

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?’

Becky Fédia

www.thegriffinsociety.org

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Abstract

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. 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. The findings of this research show that through participating in trust-building, collaboration and emotional connection, lawyers can influence the extent to which women experience the lawyer/client relationship as healing or harmful, as well as influencing their experience of the wider system. They also highlight the reality that individual lawyers are woven into a wider system that presents many systemic barriers to trauma-informed working. As such I argue that, whilst there is much that can be taken from trauma-informed practice by individual lawyers to improve the experiences of women in the criminal justice system, there are limitations to these improvements without wholesale system shifts. Being informed about trauma is not enough. Care that truly responds to women's trauma requires a system-wide change process with buy-in from those operating at the highest level. This research concludes with a series of recommendations that focus on the lawyer-client relationship as the most feasible domain for the implementation of small changes to practise that could have an immediate positive impact on the experience of women going through the criminal justice system.

Chapter 1: Introduction

Incidence of trauma, defined as an ‘inescapably stressful event that overwhelms a person’s capacity to cope’ (van der Kolk and Fislser, 1995), amongst women involved in the criminal justice system is significantly higher than that of the general population. A 2012 study using longitudinal data from the Stockholm Birth Cohort Study also suggests that women who offend have experienced more social issues than the corresponding male offending populations (Estrada and Nilsson, 2012).

Growing bodies of research suggest that nearly 60% of women in prison and serving sentences in the community have been victims of domestic violence as adults (Swaine-Williams, 2022) and more than half (53%) report having experienced emotional, physical or sexual abuse as a child compared to 27% of men (Light, Grant and Hopkins, 2013). Nearly a third (31%) of women in prison spent time in care as children (Ministry of Justice, 2012). Such inter-relational trauma has the capacity to compromise self-development (Courtois and Ford, 2009), which can itself contribute to offending (Ardino, 2012).

The UK Government’s 2018 Female Offender Strategy acknowledges this:

We must take steps to understand and address the underlying causes of offending...The evidence shows us that vulnerability is not just a consequence of crime. It can also drive offending behaviour and prevent people from breaking out of a cycle of reoffending. This is particularly stark when we look at female offenders. (Ministry of Justice, 2018, p. 3)

In recent years, work has been done to explore the idea of implementing ‘trauma-informed’ approaches, which seek to recognise and respond to the prevalence of trauma, within prison environments in particular (Covington and Russo, 2016; Petrillo, Thomas and Hanspal, 2019, 2021; Lomani and Brooker, 2022). Yet the concept of implementing trauma-informed care within a setting which by its very nature is coercive and hostile (Jewkes *et al.*, 2019), is problematic, in part due to the potential for up-tariffing (Lomani and Brooker, 2022) but also due to the inherent paradox of deprivation of liberty and trauma recovery (Iles, Tsintsadze and Weinberg, 2022). As Judith Herman

states, 'no intervention that takes power away from the survivor can possibly foster her recovery' (Herman, 1992, p. 133).

The Female Offender Strategy (2018) again appears to align with this mode of thinking, explicitly stating the government's intention to reduce the number of women entering the criminal justice system by intervening earlier with support in the community (Ministry of Justice, 2018, p. 6). Despite this, there has been an underwhelming commitment to concrete strategies, targets and the necessary financial support to enable this shift (Committee of Public Accounts, 2022; National Audit Office, 2022). In 2022, over fifteen years since Baroness Jean Corston (Corston, 2007) concluded that prison is not the right place for women who are not a risk to the public, 66% of the female prison population were convicted of non-violent offences (Ministry of Justice, 2022) and the government has recently affirmed its commitment to creating an additional 456 prison spaces for women (Justice Committee, 2022).

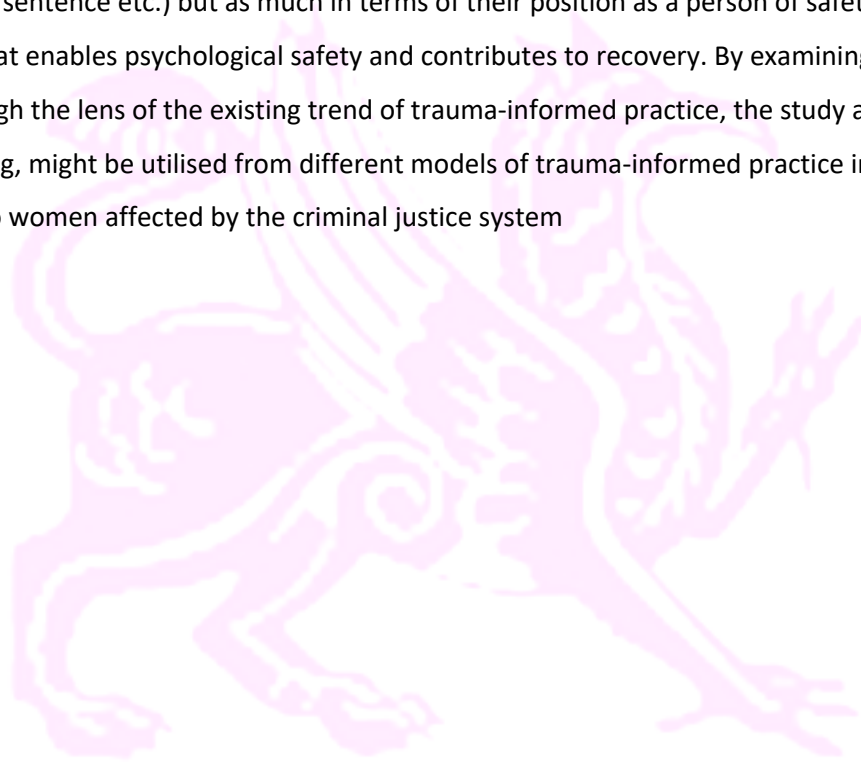
The picture in the community is perhaps less bleak. The UK Government has outlined its commitment to trauma-informed care being delivered to women on probation (Ministry of Justice, 2018, 2020) and a recent study shows areas of promising practice within probation services (Petrillo and Bradley, 2022). The labelling of care as trauma-informed care has also become popular within voluntary sector organisations serving criminal justice-involved women in the community (The Centre for Social Justice, 2018; Brighton Women's Centre, 2022; Women in Prison, 2022). Yet despite their critical role in a woman's journey through the criminal justice system, lawyers have rarely formed part of the picture of 'services' offered to women that have the potential to contribute to their recovery.

According to the Ministry of Justice, in 2021, over 200,000 female defendants were proceeded against by magistrates' courts (21% overall) (Ministry of Justice, 2022). Around 15% of these women (29,376) had legal aid representation in the magistrates' court (Ministry of Justice, 2022). A further 86,636 women had other forms of crime-related legal aid support including police station representation, prison representation and crown court support (Ministry of Justice, 2022). More still will have been represented privately.

From representation at a police station following arrest through to appearances in court, contact with a legal professional is a common thread that runs through many women's journeys through the criminal justice system. Despite this pervading presence, literature on the extent to which the role of

a defence lawyer is amenable to trauma-informed practice remains sparse. Only in recent times has the role of the lawyer been examined as one that has the potential to influence the quality of experience of traumatised defendants and their likelihood of experiencing further harm from the criminal justice process (Kraemer and Patten, 2014; Katz and Haldar, 2015; Peña, 2019; Doughty Street Chambers, 2021; Law Society of Scotland, 2022).

Through hearing the voices of legal professionals who have defended women and women who have needed support from lawyers, this study seeks to draw out the potential of the role of the lawyer to impact a woman's journey through the criminal justice system not just in terms of the legal outcome (i.e. conviction, sentence etc.) but as much in terms of their position as a person of safety who can provide care that enables psychological safety and contributes to recovery. By examining this potential through the lens of the existing trend of trauma-informed practice, the study ascertains 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



Chapter 2: Literature Review

2.1 Introduction

This literature review begins by briefly examining the concept of trauma-informed support and the existing literature on trauma-informed lawyers. It then examines the role of the lawyer with broad regard to Harris and Falot's five basic principles of trauma-informed practice; safety, trust, choice, collaboration and empowerment (Falot and Harris, 2008). Finally, the review collates some other relevant literature on structural barriers to trauma-informed working for the legal profession.

2.2 A 'trauma-informed' approach

In order to understand what is meant by 'trauma-informed' practice it is first necessary to define trauma. Trauma is used as a catch-all term for both an incident which is seen as traumatic and the subsequent effects of the incident on an individual. However, what constitutes trauma to one person may not be seen as traumatic by another and the effects of any given event will be experienced differently by each individual. Trauma can therefore be best defined by combining the qualities of the incident and its after-effects, as an 'inescapable stressful event that overwhelms people's coping mechanisms' (van der Kolk and Fessler, 1995, p. 505).

Interest in experiences of childhood trauma and their effect on outcomes in adult life has increased, particularly since the publication of the field-defining Adverse Childhood Experiences study (Felitti *et al.*, 1998). It is widely documented that experiences of childhood trauma have a significant impact on an individual's risk of involvement in the criminal justice system (Messina and Grella, 2006; Currie and Tekin, 2012; Edalati and Nicholls, 2019). With this in mind, some work has been done to explore the idea of implementing trauma-informed approaches within the UK criminal justice sector including prisons (Covington and Russo, 2016; Petrillo *et al.*, 2019; Lomani and Brooker, 2022), women's centres (The Centre for Social Justice, 2018; Women in Prison, 2022) and probation services (Petrillo and Bradley, 2022).

Yet despite (or perhaps because of) the growing popularity of the term ‘trauma-informed’, there is no agreed framework or implementation strategy across the UK or the criminal justice sector (Emsley *et al.*, 2022).¹ Numerous frameworks, working definitions, principles and guidelines which could be used exist,² but the nuances of these, and their applicability to sector-specific circumstances or services vary considerably (Elliott *et al.*, 2005; Fallot and Harris, 2008; Substance Abuse and Mental Health Services Administration, 2014; Wilton and Williams, 2019). This risks trauma-informed services becoming a trend of nomenclature with piecemeal implementation (Emsley *et al.*, 2022) which falls short of the necessary change to the culture and delivery of systems and services.

Harris and Fallot (2008) conceptualise a trauma-informed approach as having five central principles around which services should be designed; safety, trust, choice, collaboration and empowerment for everyone (Harris and Fallot, 2008). As such, trauma-informed may best be conceptualised as an approach and a set of ideals which sit behind the delivery of a service and which materially change the entire culture of that service, including hiring practices, policies, governance and service delivery. This culture recognises the prevalence of trauma; ensures that care providers are equipped with knowledge about how trauma affects individuals; and responds by putting this knowledge into practice, including through avoiding re-traumatisation (Substance Abuse and Mental Health Services Administration, 2014, p. 9). Many existing frameworks also make note of the importance of ensuring that service providers are themselves supported to recognise and respond to their own exposure to trauma through their work (NHS Education for Scotland, 2017). Trauma-informed care is usually implemented ‘universally’, in that the same care is provided to all users of the given service regardless of whether there is explicit knowledge of their trauma (Kubiak, Covington and Hillier, 2017). This both acknowledges the prevalence of trauma and recognises and responds to the difficulty of speaking out about experiences of interpersonal trauma by not requiring individuals to disclose their experiences of trauma in order to receive a service that may be better suited to their needs.

