

Understanding Neurodivergence in Law and Justice 20 March 2024 Transcript

Emma Llanwarne:

Good evening everyone, and thank you for joining us tonight for Understanding Neurodivergence in Law and Justice. My name is Emma Llanwarne and I am the co-founder of neurodiversikey®. Tonight's event marks the midpoint of our first ever Neurodiversity Celebration Week as an organisation. Let me briefly introduce our speakers for you this evening. It is a pleasure to introduce our speakers, Matthew Graham, who is a solicitor at Stone King, and Alia Lewis, who is a director and solicitor at Duncan Lewis, Amanda Weston KC who is due to join us shortly, is a barrister at Garden Court Chambers.

Tonight's event will be addressing the following questions. What are the biggest threats to justice or barriers for neurodivergent people? We will discuss how intersectionality contributes to threats to justice and the barriers. How can threats to justice or barriers for neurodivergent people be minimised? And what are the key provisions to minimising those threats and barriers, particularly addressing how successful the provisions are?

Alia I first wanted to come to you, and what do you think in your area of law is the biggest threat to justice and the barriers for neurodivergent people?

Alia Lewis:

Well, thank you for having me, Emma and Danielle. I think, I mean, from my perspective, it's quite a simple answer with lots of threads to it. And it's quite simply a lack of understanding. Lack of understanding is the basis of all the barriers that the neurodivergent parties in family proceedings face, as far as I'm concerned, and that lack of understanding is what's driven the work that myself and my team are currently doing.

It might help to just give a bit of background of where I've come from. I've

got a child who is autistic. He was, he's nine now. He was diagnosed when he was age three. And so I've had six years of knowingly being a parent of an autistic child, although he's nine. And I've realised over the past six years how little I knew about autism and neurodivergence in general before I became aware of my son's autism and his subsequent diagnosis.

And it became apparent to me over the past six years how differently I began to practise in my cases. I am a children panel solicitor. I represent children in care cases mainly, although I do represent parents as well. And it also became apparent to me not only how different my practice, but how the other lawyers in and around the social workers and other professionals in my cases were struggling to understand the issues around the neurodivergence.

And so really that was the basis for me to start exploring ways of trying to deal with these barriers. And first of all, for me it was about trying to look at the issue of training because in the family justice and child protection system, whilst we're dealing with huge numbers of people passing through these systems who are neurodivergent, I mean, as we know from many of us will know from the ADHD Foundation website, one in five people in the UK, are neurodivergent.

So, you can imagine how many people are passing through the family justice system with conditions that fall under the neurodivergence umbrella. We are not required to undertake any form of training in relation to neurodivergent conditions and as my understanding of neurodivergence increased, I became more and more alarmed by this and then I could see the way in which it was impacting, on the way in which we advocate for neurodivergent parties, care plan, in cases, in care cases, support neurodivergent parties, and the way in which it can lead to the lack of understanding can lead to issues such as parental blame in care cases, because social workers don't understand the problems that they're being faced with.

in terms of the child protection concerns arising in these cases.

And quite often will attribute the welfare concerns to bad parenting rather than really digging below the surface and understanding what's actually causing the issues that they're being faced with. So, yeah, I mean, that was the most alarming thing to me, that we, none of us are trained, whether you're talking about social workers, family support workers, solicitors, judges, barristers.

Mainly, it's training that you access yourselves if you begin to become aware that you need that training and understanding. And to be more specific, I mean, in cases that I deal with on a daily basis, like I said, I represent children and you end up in situations where children can be placed in a foster placement, for example, a severely autistic child can be placed in foster placement with a foster carer who has no understanding of autism, has had no training, has never looked after an autistic child before.

You can have situations where social workers will not advocate for relevant assessments for children because they don't understand the assessments that are required. And I don't say this as any form of criticism to any professional that operates within these systems. I was one of those professionals that didn't understand until I had my son. So you can imagine how from those, just those minimal examples, there can flow massive barriers to actually achieving justice in family cases.

If you're not understanding the needs of the child that you're dealing with, and equally, if you're not understanding the needs of the parents that you're dealing with, because many, as we know, many parents in the family justice system are neurodivergent, quite often there's a genetic link, and so in many of our cases, we see that parents neurodivergent are misunderstood.

They're seen as difficult. And that just causes huge problems in terms of the way the cases progress through court and the really skewed and inaccurate and unfair narratives that develop as a result of that lack of understanding. And so what we've tried to do

is to begin addressing that by developing a specialist team within our firm and also a working group to try and drive forward changes, which I can talk about later.

But the other topic I wanted to touch on this question is just going back to the parental blame issue. There was a report by the charity Cerebra last year that looked at the prevalence of, the prevalence and impact of false allegations against parents, of fabricated illness. And I think this is quite a helpful report to look at when we're talking about barriers to justice, when you look at the report it is quite surprising, actually the figures they had, they did a study of 397 families. 97% of the parents and carers, who responded, considered their children to be disabled and 65% of those respondents identified with children were autistic or with a non-visible disability and over 40% of the parents who responded identified as autistic. So this is cases where parents have been falsely accused of fabricating illness in their child.

And when you look at the conclusions of these cases, the figures showing that 84% of those cases ended in no follow up action and 95% of children remaining with parents. And I think that's really important to touch upon because not only is the family justice system, the child protection system set up in a way that places huge barriers in place of justice for neurodivergent parties, but there's also the wider implications in terms of guidance that professionals within those systems have to consider and within fabricated illness cases, professionals have to consider. Well, medical professionals, for example, have to consider the perplexing presentation guidance, which is set out by the Royal College of Pediatrics and Child Health, and that asks medics to look at alerting signs. And many of those alerting signs are things like implausible presentations, seeking multiple opinions, repeated presentations to medical professionals. And as we know, those alerting signs and those presentations could very much relate to neurodivergent parents and are therefore very likely discriminatory.

