



Legal professionals and witness statements from people with a suspected mental health diagnosis



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ABSTRACT

Individuals with mental health problems are considered to be part of a group labeled 'vulnerable' in forensic psychology literature and the legal system more generally. In producing witness statements, there are numerous guidelines in the UK, designed to facilitate the production of reliable and valid accounts by those deemed to be vulnerable witnesses. And yet, it is not entirely clear how mental health impacts on reliability and validity within the judicial system, partly due to the diversity of those who present with mental health difficulties. In this paper, we set out to explore how legal professionals operating in the UK understand the impact of mental distress on the practical production of witness testimonies. Twenty legal professionals, including police officers, judges, magistrates and detectives were involved in a semi-structured interview to examine their knowledge and experience of working with mental health problems, and how they approached and worked with this group.

A thematic analysis was conducted on the data and specific themes relevant to the overall research question are presented. These include a) dilemmas and deficiencies in knowledge of mental health, b) the abandonment of diagnosis and c) barriers to knowledge: time restrictions, silence, professional identity and fear. Finally, we explore some of the implications of these barriers, with regard to professional practice.

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1. Introduction

According to police identification, around 3–5% of witnesses who produce statements are deemed vulnerable, though some have estimated the figure to be closer to 54% (Smith & Tilney, 2007). The variability in percentages of witnesses deemed vulnerable has been attributed to a number of factors, including problems in recording vulnerability, some victims not self reporting, disagreements amongst police and the Crown Prosecution Service (CPS) regarding vulnerability status and the police not giving the CPS sufficient information for them to apply for special measures (Aihio, Frings, Wilcock & Burrell, *in press*). A mental health diagnosis is one type of psychological vulnerability to be considered by legal professionals when interviewing for witness statements, especially if the individual is distressed at the time of interview (Gudjonsson, 2010), and during court proceedings, as outlined by the Youth Justice and Criminal Evidence Act [YJCEA], 1999, which covers both vulnerable individuals and children. Yet despite an awareness of mental health difficulties in academic and official literature, special measures for vulnerable witnesses as suggested by the YJCEA 1999 are not always implemented in practice, and if they are, they are often

applied late and recording of disabilities are often not detailed sufficiently (Charles, 2012).

The closure of the large asylums and the rise in community living for individuals with mental health difficulties has led to an increase in this group of witnesses. Furthermore, this group are not only deemed vulnerable by their mental health status, but often experience added disadvantage, due to poor housing and a paucity of supportive social networks (Barnett & Appelbaum, 2010).

Despite such recognized vulnerabilities, mental distress is only considered to be a risk factor, not a definable marker with respect to those deemed likely to provide unreliable or false evidence as outlined by the Achieving Best Evidence (ABE) guidelines, which once more covers all vulnerable individuals and children (Ministry of Justice, 2011a,b). Partly at stake are public and professional perceptions of a straightforward relationship between mental distress and (un) reliability and unpredictability more generally. Vulnerable witnesses are often aware of this perception (Crown Prosecution Service[CPS], 2009;), and may not report a crime due to the (reasonable) belief that they will not be taken seriously (Stobbs & Kebbel, 2003). Previous research has found that police officers and jurors hold negative attitudes and perceptions of witnesses with a mental health diagnosis, perceiving their testimony to be inherently less credible and redundant (Watson, Corrigan, & Ottati, 2004). And yet, little is known about the actual or specific psychological impairments and obstacles to reliable evidence associated

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with this group, beyond general statements regarding a greater propensity for stress, anxiety and the reactivation of previous trauma during periods of distress and undue pressure (Bull, 2010; Chappell et al., 2004). To our knowledge, there are no empirical studies exploring specific psychological functioning in persons with mental health difficulties during investigative interviewing. Memory, problem solving ability, and narrative coherence, all have the *potential* to impact on witness reliability, but the data on this simply does not exist. What is constituted as 'vulnerable' with respect to witnesses with mental health diagnoses is, therefore, somewhat sketchy and difficult to define. Furthermore, little is known about legal professionals' understanding of what constitutes 'potential vulnerabilities' associated with mental distress. Furthermore, it is not clear how a diagnosis might impact on the way in which witness interviews are carried out.

The ABE guidelines generated in the UK recommends a number of measures to protect witnesses with a history of mental health problems when giving evidence, and to ensure they provide reliable and credible witness statements. Diagnoses of anxiety, schizophrenia, personality disorder and depression are discussed in the ABE for their potential to influence witness reliability. Witnesses diagnosed with psychotic disorders, for example, are considered likely to give unreliable evidence if their delusional or hallucinatory symptoms are active at the time of interview. The Bradley (2009) also recommended a full assessment be given to those diagnosed with a mental disorder, such that cognitive abilities and other personality factors can be monitored to assess the likelihood of faulty information being provided.