¹ A toolkit for planning and developing trauma-informed services *does* exist in Scotland (Homes and Grandison, 2021) and there are some ongoing attempts to standardise care in a bid to provide quality assurance such as the One Small Thing ‘Quality Mark’, which provides three-tier recognition (trauma aware, trauma informed and trauma responsive) for organisations that can evidence meeting standards set out in their framework (One Small Thing, 2020).

² As a point of interest, various models are compiled in a compendium in Annex A - it is to be noted that this list of models is not exhaustive and there are many other frameworks and models in use throughout the criminal justice and other sectors, both in the UK and globally.

Covington (2022) distinguishes between being trauma-sensitive, trauma-informed and trauma-responsive services. Whilst being trauma-informed can assist providers in understanding client behaviour, she argues that in order to ‘minimise damage and maximise opportunities for healthy growth and development’ (Covington, 2022, p. 173), services must go further become trauma-responsive, incorporating changes at all levels to create true culture change.

2.3 Trauma Informed Lawyering

According to Katz and Haldar, who teach trauma-informed lawyering in the US, it involves recognising trauma, adapting the relationship with the client and the defence strategy accordingly, and taking steps to manage one’s own vicarious trauma (Katz and Haldar, 2015). In their guide on trauma-informed lawyering for young people, the Youth Justice Legal Centre categorises the steps of trauma-informed lawyering for young people as being: identifying a traumatised client and using evidence of trauma to support legal strategies (Youth Justice Legal Centre, 2021). Some existing literature acknowledges the importance of trauma-informed lawyering for victims and/or children (Feierman and Ford, 2016; Rapp, 2016; Martin, Woodhouse and Burke, 2019; Golden Eagle Rising Society, 2020; Youth Justice Legal Centre, 2021) and alternative legal frameworks such as therapeutic jurisprudence and restorative justice recognise the importance of some of the overarching principles of trauma-informed practice such as safety, trust and collaboration (Wexler, 2004; Randall and Haskell, 2013; Yamada, 2021).

2.3.1 Trauma-Informed Principles: Safety and Trust

‘Trust and safety, rather than being assumed from the beginning, must be earned and demonstrated over time.’ (Harris and Fallot, 2001, p. 20)

The Youth Justice Legal Centre advises that being reliable and consistent is one way to build a sense of safety for a client and establish trust. Others include being transparent about what is happening, checking the client’s understanding of what is happening and maintaining predictable routines so that clients know what to expect (Youth Justice Legal Centre, 2021). Lawyers can also do simple things like introduce themselves and use clear language, as well as being clear about what is going to happen and why (Martin, Woodhouse and Burke, 2019).

The barriers to defendants building trust with a legal representative are many. In their report on defendant engagement in criminal justice proceedings, Revolving Doors found that defendants reported changing of solicitors, not having enough time to build trust in their lawyer, lawyers not taking actions that had been agreed and lawyers taking an impersonal attitude as just some of those barriers (Mullen, Collins and Savage, 2020).

2.3.2 Trauma Informed Principles: Empowerment, Choice and Collaboration

‘Working collaboratively to facilitate the individual’s sense of control and to maximise their autonomy and choices throughout the engagement process is crucial in trauma-informed and trauma-responsive services.’ (Center for Substance Abuse Treatment (US), 2014, p. 22)

The power dynamics inherent in a relationship between a woman and her defence representative are clear. The lawyer represents an ‘expert’, an individual holding the key to freedom and an advisor. The power balance swings firmly in the lawyers favour. Whilst the Criminal Procedure Rules (*Criminal Procedure Rules*, 2020) indicate that reasonable steps must be taken to ensure the participation of defendants in their trial, the position of the lawyer as someone who presents the case lends itself to passivity on the part of the client. Wohlers notes that this essentially confines the defendant to a passive spectator role if they choose to be represented (Wohlers, 2018) and Owusu-Bempah adds that recent focus on efficiency and the speed with which cases must be heard in England and Wales is likely to contribute to a defendant feeling incidental to their own trial (Owusu-Bempah, 2020).

According to Owusu-Bempah, defendants also experience high levels of exclusion as a result of the criminal justice settings and processes themselves (Owusu-Bempah, 2020). The formality, language and complex workings of the courtroom for example, lead to a sense of alienation from the proceedings. He goes on to highlight that these feelings of alienation can be further heightened by disparities in the representation of protected characteristics such as race and disability between defendants and the legal actors, as well as other characteristics such as education (Owusu-Bempah, 2020, p. 16). Inevitably, in a male-dominated criminal justice system (Bar Standards Board, 2022; Solicitors Regulation Authority, 2022), this increased alienation also applies to gender.

According to McKenna and Holtfreter (2021), writing on trauma-informed courts in the US, lawyers can play a role in promoting voice, choice and empowerment by ensuring that the defendant is

addressed directly, is able to say in their own words what happened and input their thoughts into best courses of action (McKenna and Holtfreter, 2021). Trauma informed lawyering requires the lawyer to suspend their position of 'expert' and work with the client as a problem-solving team (Katz and Haldar, 2015).

2.4 Systemic Constraints

2.4.1 Operating within Gender Neutral Law

The concept of equality before the law means that all citizens are entitled to equal treatment before the law and its processes (Ashworth, 2005). As Julia Tolmie posits in relation to family law in New Zealand however, this is 'imposing gender neutral standards on a gendered world' (Tolmie, Vivienne and Gavey, 2010, p. 302).

Whilst the law may be the same for everyone, the way in which it is experienced is not. Defences for women and girls committing offences as a result of abuse remain inadequate, despite other changes in legislation for comparable circumstances (Swaine-Williams, 2022). In the case of self-defence, whilst householders are protected from the law if they use disproportionate force to deter an intruder in their home (*Criminal Justice and Immigration Act 2008*, 2008), similar provision does not apply to women and girls defending themselves against, for example, domestic abuse. Similar reforms in law have provided defences for victims of trafficking coerced into their offending (although it should be noted that knowledge and application of this defence amongst those dealing with it, namely police, lawyers and the judiciary, remains inconsistent (Bristow and Lomas, 2020)), yet the defence of duress for women coerced into offending as a result of other types of harm is in essence unusable (Edwards, 2019). This creates structural gender discrimination within the enactment of law (Swaine-Williams, 2022), through applying the principle of equality rather than reconceptualising justice (Smart, 1989).

The relevance of women's experiences of trauma therefore predominantly comes into play not in relation to prosecution, nor defence but in mitigation. Within the United States, lawyers are obliged to disclose relevant trauma history and adversity in cases that hold a potential capital sentence or a juvenile life without parole sentence (Gohara, 2018; Hiromoto *et al.*, 2022). Whilst Sentencing Council guidelines clearly outline the relevance in mitigation of both mental illness (such as PTSD) (Sentencing Council, 2020) and coercion, such as a defendant being 'involved through coercion,

intimidation or exploitation' (Sentencing Council, 2019), no such obligation exists across England and Wales. The Youth Justice Legal Centre points out that submission of trauma history in mitigation can be a 'double-edged sword', whereby judges and prosecutors see this as an indicator of future risk of offending (Youth Justice Legal Centre, 2021, p. 6). The Centre for Women's Justice found that women were often discouraged from bringing trauma context forward as a mitigating factor lest it be seen as an excuse for their offending (Swaine-Williams, 2022). One can therefore infer that the 'double-edged sword' applies equally to women as it does to children in the criminal justice system and that defence lawyers find themselves stuck in a system that promotes the denial of women's trauma and invites the lawyer to join what Danieli and others call 'the conspiracy of silence' around women's trauma (Danieli, 1984; McKinney, 2007).

2.4.2 The Rational Lawyer

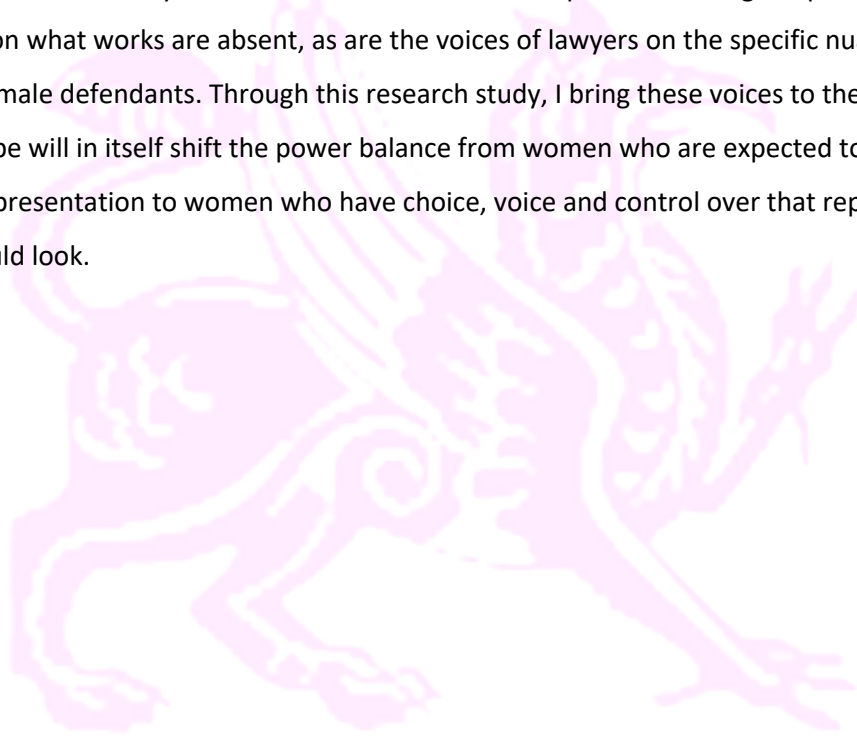
The role of a defence lawyer is often seen as 'dirty work' (Flower, 2021). Principle 4 of the Solicitors Regulation Authority and the Core Principles of the Bar Standards Board requires legal professionals to act in the best interest of each client (Bar Standards Board, 2020; Solicitors Regulation Authority, 2021). The defence lawyer must therefore navigate the undesirable position of being seen to defend a breach of society's norms. Flower suggests that one way this is managed is through an artificial separation between the rational professionalism of the lawyer whose role is to pursue fair procedure on the one hand and emotionality on the other (Flower, 2021). Whilst acting in their best interest, the lawyer cannot be seen to enter into an emotional relationship with the client and lawyers are taught to set emotions aside in order to be analytical (Katz and Haldar, 2015). It is possible that this leads to a sort of emotional numbness, in which the lawyer-client relationship becomes a merely transactional interaction in the pursuit of the abstract goal of justice. Research into barriers for defendant engagement into criminal justice proceedings suggests that some clients found their lawyers to be impersonal (Mullen, Collins and Savage, 2020).

