

Trauma-Informed Lawyering in the Context of Civil Claims for Sexual Violence

NIKKI GODDEN-RASUL* AND CLARE WIPER**

Abstract

Over the last decade there has been an increase in civil compensation claims for sexual violence in the UK. Given 'trauma-informed' approaches have been called for in relation to legal responses to sexual violence, we put forward seven key principles of trauma-informed lawyering in this context and draw on interviews with UK-based civil lawyers who represent sexual violence survivors to explore the extent to which trauma-informed work is taking place. While we find that our sample of lawyers typically have a very good knowledge of sexual violence and the trauma it can cause, there is less certainty about how to accommodate the impacts into practice. Moreover, there is a tendency to prioritise individual healing and medicalise a form of social injustice. We conclude by emphasising the need for legal training and education on a trauma-informed approach which accounts for the social and political dimensions of sexual violence and trauma.

INTRODUCTION

The last decade has seen an increase in civil compensation claims for sexual violence in the UK. In part, this is due to increased public awareness of the possibility of such claims in light of high-profile cases. Civil claims were brought against the estate of Jimmy Savile, deceased children's presenter who sexually abused children for decades, and against the institutions which enabled the abuse.¹ Abuse cases against religious organisations, hospitals, care homes, youth organisations and police forces have also been widely publicised.² In addition, the #MeToo movement has empowered survivors across the world to disclose their experiences of sexual violence,³ overlapping with high-profile civil suits against wealthy, powerful defendants, including Harvey Weinstein, Prince Andrew and Donald Trump.

Alongside this increased public awareness, doctrinal changes have made civil claims for historic and contemporary sexual violence practically possible in more cases. The UK courts have expanded vicarious liability to include intentional torts to the person (which cover many forms of sexual violence)⁴ and made the limitation period for these torts extendable with judicial discretion,⁵ which is significant as survivors often do not disclose abuse until many years after it has ended. More recently, the Independent Inquiry into Child Sexual Abuse (IICSA) has attempted to make legal

* Newcastle Law School, Newcastle University, UK.

** Social Sciences Department, Northumbria University, UK.

Corresponding author: nikki.godden-rasul@newcastle.ac.uk.

Many thanks go to Jaqueline Kinghan and Richard Collier who took time and care in reading and providing valuable suggestions on an earlier draft.

¹ J. Halliday, 'Jimmy Savile: 31 victims of alleged abuse sue BBC and star's estate' *Guardian*, 13 February 2013.

² For example, see N. Titheradge, 'Scout Association faces increase in historical sex abuse claims' *BBC*, 10 December 2014; BBC, 'Aston Hall: Hospital abuse victims in compensation deal' *BBC*, 9 August 2019.

³ T. Serisier, *Speaking Out: Feminism, Rape and Narrative Politics* (2018).

⁴ *Lister v Hesley Hall* [2001] UKHL 22.

⁵ *A v Hoare* [2008] UKHL 6 and sections 11 and 33 Limitation Act 1980.

remedies more accessible to survivors of child sexual abuse, publishing a significant number of recommendations about how legal processes can be improved.⁶ Given the financial and practical limitations of the civil legal system, the numbers of sexual abuse cases are likely to remain relatively small compared to other personal injury cases.⁷ Nevertheless, civil claims for sexual violence have been increasing and this article presents original data from interviews with thirteen UK-based civil lawyers who represent sexual violence survivors. Ours is the first study to examine how civil lawyers understand, accommodate, and address the trauma which sexual violence can cause.

Let us be clear: the civil legal process is no panacea. Civil compensation claims do not provide sexual violence survivors with justice as they conceive of it, although they can provide a form of accountability and closure.⁸ Some survivors who have pursued civil claims have found the process just as distressing as the criminal legal process,⁹ and that it has compounded the trauma.¹⁰ This could be due to the nature of the adversarial system and the evidence gathering process which includes detailed interrogations of medical history and sexual behaviour to challenge a survivor's case.¹¹

However, the extent to which the process is re-traumatising could be, in part, reliant on the way that the lawyer handles the case and engages with their client.¹² In the civil legal context, 'the duty to clients is the foundation of the distinctive ethic of professions'¹³ and it is the work of personal injury lawyers to attract new clients, keep clients, and provide a good service to maintain this cycle.¹⁴ As such, to do this well in the context of claims for sexual violence, personal injury lawyers will need an understanding of sexual violence and its impact on survivors, many of whom, but by no means all, will experience trauma.

There are large bodies of literature on trauma-informed practices in health and other sexual violence service contexts,¹⁵ and there is an emerging body of scholarship about trauma-informed approaches in law, though primarily in the US.¹⁶ The relatively small amount of scholarship in the UK

⁶ Independent Inquiry into Child Sexual Abuse <<https://www.iicsa.org.uk/reports-recommendations.html>>.

⁷ N. Godden, 'Claims in Tort for Rape: A Valuable Remedy or Damaging Strategy?' (2011) 22 *King's Law Journal* 157, at 174.

⁸ H.F. Antonsdóttir, 'Compensation as a Means to Justice? Sexual Violence Survivors' Views on the Tort Law Option in Iceland' (2020) 28 *Feminist Legal Studies* 277; R.L. Holder and K. Daly, 'Recognition, Reconnection, and Renewal: The Meaning of Money to Sexual Assault Survivors' (2018) 24 *International Review of Victimology* 25.

⁹ J. Macfarlane, *Going Public: A Survivor's Journey from Grief to Action* (2020).

¹⁰ A. Jay, M. Evans, I. Frank and D. Sharpling, *Accountability and Reparations* (Independent Inquiry into Child Sexual Abuse 2019) Part C.1 para. 7.

¹¹ L. Ellison, *The Adversarial Process and the Vulnerable Witness* (2001).

¹² R. Campbell and P.S. Appelbaum, 'The Psychological Impact of Rape Victims' Experiences with the Legal, Medical, and Mental Health Systems' in *Applied Ethics in Mental Health Care: An Interdisciplinary Reader*, eds. D.A. Sisti, A.L. Caplan and H. Rimon-Greenspan (2013) 149.

¹³ A. Boon, *The Ethics and Conduct of Lawyers in England and Wales* (2014, 3rd edn.) 297.

¹⁴ Y. Suseno, A.H. Pinnington, J. Gardner and A.D. Shulman, 'Social Capital and Knowledge Acquisition in Professional-Client Relationships' (2006) 13 *International Journal of the Legal Profession* 273, at 274.

¹⁵ A. Muttillio, J.L. Murphy and A. Galletta, 'A Decade of Trauma-Informed Care: An Organizational Case Study' (2022) 31 *Journal of Aggression, Maltreatment & Trauma* 1033.

¹⁶ H. Maki, M. Florestal, M. McCallum, J.K. Wright, *Trauma-Informed Law: A Primer for Lawyer Resilience and Healing* (2023); T. Kraemer and E. Patten, 'Establishing a Trauma-Informed Lawyer-Client Relationship (Part One) Trauma in Practice' (2014) 33 *Child Law Practice* 193; N.C. McKenna and K. Holtfreter, 'Trauma-Informed Courts: A Review and Integration of Justice Perspectives and Gender Responsiveness' (2021) 30 *Journal of Aggression, Maltreatment & Trauma* 450; F. Gerry, 'Trauma-Informed Courts: Part 1' (2021) *New Law Journal* 16.

is mostly in the areas of immigration law, criminal law, and legal aid work,¹⁷ but there is evidence that trauma-informed work is also developing in UK legal practice. For example, the Law Society of Scotland has Continuing Professional Development training on trauma-informed lawyering¹⁸ for lawyers practising in different areas of law. More significantly, the 2023 Victims, Witnesses, and Justice Reform (Scotland) Bill provides a framework to embed trauma-informed practices across the justice system, though the specific provisions are targeted at criminal and civil courts and criminal justice agencies, and do not include private practice. In England and Wales, the Youth Justice Legal Centre has developed a guide on trauma-informed lawyering in the context of youth justice.¹⁹ Given this, it is surprising there is little literature on trauma-informed approaches to law and sexual violence, whether in relation to the criminal legal process as Ellison and Munro point out,²⁰ or civil compensation claims.²¹ Indeed, trauma-informed work does not feature in the IICSA reports, for instance. As such, there is little known about whether there is widespread knowledge and training about sexual violence and trauma-informed practices in this legal sector.

