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Criminal justice responses to victim- survivors of sexual violence with learning disabilities:  
Findings from a local study in North East England.

**Abstract**

This paper presents findings from research that explored local criminal justice responses to people with learning disabilities reporting sexual violence. The paper presents data collected in interviews with victim-survivors and stakeholders. Findings suggest that the criminal justice system creates key barriers to justice for people with learning disabilities/ autism when reporting sexual violence. Barriers include learning disabilities not being recognised or understood, a lack of effective communication, and a lack of appropriate support, alongside people with learning disabilities/ autism not being viewed as ‘credible witnesses’ by the police or courts. The article concludes that current working practices are inherently discriminatory to those with atypical frames of reference and need adjustment to better support victim-survivors of sexual violence who have additional needs.

**Keywords**

Rape/ sexual assault; sexual violence; learning disability; autism; criminal justice, police; courts.

**Key Messages**

- There is a pronounced justice gap for women with learning disabilities/ autism reporting sexual violence.
- Current criminal justice responses are discriminatory to victim-survivors with learning disabilities and/or autism.
- There is an urgent need to develop inclusive criminal justice responses.

**Introduction**

It is estimated that more than 80% of sexual offences are never reported to police (ONS, 2021) and research on criminal justice responses to reports of sexual violence documents a longstanding ‘justice gap’ for victim-survivors (e.g. Hohl & Stanko 2015). In response to these concerns an ‘end to end’ government review of the criminal justice responses to reports of rape was recently undertaken (Ministry of Justice, 2021). As with the Rape Inspection Report (HMCPSI, 2019), the review acknowledges that disabled women, and other

minoritised women, are more vulnerable to sexual violence and have less access to support (see also Hollomotz et al 2023).

This paper presents findings from a study in North East England that explored criminal justice responses to victim-survivors of sexual violence with learning disabilities. The research was undertaken in 2019 at the request of a local rape crisis centre who were concerned about criminal justice responses to women with learning disabilities accessing their services (see Jobe & Williams et al 2020). The paper adds to existing research studies in the UK exploring gender-based violence against disabled women (Hollomotz 2009, Thiara, Hague, Mullender 2011, Balderstone 2013, Hollomotz et al 2023).

Following these studies, we recognise that the social model of disability through the positioning of disability as a social construct offers a useful explanatory framework to explore how criminal justice responses to women with learning disabilities reporting sexual violence reveal systematic barriers to justice. However, longstanding critiques of the social model of disability have highlighted that the model doesn't always engage sufficiently with embodied experience(s) or account for different experiences of impairment, which has often worked to exclude the experiences of people with learning disabilities (Owens 2015). Moras (2013:191) documents that learning disabled and autistic victim-survivors have historically been absent from both feminist and disability discourse on sexual violence. Our research was undertaken with the key aim of addressing this gap in the literature.

#### A note on terminology

Identity first language will be used in relation to disabled people, and when referring to a specific community, people with learning disabilities and/or autism will be used. Some victim- survivors interviewed for the study described themselves as having a learning disability and/ or autism, and individually described different conditions. With the caveat that we recognise that autism is not a learning disability, we have used descriptions from these interviewees and other participants verbatim.

#### **Literature review**

Research in the UK suggests that people with learning disabilities/ autism, and particularly women, are at higher risk of sexual abuse (Byrne, 2018; Stern Review, 2010; Majeed-Aris, Rodriguez and White 2020). Statistics from the UK suggest that disabled women are almost

twice as likely to experience sexual assault than non-disabled women (ONS, 2019). Majeed-Ariss and colleagues (2020) recently highlighted the over-representation of adults with learning disabilities accessing services at a Sexual Assault Referral Centre. For Hollomotz (2009) the disproportional risk of sexual violence is a consequence of the social marginalisation of disabled people. Hollomotz (2009:110) argues that: “instead of focusing solely on the protection of ‘vulnerable’ individuals, we must see beyond ‘vulnerability’ and aim to eliminate conditions that create risk.”