And they then feed into the family justice system where social workers raise concerns about a child's welfare because of

alleged fabricated illness. And so the cycle goes on. And so I thought that was quite interesting in terms of the figures, because it really highlights the need for a massive overhaul of not just the family justice system, but the wider systems that feed into the family justice system.

Emma Llanwarne:

I absolutely agree, Alia, that the shocking statistics. And do you think in your opinion that parents are scared to even raise the possibility that their child may have autism or ADHD because there's such a stigma still attached to these conditions?

Alia Lewis:

I think I think the parents will raise it. Some parents will raise it. I think I don't know whether they're, it's that they're scared to raise it, but I think quite often many parents will raise it and they're probably right that their child is autistic and or ADHD and or whatever other condition. But because social workers are not trained to understand the traits and the signs, they are quite often dismissive. And that relates back to parental blame. And there's actually been a study last year by Birmingham in Birmingham, there was a study I've not seen the outcome of the research yet, but they're specifically looking at parental blame and autism, which is quite telling and it was funded by NHS England, which is very telling, which shows that there is a huge problem.

I mean, as a parent of an autistic child myself, I've not thankfully been involved with Children's Services, but I can certainly say that when I was fighting my way through his toddler years and trying to understand why he seemed to be so different to his peers, and I took him to his one year developmental check and his two year developmental check and he wasn't doing most of the things that he should have been doing at those stages. I experienced it on a low level, the idea that some concept of parental blame with health visitors sort of saying to me, "Well, Mum, have you tried modelling how to brush his teeth?" "Have you tried modelling how to scoop the spoon" and it became about my parenting rather than the fact that there was actually what I didn't realise at the time, very clear

and obvious signs of autism that he was presenting with.

But because I didn't understand, I wasn't able to advocate for him at that time. I was just questioning why is he not doing these things? And so I having experienced it on a very low level, I can only imagine how deeply frustrating and also traumatic. And that's one of the things that came out of the FII study, the Cerebra study, was the trauma that these families experience, particularly in FII cases of being accused of fabricating illness and problems in their children when actually they haven't.

And it must be hugely traumatic. I mean, it has really, really serious implications because parents who are accused of fabricating traits or illness or whatever is, they don't want to then go and ask for support. And then again, that gets them into a really dangerous cycle because if you're not getting the support you need, the problems are going to exacerbate. And then you are more likely to come to children's services.

Emma Llanwarne:

Yeah. And if you're not getting the training, how are you going to recognise you know those signs and symptoms and how to access help?

Alia Lewis:

Exactly.

Emma Llanwarne:

And it's a never-ending cycle.

Alia Lewis:

And the lack of understanding is across the board. And, you know, it's not just social workers. It's everyone in the family justice system. And it's really important that really experienced and established people within the family justice system, judges particularly, are able to accept that whilst they may be amazing lawyers, there are things that they need to learn and we're always able to learn more.

We're always able to improve ourselves and our knowledge and that that there's a massive gap in what we've been taught, a huge proportion of societies and are neurodivergent. And this is something that's really got to start being accepted by the professions that fall under the umbrella of family justice system that we need to learn about this because this is brains wired differently to what is expected, not considered typical, in order to make sure that people are actually getting the justice they deserve and that children are getting the outcomes that they deserve.

Emma Llanwarne:

Absolutely agree Alia, and just when you said that, you know, it affects all areas of law across the board. I just want to move on to Matthew. Matthew, what do you see are the biggest threats and barriers to justice then to neurodivergent people in criminal law?

Matthew Graham:

It's a big question that. I suppose as I frame an answer and think about this question, I see it in two regards. I ask myself about the points of entry into the criminal justice system, whether that's as somebody accused, or an offender or a perpetrator, or whether it's as a victim, or a witness of crime. What are those drivers into the system?

I think we need to think carefully about that when we're considering the impact of neurodivergence on the criminal justice system. We know statistically that the neurodivergent community are overrepresented in the criminal justice system, both as perpetrators and as victims, and so probably as witnesses as well, therefore. So we have more of the neurodiversity community in the criminal justice system than the general population.

So I think we have to ask ourselves really important questions about why that is. I don't have the answers to that. But when we think about the threats to justice, I think that's a really big part of the answer. In reality, we tend probably as lawyers to talk quite a bit about picking up the pieces about how we deal with policing, about how we deal with courts, about how we deal with prisons.

But of course, all of those people come into the system at some point. For my own part, as a professional, I think there's actually an over-emphasis on defendants, on offenders and perpetrators to the extent that there's a lack of focus on the importance of neurodivergence for victims and witnesses in the system. That's my own experience comes through there. I might potentially get public funding, for example, to help a neurodivergent offender, but there's no equivalent for a neurodivergent victim. And they are, I'm afraid, treated poorly in the system. That's the stark reality of it. Rosie, I can't see you, but I can see the comment that you've made and it's telling that you're surprised that there's not training in relation to neurodivergence for practitioners. You're right, there isn't. You should be surprised in that sense because it's rubbish. But it's true.

