

AsIAM's Submission to the Joint Oireachtas Justice Committee on Courts and Courthouses



Introduction

AsIAM welcomes the opportunity to make a submission to the Oireachtas Joint Committee on Justice on the subject of “Courts and Courthouses”. As Ireland’s National Autism Charity, we see the impact that access to justice has on the autistic community, which comprises at least one in 65 people, along with their families and supporters. The courts’ system/structure can often be a complex and oftentimes arduous and intimidating process for anyone, but it can be particularly daunting and overwhelming for autistic people. It has a real and substantial impact on our community’s ability to access justice in accordance with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), and to fully exercise and vindicate their rights as Irish citizens.

Professor Theresa Degener, notes that *“access to justice in most countries is usually available to those who have financial, political or cultural power, whereas minorities or other groups experiencing discrimination and subordination are excluded from it”*¹. This is no different in Ireland, where autistic people and disabled people comprise some of the most marginalised and excluded groups in society. Many individuals on the spectrum and their families often find themselves engaging with the legal system in a myriad of ways. For instance, some may find themselves having to sue the State just to ensure that their children can fully access their education or essential services. Others may find themselves coming into contact with the criminal justice system, either as victims or survivors, as witnesses, as jurors or as perpetrators themselves. This can be

¹ E. Flynn, ‘Disabled Justice?: Access to Justice and the UN Convention on the Rights of Persons with Disabilities’ (1st edn, Routledge, 2016), p.ix.

complicated further if it intersects with gender identity, ethnicity, sexual orientation, socio-economic background, other disabilities or forms of neurodiversity or if they are a member of the Roma/Traveller Community.

Autistic parents may have cases in the Family Courts if there are disputes relating to custody/child maintenance, *inter alia*. Our Ward of Court system also disproportionately impacts many members of the autistic community, and many autistic people find themselves in the care of the State, often through no fault of their own. Other autistic people may seek to sue businesses or entities as injured parties for tortious wrongdoing, including defamation, personal injury, unfair dismissal or negligence etc.

In short, Autistic people are part of the fabric of Irish society. They can, and often do, access the legal system in much the same ways as their neurotypical peers. This means that *all autistic people*, regardless of their status, need to have full and equal access to the same facets of the legal system. This includes having full access to court buildings in accordance with Universal Design principles, including access to quiet spaces or sensory rooms if needed. In terms of wider accessibility, this will also include ensuring that legal professionals, Gardaí, prison staff and court staff are fully trained on autism acceptance and inclusion, and that autistic people can readily access Reasonable Accommodations at any point of proceedings where they need support without undue delay.

Anecdotal evidence suggests that many autistic individuals and their families have had negative experiences in engaging with the legal system. This can have a real and tangible impact on their faith in the rule of law and the administration of justice. This is particularly prevalent as autistic people are more likely to engage with the legal system as victims of crime or as injured parties². Autistic people are also more likely to experience trauma and develop conditions such as Post Traumatic Stress Disorder; this often happens due to negative or adverse experiences that go along with growing up as autistic³. Autistic people, alongside people with intellectual disabilities, are also

² Equality and Human Rights Commission (Great Britain), 'Crime and disabled people', <https://www.equalityhumanrights.com/sites/default/files/research-report-103-crime-and-disabled-people.pdf> (accessed 20 Aug 2021), 33.

³ N. Haruvi-Lamdan et al, 'Autism Spectrum Disorder and Post-Traumatic Stress Disorder: An unexplored co-occurrence of conditions.' (2020) 24 (4) *Autism* 884-898, 884.

particularly vulnerable to experiencing disablist hate crime⁴, to incidences of 'mate crime'⁵ and to ableist attitudes held by society more generally.

There are two Articles within the UNCRPD in particular that relate to how autistic people access the Courts in Ireland. *Article 12*, on Equal Recognition Before the Law, obliges States to ensure that people with disabilities are treated equally before the law. This includes the right to enjoy the legal capacity to make decisions about their lives, including being supported to making these decisions.⁶ *Article 13*, on Access to Justice, obliges States to ensure that disabled people have equal and effective access to justice. This includes providing accommodations that support their participation in investigations and court cases, and for police, courts, probation and prison staff to receive awareness training appropriate to supporting people with disabilities to participate in legal proceedings.⁷

For this submission, AsIAM will set out to answer the questions posed by the Committee to the best of our knowledge step-by-step, and then provide further information, including recommendations, on how the Courts can improve accessibility for autistic people.