For survivors, a trauma-informed practice could substantially alter the way they experience the civil process. Without a trauma-informed approach – even with good intentions on the part of the lawyer – there is a significant risk of re-traumatisation.²² While other areas of personal injury work can often involve trauma (for example, car accidents or medical negligence which can cause significant physical and psychological harm), the structural gender and other power relations which underpin sexual violence play a part in the way trauma can manifest. So understood, the article first discusses conceptions and politics of trauma and the relationship to civil compensation claims. We then use the literature to identify and discuss seven key principles of trauma-informed lawyering for the context of sexual violence. These are: (1) recognition of the impact of violence and trauma; (2) positive relationships; (3) safety, trust and transparency; (4) minimising re-traumatisation; (5) empowerment, voice and choice; (6) cultural, historical and gender dimensions; (7) and minimising vicarious trauma. The way that these principles of trauma-informed lawyering are translated into practice are always context dependent. We take the specific context of civil claims for sexual violence, drawing on thirteen interviews with personal injury lawyers in the UK who take such cases, and analyse them in relation to the seven key principles. In doing so, we explore their understandings of sexual violence, trauma, and the limitations of trauma-informed approaches, and if and how this informs their work. We conclude by emphasising the need for legal training and education on a trauma-informed approach which accounts for the social and political dimensions of trauma.

¹⁷ J. Fleck and R. Francis, *Vicarious Trauma in the Legal Profession: A Practical Guide to Trauma, Burnout and Collective Care* (2020); L. Ellison and V.E. Munro, 'Taking Trauma Seriously: Critical Reflections on the Criminal Justice Process' (2017) 21 *The International Journal of Evidence & Proof* 183.

¹⁸ Law Society Scotland <<https://www.lawscot.org.uk/members/cpd-training/online-cpd/trauma-informed-training/>>.

¹⁹ Youth Justice Legal Centre <<https://yjlc.uk/resources/legal-guides-and-toolkits/trauma-informed-lawyering/>>.

²⁰ Ellison and Munro, *op. cit.*, n. 17.

²¹ M. Randall and L. Haskell, 'Trauma-Informed Approaches to Law: Why Restorative Justice Must Understand Trauma and Psychological Coping Restorative Justice' (2013) 36 *Dalhousie Law Journal* 501.

²² Campbell and Appelbaum, *op. cit.*, n. 12.

SEXUAL VIOLENCE, TRAUMA, AND CIVIL COMPENSATION CLAIMS

Sexual violence has become almost synonymous with trauma.²³ Since the 1970s when feminists framed sexual violence as a harm to survivors' personhood and to women collectively,²⁴ the psychological consequences that sexual violence can have on survivors has been explored and defined.²⁵ Currently, Gavey and Schmidt explain, within Western publics, politics and professional domains, sexual violence is assumed to have severe life-long psycho-social consequences for survivors who are in need of healing.²⁶ On the one hand, this has legitimised and normalised the experiences of some survivors.²⁷ On the other, treating sexual violence as an individual injury requiring medical treatment can conflict with and inhibit feminist efforts to theorise, underscore and address its socio-political underpinnings.²⁸ Assumptions about the inevitability and symptoms of trauma also homogenises survivors' experiences and needs, modelled on a white European woman.²⁹ Such an individualised focus can reflect a Western model of trauma which is contrary to collective notions of trauma grounded in Black, indigenous and postcolonial literatures.³⁰ Trauma, then, is not an objectively identifiable injury. The way it is understood, (un)recognised and experienced is shaped by and contributes to the construction of social, political and economic orders.³¹

It must be emphasised that not all survivors will experience trauma because of sexual violence, and individualised conceptions of trauma which pathologise the cause and response should be resisted. In the medical literature there is recognition that emotional and psychological reactions to trauma are likely to vary greatly among individuals depending on a variety of contextual factors, including: the personal characteristics of the survivor, their relationship (if any) with the person who has abused them, their situation within social relations and hierarchies, personal histories of violence, and family, medical and social supports.³² Some definitions of trauma reflect this, covering a wide range of potential circumstances and impacts, and are not necessarily tied to medical symptoms or diagnoses. For example, the UK Trauma Council defines trauma as 'the way that some distressing events are so extreme or intense that they overwhelm a person's ability to cope, resulting in lasting negative impact'.³³ Impacts can include shock, fear, anxiety, shame, self-blame,

²³ S. Lamb, 'Constructing the Victim: Popular Images and Lasting Labels' in *New Versions of Victims: Feminists Struggle with the Concept*, ed. S. Lamb (1999) 108.

²⁴ S. Egan, *Putting Feminism to Work Theorising Sexual Violence, Trauma and Subjectivity* (2020) 100; J. Bourke, 'Sexual Violence, Bodily Pain, and Trauma: A History' (2012) 29 *Theory, Culture & Society* 25.

²⁵ S. Sutherland and D.J. Scherl, 'Patterns of Response among Victims of Rape' (1970) 40 *American Journal of Orthopsychiatry* 503; A. Wolbert Burgess and L. Lytle Holmstrom, 'Rape Trauma Syndrome' (1970) 131 *American Journal of Psychiatry* 981; J.L. Herman, *Trauma and Recovery* (1997).

²⁶ N. Gavey and J. Schmidt, '"Trauma of Rape" Discourse: A Double-Edged Template for Everyday Understandings of the Impact of Rape?' (2011) 17 *Violence Against Women* 433.

²⁷ Herman, op. cit., n. 27.

²⁸ M.A. Beres, B. Crow and L. Gotell, 'The Perils of Institutionalization in Neoliberal Times: Results of a National Survey of Canadian Sexual Assault and Rape Crisis Centres' (2009) 34 *The Canadian Journal of Sociology / Cahiers canadiens de sociologie* 135, at 142.

²⁹ A.C. Rojas Durazo, 'Medical Violence Against People of Color and the Medicalization of Domestic Violence' in *Color of Violence: The INCITE! Anthology*, ed. INCITE! Women of Color Against Violence (2006); I. Visser, 'Decolonizing Trauma Theory: Retrospect and Prospects' (2015) 4 *Humanities* 250.

³⁰ M. Yellow Horse Brave Heart, 'Gender Differences in the Historical Trauma Response Among the Lakota' (1999) 10 *Journal of Health & Social Policy* 1; E. Prussing, 'Historical Trauma: Politics of a Conceptual Framework' (2014) 51 *Transcultural Psychiatry* 436; bell hooks, 'Lasting Trauma' in *Rock My Soul: Black People and Self Esteem*, ed. bell hooks (2003).

³¹ D. Fassin and R. Rechtman, *The Empire of Trauma: An Inquiry into the Condition of Victimhood* (2009).

³² J.G Beck and D.M. Sloan, *The Oxford Handbook of Traumatic Stress Disorders* (2020, 2nd edn.) 7.

³³ <https://uktraumacouncil.org/trauma/trauma?cn-reloaded=1>

loss of trust and distress which can last for days or weeks after the traumatic event.³⁴ The impact and manifestations of trauma can vary depending on the person's location within social hierarchies, particularly as gender, race, class and ability affect the distribution and frequency of traumatic injury.³⁵

If severe psychological reactions and symptoms continue, the survivor may be diagnosed with the specific condition of post-traumatic stress disorder (PTSD), first recognised in the clinical literature by the American Psychiatric Association in 1980. The current American Psychiatric Association's (APA) *Diagnostic and Statistical Manual of Mental Disorders (DSM V)*³⁶ identifies four categories of PTSD: persistent intrusive thoughts and flashbacks; avoiding people, places, activities, objects and situations which could raise memories of the event; alterations in cognition and mood; alterations in arousal and reactive symptoms, which may include being irritable and having angry outbursts or behaving recklessly or in a self-destructive way. These specific medical criteria are helpful to give an indication of the ways in which trauma can manifest, but trauma should also be understood as being shaped by social relations and institutional structures.

Understandings of trauma inform and are informed by law's conceptions of and responses to it, including through claims for financial compensation.³⁷ As recognition of the potential psychological impact of sexual violence became more commonly understood from the 1970s, tort actions to compensate for this harm followed.³⁸ Nevertheless, it wasn't until the 1990s that the psychological impacts of sexual violence really took hold in judicial assessments of damages.³⁹ On the one hand, providing compensation for trauma can provide a level of financial security and access to the most appropriate and long-term medical treatment in a shrinking welfare state and a national health service decimated by conservative governments. On the other hand, compensation can commodify the harms, putting a price on sexual violence and trauma that can be exchanged in a capitalist market.⁴⁰ It also 'privatises' the consequences of sexual violence,⁴¹ locating them in the individual who is subject to the 'damages lottery',⁴² only having a chance of redress when there is a pecunious defendant to sue, normally an institution with liability insurance.⁴³ Furthermore, as

³⁴ N.P. Yuan, M.P. Koss and M. Stone, *The Psychological Consequences of Sexual Trauma* (2006); Sexual Violence Research Initiative, *Rape: How Women, the Community, and the Health Sector Respond* (2007).

³⁵ M.E. Gilfus, 'The Price of the Ticket: A Survivor-Centered Appraisal of Trauma Theory' (1999) 5 *Violence Against Women* 1238 at 1243.

