
ORIGINAL ARTICLE

Trauma-informed lawyering in the context of civil claims for sexual violence

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Abstract

Over the last decade, there has been an increase in civil compensation claims for sexual violence in the United Kingdom (UK). Given that 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 represented sexual violence survivors to explore the extent to which trauma-informed work is taking place. While we found that our sample of lawyers typically had a very good knowledge of sexual violence and the trauma that it can cause, there was less certainty about how to accommodate the impacts in practice. Moreover, there was a tendency to prioritize individual healing and medicalize a form of social injustice. We conclude by emphasizing the need for legal training and education on a trauma-informed approach that accounts for the social and political dimensions of sexual violence and trauma.

1 | INTRODUCTION

The last decade has seen an increase in civil compensation claims for sexual violence in the United Kingdom (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, the deceased children's television presenter who sexually abused children for decades, and against the

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institutions that enabled the abuse.¹ Abuse cases against religious organizations, hospitals, care homes, youth organizations, and police forces have also been widely publicized.² In addition, the #MeToo movement has empowered survivors around the world to disclose their experiences of sexual violence,³ overlapping with high-profile civil suits against wealthy, powerful defendants, including Harvey Weinstein,⁴ Prince Andrew,⁵ and Donald Trump.⁶

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)⁷ and made the limitation period for these torts extendable with judicial discretion,⁸ 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 remedies more accessible to survivors of child sexual abuse, publishing a significant number of recommendations about how legal processes can be improved.⁹ Given the financial and practical limitations of the civil legal system, the number of sexual abuse cases is likely to remain relatively small compared to other personal injury cases.¹⁰ Nevertheless, civil claims for sexual violence have been increasing, and this article presents original data from interviews with 13 UK-based civil lawyers who represented sexual violence survivors. Ours is the first study to examine how civil lawyers understand, accommodate, and address the trauma that 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, though they can offer a form of accountability and closure.¹¹ Some survivors who have pursued civil claims have found doing so just as distressing as the criminal legal process,¹² and that it has compounded the trauma.¹³ This

¹ J. Halliday, 'Jimmy Savile: 31 Victims of Alleged Abuse Sue BBC and Star's Estate' *Guardian*, 13 February 2013, at <<https://www.theguardian.com/media/2013/feb/13/jimmy-savile-victims-sue-bbc>>.

² See for example N. Titheradge, 'Scout Association Faces Increase in Historical Sex Abuse Claims' *BBC News*, 10 December 2014, at <<https://www.bbc.co.uk/news/uk-30367935>>; BBC News, 'Aston Hall: Hospital Abuse Victims in Compensation Deal' *BBC News*, 9 August 2019, at <<https://www.bbc.co.uk/news/uk-england-derbyshire-49277316>>.

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

⁴ M. Ryzik and C. Buckley, 'Harvey Weinstein Accusers Agree to \$17 Million Settlement' *New York Times*, 27 January 2021, at <<https://www.nytimes.com/2021/01/27/movies/harvey-weinstein-settlement.html>>.

⁵ C. Davies et al., 'Prince Andrew Settles Virginia Giuffre Sexual Assault Case in US' *Guardian*, 15 February 2022, at <<https://www.theguardian.com/uk-news/2022/feb/15/prince-andrew-and-virginia-giuffre-reach-settlement-in-principle>>.

⁶ J. Miller, 'Donald Trump Ordered to Pay Writer \$5mn in Sexual Abuse Lawsuit' *Financial Times*, 9 May 2023, at <<https://www.ft.com/content/933d458d-104d-4286-862d-888a55ad0ae6>>.

⁷ *Lister v. Hesley Hall* [2001] UKHL 22.

⁸ *A v. Hoare* [2008] UKHL 6; Limitation Act 1980, ss 11, 33.

⁹ Independent Inquiry into Child Sexual Abuse, 'Reports & Recommendations' *Independent Inquiry into Child Sexual Abuse*, at <<https://www.iicsa.org.uk/reports-recommendations.html>>.

¹⁰ N. Godden, 'Claims in Tort for Rape: A Valuable Remedy or Damaging Strategy?' (2011) 22 *King's Law J.* 157, at 174.

¹¹ 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 Rev. of Victimology* 25.

¹² J. Macfarlane, *Going Public: A Survivor's Journey from Grief to Action* (2020).