About AsIAM

AsIAM is the national charity and advocacy organisation for Ireland's autism community. We are working to create a society in which every autistic person is empowered to reach their own personal potential and fully participate in society. We believe that by developing the capacity of the autism community and addressing the societal barriers to inclusion, we can make Ireland the world's most autism-friendly country.

Our organisation has made its mark on the national landscape since our founding in 2014, from our award-winning campaigns to lobbying lawmakers to prioritise autism on

⁴ E. Chaplin, S. Mukhopadhyay, 'Autism Spectrum Disorders and Hate Crime', (2018) 4 (1) *Advances in Autism*, <https://openresearch.lsbu.ac.uk/item/86w4v> (accessed 20 Aug 2021), 4.

⁵S. Forster, A. Pearson, "'Bullies tend to be obvious": autistic adults perceptions of friendship and the concept of 'mate crime', (2020) 35 (7) *Disability and Society* 1103-1123, 1103.

⁶ Article 12, United Nations Convention on the Rights of Persons with Disabilities. Online. Available at: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html> (accessed 20 Aug 2021).

⁷ Article 13, United Nations Convention on the Rights of Persons with Disabilities. Online. Available at: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html> (accessed 20 Aug 2021).

the Oireachtas' agenda. AsIAM has developed a range of innovative supports for Ireland's autism community; as well as providing vital information and advocacy supports, we have also delivered several nationally and internationally renowned training and accreditation programmes for businesses and services to become autism-friendly.

Executive Summary

- **Mainstream autism and neurodiversity into the Courts Service's future plans on physical and virtual accessibility, including the use of virtual courtrooms.**
- **Increase resources to ensure that autistic people have full access to court buildings in accordance with Universal Design principles, to meet the autism community's diversity of needs. Such measures should include access to quiet spaces, providing separate waiting areas for witnesses and defendants, accessible signage, flexible court schedules, reducing sensory stimuli and other measures. Mainstream these access considerations into all future builds and renovations.**
- **Ensure that all information related to the court's activities and proceedings is fully accessible to the autistic community, including the development of Easy-to-Read materials and Social Stories.**
- **Ensure that all courts put pre-trial preparation/support in place for autistic people, including courtroom visits in advance of the hearing, and information on what to expect at court.**
- **Provide measures for courts to facilitate family members, advocates, 'appropriate adults', to support autistic people throughout the court process if they need it.**
- **Ensure that the courts have the option to facilitate ways of making court hearings less formal and intimidating for autistic people, including the removal of gowns/wigs, the use of pre-recorded evidence or the use of Plain English.**
- **Coordinate with relevant stakeholders to ensure that court staff receive timely information about an autistic person's access needs, including other disabilities or mental health conditions, before their case reaches court.**
- **All Court Service staff, legal professionals, Gardaí and prison staff should receive the appropriate information, including Autism Acceptance and Understanding Training and Disability Equality training on how to engage**

with autistic people and disabled people, based on best practices and delivered by autistic-led and disability-led organisations.

Are there sufficient numbers of courthouses/courtrooms throughout the State and are they sufficiently resourced?

AsIAM cannot directly speak to whether or not there are sufficient numbers of courthouses and courtrooms throughout the State. We would not be privy to the kind of data around courthouses and the number of cases that each court building would have to go through in a given year. What we can say, however, is that the COVID-19 has no doubt had a significant impact on the workload of the courts. It is important, therefore, to note there have been significant delays to some of the cases in which members of the autism community have been involved.

It is also important to be mindful of the opportunities COVID-19 has presented, not just in making courts physically accessible to people with disabilities, but also the potential to promote Digital Justice⁸ as a means of ensuring that more autistic people can access the courts and vindicate their rights. The pandemic has created an opportunity for those who feel that the Court system is not accessible. Virtual courtrooms have given many disabled people a more accessible route to the courtrooms/courthouses in Ireland, which removes some of the concerns above (i.e., the intimidating atmosphere of the court building, the formality of legal proceedings, etc.).