As an advocate in the Magistrates Court, in the Crown Court, across the system, there's no requirement on me as a professional to have any training in respect to this whatsoever. And so I can go and cross-examine witnesses or victims at will without any of that knowledge or experience. I'm afraid that is at the significant disadvantage to be with those who deserve better.

But we also look at the experience of those in the system. And of course, that is part of the focus. And I'm afraid the experience of the neurodivergent community in the criminal justice system is poor. There's no question of thought. I've been practising since a bit before 2000, so I've seen that over the last 20, 25 years or so, and I don't see any significant improvement. I mean, that's the reality of it. There was some basic guidance for police station practice in 2000 and there is some basic guidance now, and that's not through a lack of effort on some people's parts, but it does show the enormity of the challenge, I suppose.

You know, I think if I were to pick out a couple of points, which for me a real threats amongst the lot, I think policing is a real headline for me because this crosses over between the experience of the victims and witnesses and those accused and who become defendants, because the reality is the experience through policing is really not good enough, and that needs saying and it needs

acknowledging. That's my view, but it's a view that's shared quite widely, including in policing in many circles. It just hasn't become a driver of change as yet. But it's a significant threat to justice. There's a lack of understanding and it refers to that as a key point, that lack of understanding I echo that, that mirror's my experience of going to police stations, talking to police officers on whichever side it may be in a particular moment.

Those experiences are not good enough and that's a real threat to justice. And I see injustice because of that lack of understanding then flowing through the system. I think the other area is when we come to try and understand the seriousness of crime. The law, statute, tells us that we must decide the seriousness of crime by balancing the culpability of the offender and the harm caused.

So if you want to work out what somebody should get for committing a crime, you have to understand the seriousness, about its harm, and culpability. And our sentencing guidelines tell us that's what we should do. The law tells us that's what we should do, and that's what happens day in, day out in court. You wouldn't think it, though, if you went to a court and watched a case, criminal court, and watched the case.

Because I think the assessment of culpability when we're talking about neurodivergent offenders is a really complex topic and misunderstood and ill dealt with in many cases. And I see that in my practical experience and that's a real threat to justice. There's a sentencing guideline on this subject, which is little used. In practical terms, lip service is often paid. I am critical of it.

It's not that people aren't sometimes doing their best, it's just hard. But the fact that it's hard doesn't mean that it's not a threat to justice. It massively is. And I think assessing the culpability of neurodivergent offenders is an area where we've got a massive amount to do. I am sure that there will be a time, I hope, in my lifetime, I don't know, when we will look back on now on 2024, and shake our heads at how we dealt with those with significant, neurodivergent presentations in the way that we might look back

on, I don't know, Victorian England and wonder what asylums were about and so forth. I think that time will come when we look at 2024 and think that it was completely unacceptable.

I hope as I say that's in my lifetime I'm not sure, but I hope it is, it is a real threat to justice that. Fundamentally, as a society, to what extent do we blame individuals who commit crimes? That's at the heart of measuring seriousness. And I think neurodiversity is poorly understood in that context. I think that brings together what you were saying earlier as I listen to you about family justice, justice for children, ultimately through that system, to make sure that in the most vulnerable that you look after I suppose, or try to advocate for within the system, the most vulnerable are when we deal with the most vulnerable, the measure is it not all of our justice systems. And that might be because of their age, it might be because of their mental health, it might be because of their neurodivergence or often all of those things in some combination or another, I'm afraid. I think we stack up poorly. I mean.

Emma Llanwarne:

Do you think, Matthew, the questions around neurodivergence are not being asked? Crucially at the police station stage, because obviously that's the start of the cases at the police station. Now, if the questions are not going to be if they're not asked because the person doesn't know, has no knowledge of it, there's no signs or symptoms that they're aware of. Do you think that impacts?

Matthew Graham:

Yeah. So if anyone's ever given a statement to the police as a victim or a witness, for example, the police literally have a piece of paper a form that they would typically write it down on by hand or if they're using a computer, an electronic version of it. And on one side the statement gets written down on the back of it there are some questions for that individual about support they might need if they go to court. There's not a question in relation to neurodivergence. So there's no prompt.

Emma Llanwarne:

Is there anything that you've seen on any custody records or should there be, in your opinion?

Matthew Graham:

So there's no question about it specifically. It's lumped together with mental health in that sense, and I can understand why that is. But it's wrong. There should be specific questions and prompts and there aren't. So there's one example of where there's an obvious weakness. It could easily be addressed. If every person who gave a witness statement to the police was specifically asked about whether they wish to bring to the attention of anyone looking at that statement, that they have a neurodivergent presentation of some to some extent and could be supported through that, our system would be more just that's the simple reality of it. Why don't we ask it then? Is it because people don't care? Is it because we just haven't got there? But there are simple steps that can be taken. It's easy for Alia and I to say a little bit on our high horse with this, I suppose, and bemoan the system. But at the front line, small steps make a big difference, is my experience. Caring is a start and asking the question therefore is important and I mean it certainly doesn't arise in custody environments at all for those accused who have been taken into a custody environment. Actually to some extent even more so for those who are in a non-custody environment, dare I say it.

Emma Llanwarne:

But what about in your practice, Matthew? I mean, do you make a point of asking the question about neurodivergence in case prepping, taking instructions before first appearances? Trials?