¹³ A. Jay et al., *Accountability and Reparations* (2019) part C.1, para. 7, at <<https://www.iicsa.org.uk/reports-recommendations/publications/investigation/accountability-reparations>>.

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.¹⁴

However, the extent to which the process is re-traumatizing could be, in part, determined by the way in which the lawyer handles the case and engages with their client.¹⁵ In the civil legal context, 'the duty to clients is the foundation of the distinctive ethic of professions',¹⁶ and it is the work of personal injury lawyers to attract new clients, retain existing clients, and provide a good service to maintain this cycle.¹⁷ To do this well in the context of claims for sexual violence, personal injury lawyers 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,¹⁸ and there is an emerging body of scholarship about trauma-informed approaches in law, though primarily in the United States.¹⁹ The relatively small amount of scholarship about the UK is mostly in the areas of immigration law, criminal law, and legal aid work,²⁰ 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 lawyering for lawyers practising in different areas of law.²¹ 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 (YJLC) has developed a guide on trauma-informed lawyering in the context of youth justice.²² Given this, it is surprising that there is little literature on trauma-informed approaches to law and sexual violence, whether in relation to the criminal legal process as Louise Ellison and Vanessa Munro point out,²³ or civil compensation

¹⁴ L. Ellison, *The Adversarial Process and the Vulnerable Witness* (2002).

¹⁵ R. Campbell, '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 et al. (2013) 149.

¹⁶ A. Boon, *The Ethics and Conduct of Lawyers in England and Wales* (2014, 3rd edn) 297.

¹⁷ Y. Suseno et al., 'Social Capital and Knowledge Acquisition in Professional-Client Relationships' (2006) 13 *International J. of the Legal Profession* 273, at 274.

¹⁸ See for example A. Muttillio et al., 'A Decade of Trauma-Informed Care: An Organizational Case Study' (2022) 31 *J. of Aggression, Maltreatment & Trauma* 1033.

¹⁹ H. Maki et al., *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 *J. of Aggression, Maltreatment & Trauma* 450; F. Gerry, 'Trauma-Informed Courts: Part 1' (2021) *New Law J.* 16.

²⁰ 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 *International J. of Evidence & Proof* 183.

²¹ Law Society of Scotland, 'Trauma Informed Training' *Law Society of Scotland*, at <<https://www.lawscot.org.uk/members/cpd-training/online-cpd/trauma-informed-training/>>.

²² S. Lambe et al., *Trauma Informed Lawyering* (2021), at <<https://yjlc.uk/resources/legal-guides-and-toolkits/trauma-informed-lawyering/>>.

²³ Ellison and Munro, op. cit., n. 20.

claims.²⁴ Indeed, trauma-informed work does not feature in the IICSA reports, for instance. As such, there is little information on whether there is widespread knowledge and training about sexual violence and trauma-informed practices in this legal sector.

For survivors, trauma-informed practices could substantially alter the way in which 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-traumatization.²⁵ 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 that underpin sexual violence play a part in the way in which 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: (1) recognizing the impact of sexual violence and trauma; (2) building positive relationships; (3) ensuring safety, trust, and transparency; (4) minimizing re-traumatization; (5) promoting empowerment, voice, and choice; (6) attending to cultural, historical, and gender dimensions; (7) and minimizing vicarious trauma. The way in which 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 interviews with 13 personal injury lawyers in the UK who took on such cases, and analyse them in relation to the seven key principles. In doing so, we explore our interviewees' understandings of sexual violence, trauma, and the limitations of trauma-informed approaches, and if and how this affected their work. We conclude by emphasizing the need for legal training and education on a trauma-informed approach that accounts for the social and political dimensions of sexual violence and trauma.

2 | SEXUAL VIOLENCE, TRAUMA, AND CIVIL COMPENSATION CLAIMS

Sexual violence has become almost synonymous with trauma.²⁶ Since the 1970s, when feminists framed sexual violence as a harm to survivors' personhood and to women collectively,²⁷ the psychological consequences that sexual violence can have on survivors have been explored and defined.²⁸ Nicola Gavey and Johanna Schmidt explain that currently within Western publics, politics, and professional domains, sexual violence is assumed to have severe lifelong psycho-social consequences for survivors who are in need of healing.²⁹ On the one hand, this has legitimized

²⁴ M. Randall and L. Haskell, 'Trauma-Informed Approaches to Law: Why Restorative Justice Must Understand Trauma and Psychological Coping' (2013) 36 *Dalhousie Law J.* 501.