This is supported by defence lawyers' assertions that they 'switch off' and mentally reframe distressing information as a procedural legal task (Flower, 2021). It is conceivable that this dispassionate approach is at once a product of the analytical conception of the role of the lawyer as well as a direct result of repeated exposure to traumatic material. James asserts that a common response to repeated exposure to traumatic material through working with clients is that lawyers should just be resilient or 'grow a thick skin' (James, 2020). James states that the lack of recognition

of repeated exposure to traumatic material is problematic within the legal profession (James, 2020) and is a recipe for what van Dernoot Lipsky calls trauma exposure response (Lipsky and Burk, 2009).

2.5 Research Rationale

This literature review highlights that, whilst issues such as power, control and emotions in lawyering have previously been explored, the literature around the capacity of the lawyer to be a positive actor within the client's recovery from trauma is modest. Additionally, there is a lack of literature that focuses on this capacity specifically in relation to women - much of the existing literature looks at the domain of child and family law. Women's voices on their experiences of legal representation and their thoughts on what works are absent, as are the voices of lawyers on the specific nuances of representing female defendants. Through this research study, I bring these voices to the forefront in an act that I hope will in itself shift the power balance from women who are expected to passively receive legal representation to women who have choice, voice and control over that representation and how it should look.



Chapter 3: Research Methodology

3.1 Original Research Design, COVID & Change of Design

The original design for this research was changed due to challenges created by the coronavirus pandemic. Based on observations through my previous role at Women in Prison's network of women's centres, the research originally aimed to look at women's experiences of probation officers and the capacity for trauma informed practice in this space. Ethical approval for this research was granted by the University of Cambridge and then sought from the National Research Committee (NRC) at the Ministry of Justice. At the outbreak of the coronavirus pandemic however, the NRC paused all non-essential research activity and approval for new research. Due to significant delays caused by this, the proposal was reviewed. I re-examined women's journeys through the criminal justice system to identify other potential 'touch points' that could have a significant impact on women's experiences. Their experience of legal support was one key area, which an initial scope of the literature review showed was an under-researched area.

Ethics approval for the new research design was sought from the Institute of Criminology, University of Cambridge. In order for approval to be gained, the Institute was provided with Participant Information Sheets for both legal professionals and women with lived experience of the criminal justice system (see Appendix B and C respectively) and the research Consent form (see Appendix D).

3.2 Qualitative Nature of Research

This research employed in-depth semi-structured interviews in order to understand the nuanced experiences of participants. The design of the semi-structured interviews sought to find a middle ground on what Brinkmann calls the continuum between unstructured and structured interviews in order to elicit the 'rich and indispensable' knowledge that can be found in human conversation (Brinkmann, 2014).

3.3 Sampling, Recruitment and Interviews

In order to recruit participants I reached out to legal professionals utilising existing contacts as well as reaching out to a random sample of over 50 law firms from the Legal Aid Agency's directory of

providers, filtering for providers who offer defence in criminal matters. Additionally, an email was sent to the London Criminal Courts Solicitors Association. Both the Law Society and the Criminal Law Solicitors' Association were also contacted. Unfortunately both were unable to assist. Snowballing was thus used with existing interviewees to reach further participants.

All participants were provided with one of two Participant Information Sheets, either that for experts by experience (Appendix C) or for experts by profession (Appendix B) and were then talked through the details of the research. A total of 12 interviews, three with women who had lived experience of either the criminal or family justice system (or both) and had been represented by lawyers as a result of this and eight with legal professionals were conducted between January 2022 and November 2022, with interviews lasting between 30 and 90 minutes.

The purpose of the interviews was twofold:

- a) For women with lived experience of the criminal justice system: to understand their experience of receiving legal defence, including enablers and barriers to their full participation in the legal process.
- b) For legal professionals: to understand their perceptions of the possible effect of gender on the legal process and requirements of quality legal support, as well as to understand their own enablers and barriers in providing quality legal defence to women specifically.

Interviews were semi-structured, with one topic guide for legal professionals and one for women with experience of the justice system. This approach maintained some consistency within each of the two cohorts but allowed space for new themes to emerge and be explored as the participants saw fit (Brinkmann, 2014).

3.4 Limitations

Whilst I employed several methods to recruit an initial group of participants and then used snowballing to expand this pool of participants, the nature of the research question was such that legal professionals with an existing interest in trauma-informed practice, women's rights and holistic legal defence were more likely to volunteer to be interviewed. I attempted to mitigate this selection bias with some success by requesting that participants put me in touch with contacts who may be willing to be recruited but who *did not* have an existing interest in this area, however it is likely that the majority of participants did have an existing interest in this area.

Additionally, due to choosing not to pursue ethical approval from the National Research Committee (because of Covid constraints), it was challenging to find women who fitted the research criteria as they could no longer be involved with the justice system or working with probation (if they were still involved then NRC approval would have been required). Several women who wanted to participate were unfortunately unable to do so because of this constraint. I made a decision to expand the criteria to women who also had experience of working with family lawyers. I made this decision in order to ascertain whether there were similarities in their experience or things that could be learned from family law practice. As a result, of the small sample of women interviewed, not all had specifically experienced working with *criminal* lawyers.

The sample size of this study is small and may not be representative of a wider cohort of course, but small-scale studies of this sort can nevertheless offer some insights.

3.5 Analysis

Thematic analysis was used to identify patterns in the data using Braun and Clark's (2006) 6-step framework. This approach was used due to its ability to allow themes to emerge from the data. Interviews were systematically coded using a combination of inductive and deductive (based on literature review) codes. An iterative approach was taken, whereby analysis was treated as 'a continuously unfolding process' (Layder, 2013, p. 12). An initial set of themes was generated from the available literature, each interview transcript was then coded, and codes were either assigned to a pre-established theme or left unassigned. Unassigned codes were then reviewed and further grouped and reorganised by theme. A total of 90 initial codes were applied and these were then grouped into four broad themes with nine sub-themes. Once the coding was completed and grouped, I identified the narrative for each theme and this formed the basis of this report. The research software Dedoose was used to provide structure to the coding process.

Chapter 4: Research Findings & Analysis

4.1 Gender Neutral System

Interviews with women with lived experience and with lawyers reflected the existing literature on the issues inherent in a system that is 'equal' by nature (Edwards 2019; Centre for Women's Justice 2021; Tolmie et al. 2010). Women and lawyers routinely described the ways in which gender-based inequalities had either wholly or in part led to their involvement with the justice system, and how they then found that there was no space to insert these gendered experiences into this same system.

4.1.1 Gender Neutral Law Enacted in Gendered Ways

As highlighted in the literature concerning female victim/survivors of domestic abuse (Centre for Women's Justice, 2021), interviews made clear that the 'gender neutral' nature of the law played out in heavily gendered ways, particularly in relation to the usability of defences. Interviews with legal professionals reflected current research (Centre for Women's Justice, 2021; Swaine-Williams, 2022), which highlights the lack of relevant defences for women whose offences are linked to their own experiences of abuse. Self-defence was cited as a wholly inadequate defence for women, in particular due to the reasonable force test, where any force used must be judged to be proportionate (*Criminal Justice and Immigration Act 2008*, 2008). Solicitor Heather³ highlighted how this gender neutral standard plays out in a gendered way:

'That's [self-defence] a very difficult defence to use, especially for women who may be physically weaker or may be the usual victim in a relationship and therefore anticipate violence and have to use a weapon or something.' (Heather, solicitor)

Similarly, a duress defence was labelled as all but unusable by some participants due to the fact that it does not recognise the complex nature of domestic abuse and the ongoing psychological manipulation that victims endure. Defendants must have believed that there was an imminent

³ Pseudonyms have been used to refer to study participants throughout.

danger of physical injury (Crown Prosecution Service, 2018), however Heather commented that in reality, 'you have to more or less show that you had a gun held to your head'.

This lack of relevant defences for a woman committing violence in the context of violence led to a strong bias towards women pleading guilty, due to the fact that if a defence which was unlikely to be successful was run and ultimately *was* unsuccessful, then the woman would not 'get the benefit' of her guilty plea during sentencing. Utilising mitigation for reduced sentences was described as a woman's 'best hope' in most scenarios.

4.1.2 Gender Roles

Weinberg (2023) argues that a set of 'established expectations', some relating to gender, underpin the criminal justice system. These expectations, such as the role of women as caregivers and nurturers, lead to women being judged more harshly when they act outside of their expected role (Kennedy, 2018; Robins, 2018).

During interviews, women were described, or described themselves as being disproportionately penalised because of gendered assumptions about how women should behave and because of the material responsibilities that their gender conferred on them.

'An additional hurdle that you've got to surmount...It's that problem about you have betrayed the role as a nurturer and a partner and a wife or whatever it is. So, you do sense that additional stigma and that's something that you've got to deal with.' (Luke, barrister)

Luke then went on to describe the material challenges this presented for the defence itself:

'It means that very often...you've got to convince the woman to give evidence. Whereas in a lot of cases you're able to conduct them with a male and he doesn't have to give evidence and you're just testing the prosecution's case and looking at the gaps in the evidence.'

Childcare was also raised as an issue which had gendered effects when it came to a legal representative's ability to defend their female client due to the additional pressures that the system placed on women. The caring of children remains a gendered role (Curtice *et al.*, 2019) and several solicitors suggested that women were more likely to plead guilty due to either immediate pressures

of childcare or fear of increased separation from their children if a defence was run and was not successful. Stewart, a solicitor who often represented clients at the police station, said:

‘Some of them [police officers] take glee in using it as a tactic to put pressure on a suspect and will try and give false hope that, ‘Oh no, if you just, come on, just answer the questions and we’ll let you on your way and things will, you know, you can get your kids,’ which is all very well. But if you get your kids one day and you make an admission that could mean you go to prison for five years, your children haven’t benefited in the long run.’

Both the Bar Training Curriculum and Assessment Strategy (2021) and the Solicitors Qualifying Exams Assessment Specifications (2020) make general reference to the identification of vulnerable clients and making accommodations to meet their needs. They also make reference to upholding equality, acting inclusively (Bar Standards Board, 2021) and meeting the particular service needs of all clients (Solicitors Regulation Authority, 2020). However lawyers generally had no prior exposure either during their law degree (where relevant), their initial qualifying training or in later professional development to the nuances of gender-specific issues that might arise in their work or appropriate ways in which to manage these. A small number had attended training as a result of their own interest, however it was clear that this was as a result of individuals’ particular passion. Given the low volume of female clients in most criminal law firms and the lack of explicit requirements for professional development around gender- and/or trauma-specific representation, there is likely to be a huge level of variability in practice when it comes to navigating gendered issues such as those presented by participants in this study.

4.2 Power

Weber (1978) conceived of power as the probability that one actor will be in a position to carry out his own will despite resistance. In this sense the balance of power in criminal justice proceedings tips firmly in favour of the state and its system of criminal justice. One could argue that the defendant (and indeed the victim) in fact holds no power. Yet Felstiner and Sarat (1991) argue that ‘power is neither stable nor static’ and interviews reflected this in their references to the ways in which lawyers downplayed or over-performed their role in order to moderate their power. Bibas (2012) states that far from being an ‘amoral exercise of social control’ criminal justice is a system in which victims, defendants and the general public deserve a role (Bibas 2012, p 83). It therefore follows that defendants should be able to negotiate some power within this system in order that they can play

an active role in their own defence rather than passively receiving judgement. Yet women repeatedly came up against systemic issues which hampered their ability to exercise even small amounts of control, potentially echoing their experiences of trauma which, as Herman (1998) states, 'rob the victim of a sense of power and control'.