Reports of sexual violence are known to be subject to high rates of attrition in the criminal justice system (Hohl & Stanko 2015). No study in the UK has specifically and exclusively focused on rape case attrition for victim-survivors with learning disabilities. However, studies of rape attrition overall indicate that those with a learning disability are more likely to see their cases ‘drop out’ of the system. Attrition can occur when police investigate whether a crime should be referred to the Crown Prosecution Service for charging; when the Crown Prosecution Service decides whether to prosecute (the evidential test); or through a verdict at Court. Hester and Lilly (2017) state that it is accepted in the literature that the attrition of rape cases most typically occurs at the point of a police investigation. The available evidence suggests that this is more pronounced for victim-survivors with a learning disability (Hohl and Stanko, 2015) and/or for victim-survivors with ‘psychosocial’ disabilities (Ellison et al., 2015). Hohl and Stanko (2015), investigating a large sample of rape allegations reported to the London Metropolitan Police, established that victim-survivors with learning difficulties are 4.4 times more likely to have their case ‘no crimed’ (not acted upon) by police or the CPS. Elsewhere, in a study in Norway, Vik et al (2020) discovered that investigations where a victim had vulnerability factors were less likely to be thorough, deemed a priority or result in an arrest.

Victim-survivors with learning disabilities are also less likely to see a conviction in court. Observations of court proceedings and decision making in cases of rape/sexual assault suggest that rape myths prevail in court proceedings and that ‘ideas about rationality and normality are central to the evaluation of evidence’ (Smith and Skinner, 2017: 441). Three cases where the victim-survivor had a known or suspected learning disability were included in Smith’s (2018) observations of court proceedings. While special measures were in place where disabilities were known and reassurance/ sensitivity from barristers and the judge when giving evidence were observed (2018:154), victim-survivors were presented by the

defence as unreliable *because* of their disabilities. Victim-survivors were criticised for not answering questions fully and Smith observed that no discussion about capacity to consent was undertaken despite it being evident that this was likely to be a significant factor in at least one case.

Studies document rape victim-survivors' negative experiences of reporting sexual violence and experiences of secondary victimisation by the criminal justice process (Brooks-Hay et al., 2019). Studies exploring victim-survivors with learning disabilities' experiences of reporting sexual violence to the criminal justice system are limited. Beckene et al (2020) interviewed four victim-survivors with learning disabilities and found that:

after the traumatic incident of abuse, a court experience could become a secondary source of trauma. Experience of this trauma was dependent on the quality and quantity of support people received and the understanding of intellectual disabilities amongst the legal participants (Beckene et al 2020:67).

A recent large-scale analysis of rape case trajectories through the criminal justice system (Hester et al., 2018) included interviews with four people with learning difficulties. These four interviewees had mixed experiences of reporting to the police. One interviewee did not feel the police took them seriously due to their learning disability and reported that they were not kept informed about the progress of their report of sexual assault. In this case, a lack of action led to a distrust of the police and a reluctance to report in future. In a recent study by Hollomotz, Burch, and Bashall, (2023) disabled victim-survivors reported that they felt excluded from sexual violence support services, had inconsistent experiences of being asked about their support needs or having support needs met by both support services and the criminal justice system. Participants in the study indicated that they wanted inclusive services with the victim-survivor at the centre of service design and delivery (Hollomotz, Burch, and Bashall, 2023).

Special measures have been introduced to support vulnerable witnesses to give their best evidence. These include the option to video-record evidence or use a TV link to address the court, the use of communication aids such as picture boards or computers and the provision of Registered Intermediaries. Intermediaries are communication specialists who facilitate communication between the witness and the authorities, ensuring the witness understands the questions and their answer can be understood by the police or the court. As reasons for the

increased attrition rates for people with learning disabilities/ autism include lack of accessible information, communication difficulties (Antaki et al., 2015) and lack of specialist support provision (Olsen et al., 2017), the use of intermediaries are crucial to the experience of reporting a crime and, potentially, case outcomes.

However, concerns have been raised about the effectiveness and availability of special measures in rape cases (Majeed-Ariss et al 2021) and their potential influence on jury perceptions of witness credibility (Baverstock, 2016; Fairclough, 2020). Previous research suggests that intermediaries are not always offered and there may be cases when the need for an intermediary is not recognised (Fairclough, 2020). Plotnikoff and Woolfson (2019) found that members of the judiciary were not always correctly informed about the role or potential importance of an intermediary. Similarly, evidence points to a lack of consistent assessment regarding the need for an intermediary with the use of police officers' own judgement being increasingly apparent (Victims Commissioner, 2018). This means that access to an intermediary and therefore the ability to give best evidence may be dependent on which professional deals with a case, despite stipulations by the Ministry of Justice that "All witnesses with learning disabilities are eligible for an intermediary where the use of an intermediary would maximise the quality of their evidence" (Ministry of Justice 2022:50).

The aim of this article is to explore criminal justice responses to reports of sexual violence where the victim-survivor has a learning disability/ autism through a local study in North East England. The following sections outline the study undertaken, and present key findings and discussion.