²⁵ Campbell, *op. cit.*, n. 15.

²⁶ 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.

²⁷ 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.

²⁸ S. Sutherland and D. J. Scherl, 'Patterns of Response among Victims of Rape' (1970) 40 *Am. J. of Orthopsychiatry* 503; A. Wolbert Burgess and L. Lytle Holmstrom, 'Rape Trauma Syndrome' (1974) 131 *Am. J. of Psychiatry* 981; J. L. Herman, *Trauma and Recovery: The Aftermath of Violence – from Domestic Abuse to Political Terror* (1997).

²⁹ 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.

and normalized the experiences of some survivors.³⁰ On the other hand, treating sexual violence as causing individual injury requiring medical treatment can conflict with and inhibit feminist efforts to theorize, underscore, and address its socio-political underpinnings.³¹ Assumptions about the inevitability and symptoms of trauma also homogenize survivors' experiences and needs, modelled on a white European woman.³² Such an individualized focus can reflect a Western model of trauma that is contrary to collective notions of trauma grounded in Black, Indigenous, and post-colonial literatures.³³ Trauma, then, is not an objectively identifiable injury. The way in which it is understood, (un)recognized, and experienced is shaped by and contributes to the construction of social, political, and economic orders.³⁴

It must be emphasized that not all survivors will experience trauma because of sexual violence, and that individualized conceptions of trauma that pathologize 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.³⁵ 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'.³⁶ Impacts can include shock, fear, anxiety, shame, self-blame, loss of trust, and distress, which can last for days or weeks after the traumatic event.³⁷ 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.³⁸

If severe psychological reactions and symptoms continue, the survivor may be diagnosed with the specific condition of post-traumatic stress disorder (PTSD), first recognized in the clinical literature by the American Psychiatric Association (APA) in 1980. The APA's current *Diagnostic and Statistical Manual of Mental Disorders (DSM V)* identifies four categories of PTSD: persistent

³⁰ Herman, op. cit., n. 28.

³¹ M. A. Beres et al., 'The Perils of Institutionalization in Neoliberal Times: Results of a National Survey of Canadian Sexual Assault and Rape Crisis Centres' (2009) 34 *Cdn J. of Sociology / Cahiers canadiens de sociologie* 135, at 142.

³² 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.

³³ M. Yellow Horse Brave Heart, 'Gender Differences in the Historical Trauma Response among the Lakota' (1999) 10 *J. of Health & Social Policy* 1; E. Prussing, 'Historical Trauma: Politics of a Conceptual Framework' (2014) 51 *Transcultural Psychiatry* 436; b. hooks, 'Lasting Trauma' in *Rock My Soul: Black People and Self Esteem*, ed. b. hooks (2003) 21.

³⁴ D. Fassin and R. Rechtman, *The Empire of Trauma: An Inquiry into the Condition of Victimhood* (2009).

³⁵ J. G. Beck and D. M. Sloan, *The Oxford Handbook of Traumatic Stress Disorders* (2020, 2nd edn) 7.

³⁶ UK Trauma Council, 'Trauma' *UK Trauma Council*, at <<https://uktraumacouncil.org/trauma/trauma?cn-reloaded=1>>.

³⁷ N. P. Yuan et al., *The Psychological Consequences of Sexual Trauma* (2006), at <https://vawnet.org/sites/default/files/materials/files/2016-09/AR_PsychConsequences.pdf>; World Health Organization and Sexual Violence Research Initiative, *Rape: How Women, the Community and the Health Sector Respond* (2007), at <<https://www.svri.org/rape-how-women-the-community-and-the-health-sector-respond>>.

³⁸ M. E. Gilfus, 'The Price of the Ticket: A Survivor-Centered Appraisal of Trauma Theory' (1999) 5 *Violence Against Women* 1238, at 1243.

intrusive thoughts and flashbacks; avoiding people, places, activities, objects, and situations that could raise memories of the event; alterations in cognition and mood; and alterations in arousal and reactive symptoms, which may include being irritable and having angry outbursts or behaving recklessly or in a self-destructive way.³⁹ 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.⁴⁰ 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.⁴¹ Nevertheless, it was not until the 1990s that the psychological impacts of sexual violence were genuinely factored into judicial assessments of damages.⁴² On the one hand, providing compensation for trauma can offer a level of financial security and access to the most appropriate and long-term medical treatment in the face of 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.⁴³ It also 'privatizes' the consequences of sexual violence,⁴⁴ identifying them with the individual who is subject to the 'damages lottery',⁴⁵ only having a chance of redress when there is a pecunious defendant to sue – normally an institution with liability insurance.⁴⁶ Furthermore, as Nathalie Des Rosiers and colleagues 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'.⁴⁷