4.2.1 Women's Lack of Control

The effective participation of defendants in criminal proceedings is a key element of the 'right to a fair trial', enshrined in Article 6 of the European Convention of Human Rights, however in their study of victims', witnesses' and defendants' levels of understanding of proceedings at the Crown Court, Kirby et al. (2014, p6) argued that defendants' participation in proceedings could not be described as effective and that instead they experienced being 'swept through the court performance' and were 'observers of their fate rather than engaged in shaping it.'

Participants echoed this when describing the ways in which they felt completely out of control in a situation in which their future was being decided. Sophia, who had been through the criminal justice system many times, spoke about the feeling of being surrounded by people 'just wanting to do their jobs, tick you off like a box.'

Samir, a criminal defence solicitor echoed this:

'I think a lot of the frustrations that are there from people who experience criminal defence lawyers, or just [the] criminal justice system, is that everyone is trying to process you.'

Examples of this lack of meaningful participation and control were enmeshed into the functioning of the relationship between a woman and her defence team and included things 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. Naomi recalled:

'She should have been there an hour before. She arrived ten minutes before the hearing. She was great, but the trauma I had of sitting there for that 50 minutes, not even knowing whether she was going to be coming.'

Sophia spoke about constantly having to work with different people who were 'allocated' to her: 'In court, it was literally, meet somebody that's not from when you've met them in custody, somebody else from their team.' Natalia described feeling out of control between hearings: 'you can't talk to them because obviously you're not paying them for that time. Any questions which obviously is a multitude, you can't get answers to, you don't know what you're doing.'

To some extent a feeling of being powerless is inevitable as the ultimate outcome of a defendant's case lies with judges (or a jury) and with the performance of their lawyer, over which they have little immediate control. However, women's reflections seemed to signal that not only did they hold no power but they also had no control over their own experience and were at the mercy of a system which left their questions and fears unanswered and instead processed them through a series of administrative actions that did not give space for emotion or meaningful participation.

4.2.2 Performative Power: Public vs Private

'Good' representatives were described by women as having two sides, one that was caring and understanding and another that was ruthless or even 'scary' in court or other settings in the system. Women articulated this role-hopping as essential to their trust in their legal team.

When speaking about the qualities of a 'good' lawyer, women universally described the lawyer as being 'normal' in their interactions with them. Sophia said:

'She doesn't really come in suits or anything...she was just really, she wasn't professional.'

Natalia added:

'Normal. Like literally, sit down. 'Do you want a cup of tea? How's the kids? Oh, did you get the parking?'... So simple basic things but they humanise you.'

Yet the positive qualities that women described when they were being represented in court were very different. Women valued lawyers who demonstrated power. Naomi said:

'I mean, he was roaring and screaming in the court... he was, you know, shouting and everything. But, it was exactly what was needed.'

Natalia spoke about the switching between these two roles, which had been central to her positive experience:

‘She was fantastic. Patient, understanding, kind but also ruthless because you can be as understanding and as emphatic as you like but ultimately when you walk into that court, unless you have back bone and strength to handle the situation that you're in and take on who you're dealing with you might as well go home because they don't care.’

The lawyer who gained women’s confidence was one who was able to create rapport in private by having everyday conversations and dropping their air of professionalism, but in public arenas hyper-dramatised their professionalism and power. Lisa Flower calls this hyper-dramatisation ‘doing loyalty’ (Flower, 2018), whereby lawyers make use of dramatic tools such as performing a ‘demonstration of outraged feelings’ (Goffman, 1956b, p. 158) and using non-linguistic gestures to align themselves with their client.

4.3 Trust

Trust is central to the functioning of the lawyer-client relationship. According to the Solicitors Regulation Authority, a lack of trust between lawyer and client can make it harder for people to participate effectively in legal services and for lawyers to effectively represent them (Solicitors Regulation Authority 2022). A study into the relationship between clients’ trust of their legal representation and their subsequent satisfaction with their legal outcome correlated increased trust with increased satisfaction, as well as highlighting the relationship between trust and increased levels of participation (Boccaccini et al. 2004). Additionally, Clair argues that the qualities of the lawyer-client relationship can themselves represent justice or injustice, aside from the formal legal outcome a client receives (Clair 2020).

A relationship of trust enables legal actors to gather the information they needed in order to provide robust defence, or more crucially, when no defence is available, information to be used in mitigation, as solicitor Stewart explained:

‘If you want to represent someone well...they need to feel comfortable to tell you about themselves and their case and you can't represent them properly unless they let you in, to

some extent. It might be that you need to present really good mitigation on their behalf...you need to gain their trust for them to consent to that.'

Trust is also one of the central principles of trauma informed practice that Harris and Falot state must be developed over time in a trauma informed relationship (Harris and Falot 2001). Interviews with both sets of participants highlighted the importance (and the difficulty) of developing this trust between lawyer and client. Systemic barriers were highlighted by nearly all participants, the most prominent of these being a lack of time to form any meaningful relationship, as well as the lawyer's positioning within the system.

4.3.1 Trust needs time and time is money

Interviewees from both groups highlighted time as a key factor in building trust with women. Solicitor Samir said:

'I think there's nothing particularly sophisticated, it's just spending time.'

However time was consistently spoken about as something that was in short supply. Solicitors who were highly experienced in meeting women for the first time and representing them in court very shortly afterwards as part of their role as a court duty solicitor, still had difficulty building meaningful trust:

'I mean, I think I'm very fast because I've been doing it so long and I know how to drill down into the key issues...in terms of just, sort of, chatting basically to try and get a woman's confidence and trust you really have very little time for that. Very little.' (Sarah, duty solicitor)

Sophia explained why time was important to her as a client:

'You want to know my mitigation and you're asking me to give you the most serious stuff that traumatises me within 30 minutes...And you can't tell someone your life within 10 minutes, 20 minutes, can you? Because one situation can take 3 or 4 hours to explain and it leads into the next, into the next.'

Without exception, all of the legal professionals interviewed said that the limited legal aid available was a significant barrier to having enough time. Legal aid payment structures left lawyers spending large swathes of time working 'unpaid' if they wanted to build trust.

Luke, a barrister, said: 'Those additional conferences you might not get paid for. But, I think you've got to do them as otherwise she will not be represented properly.'

Whilst the lack of legal aid funding was not necessarily a gendered issue, many participants recognised the additional barriers to trust for female clients, who were more likely to have experienced previous trauma, and therefore the additional burden on women of a legal aid system that left lawyers without time. Luke explained:

'You've got to spend a lot of time with them [women] frankly. You would probably see them more than you would somebody else...You've got very little time for small talk and niceties... But, I don't think you can do that [work quickly] with women who have been deeply traumatised by their life experiences. That just won't work, so you've just got to build it with more time.'

Women interviewed were also acutely aware that legal aid funding created time constraints. Naomi said:

'You can't get hold of them for weeks. You've got hearings and you can't get hold of them. And, actually, they try and say, 'Well, you are legal aid.'

Natalia, who had experienced both legal aid and private representation in family court, remarked:

'I found the ones that you pay are obviously usually nicer in terms of, sort of, representing'.

The legal aid system significantly impacted lawyers' relationship-building with women, who needed more time to establish bonds of trust in light of their previous experiences of trauma. Lawyers who were 'good' took on the burden of a broken legal aid system by spending large swathes of time working unpaid and working against a perverse incentive to 'try and get the case done and dusted as quickly as possible'.

4.3.2 Whose side are you on?

'I suppose that's pretty fundamental, isn't it, for a lawyer to just make sure that they [client] appreciate that you're there fighting for them and working with them as opposed to just some other authority figure coming in.' (Heather, solicitor)

Interviews linked the issue of building trust with the position of the lawyer within the wider system. Sophia said:

'A lot of the time, I felt so uncomfortable, because the person that was representing me was having a conversation with one of the police officers, like they're best mates, 'Oh yes, how's this, how's that, how's this?' And it was really inappropriate.'

In a study of the barriers to defendant participation in criminal proceedings, Owusu Bempah observed that the camaraderie between legal professionals can contribute to a sense of 'us and them' between clients and legal actors (Owusu-Bempah, 2020).

Some legal professionals also recognised the problem that being 'part of the system' caused in building trust with clients, in particular with under-represented communities, a finding echoed by the 2017 Lammy Review (Lammy, 2017). Heather commented:

'There are certain black or working class communities where there are issues about distrust of policing and social workers, and just generally distrust of people in authority which can include lawyers, which will mean a big barrier there about trying to get somebody to see that you're on their side.'

Richard, a criminal solicitor, recalled his first meeting with a female client whom he described as 'hostile' towards him. He reflected on the reasons for these types of reactions, 'you know, I was part of the system.'

In situations where a woman viewed a lawyer as being 'on side', one of the main factors that contributed to this feeling was the lawyer fighting against the system with or for the client. Sophia recounted first feeling trust in a lawyer when, at the police station, the lawyer exerted her authority over police officers:

'She's really like, 'Listen, I'm not going to let them do this, I'm not going to let them do that'...They [police officers] were ringing through saying, 'We're waiting for interview.' She said, 'My client is not ready yet.' Like, don't tell me when to finish with my client, she's not ready to be interviewed yet.'

4.4 Emotions

According to Bandes et al. (2021), the law has long failed to investigate the role of emotion in its operation, perhaps believing that the clear lines of the law and its supposed objectivity might be warped by the subjectivity of emotion. As Maroney (2021, p15) states, 'perhaps the most common lay perception of emotion in law is that the former has no place in the latter.'

More recent scholarship has recognised the integral role of emotion in the law (*see e.g.* Bandes 1999; Bandes et al. 2021; Bornstein and Wiener 2010). In line with this, interviews demonstrated the centrality of emotions for both defendants and lawyers, but echoing more historic sentiments, they also showed the extent to which emotions were denied or suppressed, despite the lack of formal barriers, in a process of self-censorship (Bar-Tal 2017).

4.4.1 Shame & silence

For both sets of participants, the way in which the criminal justice system and courts in particular were set up contributed to a continued silence around women's trauma. Solicitor Sarah described a woman she defended regularly who had experienced severe trauma which was very relevant to her offences. However, Sarah explained, 'absolutely no way under any circumstances would she allow any of that to be said in open court by way of mitigation.' As a result, her client went to prison several times. This was a repeated pattern, where histories of sexual abuse and domestic violence in particular, created so much shame in clients that they would not allow for them to be presented in mitigation, no matter what the potential consequences of not presenting them might be.

Both sets of participants highlighted the courtroom as an arena that amplified this shame and silence dynamic. One example was given of a woman who had killed her abuser but was faced with his family in open court at the trial. She felt that she could not speak about the abuse in court because she felt 'this terrible shame and guilt' and did not want to add to the family's trauma.