## **Methods**

This research was undertaken with two key aims. Firstly, to document criminal justice responses in one police force area to reports of sexual violence from victim-survivors with learning disabilities and secondly to explore how victim-survivors with learning disabilities experience reporting sexual violence to the police. The research received ethical approval from Durham University.

Semi-structured one-to-one interviews were conducted with 14 practitioners who (had) worked in sectors where they worked with people with learning disabilities/ autism who had experienced sexual violence. Participation was voluntary and individuals are identified by area of expertise. We have not used specific job titles as these are often unique or form part

of a small, local team which may allow participants to be identified. Participants spanned a range of professions including the police, healthcare, counselling, community work, social work and law and had expertise in either criminal justice, sexual violence or learning disabilities. At times, participants were knowledgeable and/or experienced in two of these specialisms, however, there was no individual whose expertise extended across all three.

The article also draws on interviews with four victim-survivors with learning disabilities who were interviewed about their experiences of reporting sexual violence to the police and in one case their experience of giving evidence at court. Interviewees were accessed via support agencies. Care was taken in the interviews to ensure that individual communication needs were met and supported. Three interviewees had someone present at the interview for emotional support. Names used in this paper- Rebecca, Helen, Emma, and Jane- were chosen by interviewees.

When analysing the 18 semi-structured interviews from victim-survivors and practitioners, we were interested in understanding commonalities in experience. Interviews were transcribed and were combined into one dataset before thematic analysis. Interviews and transcripts subjected to detailed and close reading by both authors individually followed by manual inductive coding across the dataset. Following Braun and Clarke (2006) six steps model, codes were then cross-referenced and preliminary themes developed. Through this analysis the following broad themes were developed: inconsistent police responses, the need for a victim centred approach, the importance of inclusive communication and registered intermediaries, discrimination due to criminal justice system constructions of credibility and the challenges of multi-agency support.

### Limitations of the research

The research was principally undertaken in one police force area and was intended to be an exploratory piece of research. It should be noted that the findings presented in this article reflect the exploratory nature of the study and presents the views of a small number of practitioners working in one locality. We had hoped to engage more victim-survivors in the research. Even though we were working in partnership with victim support agencies engaging victim-survivors with learning disabilities proved difficult, and in one locality was challenging. As a result, this paper draws from interviews with two victim-survivors in North East England and two victim-survivors outside of this area.

## Findings

### Inconsistent Police responses

When sexual violence was reported by a victim-survivor with learning disabilities, police responses could vary significantly and were often dependant on individual police officers. Some police officers were recognised as having specialist knowledge and could build an empathetic relationship with the victim-survivor, but this was not guaranteed. Inconsistency in police responses to victim-survivors with learning disabilities was a common theme across interviews. Practitioners recognised that some individual officers had specialist knowledge or expertise and good practice by these officers was highlighted.

Generally, I would say, most of the cases that I've worked with, the police officers involved in this type of case are often very empathetic, very... and very good people... and the complainants, have a generally good and trusting relationship with them and that seems to make the biggest difference, I think, if they've got a good relationship with an officer supporting them through the process, they seem to find it easier and more positive than if they don't have that.  
(Registered Intermediary)

However, a lack of consistency in responses to disclosures of sexual violence by people with learning disabilities/ autism was highlighted by practitioners as problematic.

I think it depends sometimes which officer you get on the day, or what level of training somebody's had (Social Worker)

It's been handled differently as well so depending on which...[police] area has kind of dealt with it (Learning Disability Nurse)

Inconsistency sometimes stemmed from an individual officer's ability to recognise that a victim-survivor may have a learning disability or an additional communication need. Police officers were typically reliant on an official diagnosis to signpost that support may be required. The reliance on a medical diagnosis means that some victim-survivors do not receive the support they need when reporting.

So, actually if we can get a really early identification that a complainant has a diagnosed [learning disability] or has a Statement of Special Educational Needs, or whatever it is, that just helps us be able to then prioritise our resources better or to provide a better response at that early point (Police Officer)

I think the difficulty is where it's not recognised. I think there is a lot of people live in society that's not recognised, they are not engaged with services, I think they are the ones we would probably miss (Former Police Officer)

When officers did not recognise a learning disability or understand the ways this might affect an individual, victim-survivors did not receive the additional support which they needed and to which they are entitled. This can have a profound effect on the quality of the evidence the victim-survivor can provide and, therefore, a case outcome. While practitioners understood the special measures that were available for vulnerable witnesses, there was concern that these may not always be in place. Concern was raised that where learning disabilities or additional needs were not recognised by officers or disclosed by the complainant (or representative) therefore support measures were not deemed necessary.