AsIAM, given the information we *are* privy to, does not believe that at this point in time that courthouses/courtrooms are sufficiently resourced to fully meet the access needs of Ireland's autistic community. Many autistic people and their families in correspondence with us have relayed their stressful experiences in accessing courts in terms of accessing facilities adjacent to the court, which can be attributed to gaps in training or understanding among Court Service staff and legal professionals. The sensory impact of being at court itself, particularly during busy periods, can also be overwhelming for many on the spectrum who might be sensitive to lights, crowds or noise, and the need to hear evidence from autistic people at court, given the often adversarial nature of proceedings,

⁸ Courts Service of Ireland 'Supporting Access to Justice in a Modern, Digital Ireland - Long Term Strategic Vision 2030' <https://iwla.ie/wp-content/uploads/2020/11/Long-Term-Strategic-Vision.pdf> (accessed 20 Aug 2021), p. 4, 10.

can pose significant barriers to accessing courtrooms and by extension accessing justice for the autism community.

In summary, AsIAM believes that additional resources need to be in place so that not just courtrooms/courthouses are fully accessible, based on Universal Design principles. court staff and legal professionals must receive sufficient training and support to ensure that autistic people can fully access the legal system and have their rights vindicated.

Recognising the need to maintain and modernise courthouses while acknowledging the importance of such buildings from historical and heritage and economic perspectives.

AsIAM understands the importance of maintaining and modernising courthouses whilst also recognising the need to preserve their character and integrity. However, from an accessibility perspective, many of Ireland's court facilities are lacking not just in terms of disability access, but also in integrating autism and neurodiversity into wider disability considerations within the Courts Service.

Autistic people, and disabled people more widely, face a wide range of accessibility issues. The lack of a separate waiting venue for witnesses and defendants is seen as a key issue, as well as the formality and authority of court buildings, signage, and the language and tones used by Court Service staff, which can be intimidating and confusing to many within the autistic community. Architectural barriers, rigid scheduling, the lack of use of stimming/comfort breaks, lack of access to quiet spaces, and lack of training can compound lack of access to courts, even though legislation such as the Disability Act enshrines that all public buildings, including courts, must be fully accessible to people with disabilities⁹. These are all issues that should be addressed to make the courts more accessible to Ireland's autism community.

Are courthouses currently equipped to provide separate entrances and waiting areas for victims and the accused?

⁹ Section 25, Disability Act 2005.

AsIAM does not believe that any meaningful number of operational courthouses are presently equipped to provide separate entrances and waiting areas for particular parties (e.g., witnesses, victims, the accused, etc). Given the potential vulnerability of one or both parties involved, this should be addressed as a major accessibility issue for autistic people, and should be mainstreamed into all future builds and renovations planned for courthouses.

Are courthouses appropriately equipped with facilities and interview suites, particularly for those who may be considered vulnerable or those with visible and invisible disabilities?

AsIAM does not believe that many courthouses are presently equipped with facilities that meet the autism community's diverse profile of needs, particularly in regards to the sensory environment, and physical accessibility more generally. For instance, many of the interview suites and meeting rooms used would use harsh fluorescent lighting, bright colours, that may be located near courtrooms or busy corridors, and may be subject to background noise from proceedings, and there may be a lack of accommodations that meet an autistic person's sensory needs. This is because an autistic person may find these environments to be overwhelming, and being asked to be interviewed by a barrister or solicitor may serve to add to the worry or distress without having additional support or accommodations in place. Some autistic people may also require access to things that might address their sensory needs, such as dimmers (e.g, sunglasses or earplugs if needed). Moreover, members of our community may need access to additional supports, such as information about their rights, or access to an *"appropriate adult"* if they are vulnerable, or separate entrances.