Matthew Graham:

Yeah, absolutely. And I think this doesn't sit in isolation of course Emma, one needs to understand the individuals that we're working with. Law's got a lot of books, a lot of boring law involved. Law's boring in that sense. But at the heart of the work that I do, I think it's the same for Alia, at the heart of our work are people. And there's no point in understanding the law if you don't understand

the people. That's my view. And there's no real exception to that. If you don't understand the people, then you won't understand the legal context. I think this idea of context is particularly important when dealing with neurodivergence because what amounts to a strength or weakness is very context specific often. And it may well be that I'm working with quite a high performing professional who's neurodivergence has actually been a real strength, for example, in that professional career. But those same strengths might become real weaknesses in, for example, a custody environment where there's an unfamiliarity. And so I think understanding the person is understanding the law, and if there are gaps in your understanding of the person, there will be gaps in your understanding of the legal framework that they're working in.

Emma Llanwarne:

Very true Matthew, rings so many bells, so true. I just want to just move over to Alia. Just in respect of you both, you've highlighted the lack of understanding of neurodivergence as part of both of your work. And part of our work is to make the legal profession neurodiverse and obviously, therefore, representation. If the legal profession did become truly neurodiverse, What do you think Alia would be the impact on neurodivergent clients first of all?

Alia Lewis:

I think the legal profession actually, I think there's a lot of neurodivergent people within the legal profession. I have to say I just didn't understand it until I had my son. But in terms of the characters that I regularly come across in my practice and in court and I understand it so much better now. But I think that people quite people get caught up in their own bubbles in their own lives, don't they?

And, you know, there's so many people now with the things that I've been doing to try and change things in the family justice system that, you know, I get I'm getting amazingly positive response from people who are either neurodivergent themselves within the profession or have a family member who's neurodivergent, but it just takes someone to kind of spark the

light really to say, right, well, let's change things and then people will follow.

And so I think it was just I suppose I think for me, just seeing the difference that support and the right intervention has made for my son made me realise that I had to do something. And I think now people within the profession who are neurodivergent and when I say profession, I mean within the family justice profession are starting to realise that they can actually do something to help change things.

So what we've done in our some myself and a couple of my colleagues who are actually joined tonight. We've developed a specialist autism and ADHD team within our care child care department at Duncan Lewis to be able to provide a really informed and bespoke service to our neurodivergent clients. But alongside that we've developed this crossfirm Working Group with Beck Fitzgerald Solicitors and Coram Chambers in order to form a basis to drive forward our campaign for reforming the family justice system.

So if anyone is interested, can have a look at FLANC, which is F-L-A-N-C flanc.org.uk. And really what we're asking for is compulsory training, best practice guidance and systemic change. And one of the things that we're looking at within these changes is what Matthew was talking about, which is to actually ask the question about neurodivergence.

So when a local authority first issues a care application, when they're seeking a leader in respect of a child on the form, they have to answer whether there's any issues of disability, but it's a very wide question and there's no question about neurodivergence. So one of the things that we're saying is there needs to be a question on that form about neurodivergence, but not only just on that form, once the case is issued and a standard directions are issued by the court, which happens on every single case, that standard directions order needs to also ask the question about neurodivergence so that by that point the parties are all involved,

they will have all instructed their lawyers. So the lawyers are then thinking about whether there's an issue of neurodivergence to consider. And even if someone isn't trained and they don't fully understand it, the mere fact that that question is there will hopefully encourage people to at least think about it. And then it may mean that people get the support that they need and the assessments that they need, etc.

But I'm hoping that the many people that I know amongst the solicitor and barrister profession who are neurodivergent will get on board and help push forward this campaign because it is so important.

Emma Llanwarne:

It sounds absolutely fantastic Alia it really does and it will make an impact. Just even asking the question, I think all of us on the call, you know, we ask the questions and we know that it really impacts. I think another important aspect to highlight is representation. And I work as a paralegal preparing the cases for criminal defence. And very often my clients will say to me, you just you don't understand, you know, you don't look like us. I say I'm ADHD and I'm dyslexic. And they're absolutely shocked because I "don't look like I have it". And then I say, Well, what does it look like? And it's absolutely amazing when you just have that representation.

It just opens up a whole new communication channel for that person. Because in my experience they feel heard, they feel listened to. And you can actually understand and explain the process for them to understand and participate effectively. Because as we know and I'm sure Matthew would agree, the court system just isn't able to effectively help neurodivergent to participate. And sometimes they're labelled as obviously lazy or not interested. And that's totally not the case. I mean, Matthew, what do you think would be the impact in criminal law if we did become truly neurodiverse?

Matthew Graham:

This is a complex question this Emma, and I think plainly the legal

profession would be better off if it was more representative. And that's true in neurodiversity as it is in many different areas, but I suppose I might express somewhat of a counterpoint to that, in so far as a concern I have about neurodivergence is it's sometimes seen as a topic that other people deal with. I think therein lies a real weakness, because actually it's something that in the criminal justice system, all advocates or representatives need to be mindful of and to be aware or to treat better, frankly, as opposed to being this is something that's done by autistic lawyers. Or, this is something that's being done by dyslexic lawyers. And likewise, those autistic or dyslexic lawyers, whatever it may be, may choose to work in whatever area of law they want in that sense.

So and I observe myself amongst my colleagues and amongst my fellow professionals, a lot of fear around neurodivergence. What words do you use? How do you not offend somebody? Are you going to say the wrong thing? Are you going to use some language that upsets somebody? And the language of neurodiversity is not easy. I say that as a professional advocate in that sense. And I think that's off putting. Does it mean that you say nothing or do nothing? I think often it does, and I fear that. So although plainly having a more diverse legal profession would plainly be a good thing and it is a systemic barrier as it were for the neurodiverse community in accessing justice, in the immediate sense, I think there are practical steps of the sort that Alia has been talking about introducing as it so which really are a big priority for us as lawyers, whoever we may be, and indeed whoever we are representing in that sense.