A lot of young women's learning differences haven't been recognised or diagnosed (Community Worker)

I think the police and the courts are aware that there are such a thing as vulnerable witnesses, yes, I think they know that at a certain level. But who fits into a vulnerable category, is still really difficult. So, for example, if you've got an adult who lives independently in the community, you know, they could have quite a significant level of learning difficulty but live independently. (Registered Intermediary)

#### The need for a victim centred approach.

'Learning disability' is an umbrella term which encapsulates a broad spectrum of needs, abilities and behaviours depending on the individual. This conflicts with a criminal justice system that works by following clear protocols with little room for individualisation. Often assumptions were made as to the best course of action for someone without considering their individual circumstances. This included not recognising how a learning disability might

impact on how a person gives evidence and/or not recognising that people with learning disabilities/ autism often need individualised rather than generic responses.

I don't think they've even looked into...people with disabilities and learning difficulties, how life is for them... I don't think they've looked into it before (because) they just treat every case; well, they treat people with learning difficulties in the same way as they treat cases with people without learning difficulties or disabilities. Which is totally wrong. (Emma)

People's individual needs need to be responded to, not just, 'Oh, they've got a learning disability therefore they must need a live link, they must need this, they must need that', they should be dealt with as individuals (Registered Intermediary)

The four victim-survivors interviewed for this study described a lack of autonomy over what happened to their case and felt that they did not get an opportunity to see their case progress to a conviction. Rebecca was told that going through the criminal justice process would be too traumatising for her specifically because she has a learning disability and was considered by the police officer to be vulnerable, but Rebecca had wanted the opportunity to see her case progress.

It was my word against his, and the police thought that it won't get very far, and it would just be traumatizing me even more. Which now looking in it, I can see... but I would have liked....I would have liked him to be...been stood up in court and got...got a prison sentence... they should give people who have got disabilities the right to actually take it to court... even though they didn't think I could cope (Rebecca)

This description suggests no further action was taken in the apparent best interests of the victim-survivor. Rebecca, however, wanted to see her case proceed. It illustrates a paternalistic approach towards the victim-survivors with learning disabilities and suggests that police officers believe the criminal justice system is likely to re-traumatise a victim-survivor with learning disabilities.

## The importance of inclusive communication

Communication is crucial in ensuring that victim-survivors with learning disabilities can negotiate the criminal justice system, but participants reported that this was often neglected. Inaccessible language and complex procedures often rendered the proceedings incomprehensible to those with a learning disability.

The police were just like ‘but you're quite clever person how come you can't understand stuff?’ and I [was] just like ‘it’s how you’re wording things’ (Helen)

The police aren’t all that great at kind of communicating the right messages to [people with learning disabilities] in the right way, so I don’t think they are all that well trained in saying it in a way that [people with learning disabilities] understand because the process type talk is quite difficult and I think even for someone who doesn’t have learning difficulties, it can be really difficult to understand the jargon (Sexual Violence Support Worker)

For victim-survivors of sexual violence with learning disabilities who are reporting a traumatic experience, there are barriers to effective communication which police must understand to facilitate taking a statement. The four victim-survivors interviewed for this study identified that the physical environment in which the interview took place was important- particularly for autistic victim-survivors. They identified that allowing additional time was important to allow a victim-survivor with learning disabilities/ autism time to formulate an answer. They said that some people with learning disabilities and/ or autism might have difficulties with articulating what happened, they might struggle with the sequencing of events and could have a different sense of time, and they might speak ‘bluntly.’ Emma said that:

[the police] should understand that people with learning disabilities find it hard to get the words out and they should be trained to deal with cases with people with learning disabilities and give them more time, and to understand how to understand people with learning difficulties and disabilities.

One registered intermediary suggested that there was a lack of awareness within the police force of diverse communication needs which limited the ability of victim-survivors with learning disabilities to engage with the system. Alongside personal barriers,

[There are] social barriers, the low expectations and attitudes that people have, the lack of time, they may not be able to give the amount of time that people need to fully explain what's happened to them. And then sort of physical barriers of having, you know, communication partners or surroundings that are not supportive of the particular communication that they need to have in order that they can report what's happened to them.

Overlooking communication needs can have serious consequences on case outcomes and can contribute to attrition. Victim-survivors with learning disabilities are not given choices over the communication used in their case. This was not limited to giving evidence in the early stages of an investigation but ran throughout the process, including the communication of sensitive and important information such as charging decisions or case outcomes.

