investigated the use of narrative elaboration technique (NET), a specific intervention for child witnesses with an ID, which was found to help recall more information and prepare them for the witness stand. They argue this technique could aid trained professionals in promoting competency, improving relations and providing strategies to empower the child with an ID. A recent review of NET demonstrated that it supported an increase in the amount of accurate information provided by children, whilst inaccurate information was not increased (Camparo, Guzman & Saywitz, 2018). In the same vein, Malbin (2004) described 'success' in a case-study for an individual with FASD being obtained by making adaptations to practice and modifying targets rather than trying to 'change' the client.

3.2 | Special measures

Eight papers discussed the implementation and use of 'special measures', the majority of which originated from England and Wales ($n = 6$), with one from Scotland and one from New Zealand. Four papers involved interviews and observation whilst the remaining papers were commentaries or review papers. Where interviews had been conducted

with individuals in contact with the courts, studies generally reported positive feedback regarding the use of special measures. However, Beckene et al. (2017) found the level of support and adherence to special measures fluctuated through the court process. One reason attributed to the fluctuating level of support was the lack of understanding of legal processes on the side of the witnesses, and a lack of understanding of ID on the side of the legal professionals. There are a wide range of special measures which can be applied across different legal systems, yet most papers on the subject refer to these measures as though homogenous. Hall (2007) and Beckene et al. (2017) report that not all special measures were universally welcomed, with particular concerns that video links were 'impersonal' and 'difficult'.

3.3 | An advocate

There were 11 papers which evaluated the use of advocates who support an individual at court. These advocates have a range of titles and roles across the globe. The advocate may be present to provide solely emotional support, or they may also support the individual to access court proceedings (the latter being most commonly labelled as an intermediary). Collins et al. (2017) found that mock-jurors rated children's evidence as more credible when they were supported by an intermediary. Three papers related specifically to those with an ID made reference to the fact that these individuals were seen as less reliable when providing evidence, although the research evidence did not necessarily support these beliefs. Studies also reported that the individual being supported by the intermediary found this beneficial in terms of their confidence and following proceedings (McGhee & Hunter, 2011; Mirfin-Veitch et al., 2014). Several studies referred to inequitable access to intermediaries, depending on: local legislation; whether a witness or defendant; and availability of professionals. Cooper and Wurtzel (2013) highlighted that the intermediary role is not a recognised and regulated professional title, which could lead to further inequity.

One paper focused on a specific approach to facilitate communication in the court room (Konstantareas, 1998). The study addressed the use of facilitated communication (FC) with non-verbal autistic individuals. This paper found that, although FC had previously been accepted as evidence in some court cases, where allegations made via FC were investigated the evidence was not credible when compared to the client's performance on cognitive and language tests.

3.4 | Plain, clear language

Whilst the aforementioned studies focus on supports that can be provided for individuals, four studies looked at how the language used in the courtroom can impact access to justice. Cooper et al. (2015) report on an individual who, whilst performing above average on verbal language skills when assessed, struggled to follow cross examination due to the complexity of language used; double negative, tag questions and multipart questions. Gudjonsson and Joyce (2011) suggests that the courtroom can learn from good practice in other areas regarding the best ways to interact with individuals with communication needs, whilst simultaneously highlighting how difficult it can be to phrase complex and sensitive subject matters simply.

3.5 | Other supports

Whereas other papers addressed support either prior to court proceedings or during, Flannigan et al. (2018) conducted a series of focus groups with professionals in North America, so as to consider how health and justice services could work together pre and post court to support individuals with FASD. Participants stated that the project built capacity, humanised the offender and created bridges between service providers. The increased collaboration between health and justice was described as a move from 'punishment to care'.

4 | DISCUSSION

This review demonstrates tentative evidence for the benefits of providing support for communication and cognition in the courtroom. However, there are significant limitations in the current evidence base around effective supports for vulnerable young people in the courtroom. Whilst several approaches have been evaluated there is a lack of robust evidence to support specific measures, and limited evidence for one approach over another. Studies are largely non-experimental in design, and there is difficulty in comparing across different courts, countries or groups considered to be 'vulnerable'. Whilst 37 papers were included in the scoping review these were often based on authors' and participants' expertise and experience. Studies were generally small and non-experimental in design. Hall (2007) had the largest sample, however within this only 11% were subject to special measures, thus reducing the relevant final sample size. Despite these limitations to the evidence base, there remains significant evidence in support of the benefits of several types of intervention; more robust evaluative evidence is required, however.

There is an increasing onus on the court to adapt their practice (e.g. Criminal Practice Directions 2015 (2016)) rather than providing one-to-one support for the individual. The current literature does not provide strong evidence for this approach, whilst young people who have received one-to-one support report finding this beneficial (Mirfin-Veitch et al., 2014). Future research could explore whether adapting the court environment, providing one-to-one support or a blended approach is the most effective in supporting young people with communication and cognitive support needs.