So it is that practicality that I suppose I advocate. I want to hear more of those voices. I want to hear more of those immediate experiences of individuals to be able to come in to the justice system. How is that neurodiversity, if at all impacting? And the there on the question asked where there's an obligation to disclose information? Well, no, there isn't, But there is an opportunity.

My fear is the opportunities that are lacking at the moment and how somebody wishes to describe themselves, as far as I'm

concerned, is a matter for them in that sense. But I know from my practical experience and I see this probably daily, those there are people who are not able to say what they want to say because they fear prejudice or they feel that they will be misheard or misunderstood in some way.

And it's a real area of difficulty. You know, as a practical example, Emma, I'm struck by how often I'm contacted by the family member of a neurodiverse accused, for example, in the criminal defence practice as compared proportionately to the non-neurodiverse. Well, what is it about our own services that are making it hard for those individuals to reach out themselves? It's a practical day-to-day experience.

Rosie, you describe yourself as a former police officer in that sense, but I'm sure you would have experienced yourself the same thing. What does it make why is it difficult for an autistic victim to come forward? What are those barriers? Understanding those and doing something about me in practical terms seems to me to be a key topic, and having more neurodiverse lawyers will help with that. But for me, it's not necessarily the focus at the moment. There's a practicality involved in this. Let's get that opportunity for those voices to be heard. It is in the context of, the justice system, that we're talking about this evening, and in the justice system I want these opportunities to be better for those people to be heard wherever they may be falling.

Emma Llanwarne:

Thank you, Matthew. And that just brings me back to your own practice. How do you tailor your practice to neurodivergent clients?

Matthew Graham:

Number one, listen. It's a starting point. Is it always the same? The service that we produce, is it always going to be the same? Might we do things differently with that individual depending on their circumstances? To listen is a really key topic. And you know, if we're looking at systemic challenges within the system, take legal aid franchising, legal aid contracting, which has a single defined

degree of service or a single cost actually.

And if you provide legal aid services, you agree to provide those services in accordance with that contract. You have no choice. There's no alternative contract, as it were. You must provide your services in accordance with what is a single standard or best practice. Well, how does... that plainly discriminates against those who are neurodiverse. Very obviously, in black and white terms if you read the contract in that sense. And so listening and then doing something different is a key mantra in my practice, listening is a good start. Then do something differently that's better.

I think, so that's first, the second point is being a confident advocate for neurodiverse clients. Call it out in other areas of the work that you're doing. For me in the criminal justice system if I go to a police station with an individual and the way they've been treated isn't good enough you have to say so. You have to say so then, and you have to change it then. It's not enough to complain about it afterwards. You have to do better then. If you're going to go into a courtroom. And I have a client with a particular need, I can't just accept that it's not good enough. I have to do something different. And if that means telling the court that it needs to change its layout, that we need to have a walk around, that we need to arrive at a different time or depart at a different time, if that means I need to speak to security staff that have a different process for literally getting into the building. Then so be it.

I work in the real world and I can't change it all in that sense. So we work within restrictions, do we not? But it's not enough to sit there and accept it and say "Well, that's just the way it is." Well, maybe, maybe, but maybe not. My own experience actually is if you do call it out and you do try and make a difference, ultimately you do, I mean, that's the reality of it. And as a lawyer, we should be aspiring confidently and ambitiously to actually making a difference to the practical experience for those individuals. And Alia, I'm sure you'll reflect on this, caring about your client as it were or that child is one thing, but you still need to ultimately try and make a difference to the way that they're represented through the process to ensure

the outcome is better, and I think that this those two strands to it Emma, I see that are really important. You have to listen, you have to do something differently, but you also have to call it out.

Emma Llanwarne:

I absolutely agree Matthew absolutely. Alia you have set up a specialist team and that's come off the back of your own experience. But how do you tailor your practice for your neurodivergent clients as well?

Alia Lewis:

Well can I just pick up on one point that Matthew was talking about earlier in terms of language, and then I'll come on to that. One thing that's really struck me over the past few years, going back to the fact that I've realised that many of the people that I work alongside are neurodivergent, is being a parent myself of a child who is autistic, I've realised how much language really affects me personally.

So when I hear people saying about a barrister or another solicitor, oh they're a bit odd, or they're a bit difficult or, you know, making comments like that, I see this I mean I because my ears perked up to it because I'm more aware because I've got an autistic child, and I'm in that world of you know neurodivergence and I have a lot of friends who have children who are autistic or ADHD, it really impacts on me personally when I hear comments about other other lawyers and quite often I'll look them up, I'll look through their profiles to see if they've mentioned that they may be autistic or they may have ADHD or maybe dyslexia. And quite often they are. And I think, wow, we really need to do something about that because that is discrimination. You wouldn't comment on someone's race, but it's okay to make comments like that. And people make comments like that across society and it's considered okay but actually it's not because you're talking about someone's make-up you know their biology.

And so I think that's one of the things that we really need to start becoming more aware of in terms of the way we talk about people.

But in terms of the way I've tailored my practice, there's so many different ways. I mean, first of all, the biggest change to the way I practise is that I think every client that crosses my path, whether it's a child or a parent, I will immediately ask myself, is there any neurodivergence here?