Tort claims, then, encourage a harmful and oppressive representation of survivors, and one that fits with the dominant white Western invocations of trauma and recovery. Indeed, a claimant's trauma and related harms need to be attributed to a single harmful wrong or series of wrongs perpetrated by the tortfeasor. So understood, civil claims are not set up to capture the ways in

³⁹ The World Health Organization provides a slightly different set of diagnostic criteria in the *International Classification of Diseases (ICD)*. 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 that traumatic events can have on a person and their engagement with the world, we do not detail different medical conditions or diagnostic criteria.

⁴⁰ Fassin and Rechtman, *op. cit.*, n. 34, p. 153.

⁴¹ See for example *W v. Meah; D v. Meah* [1986] 1 All ER 935, in which 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 recognized the 'mental consequences' in the damages awarded.

⁴² 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 et al. (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' was identified as the 'primary injury' (para. 51).

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

⁴⁴ 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.

⁴⁵ P. S. Atiyah, *The Damages Lottery* (1997).

⁴⁶ 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 J.* 311.

⁴⁷ N. Des Rosiers et al., 'Legal Compensation for Sexual Violence: Therapeutic Consequences and Consequences for the Legal System' (1998) 4 *Psychology, Public Policy and Law* 433, at 449.

which sexual violence and trauma can be interconnected with other aspects of a person's life and cannot be disentangled from hierarchical social and systemic power relations.⁴⁸ Indeed, the outcomes towards which civil claims are geared – at least in the way in which they currently operate – inherently obscure the social and political dimensions of trauma.⁴⁹

In addition to invoking problematic representations of sexual violence and trauma, the civil legal process does not readily accommodate people who may display the effects of trauma. Traumatic memories can change the way in which information is recalled and processed so that details or a temporal sequence of events can be missing. This means that accounts required in a legal process can be incoherent and inconsistent,⁵⁰ which can have a negative impact in relation to evidence gathering and the outcome of a case.⁵¹ Where trauma is caused by abuse that can bring shame and guilt, disclosing information can be difficult – but the legal process requires the details.⁵² Much then rests on how lawyers navigate the legal process in order to accommodate 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. The extent to which problematic conceptions of trauma are relied on or challenged can depend on the principles that are taken to underpin a trauma-informed approach.

3 | 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 organizations 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.⁵³ Trauma-informed care, programmes, and interventions have proliferated over the last two decades in many different contexts and for many different causes of trauma.⁵⁴ However, trauma-informed practices are not unproblematic. Like medicalizing sexual violence as trauma,⁵⁵ trauma-informed practices can pathologize sexual violence and encourage a focus on individual harms and healing while failing to capture collective and historical traumas.⁵⁶ This can, in turn, depoliticize sexual violence by disregarding the way in which trauma is affected by relational and structural sources,

⁴⁸ Gilfus, *op. cit.*, n. 38.

⁴⁹ For a discussion of the extent to which it is possible to have a non-commodifying compensation system that provides proper redress for sexual violence harms, see Radin, *op. cit.*, n. 43; Adjin-Tettey, *op. cit.*, n. 44.

⁵⁰ Lambe et al., *op. cit.*, n. 22; Randall and Haskell, *op. cit.*, n. 24, p. 523.

⁵¹ Ellison and Munro, *op. cit.*, n. 20, p. 188.

⁵² Lambe et al., *op. cit.*, n. 22.

⁵³ Muttillio et al., *op. cit.*, n. 18, p. 1044; SAMHSA, *SAMHSA's Concept of Trauma and Guidance for a Trauma-Informed Approach* (2014) 9–10.

⁵⁴ Muttillio et al., *op. cit.*, n. 18.

⁵⁵ Rojas Durazo, *op. cit.*, n. 32; Beres et al., *op. cit.*, n. 31, p. 142.

⁵⁶ Visser, *op. cit.*, n. 32.

including patriarchy, racism, and ableism.⁵⁷ Nevertheless, these limitations are not inherent to a trauma-informed approach. Rather, much depends on the key principles that are delineated and how they are translated into practice.