This silencing is likely to cause a vicious cycle where women are criminalised in part due to their silence and, once deemed 'guilty' recognition as a victim becomes less likely and so measures that could be put in place to allow the silence to be broken remain absent.

4.4.2 The lawyer's emotions denied

Interviews highlighted the emotional consequences that lawyers faced when defending women. Lawyers spoke about 'anger', 'sadness' and 'shock' at women's trauma histories. They listed the knock-on effects of these emotions in themselves and their colleagues ranging from sleeplessness to alcohol use, physical illness and leaving the profession altogether.

Yet lawyers' emotions were given little space for processing. Richard said:

'I think I'm probably, I wouldn't say used to it, I don't think you ever get used to it. But it maybe doesn't shock me as much as your average person.'

The main ways in which participants dealt with hearing about women's trauma were informal. Heather spoke about using colleagues to process difficult aspects of her work: 'we would just talk about things if there were things that were worrying about it.' Sarah cited good friends within the sector who she would talk to as a way to cope and Richard said: 'you rely on your colleagues and you're all going through the same thing, and you exchange stories.'

During interviews I became aware of the role of the interview as a space for processing secondary trauma. Despite never being asked for any case details, most of the lawyers relayed at least one deeply traumatic client history in great detail, possibly pointing to the void in formal routes for lawyers to process the volume of highly traumatic information to which they are exposed.

Chapter 5: Analysis

5.1 Trauma Dynamics Replicated or Repaired

‘What I experienced in court, was worse than the physical and sexual violence I suffered.’
(Naomi)

Trauma dynamics and feelings of coercion and helplessness inherent in women’s prior traumatic experiences were freshly weaved through their experience with the legal system and legal representation. The extreme helplessness experienced when one is subjected to physical or psychological violence (van der Kolk, 2015) was re-experienced less in women’s inability to control the outcome of their case than it was in their powerlessness in relation to the *experience* of justice proceedings. This lack of power that defendants feel is reflected in the literature:

‘The fact that even the criminal doesn’t know what is happening and isn’t told...it was like justice was *done to me* rather than for me or even with me.’ [Kevin, defendant] (Jacobson, Hunter and Kirby, 2016, p. 93)

If, as Judith Herman states, the primary principle when working with trauma survivors is to restore their sense of power and control (Herman, 1998) and one of the aims of the criminal justice system is rehabilitation, this helplessness is highly problematic. As Peña observes, one of the most harmful things that can happen to someone who has been traumatised are experiences of disempowerment (Peña, 2019), which are likely to retraumatise women, worsen outcomes and risk exacerbating criminal justice involvement (McKenna and Holtfreter, 2021).

Another way in which trauma dynamics were replicated was in women’s lack of voice and the ‘conspiracy of silence’ (Danieli, 1984) that continued to surround their prior (or ongoing) trauma. Interviews highlighted multiple barriers to women 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 ‘checkbox’, 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.

These barriers to being heard are likely to have a two-pronged effect. Firstly, women are less likely to receive 'fair' outcomes if they are unable to disclose experiences of trauma that are relevant in mitigation. This may result in disproportionately harsh sentences and lack of referral to the necessary rehabilitative programmes which would lead to lower likelihood of future offending. Secondly, as the silence around women's trauma is upheld, the system remains ignorant of the need for change in order to break this silence. Recognition of the complexity of women's offending and the need for adjustments such as special measures for women to be able to give their best defence, remains invisible.

It may be helpful to consider these experiences of helplessness, silencing and retraumatisation in the context of procedural justice, which correlates the experience of users of the criminal justice system, with the extent to which the system is viewed as legitimate by those same users. Research on procedural justice has demonstrated that there is a strong relationship between the quality of personal experiences of the criminal justice system, trust in the system and subsequent compliance with the law and cooperation with criminal justice authorities (Tyler 2007). If, as Clair (2020) argues, the qualities of the lawyer-client relationship can themselves represent justice or injustice, there is much to be said for focussing on the lawyer's actions in relation to their client and the impact this will have on women's experiences of fairness, justice and therefore the legitimacy of the system as a whole.

5.2 The Lawyer's Role in Recovery

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

- a) Firstly, the lawyer acted as an interface with the 'system' and how it was experienced.
- b) Secondly, the lawyer held an individual relationship with the woman which in itself had the potential to be either a retraumatising relationship or a reparative one.

Women spoke of 'good' lawyers not as ones who got them the favourable outcome in their case, but who made the experience of the system tolerable and who acknowledged and honoured the relationship they held with the woman.

5.2.1 The Lawyer as an Interface with the System

For women, the system was experienced not as an abstract entity but through their interactions with its 'components' (Abercrombie, Harries and Wharton, 2015), most notably people. Women were clear that their lawyer played a part in their experience of the system beyond the bounds of the legal outcome of their case, by having the potential to influence the way in which the rest of the system was experienced.

Many of the barriers to women feeling a sense of control were rooted in 'systemic' issues. From inadequate funding structures and initiatives such as Transforming Summary Justice (The Crown Prosecution Service, 2015), both of which necessitated short and impersonal interactions; to court environments and structural bias around the perception of women who committed crimes which prevented women from speaking out or being heard when they did.

Whilst lawyers were not necessarily in a position to change these systemic issues, and indeed in many cases echoed women's sentiments of helplessness, they did hold more power within the system than their clients. Harris and Falot's fifth trauma-informed principle of empowerment (Harris and Falot, 2008) is somewhat problematic in a system where women are not at liberty to take actions to 'empower' themselves. However, power is 'neither stable nor static' (Felstiner and Sarat, 1991) and can be transferred between different actors within a system. Lawyers demonstrated ways in which they used their power to moderate clients' experience of the system and 'empower' them by giving them small amounts of control. Lawyers did this through simple actions that are echoed in the literature (Rapp, 2016; Peña, 2019; Youth Justice Legal Centre, 2021), such as ensuring processes were clear, creating space for women to actively input into the justice process, allowing women to choose meeting venues and arranging tours of courts. Thus they influenced the way in which women experienced control in criminal justice processes.

Where lawyers had identified a trauma history, they were able to further influence the way in which the system was experienced by recognising trauma-specific needs and navigating the system accordingly. For example, by asking probation to include trauma history in reports to prevent the information being heard in open court to minimise shame and retraumatisation. Clearly, this requires lawyers to be a) able to identify the signs and symptoms of trauma in order to trigger trauma-specific actions and b) aware of the options available to them within the system to navigate

these needs. Lawyers interviewed varied in their knowledge in both of these regards and in relation to the latter, some noted that they knew that many colleagues were unaware of specific actions that could be taken such as speaking to the judge privately about mitigation or requesting special measures in court for a defendant (rather than a victim or other type of witness). Here Lucy gives an example of this variability:

‘The sorts of special measures that would usually be used for victims of abuse speaking in trials against their perpetrators aren't used for victim/defendants. Although I understand they could be... they could be used, but they're not routinely used.’

All lawyers said that they had not received any instruction in this area, either during their legal education or within any continuing professional development and such specific knowledge-building was spoken about as being an ‘extra’ or ‘something that somebody really good will do’. It is likely then that a woman’s experience of the system is highly dependent on the sensitivity and expertise of her legal representative.

5.2.2 The Lawyer/Client Relationship’s Therapeutic Capacity

Whilst some lawyers may believe that their role ends at defending their client’s legal position (Edwards, 2004), the unique interpersonal relationship that a lawyer holds with their client places them firmly within the context of a woman's recovery. Herman asserts that trauma has often taken place within the context of relationships, so healing should take place within this same context (Herman, 1992). The lawyer then plays a key role as someone who holds a relationship with a woman that can be grounded in principles that are *not* trauma - principles such as collaboration, respect, empathy and emotional attachment (Clark, 2003) and in doing so create safety for traumatised women. In the therapeutic context, it has been argued that relational safety *is* treatment (Porges and Dana, 2018). Wexler calls the lawyer who leans into their role’s therapeutic capacity a ‘change agent’ (Wexler, 2004, p. 747) who can directly influence client recovery.

Here Richard speaks to his awareness of the importance of the lawyer/client relationship, not just in the procedural context of a woman’s legal case, but in the emotional context of their lives:

It's such a strange job. As the defence solicitor, you're in a unique position...you can be the only person in the world, at times, who actually says something nice about them, and who

can empathise and understand... You can do your plea mitigation and they can answer, 'That's the nicest thing anyone's ever said about me.' And the sad thing is it's possibly true as well.' (Richard)

For women, lawyers crafted these non-traumatic relationships that were grounded in some of the core principles of trauma-informed practice (Harris and Fallot, 2001; Elliott *et al.*, 2005; Substance Abuse and Mental Health Services Administration, 2014; Sweeney *et al.*, 2018) by delicately balancing emotionality with professionalism.

Flower suggests that there is an artificial separation between the rational professionalism of the lawyer whose role is to pursue fair procedure on the one hand and emotionality on the other (Flower, 2021). Paradoxically, women used words such as 'stern', 'strict', 'backbone' and 'aggressive' to describe lawyers that they also described as 'normal', 'gentle' and 'protecting me'. These contradictory terms suggest that lawyers who supported women well had to engage in professionalism and emotionality at once. They were 'doing loyalty' (Flower, 2018) through engaging in emotional attachment with clients in private settings and enacting loyalty through performances in legal settings

Lawyers are traditionally taught to set emotions aside in order to be analytical (Katz and Haldar, 2015), however the findings of this research make clear the central importance of emotional awareness and dexterity in order to craft safety and trust with clients. Whilst some may argue that such nuance in practice is beyond the scope of a lawyer, therapeutic jurisprudence would acknowledge the rehabilitative role of criminal defence lawyers (Wexler, 2004). At the very least, if lawyers can model safety, power sharing and collaboration with clients, it may negate what Clair refers to as the injustices experienced by those whose dignity is eroded under the dispensation of criminal law (Clair 2020).

Interviews made clear the extent to which lawyers felt constrained by systemic challenges and as Deeya and Haldar note, in times of constrained resources, stress levels increase and this results in attempts to exert greater control, which leads to re-traumatisation (Katz and Haldar, 2015). Wexler suggests the current system 'where crushing caseloads allow for little client contact and where the only real objective is to secure a decent deal on a plea.' (Wexler, 2004, p. 747) make the potential of the 'rehabilitative role' difficult to fulfil.

5.2.3 The Daunting Prospect of the Defence Lawyer's Role

To fully support women to resolve their interaction with the justice system, lawyers needed to recognise and respond to the gender-specific experiences of female clients. This included (amongst other things): understanding the prevalence of women's trauma; the consequences of potential trauma, including how it might intersect with offending; understanding how to modify their own behaviour to avoid re-traumatisation; understanding how to modify 'systems' to accommodate traumatised individuals; educating other criminal justice actors (for example juries and magistrates) and understanding options for referring women to onward support.