Because as we said at the beginning, when you're looking at one in five people in society, if not more being neurodivergent, you should be asking yourself that question for every single client not to try and label people, but to be fair and to treat people equally actually. So that's the first thing. Secondly, we really try to understand our so when we understand that a client is neurodivergent, we will make every effort to really understand their personal neurodivergent profile, to really understand their functioning whether they've got any communication needs, any sensory needs, whatever their needs are, to really be able to tailor the way we communicate with them. So for example, we've got one client, a parent, who wants emails colour-coded. So if something is really urgent, she wants it in red font. If it's not so urgent, she wants it in green font. It has to be in size 14.

And we remember this stuff. We make sure that we remember this stuff because if I was that client, I would be wanting my lawyer to treat me like that and to make sure that my needs were being met as required. Right? So we're really, really meticulous about that. And we also...

Emma Llanwarne:

And that client will feel that they've been listened to, by you just taking on board what they said and actioning it. That is what it needs - actioning.

Alia Lewis:

Yeah, yeah. And I cannot tell you the amount of parents that have called me and the minute they understand, whether it's me or one of my team really get it, they just burst into tears because so many people don't get it. They're just relieved someone understands them and someone realises they're not a nightmare difficult parent.

They're actually just neurodivergent, that's all. And they just need to be understood. So that's one part of it. But also really understanding needs to be able to advocate for proper assessments. And the other side is developing our child practice so that we can ensure that when we go, because as children, sisters, we have to go and visit our child clients. We represent them through their children's Guardian who are from Cafcass. But we have to go represent, we have to go visit our child clients. I advocate for always going to see a child, however old they are. Not babies, but even young children. Many solicitors don't go to see them. But I think it's really important, and to understand their communication needs, and to ensure that the Guardian understands their communication needs.

So if they require communication through visual means or if they benefit from social stories, or they need a certain level of preparation before the solicitor and guardian come to see them, that that's all done. And the first thing I do when I've got a child who's got a diagnosis, who's got an EHCP, the first thing I ask for is their EHCP, and their first their most recent annual review, because I know that will give me, not always very update if you know, if you nearly a year down the line since the annual review, but it'll give you at least some decent information about how that child presents and what their needs are.

And one of the things I'm advocating for is that for all children who are neurodivergent, really it should be for all children, but particularly neurodivergent children that we have "all about me" documents so that we can really understand who these children are and what their needs are. Even before any assessments I won't go on for too long because I can see Amanda's just joined, so I want to give her a chance to talk.

But yeah, I mean, I could go all night basically, about the way I've changed my practice. But if anyone's interested, then look at our autism ADHD page on Duncan Lewis' website, because you'll see some of the things we've noted there. It's brief, but you'll see some of the things in terms of the way we think, we practise differently.

And I think we are the first, we've said it. I think we are the first team in the UK that works in this way. So we've yeah have a look.

Emma Llanwarne:

Thank you Alia. We will post the link. I would like to welcome Amanda Weston KC. Thank you so much for joining us. We really appreciate it. We've just been talking about threats and barriers to justice, particularly within Alia's field of family law and Matthew's in Criminal. What do you see as the threats and barriers to access to justice for neurodivergent clients in your area of law?

Amanda Weston KC:

Okay. So I do a few different areas, and I did want to come back about the "all about me" document. One of the key problems that Alia has identified is that if you don't have that document, when there's a new representative, it's like year zero. And so having a portable "all about me" document for a child or an adult who has difficulties in accessing justice and who needs reasonable adjustments for effective participation.

So having a document which really identifies what those difficulties are, not the diagnoses, but the actual problems faced the obstacles to accessing justice, plus the solutions that have been worked out already means that new people who come into that person's life, whether it's legal or professional, will have something to work from rather than reinventing the wheel and trying to, you know, having to go through the trial and error process so that will, that that's an important tool in accessing justice because it means that everybody who's supposed to be making sure that that voice is heard knows how to provide that service to that client, whether they're a child or an adult.

So I just wanted to say that that is a fantastic document. Social Services are used to doing it, and we've all seen those about "All About Me" documents for the deaf and certainly in the context of service providers to learning disabled service users, then yeah, you're going to see it. But I really can't understand why it isn't across the board.

I know that there are moves afoot to amend the Equal Treatment Bench Book that judges have regard to to properly take account of those useful sort of those learning points. You know what it's like when you go to court and it's all gone horribly wrong and no one's really taken the right measures in the prep so that's before you get to court.

So at the point when you're assessing somebody and you know, can they access the process however you're assessing them, you know, whether it's parents or you know, whether it's children, you know, whatever you're doing. At that point, it's so important to just have that means of effective communication. So I just wanted to sort of hammer that home really - it's really important. Judges, of course, aren't used to seeing those documents, but there's no reason, they might not be expecting them and they might look at you funny when you come one up. But that's what we go through every time we have a culture change and a culture change is what organisations like yours Danielle and the people who are presenting that's what you are you're in the forefront of a culture change.

The other thing I wanted to say was so it's right that there are already in place a number of adjustments which people are familiar with to effective participation. So whether that's the use of intermediaries, whether it's the use of screens or fidget tools and, you know, lots of sort of things which we're familiar with and used to seeing in the courtroom. And that's one thing. But the particular issue that I'm struggling with at the moment is that individuals who have not been treated appropriately or not had been neurodivergent, properly accommodated in school or in other environments, are likely to have the sorts of adverse childhood experiences which result in traumatised responses to everyday events. So, what I'm talking about is secondary trauma caused to neurodivergent children and people by being treated inappropriately or by being treated pejoratively.