Sometimes we've looked at cases and it's clearly marked this person had a learning disability but the letter that goes out is the same as what we would get.... But you know my client would not have been able to read that on her own...that police officer initially didn't come and say 'this is this', or didn't check out if she could read or understand, didn't do any of that checking out (Counsellor)

Standardised procedures such as communication by letter or over the phone further compound the exclusion of those with learning disabilities and may leave victim-survivors relying on a third party to help them understand very personal information. Jane described how the police kept in touch with the manager of the care home where she lived, who then relayed the information to her. It is important to note that third parties may not always be neutral, and victim-survivors should be entitled to confidentiality when reporting sexual violence. One intermediary described 'undoing' the work of others who had chosen methods of communication which confused the victim.

I often find myself getting involved in trying to identify who else is

communicating with this person and what's the best way of doing that, and that might mean asking (other) services to step back and allow the officer in the case and the intermediary to channel the communication so that the person doesn't become confused by mixed messages (Registered Intermediary)

Easy-read material is one way of potentially bridging the gap for some, however practitioners reported no standardised information in this format in their workplace - even when they solely worked with people with learning disabilities. Some practitioners reported creating their own accessible material using material available online.

### Special measures: Registered Intermediaries

Perhaps unsurprisingly, practitioners frequently discussed special measures when supporting people with learning disabilities/ autism through the criminal justice system, and in particular, the use of Registered Intermediaries. They reflected positively on their experiences of working with intermediaries and there was broad agreement across participants that the role was an important one.

I have to say, the [good] examples I've had it's all been round where we've used an intermediary and we've taken advice from the intermediary on how best to conduct the interview (Former Police Officer)

There was one [intermediary] that I dealt with and she was really good at communicating with me what she was doing (Sexual Violence Support Worker)

Of the four women interviewed for this study, three didn't encounter an intermediary when reporting sexual violence and Jane- whose case proceeded to court- did not have an intermediary when giving evidence at trial. An intermediary was used in Helen's case and Helen found this helpful.

I was glad that the intermediary was there cause it felt like the police were basically bit clueless and just didn't really know what to do, how to adjust things and that kind

of thing...they adjusted the physical environment and had the intermediary there and it kind of felt that the police were sort of just doing stuff as normal but the intermediary was the one who was trying to like make it work (Helen)

It was suggested by practitioners that involving an intermediary was dependent on several variables which included recognising the need for one in the first instance and the availability of a suitable intermediary at the right time. Some practitioners suggested that cost was a factor in whether an individual would have access to an intermediary. The idea that registered intermediaries were few and difficult to locate was prevalent.

They [intermediaries] are pretty scarce and not always obtained....The police are meant to get one when there is someone that needs one but it doesn't always happen or it can't happen in the timeframe that they need cos there is not enough of them across the country (Criminal Justice Expert)

I know in my experience it's been quite difficult to get intermediaries involved (Counsellor)

The Ministry of Justice has one view about how many intermediaries they need but on a day-to-day basis it really depends on the cases that are happening at any one time, as to whether there are enough of us to meet the demand (Registered Intermediary)

Interviewees confirmed that the availability of an appropriate intermediary may impact on a case- delaying case progression and police officers suggested that these delays could negatively on the police officer's ability to build a relationship of trust with the complainant.

I find that people who have learning difficulties accessing the criminal justice system have to wait even longer, [in what] is already a really long process because of all these extra levels that they have to go through (Sexual Violence Support Worker)

There (aren't) as many intermediaries as we need, so sometimes we have to wait for an intermediary to come and assess the victim to see if... how we were going to extrapolate the interview and how we're going to support through ABE. Sometimes we can be waiting for a month, 6 weeks, for that kind of

support. If we ever needed things like capacity assessments and things, you know, they take a bit of time and just start holding up all the investigations... I mean the investigation will continue but it's more about the victim's position and, you know, if we're waiting to have to be able to speak to the victim because we haven't got that support there, and that hold-up, you could say that could reduce the trust and confidence of the victim, you know, and we may then lose their cooperation. So yes, it does have an impact (Police Officer)

When intermediaries were used, the same intermediary may not be available for the whole process. An intermediary is designed as a short-lived intervention, and it often takes a long time for a case to progress through the Criminal Justice System. Ideally, police suggested the same intermediary should be used to build the communication relationship but may not always be available. The broader detrimental impact of the time a case may take to progress through the system was also recognised by other participants as problematic.