This research highlights the hugely complex nature of a lawyer's role if they are to work with women effectively. As Stephen Wexler argues in relation to clients in poverty, women coming into contact with the criminal justice system rarely have isolated legal problems and the lawyer who works with these clients' individual legal issues rather than working holistically is likely to leave them at risk of 'bumping into sharp legal things' again (Wexler, 1970, p. 1053).

In working holistically and therefore sometimes bearing witness to women's trauma, lawyers can take on the role of a bystander:

'The bystander is forced to take sides. It is very tempting to take the side of the perpetrator. All the perpetrator asks is that the bystander do nothing. He appeals to the universal desire to see, hear, and speak no evil.' (Herman, 1992, p. 8)

In order to 'contend with the tendency to discredit the victim or to render her invisible' (Herman, 1992, p. 8), lawyers must acknowledge the truth of deeply upsetting stories and therefore take on this emotional burden themselves. This emotional burden sat alongside the complexity of representing women leaving lawyers with a 'daunting responsibility' (Edwards, 2004) for which they were unsupported. This resulted in far-reaching personal consequences for lawyers interviewed and their colleagues.

Vicarious trauma refers to the negative effects of working with traumatised individuals on one's own well-being and psychological health (McCann and Pearlman, 1990). James suggests that, in part due to a widely-held belief that lawyers do not hold therapeutic relationships with their clients, the legal profession has been slow to acknowledge the reality of vicarious trauma (James, 2020), however as

this research has shown, the scope of a positive client/lawyer relationship with female clients goes far beyond the realms of the law.

The UK Bar Council reports that one in three barristers find it difficult to control or stop worrying and that one in six feel low most of the time (UKBC, 2022). A defence lawyer's wellbeing is important not only in itself and in relation to their capacity to work effectively, but also in their capacity to avoid the re-traumatisation of traumatised clients (Kezelman and Stavropoulos, 2016). Katz and Haldar advocate that the final step in trauma-informed lawyering *must* be that of addressing vicarious trauma (Katz and Haldar, 2015). James suggests that through trauma-informed practices such as training, trauma-informed supervision and organisational support, the effects of vicarious trauma in lawyers can be managed but that this also improves their skills in responding to traumatised clients (James, 2020).

5.3 Problematising the Role of Trauma

Whilst extensive data points to the significant proportion of justice-involved women who have also experienced trauma (*see e.g.* Swaine-Williams 2022; Estrada and Nilsson 2012; Ministry of Justice 2012), one cannot assume that trauma impacts *all* women in the criminal justice system. Trauma responses also vary vastly between individuals.

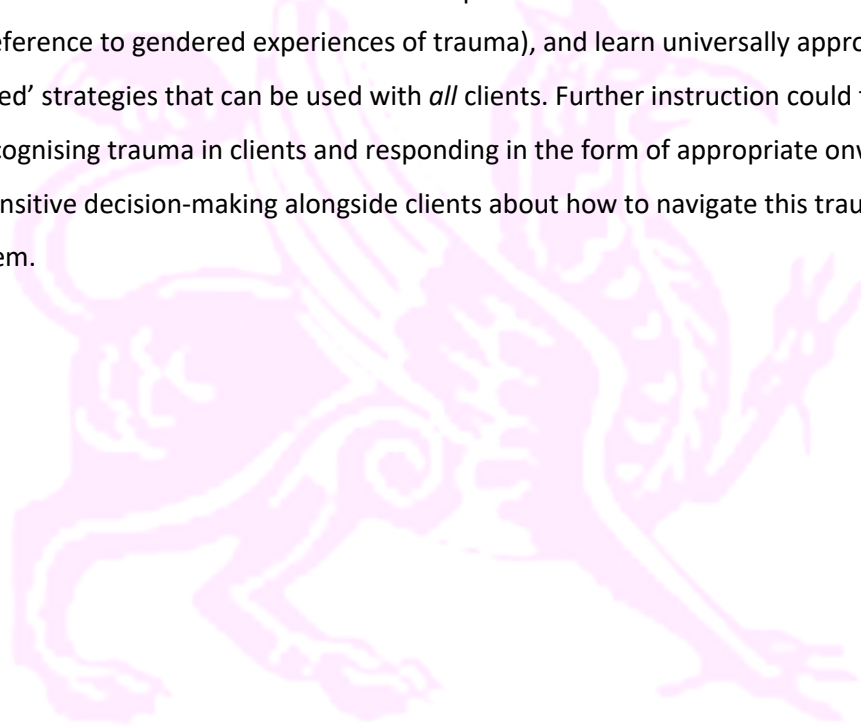
Additionally, both the literature and interviews conducted as part of this research, point to risks of lawyers centering a woman's potential experiences of trauma when representing them, namely:

- 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).

Even if lawyers had access to adequate training which equipped them to recognise and respond to signs of trauma, the structural issues mentioned by both lawyers and women such as lack of time, constantly changing representation and a system that does not recognise or respond to the reality of gender-based inequalities, mean that the role of the lawyer in relation to a client's trauma must be handled with caution.

With these considerations in mind, it is crucial to differentiate between trauma-informed and trauma-specific provision (Covington 2022). A trauma informed approach is usually implemented as a ‘universal precaution’, involving changes in practice which do not necessitate prior knowledge about whether a client has a trauma history or not (Raja et al. 2015). This universal approach encourages professionals to work under the assumption that all clients *may* have experienced trauma and that those who have not will not be harmed by the approach. On the other hand, trauma-specific strategies are implemented when a client’s trauma history is known or suspected and are designed to specifically address violence and trauma (Raja et al. 2015; Covington 2022).

A feasible way to equip lawyers to handle trauma safely might therefore be through the provision of training which enables them to better understand the prevalence of trauma in their client group (with specific reference to gendered experiences of trauma), and learn universally appropriate ‘trauma-informed’ strategies that can be used with *all* clients. Further instruction could then be provided on recognising trauma in clients and responding in the form of appropriate onward referrals and sensitive decision-making alongside clients about how to navigate this trauma within the justice system.



Chapter 6: Conclusions & Recommendations

This research illustrates the importance of the lawyer as a key actor in a woman's experience of the criminal justice system. The lawyer can pave the way for *how* the criminal justice system is experienced - whether as a system of punishment or rehabilitation. It also highlights the rehabilitative capacity of the lawyer/client relationship in itself.

'That right there [the woman's experience with her lawyer] will either pave the way for somebody to want to get the help and rehabilitation or they're going guilty because it's easier than not saying anything.' (Sophia, expert by experience)

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 as Kubiak and others assert, unless there are wholesale systems shifts towards a trauma-informed approach, whilst individual actors in the system can practise trauma-informed care, women are still likely to experience trauma at the hands of the system (Kubiak, Covington and Hillier, 2017). Being informed about trauma is not enough. Trauma-responsive models of care require a system-wide change process (Bunting *et al.*, 2019; Covington, 2022).

The problem remains that where experiences of trauma and offending meet, the system expects women (and defendants more broadly) to speak of their trauma in order that the full facts of their case may be known and the outcome may be 'just'. Yet this report highlights the layers of difficulty in doing so which are enmeshed into this same system: the impersonal interactions that preclude women from feeling safe to disclose, the legal issues that women can encounter when relying on trauma as an explanation for their offending and the potential trauma of retelling. In effect women are balancing the material risks of harsher punishment if they maintain silence around trauma, with the physical and psychological risks of speaking out.

The small scale data sample of this report presents some echoes of the existing literature on the need for far-reaching reforms within the criminal justice system in order to mitigate the range of

issues that women with experiences of trauma will likely face in their encounter with justice. Lawyers and women spoke of the intricate links between abuse and offending, which leads to philosophical questions about the implications for 'doing justice' when women have offended in the context of abuse. The sometimes direct link between abuse and offending echoes the findings of the Centre for Women's Justice (Centre for Women's Justice, 2021; Swaine-Williams, 2022) who state that there is a need for legal reform to ensure that women who have committed offences in the context of their own abuse are not being criminalised unjustly.

Additionally, some of the systemic issues raised by lawyers such as the additional time required to build trust with female clients and the need to effectively work 'unpaid' in order to do this given the lack of adequate funding, point to the legal aid funding crisis highlighted in Sir Christopher Bellamy's recent review of legal aid (Bellamy, 2021). The government's proposed measures to tackle this crisis do not nearly address the scale of the issue and represent a real-terms cut to legal aid funding, which is likely to result in a continuation or worsening of the barriers to meeting women's needs described by participants in this report. The profit-making model of the majority of providers of legal aid-funded defence is at odds with the needs of most women requiring criminal defence. As Wexler notes, the traditional model of legal practice for private clients is not a model that transfers well to individuals facing hardship (Wexler, 1970, p. 1049). There exists some promising alternative financial models such as that practised by Commons Law Community Interest Company (2022) which could provide routes to more equitable representation across clients with varying incomes and more holistic support for clients with multiple needs.

This report also highlights the ways in which the individual relationship between a woman and her lawyer can be healing or damaging in itself and can also pave the way for how the rest of the justice system is experienced. Given the need for large-scale reform to tackle the aforementioned systemic issues, the individual lawyer-client relationship would therefore seem to be the space in which immediate change would be most feasible. The implementation of trauma-informed care can constitute simple 'small changes to practise' (Raja et al. 2015, p. 217) and does not require lawyers to learn how to screen for experiences of trauma or act beyond the bounds of their role as a therapist. As such, the recommendations of this report focus on this area, 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. After all, if trauma occurs in relationships so too must it be repaired in them (Herman 1998).

6.1 Recommendations

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

Whilst specialist training and resources on representing vulnerable clients does exist, much of what is available focuses on victims, witnesses and children⁴. Lawyers interviewed confirmed that they had not accessed any specific resources or training on trauma-informed lawyering for defendants. Lawyers said that they would find access to training on representing women and working in a more trauma-informed way beneficial. 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: Both the 'Professional Statement for Barristers Incorporating the Threshold Standard and Competences' (2016) issued by the Bar Standards Board and the 'Statement of Solicitor Competence' (2015) issued by the Solicitors Regulation Authority set an expectation that lawyers respond to diversity. The Professional Statement asserts that barristers should 'respond appropriately to those from diverse backgrounds and to the needs and sensitivities created by

⁴ One notable exception is the Advocate's Gateway Toolkit 1(a), '*Case management in criminal cases when a witness or a defendant is vulnerable*' (The Advocate's Gateway 2019).

individual circumstances' (Bar Standards Board 2016, p17), whilst the Statement of Solicitor Competence says that solicitors should be 'identifying and taking reasonable steps to meet the particular service needs of all clients including those in vulnerable circumstances' (Solicitors Regulation Authority 2015). Given these expected competencies, 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: Access to special measures can be necessary to ensure the effective participation of defendants (Owusu-Bempah 2020). It is beyond the scope of this report to address the disparity in access to special measures for defendants in comparison to other witnesses (*see e.g.* Fairclough, 2019), however there are a number of other available measures that lawyers, as the interface with the system could utilise to promote greater control for defendants and reduce the very real risks of retraumatisation 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:

Given the suggestion that the lawyer can play a rehabilitative role (Wexler 2004) but that the lawyers interviewed consistently spoke of their limited ability to act within this scope (not to mention the risks inherent in expecting lawyers to act therapeutically), 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 be more feasible than a directory of services covering all possible needs and women's centres would then be able to provide either the appropriate support or appropriate local signposting to women. This would support women to address the underlying needs which brought them into the criminal justice system and contribute to reducing reoffending, however it should be noted that the Government needs to make a commitment to ongoing statutory funding for the existing network of women's centres and to work with existing providers to expand the current provision and equalise access to women's centres across the UK if this is to be a sustainable solution.