And there a number of over-laying features such as race and other protected characteristics which can also contribute to people's

perceptions of the behaviours of neurodivergent people. So, what I'm particularly anxious about is that we are all familiar with phrases like a trauma-informed practice, but my experiences, even in the family courts, they are way behind. So for instance, and this is a this is a mechanistic problem in, in the care context, the courts are very used to seeing young people who've been through the care system, then becoming parents. And once they cross the 18 threshold, the local authorities focus entirely on the children and how those children might have been let down in the past becomes irrelevant.

And so what I'm concerned about really is ensuring two things. When we're dealing with effective participation, we all ought to be if we're running a trauma informed practice and I think, you know, most of us these days say that we do, we should be astute to the way that trauma and secondary trauma and emotional difficulties which might arise from inappropriate education environments for people, how that affects their behaviours and presentation and effective participation needs. But also, and I think this is important, poor coping strategies are something which can affect a person's ability to respond well to questions, whether that's questions in preparation of somebody's evidence to be a witness or taking instructions or whether it's in the witness box. And poor coping strategies are something which are easily viewed pejoratively. So, for instance, if you've got a person, a traumatised young person whose immediate reaction to feeling under stress is to lie, then you have to have a mechanism for ensuring that the courts factor that in, not just into how they treat the evidence, but how they take the evidence.

And that, I don't think we've reached that stage. There's a few evolved courts that you can appear in and the judges of their own motion will say, yes, well, I recognise that trauma is a factor here. And they understand and they take that into account. But unless you've instructed a a child psychiatrist or a psychologist to report on the impact of trauma on the witness' evidence, then there's nothing you can point to that's admissible in a family court. You'd have to make a part 25 application, I think Alia knows what I'm

talking about, and it's all very clunky and it's not necessary because we all know what the effects of trauma are. All we have to do is identify that someone's trauma-affected and then make reasonable adjustments. So I, whereas I'm sort of upbeat, I think anyone who has heard me before, I'm relatively upbeat about how court environments are becoming used to reasonable adjustments and effective participation directions. I still think there's a long way to go on trauma and I'm very much hoping that changes to the Equal Treatment Bench Book are going to include some sort of visual explanations of how the brain works when you're having a trauma response and the sorts of institutional knowledge the courts have to develop to make sure that those people aren't treated inappropriately as a consequence, That's what I had to say.

Emma Llanwarne:

Thank you, Amanda. No that feeds into my question, which will have to be my last, actually, because it is now just gone half past. My question goes to Matthew and both Alia. Now, there are key provisions that professionals, judges can access, such as the Equal Treatment Bench Book like Amanda said, the Criminal Procedure Rules and the Civil Procedure Rules. Matthew, how successful are those key provisions in minimising the threats and barriers, in your opinion, when you write about clients.

Matthew Graham:

In the criminal justice system, I'm sorry to say ineffective, and I am so genuinely sorry to say that I don't doubt that you're right, Amanda that there are steps forward, but I'm afraid that small steps and they're inadequate and they are too slow. And I'm critical of them. I think that the need is simply more urgent and bigger and and so I'm afraid the Equal Treatment Bench Book is an example which is cited quite routinely by practitioners in courts as being important and so forth. And I'm afraid I just don't see the difference that's being made. I said earlier Emma, and I mean it, that in my nearly 25 years of practice, I'm afraid the progress has been close to non-existent in this regard and it's withering to say that, but it's true. And so I think the key provisions are way short of what is

needed and by a measure.

In my own part in the criminal justice system, I would like to see urgent reform of custody facilities. I would like to, I mean, I haven't touched on the subject of prison conditions, but it's a fundamental part of the justice system for example. I said earlier that I believe profoundly that the treatment of witnesses in the criminal justice system, those who are neurodivergent, is shocking. It's unacceptable and it's wrong. And there are changes that can be made easily and cheaply. These things don't cost money particularly, and I don't think they're as hard as sometimes they're made out to be. I think there's a huge responsibility on the judiciary to take, if we call them those key provisions, such as they are and take them seriously. And I don't wish to be negative about that because there's a tremendous amount of good work being done. But those pockets of good practice of the sorts that are being described by Alia and by Amanda there, I'm afraid, are isolated. I hope there is change. I'm optimistic about that. But we're starting from a low base in my honest experience and one that has not changed significantly. And I applaud all of you on the call for joining in and being interest in the subject. It is a start. I wish there were more of it. And it's not enough.

In danger of kind of being on my horse about this. But it is not enough to pay lip service to the topic - almost makes it worse. There has to be difference, and I'm sure Amanda and Alia's experience is similar to mine in these circumstances that the judge may say something kindly and do nothing different. Well, that isn't progress. In fact, it's an excuse for a lack of progress. And there is a real challenge to those of us on the panel as lawyers to be genuine advocates in a broader sense, beyond the merely purely legal to be real advocates for those clients who need that support wherever they may be, in whichever of the systems we are each working in.

And so I'm afraid those key provisions are inadequate and they rely on good people, often parents. You heard a bit about that, or lawyers, or supporters, or those in charities and in the third sector and so on, to stand up and to make a difference. And that

absolutely involves an understanding of trauma, absolutely, an understanding of the manifestation of a particular condition. It's not just a report. You may need a report. It's not just that. How does it make a difference? So for me, those provisions, I'm afraid, are inadequate, and there's a lot of work to be done.

Emma Llanwarne:

Thank you, Matthew. And Alia, what's your experiences of the key provisions in your area of law?