There is a substantial body of literature that sets out various key principles of trauma-informed practices. Where principles differ, this is often 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 that would apply in a legal context are recognizing the impact of violence and victimization, building positive relationships, and minimizing re-traumatization.⁵⁸ Lawyers must understand the nature of violence and its social, structural, and individual dimensions and, with this awareness, adapt practices to minimize further trauma, such as by asking non-judgemental, open-ended questions without assumptions.⁵⁹ The YJLC explains that positive relationships can be built through empathy, responsive listening, restraint from judgement, care and concern, patience, respect, and reliability.⁶⁰

For interpersonal and sexual violence, Jennifer Pemberton and Tamra Loeb argue that feminist approaches to trauma are represented in the Substance Abuse and Mental Health Service Administration (SAMHSA)'s internationally recognized guidelines for trauma-informed practices:⁶¹ safety; trust, and transparency; peer support; collaboration and mutuality; empowerment, voice, and choice; and attention to cultural, historical, and gender issues.⁶² 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.⁶³ By contrast, safety, trust and transparency, and empowerment, voice, and choice are common to other trauma-informed guidelines⁶⁴ and can be applicable in legal contexts.⁶⁵

We view safety, trust, and transparency as interconnected. When a lawyer is transparent about their role, what they can and cannot do, and the challenges and benefits of the legal process, this can help to build client trust.⁶⁶ This trust can in turn help clients to feel safer, especially if the lawyer is able to adjust the physical environment (such as by offering safe exit routes, and light and airy spaces) to provide a sense of physical and psychological safety.⁶⁷ Trying to ensure

⁵⁷ K. A. Becker-Blease, 'As the World Becomes Trauma-Informed, Work to Do' (2017) 18 *J. 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 *J. of Trauma & Dissociation* 165, at 171.

⁵⁸ Lambe et al., op. cit., n. 22; Maki et al., op. cit., n. 19, pp. 65–66.

⁵⁹ Maki et al., op. cit., n. 19, p. 65.

⁶⁰ Lambe et al., op. cit., n. 22. See also American Bar Association, *Establishing a Trauma-Informed Lawyer-Client Relationship* (2014).

⁶¹ 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 *J. of Feminist Family Therapy* 115.

⁶² SAMHSA, op. cit., n. 53.

⁶³ S. Buckingham, 'Trauma Informed Juvenile Justice' (2016) 53 *Am. Criminal Law Rev.* 641; Lambe et al., op. cit., n. 22.

⁶⁴ D. E. Elliott et al., 'Trauma-Informed or Trauma-Denied: Principles and Implementation of Trauma-Informed Services for Women' (2005) 33 *J. of Community Psychology* 461.

⁶⁵ Lambe et al., op. cit., n. 22; N. Martin et al., 'Being Trauma-Informed – In Practice' *Law Society of Scotland*, 7 October 2019, at <<https://www.lawsocot.org.uk/members/journal/issues/vol-64-issue-10/being-trauma-informed-in-practice/>>.

⁶⁶ Lambe et al., op. cit., n. 22.

⁶⁷ SAMHSA, op. cit., n. 53, p. 11.

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 professional relationships.⁶⁸ However, giving survivors a voice is more than simply enabling them to ‘have their say’. As Clare McGlynn and Nicole Westmarland explain, it also involves ‘active participation’ in decision making and being heard, which ties in to survivors’ desires for recognition of the harms of sexual violence as a part of justice.⁶⁹ Notably, empowerment, voice, and choice is absent from Helgi Maki and colleagues’ principles of trauma-informed lawyering, which demonstrates the need to consider the legal context *and* the context of sexual violence together.⁷⁰

A principle not as commonly identified in trauma-informed practices but recognized by SAMHSA is attention to the cultural, historical, and gender dimensions of trauma and its causes. This means actively addressing cultural stereotypes and biases,⁷¹ responding to the racial, ethnic, and cultural needs of service users, and attending to racial and historical traumas.⁷² Without this principle, the social, cultural, and political dimensions of trauma and sexual violence are unlikely to be recognized and responded to, potentially causing further harm.⁷³

Finally, Aaron Muttillio and colleagues 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.⁷⁴ Vicarious trauma can cause a person to display similar symptoms to primary trauma, including either re-experiencing or avoiding recollecting an experience that they have been told, and emotional ‘numbness’.⁷⁵ There is increasing evidence that lawyers who represent traumatized clients can experience vicarious trauma.⁷⁶ This can cause poor working relationships and practices, which impact on the lawyer and their colleagues and can potentially contribute to re-traumatizing clients.⁷⁷ As such, a trauma-informed approach must recognize and address the potential for vicarious trauma.