Recommendation 5: Increase awareness of secondary trauma and access to support for legal professionals: Lawyers identified the significant emotional burden of working with traumatised individuals and simultaneously pointed to the lack of formalised support available to them. Given the importance placed on addressing staff wellbeing in order to implement trauma-informed approaches (see e.g. SAMHSA, 2014; Homes and Grandison 2021) 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. It should be noted that The General Council of the Bar already hosts resources on vicarious trauma on Wellbeing at The Bar (2022), which provide a positive platform from which to build.

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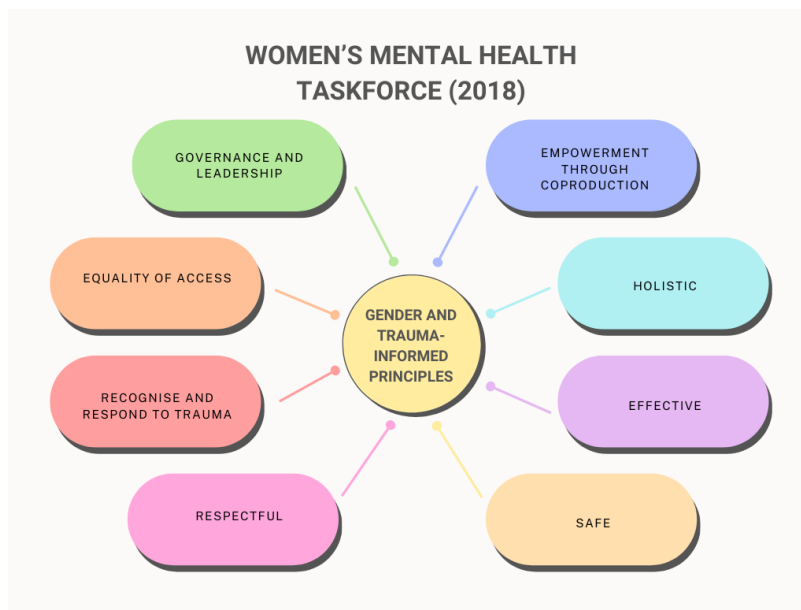
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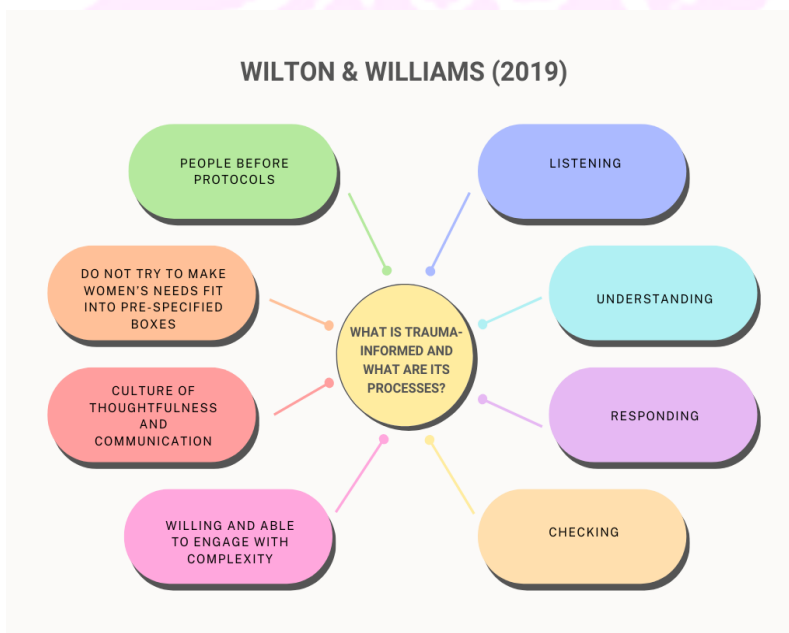
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Annex A: Trauma-Informed Models

Various trauma-informed models and approaches are compiled in this here as a point of reference for interested practitioners. This list is not exhaustive and there are many other frameworks and models in use both in the UK and globally. This is designed to illustrate the variability in and crossover of principles in a sample of models.

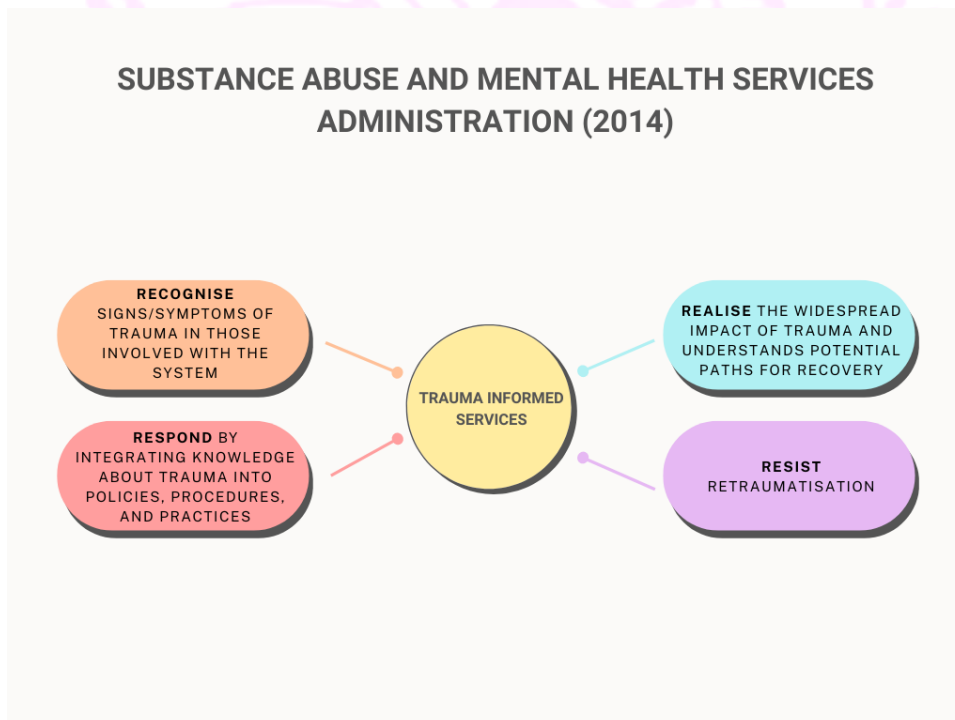
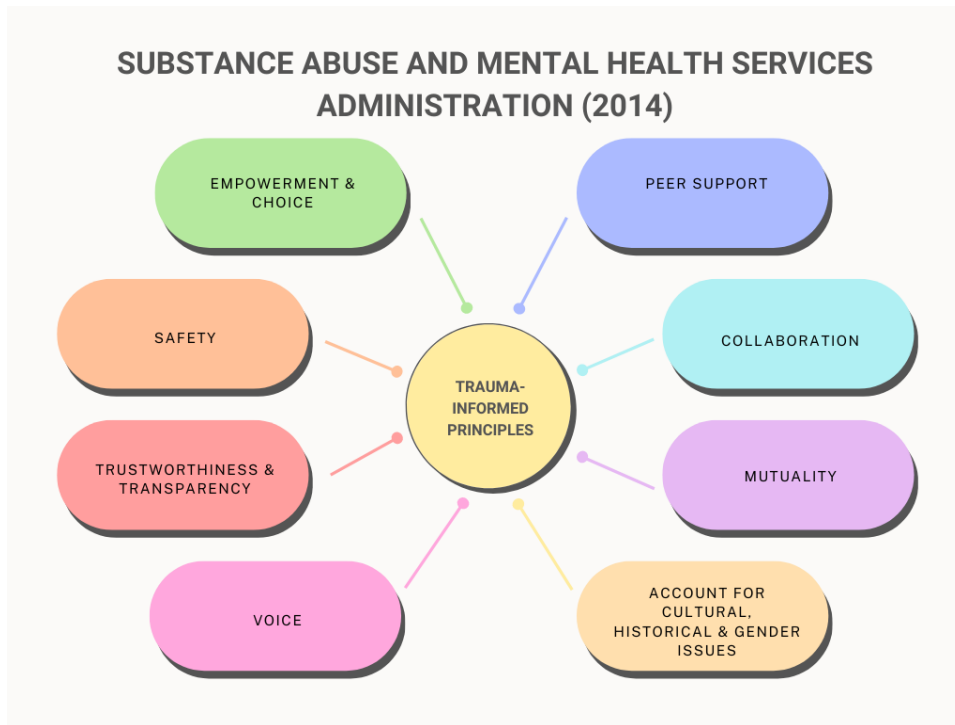


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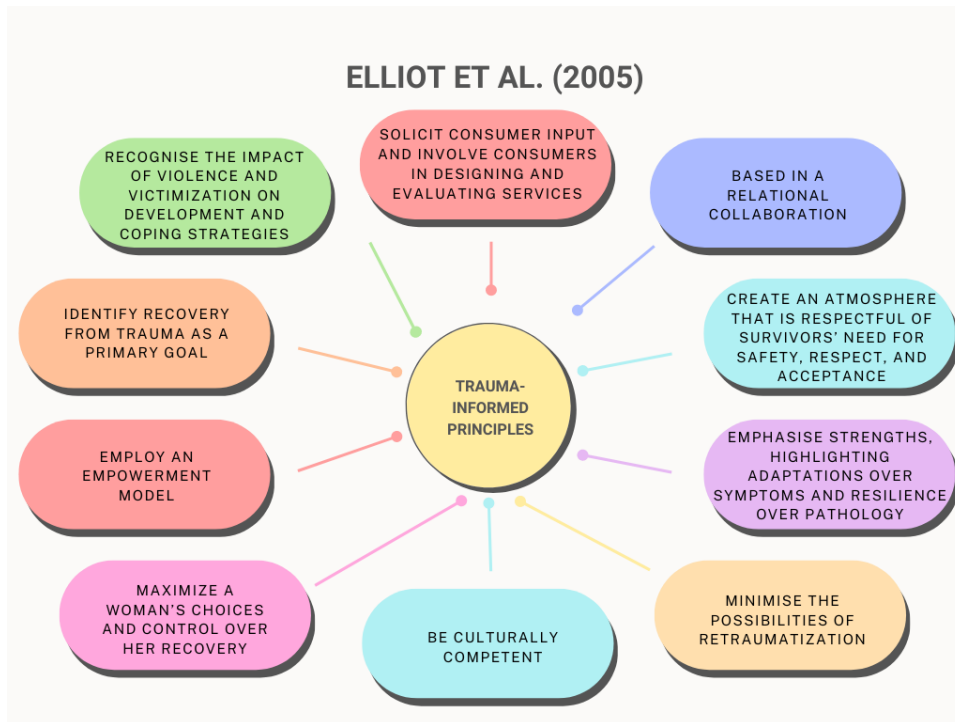


