

Research Paper

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**What, if anything, might be utilised from different models of trauma-informed practice in providing legal support to women affected by the criminal justice system?**

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**Executive Summary**

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## Executive Summary

### Background

Incidence of trauma amongst women involved in the criminal justice system is significantly higher than that of the general population and is regularly linked with women's offending. In recent years there has been growing interest in trauma-informed practice which seeks to recognise and respond to the prevalence of trauma. This interest has spread to the criminal justice sector, with numerous prisons, probation services and the third sector in the UK all experimenting with implementing trauma-informed approaches. Contact with a legal professional is a common thread that runs through many women's journeys through the criminal justice system but, in the UK at least, has not been explored as an area in which the aforementioned trauma-informed practices could be utilised. Through hearing the voices of women that have worked with lawyers and the voices of lawyers themselves, this study seeks to examine the extent to which trauma-informed approaches could be usefully implemented at this 'touchpoint' in the criminal justice system and whether lawyers could become part of the trauma-informed offer for women.

### Key Findings:

Analysis of the key findings of this research revealed three main themes:

#### Trauma Dynamics Replicated

The extreme helplessness experienced during trauma was re-experienced through the criminal and family justice systems in women's powerlessness in relation to the *experience* of justice proceedings (rather than the legal outcome). Women repeatedly came up against systemic issues which increased feelings of helplessness and therefore mirrored trauma dynamics. For example:

- Feeling out of control: Issues such as not knowing who her representative would be, changes in representation and not having opportunities to speak with her legal team before court or between meetings meant that women often felt completely out of control.

- Silencing: Women experienced multiple barriers to being able to tell their side of the story and feel that they were heard in the justice process. Lack of time to build a relationship with a legal representative, being seen by multiple different people, feeling like they were being treated like a 'tick-box', having to repeat traumatic information and being required to speak in an intimidating public forum about deeply traumatising information were some of main barriers that prevented women from being heard and contributed to re-traumatisation.

### **The Lawyer's Role**

Women's relationships with their lawyer held importance outside of the legal outcome in two areas:

- a) As an interface with the 'system' and how it was experienced.

Whilst lawyers were not necessarily in a position to change systemic issues, they were sometimes able to use their position to moderate clients' experience of the system through simple actions such as ensuring processes were clear, creating space for women to actively input into the justice process, allowing women to choose meeting venues, arranging tours of courts or by requesting special measures.

- b) As someone held an individual relationship with the woman which in itself had the potential to be either a retraumatising relationship or a reparative one.

Lawyers also played a key role as someone who held a relationship with a woman that could be grounded in principles that are *not* traumatic by balancing emotionality with professionalism and utilising some of the key principles of trauma informed practice.

Lawyers had generally not received any specialist instruction on representing women or working with trauma, either during their legal education or within any continuing professional development. They also had to handle the emotional burden of working with trauma without formalised support which resulted in far-reaching personal consequences for lawyers interviewed and their colleagues.

### **The Role of Trauma**

There are risks to lawyers centering a woman's potential experiences of trauma when representing them, namely:

- a) The psychological danger of pushing women to speak about and therefore potentially relive trauma or what Rosenblum calls 'the dangers of telling' (Rosenblum 2009), in particular where the lawyer does not then have the skills or capacity to adequately respond and follow up to address trauma.
- b) The legal 'double-edged sword' of submitting trauma in mitigation where it may be viewed instead of a mitigating factor as an indicator of future risk (Youth Justice Legal Centre 2021).

## Conclusions & Recommendations

There is much that can be taken from trauma-informed practices by individual legal representatives to improve women's experiences if this is done with care and attention to the potential for re-traumatisation if the lawyer steps too far beyond the boundaries of their role. However, given the systemic nature of many of the issues raised, whilst individuals in the system can practise trauma-informed care, women are still likely to experience trauma at the hands of the system.

The recommendations of this report focus on the changes to practise that could be made in respect of the lawyer-client relationship, with the hope that small-scale change can have an immediate and material impact on women's experiences as they travel through the criminal justice system.

## Recommendations

### **Recommendation 1: Continuous Professional Development (CPD) for lawyers which covers the basic principles of gender- and trauma-informed lawyering**

Bespoke CPD training should aim to provide lawyers with a basic grounding in trauma theory, its links to gendered offending and the implications of this for the lawyer-client relationship. It should also provide a set of easily implementable universal trauma-informed strategies. Such a CPD course would cover the following topics:

- a) Gendered pathways to offending, including experiences of abuse,
- b) Implications of experiences of trauma on the lawyer-client relationship,
- c) Practical and 'universal' trauma-informed strategies that a lawyer can implement in their practice,

- d) Recognising potential signs of trauma in clients
- e) Using already-available strategies in the justice system to support trauma-specific work with traumatised clients
- f) Making onward referrals to support trauma recovery
- g) Recognising and addressing secondary trauma in oneself.

Such CPD would be applicable not only to lawyers practising criminal law but also to those working in areas such as immigration, family law, international law and other areas of civil law such as tort law.

### **Recommendation 2: Inclusion of gender and trauma-informed competence in legal qualifying assessment specifications**

Explicit reference to the relevance of gender and trauma in relation to responding to diversity should be included in the Solicitor's Qualifying Exams Assessment Specification and the Bar Course Curriculum and Assessment Strategy. This would ensure that gender- and trauma-competent lawyering become embedded and would improve practice across the board rather than just for those with a special interest in this area.

### **Recommendation 3: Increase use of already available strategies to promote women's participation in the justice process**

Lawyers, as the interface with the system could utilise a number of already available strategies to promote greater control for defendants and reduce the very real risks of re-traumatisation that the women interviewed in this study spoke about. This includes utilising trauma-informed practices in private meetings with clients (such as grounding techniques), utilising available adaptations within the system i.e., presenting sensitive mitigation information to judges in private or in pre-sentence reports instead of in open court, and providing defendants with the opportunity to see courtrooms before appearing in court. Lawyers should also promote the use of special measures for defendants where the criteria are met and where it is thought that this would increase their ability to participate.

**Recommendation 4: Creation of directory of women’s centres that support women involved in the criminal justice system to enable lawyers to refer women to appropriate support**

Lawyers need access to a directory of women’s services in order to easily signpost or make onward referrals for women who disclose trauma. Women’s centres provide a one-stop shop where women can have a variety of their needs met and have been shown to provide a range of benefits for women who access them (The Tavistock Institute, 2019). A national directory of women’s centres would support lawyers to make onward referrals to services which support women to address the underlying needs which brought them into the criminal justice system and contribute to reducing reoffending.

**Recommendation 5: Increase awareness of secondary trauma and access to support for legal professionals**

The recognition and management of secondary trauma should be included in the bespoke CPD package on gender- and trauma-informed lawyering (as per recommendation 1). In addition, professional associations such as The Law Society and The General Council of the Bar should have available information, resources and awareness-raising in place to promote an increased understanding of vicarious trauma in law and to promote uptake of support.

ENDS