Despite the recognition that mental health problems are potentially disruptive to the provision of reliable evidence, the ABE quite clearly states that a mental health diagnosis does not *preclude* the ability for witnesses to provide reliable evidence. The CPS (2009) also outlines that it is the ability to understand questions asked of them and give answers that can be understood, which is deemed by law to impact on the competence of a witness to give testimony, regardless of vulnerability. And in general, despite the existence of certain guidelines and recommendations, the assessment of psychological ability for individuals diagnosed with mental disorder are not entirely consistent, and additional support may only be considered necessary during times of crisis. Furthermore, a full life history, which may include previous episodes of trauma and victimization, may in fact be more relevant than the diagnosis itself, as histories of victimization are often evident in crime victims, with mental health difficulties (Crump, Sundquist, Winkleby, & Sundquist, 2013; Pettitt et al., 2013).

With this information in mind, the ABE recommendations state that an individual with mental health problems may require additional support to complete a witness interview task during a time of acute distress. This may involve facilitating anxiety reduction through the use of modified interviewing techniques and the potential involvement of an intermediary. However, under the current definitions by the YJCEA 1999, only a small number of cases involving witnesses with mental health problems actually qualify for the use of such special measures, which are seldom used for both police interviews and court proceedings (Charles, 2012). The aim of this study is to explore legal professionals' perception of their own knowledge of mental health and its relationship to vulnerability in the context of interviewing witnesses, and whether they have sufficient knowledge of mental distress to be able to put some of these official recommendations into practice. We have included a diverse group of legal professionals, at each stage of the judicial process (from front line police to judges), to ensure that a plurality of perspectives operating across a broad range of legal activities is included. We expected that some of the potential differences in perspective are grounded in the different work settings, but we also anticipated some commonality, emerging from shared concerns around adhering to legal processes and upholding principles of justice. The complex relationship between mental health and the legal system is of interest at all levels, which is why we adopted an inclusive policy in this exploratory stage of the research.

1.1. The attitudes and perception of front line staff on mental health

Police officers often report that they do not receive enough training and information about mental health and find it difficult to approach situations involving persons who have a mental health problem (Psarra et al., 2008; Ruiz & Miller, 2004). The Vulnerable and Intimidated Witnesses: A Police Service Guide (Ministry of Justice, 2011a,b) advises on prompts to be used by police officers in the UK to recognize vulnerable witnesses during the initial investigative interviewing process. There is, however, an initial obstacle that prevents the successful identification of vulnerable witnesses, as their vulnerability may not be disclosed or discovered until a later stage in the investigative process, if at all. This raises important questions regarding any additional support that may be required to produce reliable and valid testimony.

Although there has been a relatively small body of research on the perceptions and attitudes of legal professionals towards persons with a mental health diagnosis, there is a need for more in-depth research on the interactions between these front line professionals and this vulnerable group (Chappell & O'Brien, 2014).

On reviewing the available literature, the majority of research focuses on interactions between the police and individuals with a mental health problem in the context of being a suspect of crime (Teplin & Pruett, 1992). There has been little exploration of the beliefs, perceptions and attitudes of police and other legal professionals in respect of *witnesses* with mental health problems. The aim of this exploratory study is to delve deeper into professionals' knowledge about mental health difficulties and the types of knowledge they deem relevant in carrying out interviews with this witness group.

1.2. Interviews

Verbal data were collected between December 2012 and March, 2013, via twenty individual semi-structured interviews. The interviews were recorded using a digital recording device and then later transcribed for analysis. An interview schedule was developed by authors one and three, based on their reading of previous literature and their theoretical knowledge of mental health issues, and the interview questions were specifically related to witnesses who were not being charged or investigated. We also used three scenarios relating to three crimes involving individuals with different forms of mental distress. This served as a prompt to guide the participants in their responses, and is a well used qualitative technique in empirical research (Willig, 2008). Throughout, the interviewer used prompts and encouraged exploration of the issues with the participants, in order to check for meaning and to ensure understanding. The interviews varied in duration from thirty minutes to 1 h.

1.3. Participants

Participants from a number of police forces, law firms and criminal courts across the South East of England were invited to take part in the study, via email.

Eight female and five male police officers of varying ranks took part in the study. These included three police constables, six detective constables, and four detective sergeants (including one acting detective sergeant). Further, four (male) criminal lawyers (one of which was a trainee), two judges (both male) from the criminal law courts, and one magistrate (female) also took part in the study. All of the police officers had received training previously in the elicitation of evidence from vulnerable witnesses, although this experience was wide-ranging (from 'a couple of hours' to more extensive week long training events).

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