³⁶ The World Health Organisation provides a slightly different set of diagnostic criteria in the *International Classification of Diseases*. Both DSM and ICD can be used in the UK, but the latter is most common and is used by UK National Health Service practitioners. However, as trauma-informed practices are not necessarily based on medical diagnoses but rather the general impacts traumatic events can have on a person and their engagement with the world we do not detail different medical conditions or diagnostic criteria.

³⁷ Fassin and Rechtman, *op. cit.*, n. 33, p. 153.

³⁸ For example, see *W v Meah; D v Meah* [1986] 1 All ER 935 where the court primarily captured the harm as 'physical injury' and compare to *Griffiths v Williams* (1995) *The Times*, 24 November 1995 in which Rose LJ recognised the 'mental consequences' in the damages awarded.

³⁹ N. Godden-Rasul, 'Retribution, Redress and the Harms of Rape: The Role of Tort Law' in *Rape Justice: Beyond the Criminal Law*, eds. A. Powell, N. Henry and A. Flynn (2015) 112. For a recent example, in *FGX v Gaunt* [2023] EWHC 419 nearly £100,000 was awarded to a woman whose former partner had taken and posted sexually explicit images and videos of her on a pornographic website without her knowledge or consent, and 'chronic PTSD with an enduring personality change' is identified as the 'primary injury' (para. 51).

⁴⁰ M.J. Radin, 'Compensation and Commensurability' (1993) 43 *Duke Law Journal* 56.

⁴¹ E. Adjin-Tettey, 'Sexual Wrongdoing: Do the Remedies Reflect the Wrong?' in *Feminist Perspectives on Tort Law*, ed. J. Richardson and E. Rackley (2012) 192.

⁴² P.S. Atiyah, *The Damages Lottery* (1997).

⁴³ C. Brown and M. Randall, 'Compensating the Harms of Sexual and Domestic Violence: Tort Law, Insurance and the Role of the State' (2004) 30 *Queen's Law Journal* 311.

Feldthusen et al. explain, ‘to win “big” the lawyer is encouraged to portray [the claimant] as ... a person needing therapy for a long time and ... whose potential will never be fully realized’.⁴⁴

Tort claims, then, encourage a harmful and oppressive representation of survivors, and one which fits with the dominant white western invocations of trauma and recovery. Indeed, a claimant’s trauma and related harms need to be attributed to the single harmful wrong or series of wrongs perpetrated by the tortfeasor. So understood, civil claims are not set up to capture the ways in which sexual violence and trauma can be inter-connected with other aspects of a person’s life and cannot be disentangled from hierarchical social and systemic power relations.⁴⁵ Indeed, the outcomes that civil claims are geared toward – at least in the way they currently operate – inherently obscure the social and political dimensions of trauma.⁴⁶

In addition to problematic representations of sexual violence and trauma, the civil legal process does not readily accommodate people who may display effects of trauma. Traumatic memories can change the way information is recalled and processed so that details or a temporal sequence of events can be missing. This means accounts required in a legal process can be incoherent and inconsistent⁴⁷ which can have a negative impact in relation to evidence gathering and the outcome of a case.⁴⁸ Where trauma is caused by abuse which can bring shame and guilt then disclosing information can be difficult – but the legal process requires the details.⁴⁹ Much then rests on how lawyers navigate the legal process in order to accommodate for the effects of trauma and limit adverse impacts on their clients.

Despite the fact that civil compensation claims can invoke problematic representations of trauma, the experience of the civil process (and potentially outcomes) could be improved for sexual violence survivors where a trauma-informed approach is taken. To what extent problematic conceptions of trauma are relied on or challenged can depend on the principles which are taken to underpin a trauma-informed approach.

PRINCIPLES FOR TRAUMA-INFORMED LAWYERING IN THE CONTEXT OF SEXUAL VIOLENCE

Since sexual violence has become treated as traumatic there has been a trend – particularly in the contexts of health and sexual violence support – for services, public institutions, and organisations to become ‘trauma-informed’. This means understanding and appreciating the impact of trauma, adapting a service or provision to reflect and accommodate this, and promoting healing.⁵⁰ Trauma-informed care, programmes and interventions have proliferated over the last two decades in many different contexts and for different causes of trauma.⁵¹ However, trauma-informed practices are not unproblematic. Like ‘medicalising’ sexual violence as trauma,⁵² trauma-informed practices can pathologise sexual violence and encourage a focus on individual harms and healing while failing to capture collective and historical traumas.⁵³ This can, in turn, depoliticise sexual violence by disregarding the way that trauma is affected by relational and structural sources, including

⁴⁴ B. Feldthusen, N. Des Rosiers and O.A.R. Hankivsky, ‘Legal Compensation for Sexual Violence: Therapeutic Consequences and Consequences for the Legal System’ (1998) 4 *Psychology, Public Policy and Law* 433, at 449.

⁴⁵ Gilfus, op. cit. n. 37.

⁴⁶ For a discussion of the extent to which it is possible to have a non-commodifying compensation system which provides proper redress for sexual violence harms see Radin, op. cit. n. 43; and Adjin-Tettey, op. cit., n. 44.

⁴⁷ S. Lambe, C. Mawer, K. Moran and L. Cooper, *Trauma Informed Lawyering* (2021); Randall and Haskell, op. cit., n. 23, p. 523.

⁴⁸ Ellison and Munro, op. cit., n. 17, p. 188.

⁴⁹ Lambe and others, op. cit., n. 50.

⁵⁰ Muttillio, Murphy and Galletta, op. cit., n. 19, p. 9; Substance Abuse and Mental Health Services Administration, *SAMHSA’s Concept of Trauma and Guidance for a Trauma-Informed Approach* (2014) pp. 9-10.

⁵¹ Muttillio, Murphy and Galletta, op. cit., n. 18.

⁵² Rojas Durazo, op. cit. n. 31; Beres, Crow and Gotell, op. cit., n. 30, p. 142.

⁵³ Visser, op. cit., n. 31.

patriarchy, racism and ableism.⁵⁴ However, these limitations are not inherent to a trauma-informed approach. Rather, much depends on the key principles which are delineated and how they are translated into practice.

There is a substantial body of literature which sets out various key principles of a trauma-informed practice. Where principles differ, often this is because they are envisioned for a particular type of service or a particular context in which a service operates. Here, we identify which of these are relevant to legal processes and sexual violence, and what they mean. The most common denominators which would apply in a legal context are recognition of the impact of violence and victimisation, minimising re-traumatisation, and building positive relationships.⁵⁵ Lawyers must understand the nature of violence and its social, structural and individual dimensions and, with this awareness, adapt practices to minimise further trauma, for instance, by asking non-judgemental open-ended questions without assumptions.⁵⁶ To build positive relationships, the Youth Justice Legal Centre (UK) explains that this can be done by showing empathy, responsive listening, restraint from judgement, care and concern, patience, respect, and providing predictability.⁵⁷

For interpersonal and sexual violence, Pemberton and Loeb argue that feminist approaches to trauma are represented in SAMHSA's internationally recognised guidelines for trauma-informed practices.⁵⁸ These are: safety; trust and transparency; peer support; collaboration and mutuality; empowerment, voice and choice; and cultural, historical and gender issues.⁵⁹ However, not all of these are easily applicable in legal contexts. For instance, peer support and collaboration and mutuality may work well in relation to substance abuse and mental health services but are not so suitable in legal contexts, and are not included in trauma-informed approaches to youth justice, for example.⁶⁰ Safety; trust and transparency; and empowerment, voice and choice, by contrast, are common to other trauma-informed guidelines⁶¹ and can be applicable in legal contexts.⁶²

We view safety, trust and transparency as interconnected. When a lawyer is transparent about their role, what they can and cannot do to help, and the challenges and benefits of the legal process, this can help build client trust.⁶³ This trust can in turn help clients feel safer, especially if the lawyer is able to adjust the physical environment (for example, offering safe exit routes, and light and airy spaces) to provide a sense of physical and psychological safety.⁶⁴ Trying to ensure empowerment by giving survivors a voice and choices is particularly important in the context of sexual violence. This is because power imbalances connected to sexual violence can be replicated in

⁵⁴ K.A. Becker-Blease, 'As the World Becomes Trauma-Informed, Work to Do' (2017) 18 *Journal of Trauma & Dissociation* 131, at 133; J.M. Gómez et al., 'Shifting the Focus: Nonpathologizing Approaches to Healing from Betrayal Trauma Through an Emphasis on Relational Care' (2016) 17 *Journal of Trauma & Dissociation* 165, at 171.

⁵⁵ Lambe et al., op. cit. n. 50; Maki and others, op. cit., n. 16, pp. 65-66.

⁵⁶ Maki et al., op. cit., n. 16, p. 65.

⁵⁷ Lambe and others, op. cit. n. 45; See also American Bar Association, *Establishing a Trauma-Informed Lawyer-Client Relationship* (2014)

⁵⁸ J.V. Pemberton and T.B. Loeb, 'Impact of Sexual and Interpersonal Violence and Trauma on Women: Trauma-Informed Practice and Feminist Theory' (2020) 32 *Journal of Feminist Family Therapy* 115.

