

Professor Felicity Gerry QC

Trauma Informed Courts Information Sheet

Experts agree, however, that essential components of trauma informed include awareness of the prevalence of trauma, understanding about the impact on service utilisation and engagement, and commitment to incorporating those understandings in policy, procedure and practice (Yatchmenoff et al 2017)

The pervasiveness of trauma can create acute challenges for the criminal justice system by the negative impact of trauma on recall, coherence and evaluation of credibility and the ways in which the court process itself may entrench and augment vulnerabilities.

Courts taking a trauma informed approach is an integral aspect of procedural fairness and any failure to do so impacts on court integrity.

Trauma-informed systems within institutions enable voice opportunity, the perception and experience of inclusion, transparency and fairness, which can increase trust and confidence in court authority. Accordingly, lawyers and judges need to be able to recognise trauma in court users and to reflect on the risks of secondary stress for themselves, particularly in cases involving vulnerable people or gruesome evidence.

Research into justice processes has suggested that applying a ‘trauma informed lens’ to criminal justice policy can help to tackle the negative impact of trauma on witness ability to participate fully and effectively within the criminal justice process. It will also have tangible, and often progressive, implications for how many vulnerable suspects and defendants are dealt with and it can cast light on vicarious trauma to all court users including police, prosecutors, defence counsel, judges, and jurors.

What is Trauma in Justice Systems?

Stress or emotional distress can encompass and lead to a range of conditions which might be capable of classification as trauma, some severe. Many aspects of trauma can manifest during the criminal justice process as emotional or psychological reactions to certain stress events. Roslyn Carnes used the following:

Trauma is therefore an event or process which overwhelms the individual, family or community and the ability to cope in the mind, body, soul (and) spirit (Aitkinson 2002).

Carnes argues that this definition is culturally sensitive and covers the full range of potential impacts of traumatic experiences. It can be developmental, formed over time, to a significant a serious effect and largely unacknowledged with associated behaviours judged as problematic. Ellison and Munro found that a wide variety of experiences can provoke trauma. Reactions can vary depending on a range of factors including any originating stressor, prior history, support available and individual personal resilience. Once provoked, effects can be serious and debilitating and, for some, sufficiently prolonged and unmanageable to lead to specific medical conditions, manifesting in both physical and mental health difficulties. This in turn can affect coherence, consistency and credibility which can be used to undermine reliability.

These challenges can be exacerbated where there are cultural or linguistic differences or an educational background that lead to struggles constructing a recognised narrative. Impeachment of a witness is a method of advocacy that can be the most damaging in the context of trauma whilst at the same time being a recognised method of testing evidence called by the prosecution where there is a requirement to prove a criminal charge beyond a reasonable doubt. It must be remembered that, in a criminal trial, the allegation made by a witness whose evidence is challenged is not agreed by the defendant. This places a burden on the advocate to test the witness evidence and present her client’s case. It is a high -octane environment. For a complainant, witness, or defendant, relaying a traumatic event can produce “memories that are fragmented, lacking in specific detail and difficult to position in a linear narrative”. Trauma can create inconsistent or incomplete accounts and accounts may shift as those affected try to come to terms with the event and the effect upon them. Add to this the effect of cases, largely unresearched, on advocates, judges and jurors and we have the perfect storm of trauma risk being unacknowledged and unaddressed.

What is Procedural Fairness?

Research on procedural fairness perhaps unsurprisingly shows that it can enhance public trust and confidence in the administration of justice. Burke and Leben in 2008 identified the four landmarks of Procedural Fairness: Voice, Neutrality, Respectful Treatment and Trustworthy Authorities:

- **Voice** – the ability to participate in the case by expressing their viewpoint
- **Neutrality** – consistently applied legal principles, unbiased decision makers and a transparency about how decisions are made
- **Respectful treatment** – individuals are treated with dignity and their rights are obviously protected
- **Trustworthy authorities** – authorities are benevolent, caring and sincerely trying to help the litigants – this trust is garnered by listening to individuals and by explaining or justifying decisions that address the litigants needs

Professor Cheryl Thomas and Dr Dylan Kerrigan have identified five additional elements to procedural fairness: **Accountability, availability of amenities, access to information, inclusivity and understanding**. They have found that for a system to be trustworthy, reliable and morally authoritative and then for justice to be done and seen to be done, it is not trite to suggest it has to be done with transparency and accountability and by contributing to a “felt sense of social justice” to the community it serves.

Whilst accepting there had been substantial strides in the context of victim participation, Felicity’s research has taken that concept one step further: If we accept an obligation to be more responsive in the handling of vulnerable participants, not just victims, then acknowledging the extent to which criminal justice system strategies can bear significant health ramifications requires attention to the court system as a whole from the perspective of all users. Accordingly, drawing on the experience of trauma informed care can provide value in criminal justice processes.

Driving an ‘all of court’ approach to develop trauma informed processes that cater for witnesses (including complainants), suspects and defendants, investigators, lawyers (prosecution and defence), judges, jurors and court staff through consideration of therapeutic courts as a factor in service delivery also suggests that change can be court driven with structured assessment and planning and building appropriate frameworks for understanding and mutual respect to secure public trust and confidence in the administration of justice.

Felicity Gerry QC Trauma Informed Courts Video



[Professor Felicity Gerry on Trauma Informed Courts](#)



[Felicity's series on Social Media for Lawyers](#)

Felicity's Trauma Informed Courts and procedural Rights publications

- Felicity Gerry, ‘Trauma-informed courts (Pt 1)’ (2021) 171(7919) *New Law Journal* 16
- Felicity Gerry, ‘Trauma-informed courts (Pt 2)’ (2021) 171(7922) *New Law Journal* 16
- Felicity Gerry and David Woodroffe, ‘Anunga 40 Years On’ in Penny Cooper and Linda Hunting (eds), *Access to Justice for Vulnerable People* (Wildy, Simmonds & Hill Publishing, 2018).
- Felicity Gerry, ‘Vulnerable Witnesses and Parties in all Civil Proceedings – Dignity, Respect and The Advocate’s Gateway Toolkit 17’ in Penny Cooper and Linda Hunting (eds), *Access to Justice for Vulnerable People* (Wildy, Simmonds and Hill Publishing 2018), 20.

- Felicity Gerry and Penelope Cooper, 'Effective participation of vulnerable accused persons: case management, court adaptation and rethinking criminal responsibility' (2017) 26(4) *Journal of Judicial Administration* 265.
- Felicity Gerry, 'Vulnerable witnesses and parties in Civil proceedings – Dignity, Respect and The Advocate's Gateway Toolkit' in Penny Cooper and Linda Hunting (eds), *Addressing Vulnerability in Justice Systems* (Wildy, Simmonds and Hill Publishing, 2016) 17

Felicity's Trauma Informed Courts Training and CPD Delivery

- Felicity Gerry, 'Trauma Informed Lawyering' (Speech, Youth Justice Legal Centre UK, 2021).
- Felicity Gerry, '[Trauma Informed Courts](#)' (Webinar, Third International Advocacy Conference, 31 July 2019).
- Felicity Gerry, 'Declining to prosecute young and vulnerable drug dealers:- lessons from the UK County Lines Violence, Exploitation and Drug Supply investigation into criminal networks and the law on Human Trafficking' (Speech, Mt Gambier Magistrates Court, 2019).