People often think the cross examination is going to be the most traumatic bit, I think it... that it often isn't...the thing that's more traumatic for witnesses is the hanging round, the waiting, the not knowing. So, I think if things were done in a more timely fashion, I think that would improve things for people with learning disabilities (Registered Intermediary)

I find that people who have learning difficulties accessing the criminal justice system have to wait even longer, [in what] is already a really long process because of all these extra levels that they have to go through (Sexual Violence Support Worker)

Practitioners reported intermediaries being withdrawn right before an appearance in court, leaving the witness without a valued source of communication support before a crucial and difficult part of the process.

Sometimes the CPS or judges have watched ABE videos and thought, 'Oh, I don't know what the intermediary is doing there, they're not doing anything', not aware that it's taken the intermediary and the police officer five hours of preparation and planning to get that interview, and it's a good interview if I'm

not intervening, oddly..... that has then followed that some judges have then said, 'Well they don't need an intermediary at court', and then that is the worst possible thing because you've worked so hard to get through to there and then you're not approved for court, how do you then explain that to the person? (Registered Intermediary)

The impression that intermediaries were scarce and expensive, coupled with a poor understanding of their role meant that at times police sought to replace their expertise with an 'appropriate adult'. This practice was considered widespread by the participants in this research, and many had personally been asked to sit in on interviews with people with learning disabilities.

Instead of just calling an intermediary straight away, they'll exhaust all other options of people who could just do it and act as a kind of...appropriate person before they automatically go down the intermediary route and I'm assuming that's to...cost save.... what they'll be doing in exhausting like social workers, people who could just sit in with them while they are doing the interview, but of course that is not an intermediary (Sexual Violence Support Worker)

While professionals usually reported feeling empowered to refuse to act as an appropriate person, this may not be the case with a parent or carer who may also be asked to fulfil this role. The replacement of an intermediary with a family member can have serious implications - both in terms of the quality of evidence that can be elicited from the witness without a communication specialist present, but also in terms of the content of that evidence.

#### Criminal justice system perception of credibility

Practitioners suggested that victim-survivors with learning disabilities could be perceived as 'unreliable witnesses' by the police or courts (see also Williams and Jobe 2024). Being identified as learning disabled/autistic could be enough for a speaker's account to be questioned. Specifically, where victim-survivors with learning disabilities had difficulties in verbalising a consistent account, due to their memory of events or their presentation of the sequence of events, then the credibility of their account could be questioned.

[It depends on] whether you're coherent and a good witness that comes across well, so if you've got gaps in your memory or your speech and your language isn't the best at articulating things or if you get confused easily then....your case is going to be dropped (Sexual Violence Support Worker)

A focus on victim behaviour in rape/ sexual assault cases means that differences in the perception of risk or traits such as being easily influenced, or a people pleaser can result in those with learning disabilities being characterised as a 'willing participant'.

A lot of the problems with people with learning difficulties that I've found is that they don't necessarily have that level of awareness of the situations that they are in and how that can lead to risk and sometimes that's used against them in court. And that's a massive concern and I think it is about the juries not understanding the particular learning difficulties that that individual might have and how that can influence the way that they're perceived by juries and ultimately the result. (Social Worker)

The criminal justice system construction of what constitutes and embodies a 'credible' victim of sexual violence can be argued to be an example of disability discrimination (see also Williams & Jobe 2024).

### Challenges of multi-agency support

Though the region has a wealth of expertise in criminal justice processes, sexual violence, and learning disabilities, we were unable to identify a professional who could confidently claim expertise all three areas. Support for victim-survivors is typically provided via a range of agencies. A lack of coordination between different support agencies was often cited as a source of confusion. This is exacerbated for victim-survivors with learning disabilities who might access multiple agencies or have several practitioners involved in their care.

For one of my service users at one time, they had two social workers, a core team of about five people, psychological team, an advocate... (Social Worker)

Added to this, a person with learning disabilities who is reporting a sexual offence may also have an independent sexual violence advocate (ISVA), a counsellor or a mental health nurse, a registered intermediary, and a specialist police officer in charge of their case. Some

practitioners suggested that it wasn't always clear which agency was responsible for which aspect of support and intermediaries described different methods of communication used by different agencies as confusing to the victim-survivor. This could lead to confusion and a lack of clear information for victim-survivors, which is exacerbated for victim-survivors with learning disabilities.

So, the victim attrition issue, we'll call it, has been potentially exacerbated by the amount of different support agencies that people are dealing with and therefore the confusion that can cause (Police Officer)

The fact that they may have to go through so many different channels of accessing support (Social Worker)

In contrast, Jane described reliving her experiences multiple times as police collected evidence and took statements but was not offered any contact with support organisations.