⁵⁹ SAMHSA, op. cit., n. 53.

⁶⁰ S. Buckingham, 'Trauma Informed Juvenile Justice' (2016) 53 *American Criminal Law Review* 641; Lambe and others, op. cit., n. 50.

⁶¹ D.E. Elliott, P. Bjelajac, R.D. Fallot, L.S. Markoff and B.G. Reed, 'Trauma-Informed or Trauma-Denied: Principles and Implementation of Trauma-Informed Services for Women' (2005) 33 *Journal of Community Psychology* 461.

⁶² Lambe and others, op. cit. n. 50; N. Martin, A. Woodhouse and C. Burke, 'Being Trauma-Informed - In Practice', *Law Society of Scotland* (2019) <<https://www.lawscot.org.uk/members/journal/issues/vol-64-issue-10/being-trauma-informed-in-practice/>>.

⁶³ Lambe and others, *ibid.*

⁶⁴ SAMHSA, op. cit., n 53, p. 11.

professional relationships.⁶⁵ However, giving survivors a voice is more than simply ‘having their say’. As McGlynn and Westmarland explain, it involves ‘active participation’ in decision-making and being heard, which ties to survivors’ desires for recognition of the harms of sexual violence as a part of justice.⁶⁶ Notably, empowerment, voice and choice is absent from Maki et al.’s principles of trauma informed lawyering which demonstrates the need to consider the legal context *and* the context of sexual violence together.⁶⁷

A principle not as commonly identified in trauma-informed practices but which SAMHSA recognises, is paying attention to the cultural, historical and gender dimensions of trauma and its causes. This means actively addressing cultural stereotypes and biases,⁶⁸ responding to racial, ethnic and cultural needs of service users, and addressing racial and historical traumas.⁶⁹ Without this principle, the social, cultural and political dimensions of trauma and sexual violence are unlikely to be recognised and responded to, potentially causing further harm.⁷⁰

Finally, Muttillo et al. have concerns that trauma-informed approaches often do not focus enough on staff who can be vulnerable to ‘vicarious trauma’ as a result of engaging with narratives of abuse experienced by others.⁷¹ Vicarious trauma can cause a person to display similar symptoms to primary trauma, including either re-experiencing or avoiding recollecting an experience they have been told, and emotional ‘numbness’.⁷² There is increasing evidence that lawyers who represent traumatised clients can experience vicarious trauma.⁷³ This can cause poor working relationships and practices which impact the lawyer and their colleagues, and can potentially contribute to re-traumatising clients.⁷⁴ As such, a trauma-informed approach must recognise and address the potential for vicarious trauma.

In summary, the seven key principles derived from the trauma-informed practices literature which we argue are applicable in the legal context are: (1) recognition of the impact of violence and trauma; (2) positive relationships; (3) safety, trust and transparency; (4) empowerment, voice and choice; (5) minimising re-traumatisation; (6) cultural, historical and gender dimensions; and (7) minimising vicarious trauma. In our study we use these principles to explore how personal injury lawyers representing sexual violence survivors understand sexual violence and trauma, and how this shapes their working practices, as well as the extent to which the limitations of trauma theory and civil compensation claims are resisted.

METHODOLOGY

We conducted qualitative semi-structured interviews between December 2021 and May 2022 with thirteen personal injury lawyers in Britain, all of whom have expertise in civil claims for sexual

⁶⁵ Elizabeth Reeves, ‘A Synthesis of the Literature on Trauma-Informed Care’ (2015) 36 *Issues in Mental Health Nursing* 698, at 701-770.

⁶⁶ C. McGlynn and N. Westmarland, ‘Kaleidoscopic Justice: Sexual Violence and Victim-Survivors’ Perceptions of Justice’ (2019) 28 *Social and Legal Studies* 179, at 192-193.

⁶⁷ Maki et al., op. cit., n. 16.

⁶⁸ See also Maki et al., op. cit., n. 16, p. 121.

⁶⁹ SAMHSA, op. cit., n. 53, p. 11. See further L. Comas-Díaz, ‘Racial Trauma Recovery: A Race-Informed Therapeutic Approach to Racial Wounds’ in *The Cost of Racism for People of Color: Contextualizing Experiences of Discrimination*, ed. A.N. Alvarez, C.T.H. Liang, and H.A. Neville (2016) 249.

⁷⁰ Pemberton and Loeb, op. cit., n. 61; Randall and Haskell, op. cit., n. 23.

⁷¹ Muttillo, Murphy and Galletta, op. cit., n. 15, p. 1042.

⁷² P.G. Jaffe, C.V. Crooks, B.L. Dunford-Jackson and M. Town, ‘Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice’ (2003) 54 *Juvenile and Family Court Journal* 1, at 4.

⁷³ Fleck and Francis, op. cit., n. 17; Claiming Space, *Factsheet: Vicarious Trauma* (2022); H. Baillot, S. Cowan and V.E. Munro, ‘Second-hand Emotion? Exploring the Contagion and Impact of Trauma and Distress in the Asylum Law Context’ (2013) 40 *Journal of Law and Society* 509.

⁷⁴ Fleck and Francis, op. cit., n. 17, pp. 58-60.

violence.⁷⁵ We identified law firms and individual lawyers with specialisms in sexual violence via internet searches for law firms advertising legal services for sexual violence survivors in the UK, emails to the Association of Personal Injury Lawyers and the Association of Child Abuse Lawyers, and recommendations from participants who had already been recruited. The latter was particularly helpful in identifying smaller firms working on these cases. Overall, this scoping exercise revealed that although sexual violence is an emerging specialist area within the much larger personal injury arena, the number of lawyers engaging in this work is still relatively small. Only 30 firms appeared to have experience of sexual violence cases broadly, although child sexual abuse often makes up the majority of cases. After contacting these 30 firms, 16 responded with an expression of interest in the research. We emailed a project information sheet and consent form to the relevant individuals within these 16 firms, and 13 lawyers from 11 firms agreed to interview. Our purposive sample thus represents over 30% of firms engaging with sexual violence cases in Britain, according to our scoping data.

The limitation of the sample relates to self-selection: lawyers who have more of an interest in sexual violence cases and feel more confident in their practice may be more likely to agree to interview. Interviewees are all white British, but there is some diversity in the sample in terms of gender, size of firm, job role, experience and specialism. Three interviewees were men and ten were women; five interviewees work at large resourceful firms (some international and some UK-based) and eight are from smaller firms; four interviewees are junior members of a team and nine are senior partners; two have over ten years experiences working in the field of sexual violence, whereas the rest are much newer to this area; and three specialise in adult cases, whereas the rest have more experience in historic child abuse cases. The data has been anonymised, each interviewee has had their real name replaced with a pseudonym, and we have been careful about the information used to contextualise the data given that our sample was obtained from a very small pool of civil lawyers. Where possible (and necessary) we provide general information about gender, job roles, law firms and specialisms, but we have not disclosed specific information about the cases our interviewees have worked on, or any other information that might make them identifiable.

The interviews lasted between 45 minutes and 1 hour, were conducted and recorded online via Teams or Zoom, and were transcribed by a professional transcription service. Interviewees were asked questions about their understandings of sexual violence, any training they have received in this area, the main legal problems associated with these cases, if and how an understanding of client trauma informs their work, and the impact of secondary and vicarious trauma on their own wellbeing. Interviews were informed by a feminist intersectional research praxis which entails a commitment to understanding people's experiences, as well as their constructions and perceptions about the experiences of others, in the context of broader power relations and intersecting forms of disadvantage and vulnerability.⁷⁶ The interviews also reflected a feminist ethics of care,⁷⁷ especially as the subject matter is sensitive, and so attention was paid to what was said, not said, and – as far as possible via Zoom and Teams – body language during interviews, so that we could pause or offer appropriate support if needed. Relevant support services were listed on a debriefing document.

The data was analysed thematically. This involved reading and re-reading the data, discussing emerging themes, and paying attention to (and reflecting on) common and divergent narratives across interview transcripts, which we then coded into thematic categories and sub-categories.⁷⁸ These thematic categories overlapped with principles on trauma-informed practices, and so we have analysed the data in relation to the seven key principles we drew out from the literature.

⁷⁵ Ethical approval for this study was obtained from Newcastle University and Northumbria University.

⁷⁶ S. Cho, K.W. Crenshaw and L. McCall, 'Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis' (2013) 38 *Signs: Journal of Women in Culture and Society* 785.

⁷⁷ J.C. Tronto, 'An Ethic of Care' in *Feminist Theory: A Philosophical Anthology*, eds. A.E. Cudd and R.O. Andreasen (2005).

⁷⁸ J. Swain, *A Hybrid Approach to Thematic Analysis in Qualitative Research: Using a Practical Example* (2018).