A persistent lack of clear guidelines for Court Service personnel on how to provide supports for people with disabilities in court is a major barrier to accessibility. Chief among these supports include providing interpreters or advocates in court, and allowing different modes of giving evidence that meet their communication needs, and for all in the legal community to presume that all autistic people have the right to decide on how they wish to engage in the legal process. It is also crucial to stress that agencies involved in the legal process have the capacity to identify when a person identifies as autistic, and communicate this to Court Service staff so that Reasonable Accommodations can be put in place in a timely manner.

At present, few of these recommendations, if any, are formally in place and all need to be addressed as a matter of urgency.

AsIAM¹⁰ recommends that:

- Pre-trial preparation/support be put in place for autistic people. This may include a visit to the courtroom and the court building in advance of the proceedings, or others that provide assistance on what to expect in the courtroom.
- The Court Service provide an option for facilitating informal support, through family members, advocates, 'appropriate adults', throughout and during the time of the court hearing.
- The Courts Service have measures in place to make the process of going to Court less formal and intimidating for autistic people. This may include the removal of gowns/wigs as in Family Court proceedings, the use of videolink or pre-recorded video evidence, and any accommodations which address an autistic person's sensory needs, such as the relaxation of dress codes, regular comfort/stim breaks or access to a quiet space.
- That an autistic person's disability and their support/access needs should be formally recognised and communicated to Court Service staff and the judiciary should happen before their case reaches court.
- Judges and barristers should receive appropriate information and best practices training regarding how to communicate and engage with autistic people, as either witnesses, defendants and plaintiffs, as well as people with all forms of disabilities more generally.
- More accessible court environments, whether in terms of the provision of information (such as Social Stories or Easy-to-Read), making court buildings physically accessible to disabled people more generally, or the greater use of more flexible court schedules to adapt to an autistic person's access needs.

¹⁰ Many of these recommendations are based on the work of Claire Edwards and Shane Kilcommins on Access to Justice for People with Disabilities. See C. Edwards, G. Harold, and S. Kilcommins, 'Access to Justice for People with Disabilities as Victims of Crime in Ireland' <http://nda.ie/nda-files/access-to-justice-for-people-with-disabilities-as-victims-of-crime-in-ireland1.pdf> (accessed 20 Aug 2021).

In view of the COVID-19 pandemic, are courthouses structurally suitable to ensure social distancing and have the facilities to conduct remote participation?

As our organisation lacks sufficiently direct experience in this regard, we cannot immediately answer that question with specific reference to COVID-19 and the suitability of courts to ensure social distancing.

In the issue of remote participation, however, depending on the context and nature, AsIAm believes that this would be particularly useful to include the option to provide evidence or attend court over video link or to submit pre-recorded evidence as an accommodation for the autism community. We note that this is already used by children and vulnerable adults, particularly where the case may involve abuse or sexual offences, and propose that this would be particularly helpful for making the legal system more accessible to those on the autism spectrum. We also believe that having court sittings involving autistic witnesses and defendants during quieter parts of the day, as well as greater use of 'appropriate adults', advocates/supporters or family members, might help make the experience of attending court less intimidating and pressurising for many autistic people, particularly those who might be experiencing trauma.

Are there sufficient facilities/accommodations in courthouses to allow for engagement between legal advisors and their clients?

AsIAm does not believe that those jury rooms are equipped with facilities that meet the diversity of needs of the autism community, particularly with regards to the sensory environment, access to accessible information, quieter rooms where both parties can engage without any unnecessary sensory distractions.

Legal jargon and the way that certain legal practitioners speak, used both during and outside of court settings, can also pose a significant access barrier to autistic people and their families, as this can be confusing and difficult to follow, particularly for those unfamiliar with the legal process. The adversarial nature of the court system, the legal system's emphasis on 'orality,' and the need to communicate verbally to participate in court proceedings can pose significant barriers to many autistic people, particularly those of are non-speaking (non-verbal) or partially speaking (pre-verbal), and who need

additional supports, such as the use of assistive technology or augmentative and alternative communication to fully participate in the proceedings. How barristers cross-examine witnesses can also be significantly intimidating to autistic people, including the types of questions that may be asked, as well the speed and tone in which they may ask these, and that this should also be addressed to make the legal process more accessible to autistic people who need these supports.