They didn't give me any organisations that could help me or anything like that....they wrote everything down but it was more the help I needed afterwards....they must have thought I had enough support with the manager of the home but that's not the case (Jane)

Some agencies reported that there was a lack of clarity from other agencies about agency roles and a clearer understanding of what each service does and does not provide was needed. This was particularly an issue for the police:

I think some of the problems that I've experienced or seen my team experience specifically has been around particular agencies or particular individuals not necessarily understanding the role of the other individual or agency... Sometimes somebody with the best interests might give somebody complete misinformation... it's nearly always somebody tells them something that the police can do, when actually we can't... We have a lot of myth busting of what we can and can't do, managing expectations...it brings an element of confusion, unnecessarily, that probably just makes matters worse for the victim. (Police Officer)

Participants suggested that one way to mitigate the confusion of multiple support agencies and communication difficulties between agencies was to appoint a specialist single point of contact for victim-survivors with learning disabilities.

## **Discussion**

Reporting sexual violence is a complicated and difficult process for any victim-survivor and, with recent UK prosecution rates at the lowest they have ever been (CPS 2020), unlikely to result in a conviction. The findings in this paper add to existing research on inadequate criminal justice responses to reports of sexual violence and violence against disabled victim-survivors, with important insights into challenges faced by victim-survivors' with learning disabilities when navigating an ableist criminal justice system.

Our interviews with practitioners highlight good practice, however this was not system wide. Inconsistencies in police responses mean that the way the justice system is experienced is highly dependent on the individual police officers that deal with a case. There is a need for increased training for the police to enable them to better recognise learning disabilities and understand the potential impact that a learning disability might have on an individual. When the authorities rely on official medical diagnoses or the involvement of services, people with learning disabilities/ autism can be overlooked. Thus, those who have not been diagnosed or do not need support services or a care package are rendered more vulnerable - they have less access to special measures and less support.

The need for more effective training and greater awareness was suggested by all participants as a good starting point in improving experiences of the criminal justice system for victim-survivors with learning disabilities. Participants highlighted that while available special measures address some barriers for victim-survivors with learning disabilities, they should not be regarded as the only solution or the most appropriate approach for every victim-survivor. As Majeed-Ariss and colleagues (2021) found, victim-survivors reporting rape/sexual assault are not always given sufficient choice regarding the use of, or combination of special measures. This lack of autonomy is especially problematic for a victim-survivor of sexual violence with a learning disability who may need several special measures and additional tailored support beyond the special measures on offer. What is needed is an individualised, victim centred approach. Here, we agree with the conclusion of previous studies- Thiara, Hague, & Mullender (2011), Balderstone (2013) and Hollomotz,

Burch & Bashall (2023)- who all suggested that criminal justice responses and services designed *by* and *for* disabled victim-survivors are the way forward to developing inclusive responses and service provision.

What is evident from our study is that ensuring communication is inclusive for the individual victim-survivor is crucial. Standardised practices such as the use of written communication are not inclusive and a lack of cohesion across agencies offering support to victim-survivors can make an already complex system even more confusing to someone with a learning disability. The use of letters to communicate sensitive and personal information can be argued to potentially breach confidentiality and victim's rights if a person with learning disabilities cannot read or does not have first access to their own mail. It must be recognised that parents, carers, and managers are not neutral advocates but are usually invested in the individual and their case. They may not understand information themselves; they could withhold upsetting information, and, in some cases, they may be related to or work closely with the alleged perpetrator. Therefore, we question the ethics of methods which require such a filter, particularly in instances when a communication need has been identified. This is not to say that a parent or carer should never be present during an interview or that letters are never appropriate for people with learning disabilities/ autism - indeed, someone who knows the victim-survivor well can provide valuable insight and they may be an important source of emotional support. Rather, this is an example of the importance of personalisation. Asking the victim-survivor who they want to be present at an interview is a small change but one which could positively influence the victim-survivors' experience and potentially the case outcome.

Practitioners creating their own easy read material from internet sources is far from ideal. Best practice is to create easy read material *with* people with learning disabilities or specialist organisations. Also, while easy read material can be a useful first step to facilitate comprehension, easy read may not be the best option for all or a substitute for one-to-one, in person communication. A range of communication options are needed.

Practitioners in this study indicated that the spectrum of communication needs can make identifying the best way to work with an individual difficult. They would welcome specialist expertise to establish the most appropriate and effective communication and support needed in each individual case. Our research suggests that Registered Intermediaries are key to facilitating inclusive communication. Our findings show that when Registered Intermediaries

are used, they are effective, and their role is valued by both victim-survivors and practitioners. However, our research also suggested that issues with availability and perception of cost means Registered Intermediaries they are not always available or employed when needed. When an appropriate intermediary is unavailable this can delay case progression and negatively impact on a victim-survivor experience of reporting sexual violence.