DISCUSSION

1. *Recognition and Understandings of Sexual Violence and Trauma*

For a trauma-informed approach, civil lawyers need to have a good understanding of the nature of sexual violence and its potential impact, including knowledge of trauma, its differential impacts, and connections to oppressive structural relations. Laney showed an understanding of the techniques of abusers explaining that perpetrators:

are clever in the way that they've groomed the individual so that individual thinks that this is only happened to them. So a lot of the time there is a question of "maybe I did something, maybe it was me?".... It's only when an individual realizes they weren't the only one and that there were others that they realize that it wasn't their fault.

Some interviewees highlighted the gendered dimensions of sexual violence: 'the theme running through them is they will have a level of vulnerability about them ... And they are mainly women' (Amanda) and 'there's always an inequality of position' in these cases (Derek). Others were less knowledgeable about the power relations involved in sexual violence, both in relation to social and political structures as well as specific organisations. Reflecting on the extent of sexual abuse uncovered in the Boy Scouts, James said:

I actually feel sorry for the Boy Scouts because it was a laudable organization. I don't know what your political views on it, it might be a bit Empire-ish, but nonetheless... You know, sending kids out to go camping and make [camp]fires, all that sort of stuff had its merits. But it was infiltrated so very badly by paedophiles and I don't think the Scouts realized it for years and years and years.

James identifies the imperialist underpinnings of the Scouts and connections to military protection of the British Empire.⁷⁹ However, he does not recognise that the Scouts have played a role in reinforcing forms of masculinity and gendered ideals imposed through colonialism and imperialism which connect to sexual violence.⁸⁰ Instead, he attributes sexual abuse to 'misdemeanours of individuals from years ago' rather than, in part, a product and reflection of the institutional cultures, values and structures which enable abuse and silence those who were abused. As such, some of the lawyers have problematic understandings of sexual violence which could shape their engagement with their clients and potentially contribute to re-traumatisation. In broader terms, this perhaps shows a lack of awareness among lawyers of structural injustices as a result of failings in legal education and ongoing professional training, as well as the legal profession's replication of structural hierarchies.⁸¹

This is also evident in the lawyers' descriptions of trauma, where the focus is on the individual. Victoria confidently explained: 'Primary trauma is anything that impacts on the person's sense of self, security and safety'. Most of the other interviewees talked about trauma more vaguely, but nevertheless indicated they have a good understanding of trauma and its impacts throughout the interview. For example, four interviewees recognised that trauma can be 'different' for everyone, and Natalie emphasised that trauma affects 'some' clients but not all, even if the abuse may have 'a long-term effect on them and their lives'. Contrary to concerns that the trauma discourse has resulted in a requirement that survivors display a particular trauma response to

⁷⁹ Y.R. Magrass, 'The Boy Scouts the Outdoors & Empire' (1986) 10 *Humanity & Society* 37; V. Bailey, *Scouting for Empire* (1982).

⁸⁰ M. Lugones, 'Heterosexualism and the Colonial / Modern Gender System' (2007) 22 *Hypatia* 186; C. Midgley, *Gender and Imperialism* (1998).

⁸¹ F. Adébisí, *Decolonisation and Legal Knowledge: Reflections on Power and Possibility* (2023); H. Sommerlad, 'Minorities, Merit, and Misrecognition in the Globalized Profession' (2012) 80 *Fordham Law Review* 2481.

legitimise their victim status,⁸² these interviewees did not seem to have strong assumptions about the nature and extent of trauma on sexual violence survivors. That said, many of the lawyers did see sexual violence cases as distinctive from other traumatic personal injury cases because ‘the harm has been caused deliberately, which can make a difference to trauma’ (Natalie). This is one of the reasons for a specific trauma-informed approach in the context of sexual violence.

A couple of the interviewees, however, did not show a good understanding of trauma. James said: ‘psychological trauma arising from sexual abuse, well, I don't profess to understand it, and I don't profess to know well how to deal with it’. While this could reflect humility and appropriate recognition that he is not a therapist,⁸³ James goes on to say, ‘I will simply just try and be as nice and polite and gentle as possible and advise about the legal process’, which does not reflect a trauma-informed approach. Kat said that, ‘We have a lot of problems with bringing these cases forward, you can anticipate because the clients have been so damaged ... But was she raped? No doubt, she was raped, but can I win that case?’ Claiming that all her clients have been ‘so damaged’ reflects and contributes to a harmful discourse that rape is inevitably traumatic,⁸⁴ removing any possibility for healing. While James and Kat both conveyed problematic sentiments, none of the other lawyers identified social, cultural or historic contexts of trauma, nor how its manifestation and impact can be shaped by patriarchy, racism, ableism and other structural power relations.⁸⁵ Instead, they explained trauma in a narrow-individualised sense, potentially perpetuating the medicalisation and depoliticization of sexual violence.⁸⁶

In terms of the lawyers’ sources of sexual violence and trauma knowledge, three interviewees mentioned the special interest group on child abuse (which is part of the Association of Personal Injury Lawyers) and said that there is ‘training on things like vicarious trauma and the survivor’s perspective on abuse and how they found the process’ (Lisa). Fran mentioned the Association of Child Abuse Lawyers’ conference but said, ‘they tend to focus more on procedural updates, legal updates ... but occasionally they might have lectures from psychiatrists or people who help people’. In contrast, Harry explained that at his firm ‘every six months, we have a refresher on re-traumatisation and engaging with your clients’. Similarly, Victoria’s firm sought out specialists to bring in and talk about working with traumatised clients and limiting vicarious trauma, which is reflected in her confidence in talking about trauma. Nevertheless, she – alongside six other interviewees – said it was largely ‘learning on the job’. To what extent there is training and support primarily depends on whether an individual firm seeks this out and there is currently a lack of visibility of the work on trauma-informed lawyering, or guidelines and training readily available for personal injury lawyers. Indeed, as this is a niche area of legal practise, many of our interviewees were keen to know about others who were working in this area and did not feel there was much support or a network outside of their firm.

2. Positive Relationships

To attract and retain clients, solicitors must develop positive relationships with them⁸⁷ – which is a crucial aspect of trauma-informed lawyering.⁸⁸ For this reason, personal injury lawyers may be directed toward understanding sexual violence and trauma, even if the reasons for working in this area are because ‘other traditional personal injury work, car accidents, etc, has become very un-economic’ and this work is ‘lucrative’ (James). Furthermore, having independent legal

⁸² F.E. Raitt and S. Zeedyk, ‘Rape Trauma Syndrome: Its Corroborative and Educational Roles’ (1997) 24 *Journal of Law and Society* 552; D. Miers, ‘Positivist Criminology: A Critique Part 2’ (1990) 1 *International Review of Victimology* 219, at 227.

⁸³ Maki et al., op. cit., n. 16, p. 35.

⁸⁴ R. McGarry and S. Walklate, *Victims: Trauma, Testimony and Justice* (2015) 42.

⁸⁵ Becker-Blease, op. cit., n. 57, p.133; Gómez et al., op. cit., n. 57, p.171.

⁸⁶ Muttillio, Murphy and Galletta, op. cit., n. 15, p. 1044; Beres, Crow and Gotell, op. cit., n. 30, p. 142.

⁸⁷ Boon, op. cit., n. 13, p. 297.

⁸⁸ Lambe and others, op. cit., n. 50.

representation through a legal process – someone whose purpose is to account for the survivor’s rights and needs – can have significant positive impact.⁸⁹ As Amanda emphasised, ‘the first letter is a client care letter ... you’ve got to care for your client’. Compared to other personal injury cases, Laney said ‘it’s very much a personal service’, and Victoria explained that ‘you do learn much more about them than you would about an everyday client, not just because you’ve pored through their medical records or the police statements, it is just because you have so much more contact’. Part of this is building up a ‘good rapport’ (Derek) because the clients need to be comfortable enough to ‘say the “bad words”’ (Victoria) and ‘describe some horrific events’ (Derek). As such, while it is part of the lawyer’s role in any case to build a positive relationship with clients, many of the lawyers had to work harder and spend more time doing this in sexual violence cases.