Alia Lewis:

I very much echo what Matthew and Amanda have said. I think, you know, there are mechanisms for reasonable adjustments to be put in place. But as far as I'm concerned, it all comes down to the person who is responsible for making the decisions, what adjustments are put in place and for identifying those decisions. Whether it's a lawyer representing a client and advocating for it, or just agreeing to it and directing it, to really understand the nuance and intricacy of the conditions that they're dealing with.

And I can I talk for myself. I did not understand that before I had my son who is autistic. And I'm not saying that every single person has to have a neurodivergent member of their family to fully understand it, but it comes down to training. That's what and that's why I'm advocating. That's why we've developed FLANC and that's why trying to drive forward this campaign, for compulsory training for professionals within, you know, as a starting point, the area we know the child protection and the family justice system.

It's you know, as I mentioned earlier, it's being rolled out in the medical field via Paula McGowan and it's starting to get a positive response. And so I'm hoping that if we can at least have a starting point of compulsory training, that we can build upon that and really help improve understanding, particularly amongst judges as well. Because comments that I've heard when I'm in court, it just, it comes across as ignorant, but it's because of lack of understanding and lack of training.

And I'm not saying I wouldn't have made similar comments before I had my son. And as long as we can all accept that before we had an interest in it and we educated ourselves that we were the same as everyone else, we can hopefully bring people along with us rather than trying to, rather than coming across as criticising.

It's about improving things, but it's not just about reasonable adjustments in court. It's about all the stuff that happens outside of court as well. And as a children's solicitor, I just find it really shocking that social workers and guardians don't have the training to be able to communicate with children in a non-verbal way. They should have, guardians and social workers do not have a bank of visual tools of picture exchange, communication cards or now next boards or the ability to, or the apps that you can use to build social stories, that's just not readily available.

And also the fact that foster carers don't automatically get trained in understanding these conditions. I always say, you know, whilst neurodivergence is not a medical condition, I always say you wouldn't put a diabetic child in a placement with a foster carer and not teach the foster carer how to treat the diabetes right, and make sure they're monitoring and understanding every aspect of it.

But a severely autistic child with very complex needs can be placed with a foster carer who actually doesn't even know what the word autism means. I just think that that's really shocking. And you know, last year I had a case where an autistic child with very complex needs was placed with a foster carer and it was an emergency application to remove her, quite rightly so from her parents on an interim basis. Placed her in a foster placement and the, considering how profound her needs were, the statement in the section where it says about what she needs and her foster placement simply said she needs somewhere where she can practise her faith. And so that as a starting point just indicates how desperate we are to try and change things and really improve understanding. And so training has got to be the start of it, it has to be the start of it. And also, I mean, quite positively the Family Justice Council have agreed that we need best practice guidance.

And so Jenny Beck is leading that aspect of best practice guidance that's going to be drafted and hopefully a first draft will be available before our FLANC conference.

So that's really exciting. But again, I'm sure it'll be something that's going to need to be worked on and built upon over the coming years. Yeah, and then like I said, the systemic change, the what seems like small things are actually massive things like just having prompts to prompt lawyers to question whether their client might have an aspect of neurodivergence. All of that is going to be massive in helping to make the tools that we currently have actually effective and meaningful.

Emma Llanwarne:

Absolutely agree. Thank you so much, Alia. I'm aware of the time. So we do have a question. Any hope of more transparency re training in the judiciary?

Matthew Graham:

Yeah, I mean I think there's certainly hope and indeed it's right to say in my experience with the judiciary that there are real pockets of really good practice and very strong practice. That's certainly true. And I find in my own experience that judges are very open to making appropriate adaptations, to taking into account neurodiversity when it arises in a case from whichever perspective it may be.

My concern is that that's true when the issue is being properly addressed. But of course that perhaps highlights the exclusion of those where there's cases where it's not being properly addressed. It's not so obvious. It doesn't have a lawyer saying you're Honour deal with this, Judge, deal with this. What are the experiences of those individuals? And so those barriers further down, I think are particularly important. We've heard some examples about that, but there's certainly hope because there is good practice and certainly I will leave judicial environments, sometimes courts, meetings, these sorts of things and feel really enthused that you can do better and there are good experiences. Perhaps they stand out too much.

Amanda Weston KC:

So the Judicial Studies Board and the members of the judiciary, that are involved with training the judiciary, I think are astute to this issue. And certainly as different parts of the profession start formulating guidance and developing learning points, that are of broad application, I think that the judiciary will be even more likely to face requirements for training in those those aspects.

So I think that there'll be a groundswell of culture change and then eventually the JSB and those other parts of the judiciary with responsibility for training judges will start making it a part of judicial training and continuing education. Having said that, we're all familiar with, you know, the phrase that you can lead a horse to water but you can't make it drink. I mean, some judges just don't want to learn. But I think we've seen, certainly in the family courts, what happens to judges that don't want to learn. So brave litigation for judges that don't want to learn. If I can put it that way. I say that because I've got experience of litigating when judges perpetuate rape myths or when judges perpetuate myths about coercive control.

So I understand that sometimes you have to be a bit brave and your client has to be brave about being critical. But those are the cases that change things. And so I think in addition to sort of pushing judicial training, we should all be astute to rely on that learning when we're formulating our grounds of appeal. There.

Emma Llanwarne:

Thank you very much, Amanda. And thank you, everybody who has joined the call tonight for Understanding Neurodivergence in Law and Justice. But I just want to say a massive thank you to Matthew Graham, Alia Lewis and Amanda Weston for giving up their time to come and talk to us this evening.