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COMMUNICATION CHALLENGES IN FAMILY COURT: UNDERSTANDING THE UNIQUE NEEDS OF AUTISTIC CHILDREN

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Abstract

One of the main challenges facing autistic children in Family Court proceedings is their potential difficulty in effectively communicating their needs and preferences. Autistic children may have challenges with social interaction, both verbal and non-verbal communication, and may be more likely to exhibit atypical behaviours that can be misinterpreted by others. This can make it difficult for the child to participate effectively in court proceedings, or to express their wishes regarding custody, visitation, or other matters related to the case.

This article aims to give social workers and legal professionals, who may not have specialist autism training, some key points to help them to communicate effectively with their clients and to ascertain accurately the autistic child's wishes and feelings regarding the proceedings.

Introduction

The topic of autistic children in Family Court proceedings is one that presents unique challenges and considerations for all parties involved. Family Court cases involving autistic children require a specialised understanding of the child's condition and how it may impact their ability to participate in the legal process. As such, it is crucial for judges, lawyers and other professionals working within the Family Court system to be knowledgeable about autism and how it may affect the child's communication, behaviour, and decision-making abilities.

A brief overview of Autism Spectrum Disorder (ASD)

The prevalence estimates of ASD among children and adolescents ranges from 1.7% to 2.9% (Bougeard *et al*., 2024; Yang *et al*., 2022) to 3.14% in the USA (Li *et al*., 2023) and 1.4% in Europe (Sacco *et al*., 2022). From 25% to 35% children with ASD are non-verbal/minimally verbal. There is significant heterogeneity in non/minimally verbal autistic children (Koegel *et al*., 2020). One in three children with ASD has intellectual disability (Shenouda *et al*., 2023).

At present, there is a consensus that ASD is extremely heterogeneous clinically and genetically. In fact, ASD comprises **many complex and clinically distinct** neurodevelopmental disorders/conditions with both genetic and environmental components. There are subgroups of ASD with different underlying causes (though the behavioural manifestation is the same) (e.g., Bryn *et al*., 2017; Martinez-Murcia *et al*., 2017; Brian *et al*,. 2016; and others) and different outcomes (e.g., Denisova, 2024).

The diagnosis of ASD, however, relies on behaviours that indicate impairments in social interaction, communication, the presence of restricted and repetitive behavioural patterns and sensory sensitivities. The current DSM-5 criteria for an autism *spectrum* diagnosis allow hundreds of varied patterns of persistent deficits in social communication and social interaction, and myriad patterns of restricted and repetitive activities and interests (Waterhouse & Mottron, 2023). These

are categorised into three levels of support that the individual requires: Level 1– requiring support; level 2 – requiring substantial support; and level 3 – requiring very substantial support.

Besides, autism seldom (if ever) occurs in its 'pure form'. Comorbidities impact on ASD and vice versa. There is a wide range of physical and mental health conditions that appear with greater frequency in individuals with ASD compared to non-ASD populations: 78% of children with autism have at least one mental health condition and nearly half have two or more mental health conditions. The most common are: behaviour/conduct problem (60.8%); anxiety (39.5%); attention deficit disorder (ADD)/attention-deficit/hyperactivity disorder (ADHD) (48.4%); and depression (15.7%) (Kerns *et al*., 2020); and self-injurious behaviours.

Along with significant psychiatric symptoms, ASD often co-occurs with a number of medical conditions, including gastrointestinal problems, seizure disorders, sleep difficulties, metabolic concerns, immune system dysfunction and others (Neuhaus *et al*., 2018). These comorbidities impact on ASD and vice versa.

Thus, autism spectrum encompasses a wide range of abilities and challenges, from high-functioning individuals with exceptional skills to those who are non-verbal or echolalic and require very significant support in daily life, often 24 hours, seven days a week. The communication/ language problems in autism also vary significantly from one individual to the other. Some may be unable to speak, whereas others may have extensive vocabularies and may be articulate about their topics of special interest, while quite helpless in social conversations.

The challenges faced by autistic children can be vast and complex, requiring a comprehensive support system to meet their needs. Although many children share common characteristics, each autistic child is unique, with their own strengths and areas of difficulty. It is important for Family Court professionals to take a child-centred approach when dealing with autistic children in legal proceedings. By tailoring their approach to suit the individual needs of each autistic child involved in Family Court cases, professionals can safeguard the child's best interests and ensure that their voice is heard throughout the legal proceedings.

Representation and competence: the child's team

In care proceedings, the child is represented by a children's guardian and a solicitor. The dynamics between the solicitor and guardian depend on the child's competence, which the solicitor assesses. Age is a significant factor; older children are generally more likely to be deemed competent, especially those of secondary school age. Additionally, the child's understanding, which may be affected by learning difficulties or emotional problems, influences their ability to instruct the solicitor.

When a child is unable to provide their own instructions due to very young age or cognitive impairments, the guardian assumes the role of the client, directing the