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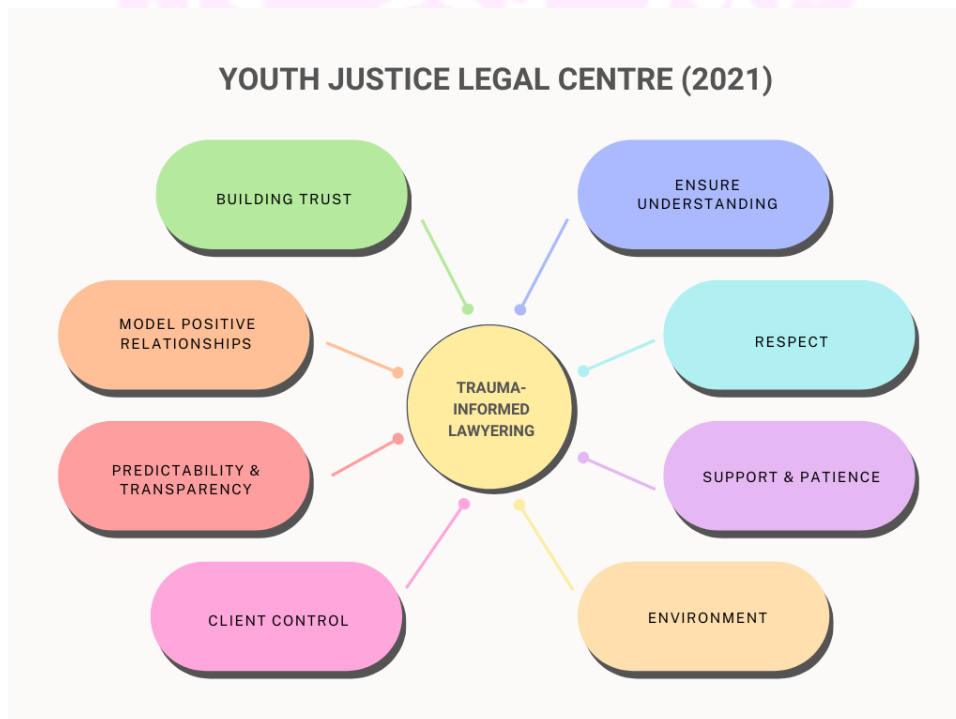
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Other guides and resources of note for legal professionals/judiciary⁵:

EHRAC. 2022. "Guidelines for Trauma Informed Legal Practice for Lawyers Working with Adult Survivors of Human Rights Violations." European Human Rights Advocacy Centre.

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⁵ Many of these resources originate from outside of the UK and therefore applicability within UK contexts will vary.

Annex B: Participant Information Sheet - Legal Professionals

Participant Information sheet and consent form

'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?'

Becky Fedia

Griffin Society/University of Cambridge - Department of Criminology

Information for participants

Thank you for considering participating in this study. This information sheet outlines the purpose of the study and provides a description of your involvement and rights as a participant, if you agree to take part.

1. What is the research about?

This research project is funded by the Griffins Society and is independent from probation and the prison service. The Griffins Society supports research about the issues facing women and girls affected by the criminal justice system so that they are better understood and so that policies and practices can be changed to improve their experiences. The research for this study will be undertaken by me, Becky Fedia. I am independent from probation and prison services.

In this piece of research I will be looking at women's experiences of receiving legal support when entering the criminal justice system and how well this support responded to their needs and understood some of the difficult experiences they might have been through.

2. Do I have to take part?

It is up to you to decide whether or not to take part. You do not have to take part if you do not want to and it is also ok to change your mind at any point. If you do decide to take part I will ask you to sign a consent form before we start our interview.

3. What will an interview be like?

The interview won't be any longer than an hour - but you are welcome to tell me that you would like to stop at any point whilst we are speaking. We can meet somewhere in the community where you feel comfortable or I can come to your place of work if that is more convenient for you. During the interview I hope to gain an understanding of your perspective on working with women affected by the criminal justice system. You are always welcome to tell me if you do not want to answer a question. If you think it would be useful to have someone with you during the interview to support you then please let me know and we can discuss how to do that.

It would help me if I can record our conversation so that I can remember what we have talked about. If you have any worries about this please feel free to let me know.

4. How do I withdraw from the study?

You can decide not to take part in this research at any point until publication of the research and you do not have to give a reason. If any questions during the interview make you feel uncomfortable, you do not have to answer them. Withdrawing from the study will have no effect on you. If you withdraw

from the study I will not keep the information you have given thus far, unless you are happy for me to do so.

Being part of this research is voluntary; you do not have to take part, and it is ok to change your mind.

5. What will my information be used for and how?

I will use the information to help me carry out my research and publish a report on my findings. Your information will not be used for any purpose other than this research project.

The records from this study will be kept as confidential as possible. Nobody except myself and a secure third party transcription service will have access to the audio recording of the interview. Once the interview is transcribed, the audio recording of our conversation will be deleted. All digital files, transcripts and summaries will be given codes and stored separately from any names or other direct identification of participants. Any hard copies of research information will be kept in locked files at all times.

Your participation will be completely anonymous. If you decide to take part, I will change your name and keep confidential any information that could identify you. Your name will not be used in any reports or publications. I might use quotes from our interview but will make sure not to quote anything that could identify you and will only reference your area of work (i.e. probation officer, charity staff, lawyer) and will not identify any geographical information that could identify your specific place of work.

Limits to confidentiality:

Confidentiality will be maintained as far as it is possible, unless you tell me something which implies that you or someone you mention might be in significant danger of harm and unable to act for themselves; in this case, I may have to inform the relevant agencies of this, but I would discuss this with you first.

8. Who has reviewed this study?

This study has undergone ethics review in accordance with the University of Cambridge, Institute of Criminology's Ethics Committee.

10. What if I have a question or complaint?

If you have any questions or concerns regarding this study you can contact me on:

Becky Fedia: beckyfedia@gmail.com
07806810462

If you have any concerns or complaints regarding this research, please contact my supervisor:

Loraine Gelsthorpe: lrg10@cam.ac.uk

If you are happy to take part in this study, please sign the consent sheet attached.

Annex C: Participant Information Sheet - Women

Participant Information sheet and consent form

'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?'

Becky Fedia

Griffin Society/University of Cambridge - Department of Criminology

Information for participants

Thank you for considering participating in this study. This information sheet outlines the purpose of the study and provides a description of your involvement and rights as a participant, if you agree to take part.

1. What is the research about?

This research project is funded by the Griffins Society and it is independent from probation and the prison service. The Griffins Society supports people to do research about the issues facing women and girls affected by the criminal justice system so that they are better understood and so that policies and practices can be changed to improve their experiences. The research for this study will be undertaken by me, Becky Fedia. I am independent from probation and prison services.

In this piece of research I will be looking at women's experiences of receiving legal support when entering the criminal justice system and how well this support responded to their needs and understood some of the difficult experiences they might have been through.

2. Do I have to take part?

It is up to you to decide whether or not to take part. You do not have to take part if you do not want to and it is also ok to change your mind at any point. If you do decide to take part I will ask you to sign a consent form before we start our interview.

3. What will an interview be like?

The interview won't be any longer than an hour - but you are welcome to tell me that you would like to stop at any point whilst we are speaking. We can meet somewhere in the community where you feel comfortable. During the interview I will ask you some questions but it is up to you what you want to tell me. You are always welcome to tell me if you do not want to answer a question. If you think it would be useful to have someone with you during the interview to support you then please let me know and we can discuss how to do that.

It would help me if I can record our conversation so that I can remember what we have talked about. If you have any worries about this please feel free to let me know.

4. How do I withdraw from the study?

You can decide not to take part in this research at any point until publication of the research and you do not have to give a reason. If any questions during the interview make you feel uncomfortable, you do not have to answer them. Withdrawing from the study will have no effect on you. If you withdraw from the study I will not keep the information you have given thus far, unless you are happy for me to do so.

Being part of this research is voluntary; you do not have to take part, and it is ok to change your mind.

5. What will my information be used for and how?

I will use the information to help me carry out my research and publish a report on my findings. Your information will not be used for any purpose other than this research project.

The records from this study will be kept as confidential as possible. Nobody except myself and a secure third party transcription service will have access to the audio recording of the interview. Once the interview is transcribed, the audio recording of our conversation will be deleted. All digital files, transcripts and summaries will be given codes and stored separately from any names or other direct identification of participants. Any hard copies of research information will be kept in locked files at all times.

Your participation will be completely anonymous. If you decide to take part, I will change your name and keep confidential any information that could identify you. Your name will not be used in any reports or publications. I might use quotes from our interview but will make sure not to quote anything that could identify you.

Limits to confidentiality:

Confidentiality will be maintained as far as it is possible, unless you tell me something which implies that you or someone you mention might be in significant danger of harm and unable to act for themselves; in this case, I may have to inform the relevant agencies of this, but I would discuss this with you first.

8. Who has reviewed this study?

This study has undergone ethics review in accordance with the University of Cambridge, Institute of Criminology's Ethics Committee and the National Research Committee (ethical approval body for HMPPS, NPS and CRCs).

10. What if I have a question or complaint?

If you have any questions or concerns regarding this study you can contact me on:

Becky Fedia: beckyfedia@gmail.com
07806810462

If you have any concerns or complaints regarding this research, please contact my supervisor:

Lorraine Gelsthorpe: lrg10@cam.ac.uk

If you are happy to take part in this study, please sign the consent sheet attached.

Annex D: Participant Consent Form

‘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?’

Researcher: Becky Fedia

PARTICIPATION IN THIS RESEARCH STUDY IS VOLUNTARY

I have read and understood the study information dated [/ /], or it has been read to me. I have been able to ask questions about the study and my questions have been answered to my satisfaction.	YES / NO
I have had the chance to ask questions and understand that if I have further questions or concerns I can contact the researcher or her supervisor using the details on this form.	YES / NO
I consent voluntarily to be a participant in this study and understand that I can refuse to answer questions and that I can withdraw from the study at any time, without having to give a reason.	YES / NO
I agree to the interview being audio recorded and the audio recording being securely transcribed by a third party transcription service.	YES / NO
I understand that the information I provide will be used for this piece of research and a published report and that the information will be anonymised.	YES / NO
I agree that my (anonymised) information can be quoted in research outputs.	YES / NO
I understand that any personal information that can identify me – such as my name, address, will be kept confidential and not shared with anyone.	YES / NO
I give permission for the (anonymised) information I provide to be deposited in a data archive so that it may be used for future research.	YES / NO

Please retain a copy of this consent form.

Participant name:

Signature: _____ Date _____

Interviewer name:

Signature: _____ Date _____

For information please contact:

Researcher:

Becky Fedia

07806810462

beckyfedia@gmail.com

OR

Supervisor:

Loraine Gelsthorpe

lrg10@cam.ac.uk

ENDS