Many of the lawyers talked about the impact the violence and trauma sometimes had on clients’ behaviours, reflecting characteristics of trauma⁹⁰ and how they would accommodate it. For instance, Victoria said that ‘they’re more – and nothing I say should be taken as disrespectful – difficult clients ... and so we can often find ourselves being a substitute for an emotional punchbag’. Likewise, Fran said, ‘sometimes you’ve just got to sit there and... I mean, it can be sometimes they can be quite aggressive, quite difficult to handle or really fly off the handle and it can be very, very difficult’. Similarly, Harry talked about ‘difficult’, ‘volatile’ and ‘demanding’ clients but said he would ‘try to take my own ego out of it and realize that even when they say some really nasty things to you, about you, to take yourself away from that and say “this isn’t about me”’. Fran said that in these cases she is ‘more aware of keeping the boundaries... Trying to be very compassionate, patient ... because sometimes they take it out on you’. Without necessarily using the exact words, the sentiments of what these lawyers express show patience, restraint from judgement, and a respect for why clients may behave in particular ways. Their response is often to ensure they are readily available to contact while setting boundaries to provide a level of predictability – all qualities which Lambe et al. emphasise are important for trauma-informed lawyer-client relationships.⁹¹ In addition, these discussions underscore the potential for sexual violence cases to cause harm to the lawyers, and the need to ensure their mental and emotional wellbeing.⁹²

3. *Safety, Trust and Transparency*

Safety was not explicitly mentioned very often but was reflected in lawyers’ discussions of specific practices they have developed for sexual violence cases. Victoria said ‘I’ve got clients I can’t just phone up and ask questions – I need to email them and say I need to talk to you about some things’. Victoria was aware of the importance of giving her clients time to prepare for their meetings and to determine when they are psychologically and physically safe to speak, which aligns with SAMHSA guidance.⁹³ Lisa gave a different example, explaining that she typically will meet sexual abuse clients with a colleague because ‘when people are continuing with so much trauma ... you don’t know what her triggers are ... So trying to have somebody else there as well when I see her, is just from a safety point of view for both of us really’. While this shows a recognition of safety as a concern, it also shows some level of insecurity in terms of how to respond to traumatised clients if they are ‘triggered’, and a need for more training and support.

Elsie and Derek highlighted the gendered dynamics of sexual violence. Elsie said that sometimes she would involve only women lawyers in specific cases, and Derek said for sexual violence cases he would always take a woman colleague with him and give clients the option of having a family member or friend at the meeting. Partly this is to offer a sense of safety but also, as

⁸⁹ F.E. Raitt, ‘Independent Legal Representation for Complainants in Rape Trials’ in *Rethinking Rape Law: International and Comparative Perspectives*, eds. C. McGlynn and V. Munro (2010) 268.

⁹⁰ See above, section ‘Sexual Violence, Trauma, and Civil Compensation Claims’.

⁹¹ Lambe and others, *op. cit.*, n. 50.

⁹² See further below, section ‘7. Vicarious Trauma’.

⁹³ SAMHSA, *op. cit.*, n 53, p. 11.

Derek explained, it is about building trust because in sexual violence a 'position of trust has been abused and I shouldn't expect all of a sudden, because of what my job is or ... my reputation, I deserve that respect straight away'. Issues of trust cropped up repeatedly. Four interviewees highlighted that often their clients had been abused by a person in a position of authority and had been let down or re-traumatised by other professionals which led to a lack of trust, and 'it takes time to build trust with that individual' (Laney). On the whole, the lawyers showed a real need to take more time to build trust because of the abuse of power and trust involved in sexual violence and individual and institutional responses to it.

Five interviewees talked about 'expectation management' in the sense of being transparent with clients about the purpose of a civil claim, the process, and what they could expect as an outcome.⁹⁴ Mia said that 'the primary aim of the process is to get compensation but sometimes clients want something else, accountability and an apology which they may not get'. Similarly, Victoria said that 'if people want their day in court, they want justice, you know, you have to be very clear at the outset that "you're probably not going to get either of these things, you need to know that"'. Laney emphasised that 'it's really important that any expectations you set you meet or go beyond' because 'if you let a client down who's been let down by authority, you're just the same effectively'.

These discussions reflect that the aspects of justice important to survivors are not always, or often, met by the civil justice system. They align with Antonsdóttir's interviews with sexual violence survivors' on their perspectives of the civil justice system, from which she concludes that they have 'profoundly ambivalent views towards the tort law option and monetary compensation', which 'does not align with many survivors' understandings of justice'.⁹⁵ This does not mean that the civil justice system has no value for survivors, or that it cannot for some, provide a sense of justice, such as 'vindication' (Derek), 'validation' (Natalie) and 'recognition' of the wrong and harm (Victoria), all of which reflect elements of justice from survivors' perspectives.⁹⁶ However, as there can be a gap between what survivors want from the civil justice system and what they are likely to get, lawyers must be transparent about the process and possible outcomes – including barriers which can prevent a claim or limit the amount of compensation negotiated, such as limitation periods.⁹⁷

Most of the lawyers we interviewed showed a good understanding of why building trust with clients who have survived sexual violence is so important, the need to be transparent, as well as adapting practices to provide a sense of safety. Only three interviewees did not provide any specific examples of how they adapted their practices to accommodate the impact of trauma on clients. On the one hand, it could be expected that the lawyers will do this to ensure that they retain clients and secure a good reputation to attract further business. On the other hand, to build positive relationships with these clients takes more time, personal contact, and commitment and some may not see trauma-informed lawyering as cost-effective, particularly where a 'sausage factory firm' takes up abuse work because of 'financial incentives' (Victoria). Given there is a significant risk the civil process could re-traumatise survivors,⁹⁸ it is imperative that lawyers working in this area do understand the possible impacts of sexual violence and trauma and adapt their practices accordingly.

4. *Minimising Re-traumatisation*

A crucial part of trauma-informed practices is minimising re-traumatisation. However, most interviewees were not well-versed in strategies that would achieve this for sexual violence survivors.

⁹⁴ Reflecting the guidelines from the Youth Justice Legal Centre: Lambe et al., op. cit, n. 50.

⁹⁵ Ibid.

⁹⁶ McGlynn and Westmarland, op. cit. n. 69.

⁹⁷ For a discussion of limitation periods in this context, see S. Ring, K. Gleeson and K. Stevenson, *Child Sexual Abuse Reported by Adult Survivors: Legal Responses in England and Wales, Ireland and Australia* (2022) ch. 8.

⁹⁸ Macfarlane, op. cit., n. 9, p. 84.

The lawyers interviewed for this study confirmed that they have not received training about re-traumatisation in the context of sexual violence despite it being a 'very, very complicated' issue with 'subtle triggers' and 'so much impact' (Lisa). In the absence of guidance,⁹⁹ most have had to develop their own strategies for minimising re-traumatisation.

One of the most common strategies, outlined by five interviewees, involves minimising the number of times a client has to repeat their story of abuse: 'for example, if we get a barrister involved, or an expert witness, we'll try to give them as much background as possible so that the client doesn't have to go through it all again' (Elsie). Amanda said she asks her clients to tell their story directly to the psychiatrist rather than to herself, because she can 'get most of what [she] need[s]' from the psychiatrist's report. Many of the lawyers identified the psychiatrist appointments and reports as a difficult part of the process for many of their clients. Fran explained: 'No psychiatrist really is going to say that what they're going through... is all related to that abuse when there's other things ... which most clients find that very difficult to understand'. The fewer 'other things' there are – that is, the fewer other potential trauma triggers – and the more privileged the client is so they are less vulnerable to multiple social traumas, the more they will fit the civil law's 'ideal victim', whose individualised harm can be traced to the abuse.¹⁰⁰ There seems little room for the lawyers to challenge this within the confines of the civil process.

A few interviewees employ strategies that speak to the broader socio-cultural and gendered context of re-traumatisation.¹⁰¹ These interviewees recognise, as a starting point, the importance of ensuring that the client knows that they are believed and that blame is situated firmly with the perpetrator: 'One thing that's head and shoulders above everything else is recognition for these women of what they've been through, you know, all of that validation that their experience happened, and you know it wasn't their fault' (Natalie). The message here is that believing clients and recognising the harm – especially if the client's experience has been denied or concealed by people in positions of authority – can minimise re-traumatisation. Significantly, recognition is frequently cited as an aspect of justice from the perspectives of sexual violence survivors,¹⁰² which indicates connections between trauma-informed work and securing justice.¹⁰³

Some interviewees were unsure where to draw boundaries in their attempts to minimise re-traumatisation. For instance, Harry questioned whether he should answer his clients excessive phone calls to 'manage their anxiety through the case' and 'reassure them' or whether he should 'pass' on the phone calls and discourage this behaviour. Without clear boundaries, there is a potential for lawyers to be exposed to harm, but it is often difficult to establish effective boundaries without specialist training. As Lisa explained: 'I actually drove her [the client] to the appointment when she went to the medical experts and she did actually want me to go in, but I did draw the line at that, albeit because I wasn't quite sure where my boundaries stood and the duty of care'.

Some interviewees were evidently more confident in their ability to minimise re-traumatisation than others, and there certainly appear to be inconsistencies in the strategies implemented across the interview sample, with some interviewees focused more on individual level strategies, and others more conscious of the broader context in which sexual violence occurs. None seemed to think about minimising re-traumatisation in relation to sources of trauma aside from sexual violence, but which can intersect with such violence, for example racial trauma.¹⁰⁴ Generally though, minimising re-traumatisation relies on the other aspects of a trauma-informed approach being fulfilled and so it is unsurprising that there is inconsistency and a lack of confidence around this, given the need for greater training, knowledge, and best-practice sharing.