A recent report from United States and United Kingdom (Gold LaGratta & Bowen, 2014) recommended a number of improvements to make court proceedings more accessible, including: using plain English, reducing the use of jargon and clearly explaining proceedings. If this was achieved, it would be likely to make a positive impact for those with mild to moderate communication impairments. However, as Gudjonsson and Joyce (2011) highlighted, changing your language is difficult and generally professionals are being asked to modify their practice without any additional training. Whilst training has been found effective in identifying vulnerable individuals (Hardy et al., 2016), there is no current evidence of training being found effective in modifying legal professionals' language, although this was a recommendation in several papers. A number of training packages specific for criminal justice professionals do exist, such as The Advocates Gateway Toolkits (2012–2021), and the Royal College of Speech and Language Therapists' The Box (Turner, Dominey & Clarke, 2018). As these training packages are already being used, they could be evaluated using the Plan, Do, Study, Act cycle (PDSA) so that training can continue to be delivered, and then honed to improve efficacy over time based on the findings. Another approach could be to adopt a non-adversarial approach which have been deemed more supportive (McGhee & Hunter, 2011), although the language and cognitive demands in this setting may be higher.

Whilst universal strategies, such as simplifying language, will be beneficial for many, a tiered model of support may be beneficial to support the varied needs of individuals (see Figure 1). The majority of children and young people could be supported at the universal level with a simplification of language used in court; however, those with moderate to severe needs may require special measures, and a small minority requiring specialist one-to-one support from an independent professional with specialist skills in supporting those with communication and cognitive impairments. In particular, preparing an individual for what to expect in court has shown promising signs for reducing anxiety. There have been a variety of ways proposed for doing this: virtual tour, actual tour, introduction to individuals and/or their roles. There needs to be further research to investigate the most effective ways of preparing an individual. Whilst at court those with the most complex needs will likely benefit from individualised support, again further research is required to discover which special measures are the most effective. Though introducing a tiered system creates flexibility to support young people on the basis of their individual needs, it would make evaluating the impact of the individual measures more challenging and complex. There is a difficult balance to strike between providing timely supports and ensuring that those supports are the most effective.

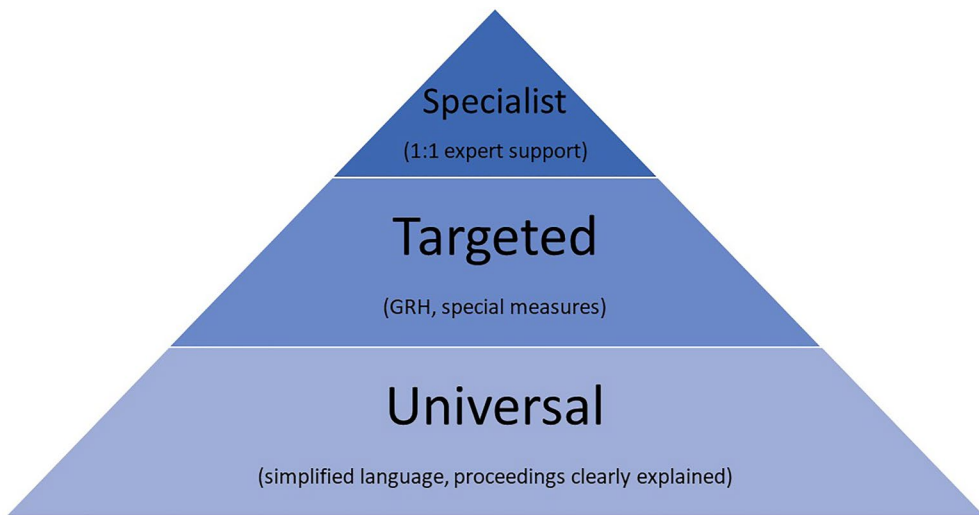


FIGURE 1 Adapted Response to intervention. [Colour figure can be viewed at wileyonlinelibrary.com]

5 | CONCLUSION

This scoping review provides tentative evidence of the benefits of increased support for individuals with cognitive and communication impairments, however, we currently lack the evidence base required to effectively convince policy makers and governments to fund the consistent provision of support measures. This is not indicative of low-quality supports, but rather of a need for more robust research in this field. We must now move on from case studies and discussion papers of promising practice to more robust studies of impact, including the utilisation of creative approaches to evaluate these supports in practice. This is evidently challenging as such support measures and changes of practice are not amenable to experimental designs, and the cost of robust evaluation may prove prohibitive. Researchers must therefore think creatively about research design, opportunities for sharing and combining data and learning from other disciplines. Creative approaches could include the use of a mock court setting (Crane et al., 2020) or taking interactive evaluative approaches (King & Stevahn, 2013) from industry, as has been done in healthcare (Goldstone, 1998), a similarly complex setting.

DATA AVAILABILITY STATEMENT

The data that support the findings of this study are available from the corresponding author upon reasonable request.

ORCID

Kim Turner  <https://orcid.org/0000-0002-2211-6309>

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