Our findings show that professionals do not always correctly understand the role of a registered intermediary or recognise when an intermediary is needed. Not accessing an intermediary to facilitate communication when one is needed could have a profound effect on a victim- survivors' ability to access justice. The use of an 'Appropriate Adult', such as a parent or carer, in place of an intermediary can have serious implications for a case, particularly one of sexual offences - as one participant stated, 'who wants to talk about this in front of their mum?'.

Our research highlights cases where intermediaries were not used in court or were withdrawn right before an appearance in court. The withdrawal of intermediaries at court was also noted as a practice in Plotnikoff and Woolfson's (2019) evaluation of policy and practice for young witnesses, with 21% of participating judges dispensing with the intermediary before cross-examination. This is concerning as the Ministry of Justice (2022) guidance on achieving best evidence stipulates that witnesses with learning disabilities can use a registered intermediary when this would help them to give clear, quality evidence. Research undertaken by the Victims' Commissioner (2018) found that intermediaries played an invaluable role in eliciting high quality evidence from vulnerable witnesses and were pivotal in securing convictions in some cases. The withdrawal of an intermediary can have a seriously detrimental effect on the quality of evidence presented by the witness and can damage the chances of a conviction. As argued by Plotnikoff and Woolfson, special measures such as intermediaries "cannot operate effectively without the confidence of the judiciary" (2019: 17).

We argue that increased awareness and understanding of the role of an intermediary at all stages of the criminal justice system is crucial. Intermediaries should be engaged at the earliest point possible and ideally the same intermediary to be available throughout for consistency, to improve the victim-survivors' experience of reporting and to support criminal justice practitioners to consistently communicate in a way that works for the victim-survivor.

Our study suggests that complexities of current support available to victim-survivors with learning disabilities are reminiscent of descriptions by Hester (2011) of ‘different planets’ of service provision between women and children's services supporting victim-survivors of domestic abuse. Participants in a recent study by Hollomotz, Burch, and Bashall (2023) advocate what is needed are inclusive services/ responses with the victim-survivor at the centre of service design and delivery. - we agree. One option suggested by participants in our study was a single point of contact for victim-survivors with learning disabilities to navigate the confusion caused by a complex system, multiple channels of information and communication difficulties. One practical outcome of the study on which this paper draws was the introduction of an Independent Sexual Violence Advocate (ISVA) with specialised expertise supporting victim-survivors with disabilities at the local Rape Crisis Centre- a partner in this research. There are other examples of similar specialist support provision nationally. An evaluation of the impact of this specialist service provision on victim-survivors experiences of reporting sexual violence is needed.

Finally, participants in this study suggested that victim-survivors with learning disabilities are less likely to be viewed as reliable or ‘credible’ witnesses by the criminal justice system. As we argue in detail elsewhere (Williams & Jobe 2024) an adversarial criminal justice system reliant on atypical frames of reference and testimony of a ‘credible witness’ is significantly less likely to achieve justice for a victim-survivor of sexual violence with a learning disability. Current ableist constructions of what constitutes credibility in the criminal justice system can be considered discriminatory and a form of testimonial injustice.

## **Conclusion**

Studies have shown that sexual violence is underreported, the criminal justice process re-traumatises victim-survivors of sexual violence, rarely leads to a conviction and does not currently deliver the justice that victim-survivors of sexual violence want or need. This article provides evidence that these barriers are further pronounced for victim-survivors with a learning disability. Our research suggests there is an urgent need for adjustments to the system to ensure equity for people with learning disabilities/ autism when reporting rape or sexual assault, alongside the changes required for all rape victims to access justice.

Non-inclusive practices could have a profound effect on a victim-survivor's ability to access justice, such as not engaging an intermediary when an intermediary could provide crucial

support for communication. Without training for police officers and other first responders what emerges is a vicious cycle which perpetuates vulnerability and inequality. The factors which make a person vulnerable to sexual assault are the same factors which mean that they are less likely to seek or attain justice, which, in turn makes them vulnerable to further abuse.

Our study also points to broader ableist constructions of credibility in sexual violence cases that discriminate against victim-survivors with learning disabilities (see also Williams and Jobe 2024). It is important to note that the findings presented in this article are limited to a small-scale study in one police force area and we were only able to include interviews with four victim-survivors of sexual violence. We suggest broader research of criminal justice responses to victims-survivors with learning disabilities/ autism is needed if the challenges indicated in this paper are to be further documented and addressed.

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