⁹⁹ See above, p x.

¹⁰⁰ On the connection between the ideal victim and trauma, see B. Spalek, *Crime Victims: Theory, Policy and Practice* (2006) 23.

¹⁰¹ See above, p x.

¹⁰² McGlynn and Westmarland, *op. cit.*, n. 69, p. 188.

¹⁰³ On this connection, see Randall and Haskell, *op. cit.* n. 23, p. 522.

¹⁰⁴ Gómez et al., *op. cit.*, n. 57, p. 171.

5. Empowerment, Voice and Choice

There was consensus among the interviewees that civil claims for sexual violence can be empowering for survivors because clients can choose and instruct their own solicitor, rather than be 'stuck with whoever is the investigating officer at the time, and whether or not they can be bothered to deal with it' (Amanda). In addition, given that power and control is taken away from sexual violence survivors via the actions of the perpetrator, aligning with Reeves,¹⁰⁵ Amanda emphasised that these uneven power dynamics must not be 'replicated' within the client-lawyer relationship. Some of the lawyers emphasised that survivors must 'get a voice in there' (Amanda) and be heard (Harry). This means providing 'recognition' and 'validation' of the harm they voice (Natalie, Victoria, Amanda),¹⁰⁶ which in the case of the civil justice system is 'when an insurance company puts a hand in their pocket' (Harry).

Some interviewees expressed that they must navigate between the requirements and outcomes of the civil justice system and what survivors want from the process, which do not always align.¹⁰⁷ Mia reflected on this and the importance of giving priority to clients' choices, even though this might not be compatible with what she considers to be the best legal advice – for instance, to avoid trial at all costs. As such, she provides a much more tailored approach:

I think it's just very specific to the client and what they want and what they see is justice in their case and everybody's different and I just think it's being mindful of that and not sort of just giving the standard sort of black and white legal advice of this is the position ... Instead, it's very much what do you want to happen? And if you do want X to happen then this is what we need to do. And just taking more of a tailored approach in terms of what the client sees is justice and what they want the outcome to be (Mia).

Similarly, Victoria gave an example of a client who would 'love to go to court and have a fight because I think he would feel better' but in doing so would potentially compromise his long-term safety and economic security. She said, 'if there's a decent offer on the table, it will be like, "this is a money claim, it's not worth your while to end up with nothing"'. She explained that while it is important that client voices are heard it is also her legal duty to help clients make 'informed' choices. These interviewees seemed to recognise the challenges and limitations of the civil justice system with respect to the level of voice and choice that survivors could be afforded. Not all did so. For example, Derek explained that his job is to help clients make 'practical' decisions which will result in a level of financial security and access to medical treatment rather than 'emotional' decisions which might compromise a financial settlement. While this is also a reflection of the constraints of civil justice, too much 'helping' clients to make the 'right' decision could mean survivors do not feel their choices are being respected, potentially generating feelings of frustration, dissatisfaction, and powerlessness.¹⁰⁸

Interviewees' discussions of empowerment, voice and choice show many of them recognise what these concepts mean for survivors, as well as the limitations of a civil compensation claim to provide justice for survivors. This only went so far, however, as none of the lawyers critically reflected on broader issues such as how survivors' expressions of harm must be individualised and attributed only and linearly to the abuse to secure compensation which, from a legal perspective, is the name of the game.¹⁰⁹

¹⁰⁵ Reeves, op. cit., n. 68, pp. 701-702.

¹⁰⁶ McGlynn and Westmarland, op. cit. n. 69, pp. 188-189.

¹⁰⁷ Antonsdóttir, op. cit., n. 8, pp. 278-279.

¹⁰⁸ Ring, Gleeson and Stevenson, op. cit., n. 102, p. 130.

¹⁰⁹ See above, section 'Sexual Violence, Trauma, and Civil Compensation Claims'.

6. Cultural, Historical, and Gender Dimensions

The scholarship on trauma-informed practices demonstrates that trauma associated with a particular event (or series of events) cannot be sufficiently understood without a broader awareness of social, cultural, and historic traumas,¹¹⁰ including those associated with patriarchy, racism, poverty, disability, homophobia, and their intersections.¹¹¹ For personal injury lawyers working on sexual violence cases, this broader understanding is important to avoid overly focusing on the individual, and medicalising a social and political problem. Yet most interviewees demonstrated a very limited understanding of the role of social, cultural, and historic traumas in the lives of their clients. This was evident in three key areas: (1) a lack of understanding of the gendered nature of sexual violence; (2) limited consideration of the role of legal systems in reproducing the oppression of racialised and marginalised communities; and (3) a failure to adopt an intersectional analysis of sexual violence and trauma.

Interviewees felt that their work can be ‘exceptionally rewarding’ (Derek) and ‘meaningful’ (Lisa) because it can help people who have had traumatic experiences access justice, which is both a ‘real privilege’ (Amanda) and a ‘huge responsibility’ (Derek). However, interviewees do not engage in this type of work for the same reasons and there are some fundamental differences in terms of their perceptions of justice for sexual violence survivors. These differences are typically linked to the interviewees’ understandings of the broader cultural, historical and gendered nature of sexual violence. Amanda and Kat were driven by their understandings of historical and institutional failures to protect women (in particular) from male violence and abuse. They both have made a conscious decision to focus on adult cases of sexual violence, frequently against high profile defendants who have ‘groomed’ and ‘abused’ people – usually women – by targeting their ‘vulnerabilities’ and ‘exploiting’ them (Amanda). Amanda situated her practice against the backdrop of the Times Up movement and conceptualised her work as being a part of broader efforts to drive social, cultural and institutional change around gender-based violence. Commitment to these types of cases does not come without risks,¹¹² particularly financial and reputational risks, but she believes it is a ‘really positive step’ that her firm is willing to take on these cases and that other firms with the resources and capacity should follow suit. For these two interviewees, obtaining therapy and compensation is viewed as important, but was often conceptualised as secondary to holding the defendant to account:

Holding [the defendant] to account is really important for them ... And there's usually a pattern as well. There's normally not just one person, it's usually a few people and when one person comes forward, eventually others will make complaints, so it is very empowering and it's about trying to address and regain what the [defendant] took from them (Amanda).

Kat also talked about the importance of women ‘going public’ with their stories of sexual assault to drive the movement forward and potentially lead to more significant social change, which reflects Macfarlane’s approach to the use of the civil law.¹¹³ This contrasts with the views of most other interviewees, who typically view compensation for the individual client as the overarching purpose of these cases. While this may technically be accurate – these are civil claims for compensation – there was a much narrower sense of social justice, and it is possible that this restricts their practice and the way they communicate with their client. Interviewees often mentioned the importance of using financial compensation for therapy and other forms of treatment ‘that [the client] may never have been able to afford otherwise’ (Laney). Treatment for sexual violence is thus individualised and medicalised, and the broader social and cultural forces that enable this violence are overlooked.

¹¹⁰ SAMHSA, op. cit., n. 53, p. 11; Maki et al., op. cit., n. 16.

¹¹¹ Becker-Blease, op. cit., n. 57, p. 133; Prussing, op. cit., n. 32.

¹¹² For further discussion, see literature on ‘cause lawyering’, for example, A. Sarat and S.A. Scheingold, *Cause Lawyering: Political Commitments and Professional Responsibilities* (1998).

¹¹³ Macfarlane, op. cit., n. 9.

Similar issues also exist around perceptions of the criminal legal system. Most interviewees said that they would only take a case ‘on the basis we can obtain the criminal case or the police file’ (Laney). James stated that: ‘I don’t think you’d be taken terribly seriously by the defendant’s civil insurer unless you’ve reported to the police, and there’s sense in that, I guess’. While this reflects the challenges for personal injury lawyers to gather evidence themselves, there was no recognition that this means that the civil system typically responds to only a small pool of survivors – approximately one in six – who report to the police.¹¹⁴ Furthermore, no interviewees recognised that the criminal legal system privileges white sexual violence survivors,¹¹⁵ and that in relying on this system the civil legal system is perpetuating racial injustices. Generally speaking, then, it seems that practice, training, and guidance on trauma-informed lawyering requires greater emphasis on critical reflection, ‘cultural humility’,¹¹⁶ and a race-informed approach to trauma and healing.¹¹⁷

7. Vicarious Trauma

There are common challenges experienced by solicitors working on personal injury cases involving sexual violence. Some of these are general challenges associated with personal injury work: targets, deadlines, strict professional obligations, and over-working for poor rates of pay. But there are also specific challenges with sexual violence cases: hearing details of sexual violence, of its harmful consequences, and of the social and institutional neglect and disparagement of survivors when they have sought to have the harms redressed. Certain cases make a mark due to their severity or their negative outcomes and several interviewees said these cases still play on their mind, despite the passing of time. Moreover, some of their descriptions of their reactions to and handling of sexual violence cases display characteristics of vicarious trauma.¹¹⁸ Interviewees described feeling increasingly ‘numb’ when reading the details of new cases (Lisa); that they felt they had to become ‘a bit dead inside’ (Victoria); and that they were no longer an ‘empathetic person’ (Harry). This seeming loss of emotion can exist alongside feelings of great emotion: of being ‘in tears at times reading some of the entries’ (Lisa); being ‘buried in the emotion of all my clients’ (Charlie), and feeling more ‘horrified’ about the ‘cover up of the abuse’ more so than the abuse itself (Charlie). The injustices that clients experience over the course of their lives are, in Amanda’s words, ‘completely unforgivable’. Knowing that they cannot change any of this leads to feelings of disillusionment for some interviewees: ‘What we do will never change what has happened to the individual. And I think we know that’ (Laney). The impact of vicarious trauma not only has implications for professional practice, but wider consequences for the lawyers’ lives and their relationships with their loved ones: ‘I said to my wife, “today was awful so just leave me alone”’ (Harry).