Challenging stereotypes around autism within the legal community is another issue to be addressed to make the court process more accessible. Some of these biases can be attributed to the uncertainty from barristers and the judiciary on how to best engage with autistic people and their families, and on misconceptions surrounding what it is like to be autistic on an individual basis. Some legal professionals may harbour doubts about an autistic person's competence or capacity to be a reliable witness, or to fully participate in the broader legal process. Indeed, our organisation has also received anecdotal evidence from correspondence with our community members about several incidents whereby an autistic person's diagnosis might even be used against them during legal proceedings.

The UNCRPD has enshrined that *all* people with disabilities, including autistic people, have the legal capacity to participate in court proceedings with the right supports put in place. This highlights the clear need for the judiciary and the legal community to receive full training on best practices in [Autism Acceptance and Inclusion](#), neurodiversity and Disability Equality Training (DET) from autistic-led and disability-led organisations and disability rights advocates.

AsIAm recommends that:

- Formalising clear, concise information, step-by-step instructions and the acceptance of the legal community of other forms of communication, and not just verbal communication, will go some way to addressing some of the gaps in communication between the legal community and autistic people and their families.
- Providing regular, and accessible information to participants around the different stages of hearings, how their case is going and what will happen next.
- Legal professionals should receive training on best practices on both Autism Acceptance and Inclusion, as well as Disability Equality Training.

- Legal professionals to receive timely information on an autistic person's access needs.

Are jury rooms adequate to accommodate juries who are providing a valuable service to the State?

AsIAM does not believe that jury rooms are equipped with facilities that meet the diversity of needs of the autism community, particularly with regards to the sensory environment. For instance, many of the interview suites and meeting rooms use harsh fluorescent lighting, bright colours, may be subject to background noise from proceedings, noises from within the room itself, and there may be a lack of accommodations that meet an autistic person's sensory needs.

An autistic person may find it to be overwhelming, and being asked to be interviewed by a barrister or solicitor may serve to add to the worry or distress without having additional support or accommodations in place, particularly if jury rooms are full. Some autistic people may also require access to things that might address their sensory needs, such as dimmers (such as sunglasses or earplugs if needed), stim breaks, or having access to quiet spaces or quiet parts of the building to regulate themselves, particularly when deliberations are made. At present, few of these recommendations, if any, are in place and all need to be addressed as a matter of urgency.

Noting that justice must be done and must be seen to be done, are there adequate facilities for media coverage, where appropriate?

As this is not within our area of expertise, AsIAM would not be in a position to answer this question. AsIAM notes that media coverage around court cases involving autistic witnesses and defendants can often be sensationalised or based on outdated preconceptions about autism, and fuel misconceptions and stereotypes that the general public may have around autism. Whilst there may be autistic people who engage in wrongdoing or criminal activity, **being diagnosed with autism does not in itself cause a person to commit crimes or harmful behaviour.**

Our [Language Guide](#) may be helpful in terms of providing clarity on misconceptions surrounding autism. It provides guidance around how to best cover legal proceedings which involve autistic people, and other members of the autistic community.

Is there sufficient IT support in courts to provide for the use of technology in courtrooms for children and minors attending court?

As this is not within our area of expertise, AsIAM would not be in a position to answer this question. However, all technology used should comply with best practices in digital accessibility, including the [Web Content Accessibility Guidelines](#), the [EU Accessibility Act](#), and the National Disability Authority's [Customer Communications Toolkit for the Public Service](#).

Are courthouses geographically located in places that are easily accessible for those that need to attend them?

As this is not within our area of expertise, AsIAM would not be in a position to directly answer this question. However, we appreciate that geographic access looks very different to people living in different parts of the country, which does have a tangible impact on some autistic people's ability to attend court proceedings. For this reason, **AsIAM believes that autism should also be mainstreamed into wider geographical considerations when locating courthouses.**

Is security adequate in courthouses – is there a case for the presence of a “Court Garda”?

As this is not within our area of expertise, AsIAM would not be in a position to fully answer this question. AsIAM believes that all Court Service staff, including Court Gardaí, should be fully trained on [Autism Understanding and Acceptance](#) based on best practices on autism inclusion.