Evidently, more work and support on the issue of vicarious trauma in the legal profession is needed, although there is evidence of some excellent practice emerging.¹¹⁹ However, interviewees for this study described disparities in the level of support on offer, and this is usually due to restrictions on time and resources, especially in the smaller legal firms. Firms with formal policies for addressing secondary and vicarious trauma were typically large and resourceful, and interviewees from these firms described having access to ‘mental health helplines’, ‘healthy mind advocates’, ‘counselling over the phone’, and ‘private health insurance’. This support does not appear to be tailored to the trauma of working on sexual violence cases (apart from one large firm who paid for an expert to speak to solicitors about sexual violence trauma). In contrast, interviewees from smaller firms spoke mostly about the importance of informal support, whereby ‘everyone takes

¹¹⁴ Rape Crisis England and Wales (2023):

<https://rcew.fra1.cdn.digitaloceanspaces.com/media/documents/Stats_webpage_-_sources_further_info.pdf>.

¹¹⁵ R.K. Thiara and S. Roy, *Reclaiming Voice: Minoritised Women and Sexual Violence* (2020).

¹¹⁶ Maki et al., op. cit., n. 16.

¹¹⁷ Comas-Díaz, op. cit., n. 73.

¹¹⁸ See above, section ‘Sexual Violence, Trauma, and Civil Compensation Claims’.

¹¹⁹ Fleck and Francis, op. cit., n. 17, p. 5.

responsibility for everyone' (Derek) and the working culture is 'friendly and open and informal' (Victoria).

Two of the interviewees made reference to wider work on improving mental wellbeing in the legal professions, and Victoria mentioned the charity Law Care. Conscious efforts to reduce vicarious trauma were also being made in certain firms. For example, James explained that files are labelled as 'graphic' and password-protected if they can cause harm – i.e., because they contain 'naked images of female body parts or male body parts', 'dead bodies', or 'post-mortem' images from the pathologist. This prevents 'illicit access to unnecessary information and harmful images or videos' as well as 'accidental access'. At Elsie's firm, lawyers always have a mixture of cases so they are not only working on sexual violence cases. In addition to a supportive working culture, interviewees spoke of the importance of personal resilience and professional distance, of having good support networks, and engaging in hobbies and exercise outside of work. Overall, the lawyers seemed to have awareness of the risks of vicarious trauma and there are some good informal and formal practices which align with Fleck and Francis's suggestions.¹²⁰ Nevertheless, a greater level of knowledge and training about best practices and support is needed and wanted by the lawyers.

CONCLUSION

There is increasing attention being paid in the UK legal sector to the need for trauma-informed legal practices and support for vicarious trauma. But there is less knowledge about how trauma-informed practices should take shape in particular areas of law or the extent to which lawyers' practices are currently trauma-informed. In this article we have drawn on the large body of trauma-informed literature to delineate seven key principles that should underpin a trauma-informed approach in the context of law, and the particular principles which should be emphasised when trauma is connected to sexual violence. These are: recognition of the impact of violence and trauma; positive relationships; safety, trust and transparency; empowerment, voice and choice; minimising re-traumatisation; cultural, historical and gender dimensions; and addressing the potential for vicarious trauma. Through interviews with personal injury lawyers who represent sexual violence survivors, we explored their understandings of sexual violence and trauma and how this shapes their working practices. The specific context of the civil law is important because of the increasing number of civil claims for sexual violence over the last decade and because of the professional-client relationship that is the foundation of personal injury lawyers' practice. Moreover, the politics of trauma can play out differently in different areas of law, as we have shown in relation to compensation claims, so contextual approaches need to be taken to trauma-informed lawyering.

We found that most of the lawyers we interviewed had a very good understanding of sexual violence and the impact of trauma, and they were particularly aware of the need to take time and care to build up a relationship of trust given the abuse of power that is connected to sexual violence. Most interviewees explained that they treated sexual violence survivors who did display impacts of trauma differently to other clients, and gave them more time, contact and patience. While there were some examples of good practice among the lawyers, there was less confidence in and fewer examples of practical ways to ensure survivors' physical and emotional safety, and how best to minimise re-traumatisation. Similarly, most of the lawyers were acutely aware of the potential of their cases to have a negative impact on their own mental wellbeing – perhaps a reflection of the broader attention to wellbeing in the profession¹²¹ – but less sure about the best ways to minimise this impact aside from informal support within their team. There was also recognition of the need to empower clients, to enable them to speak and be heard, and to afford them as much control and choice as possible within the process.

¹²⁰ id.

¹²¹ R. Collier, 'Wellbeing in the Legal Profession: Reflections on Recent Developments (Or, What Do We Talk About, When We Talk About Wellbeing?)' (2016) 23 *International Journal of the Legal Profession* 41.

While many of the lawyers highlighted that civil compensation claims can offer survivors a form of accountability, recognition of harm, and financial support to receive appropriate health treatments, some were at pains to emphasise that this does not amount to justice. Furthermore, feminist concerns about framing sexual violence were borne out. There was typically a focus on the individual survivor and a medicalisation of sexual violence, risking neglecting sexual violence as a social and political problem, and the cultural, historical and gendered dimensions of trauma, including the relationship to patriarchy, racism, poverty, ableism and their intersections.¹²² It is not clear from our study whether this is inherently the case due to tort law's 'architecture of bias',¹²³ or whether lawyers could work to disrupt the trauma framing more so than the lawyers conveyed in the interviews. Potentially, then, the use of tort law is doing more harm than good.

However, there were two lawyers who focused on social justice and political aims, taking more of a 'cause lawyering'¹²⁴ approach to their sexual violence cases. While these lawyers did not necessarily have better practices in terms of developing positive relationships with clients or preventing vicarious trauma, there was greater emphasis on empowering survivors, attracting media and political attention to their cases, and identifying potential broader impacts of cases. They also recognised the potentially oppressive impact of legal mobilisation on clients which is documented in the literature.¹²⁵ This raises questions about the role of tort law in movements to end sexual violence,¹²⁶ and about the relationship between this form of lawyering and a trauma-informed practice. These questions, though, are for another day.

We close by highlighting the need for more training and education on trauma-informed lawyering, and specific training which is developed for lawyers working in different areas of law or working in different contexts of trauma. It is good to see momentum building across the UK, and specifically in Scotland regarding the Victims, Witnesses and Justice (Scotland) Bill and embedding trauma-informed practices in the legal system. However, the aim to ensure as many lawyers and other legal actors are taking a trauma-informed approach should not be at the expense of losing sight of different contexts which can make a difference to how trauma-informed principles translate into practice. Most importantly, training must situate trauma within social structures of oppression: lawyers' reflective practices must not only consider justice for individual clients – which is an impoverished approach for social and political harms – but recognise the limitations and potential of law and legal processes to empower survivors and to be used for social justice.

¹²² Becker-Blease, op. cit., n. 57, p. 133; Prussing, op. cit., n. 32.

¹²³ M. Chamallas, 'The Architecture of Bias' (1988) 146 *University of Pennsylvania Law Review* 463.

¹²⁴ Sarat and Scheingold, op. cit., n. 121.

¹²⁵ L. Vanhala and J. Kinghan, 'The 'Madness' of Accessing Justice: Legal Mobilisation, Welfare Benefits and Empowerment' (2022) 44 *Journal of Social Welfare and Family Law* 22, at 23.

¹²⁶ As Vanhala and Kinghan point out, there is little analysis of the use of tort law in the legal mobilisation, strategic litigation, and law and social movements literatures; L. Vanhala and J. Kinghan, *Using the Law for Social Change: A Landscape Review* (2018) 11. For an example, see J. Barnes and T.F. Burke, *How Policy Shapes Politics: Rights, Courts, Litigation and the Struggle over Injury Compensation* (2015).