In summary, the seven key principles derived from the trauma-informed practices literature that we argue are applicable in the legal context are: (1) recognizing the impact of sexual violence and trauma; (2) building positive relationships; (3) ensuring safety, trust, and transparency; (4) minimizing re-traumatization; (5) promoting empowerment, voice, and choice; (6) attending to cultural, historical, and gender dimensions; and (7) minimizing vicarious trauma. In our study, we use these principles to explore how personal injury lawyers who represent sexual violence

⁶⁸ E. Reeves, ‘A Synthesis of the Literature on Trauma-Informed Care’ (2015) 36 *Issues in Mental Health Nursing* 698, at 701–707.

⁶⁹ 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.

⁷⁰ Maki et al., op. cit., n. 19.

⁷¹ SAMHSA, op. cit., n. 53. See also Maki et al., op. cit., n. 19, p. 121.

⁷² SAMHSA, op. cit., n. 53, p. 11. See also 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*, eds A. N. Alvarez et al. (2016) 249.

⁷³ Pemberton and Loeb, op. cit., n. 61; Randall and Haskell, op. cit., n. 24.

⁷⁴ Muttillio et al., op. cit., n. 18, p. 1042.

⁷⁵ P. G. Jaffe et al., ‘Vicarious Trauma in Judges: The Personal Challenge of Dispensing Justice’ (2003) 54 *Juvenile and Family Court J.* 1, at 4.

⁷⁶ Fleck and Francis, op. cit., n. 20; Claiming Space, *Factsheet: Vicarious Trauma* (2022), at <<https://www.lawcare.org.uk/media/u14fnee1/law092-2020-factsheet-trauma-aw-may-22-v2.pdf>>; H. Baillot et al., ‘Second-Hand Emotion? Exploring the Contagion and Impact of Trauma and Distress in the Asylum Law Context’ (2013) 40 *J. of Law and Society* 509.

⁷⁷ Fleck and Francis, op. cit., n. 20, pp. 58–60.

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.

4 | METHODOLOGY

We conducted qualitative semi-structured interviews between December 2021 and May 2022 with 13 personal injury lawyers in the UK, all of whom had expertise in civil claims for sexual violence.⁷⁸ 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 strategy was particularly helpful in identifying smaller firms working on these cases. Overall, this scoping exercise revealed that though 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, though 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 be interviewed. Our purposive sample thus represents over 30 per cent of the firms engaging with sexual violence cases in the UK, according to our scoping data.

The limitation of the sample relates to self-selection; lawyers who had more of an interest in sexual violence cases and felt more confident in their practice may have been more likely to agree to be interviewed. The interviewees were all white British, but there was 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 worked at large resource-rich firms (some international and some UK-based) and eight were from smaller firms; four interviewees were junior members of a team and nine were senior partners; two interviewees had over ten years' experience working in the field of sexual violence, whereas the rest were much newer to this area; and three interviewees specialized in adult cases, whereas the remainder had more experience in historic child abuse cases. The data has been anonymized, each interviewee has had their real name replaced with a pseudonym, and we have been careful about the information used to contextualize 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 on which our interviewees worked, or any other information that might make them identifiable.

The interviews lasted between 45 minutes and one hour, were conducted and recorded online via Teams or Zoom, and were transcribed by a professional transcription service. The interviewees were asked questions about their understandings of sexual violence, any training that they had received in this area, the main legal problems associated with these cases, if and how an understanding of client trauma informed their work, and the impact of 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 of the experiences of others, in the context of broader power relations and intersecting forms

⁷⁸ Ethical approval for this study was obtained from Newcastle University and Northumbria University.

of disadvantage and vulnerability.⁷⁹ The interviews also reflected a feminist ethics of care,⁸⁰ especially as the subject matter is sensitive, and so we attended to what was said but also to what was not, and – as far as possible via Zoom and Teams – to 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.⁸¹ These categories overlapped with the seven key principles on trauma-informed practices that we drew out from the literature, and so we have analysed the data in those terms.

5 | DISCUSSION

5.1 | Recognizing the impact 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 has 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. Amanda said: '[T]he theme running through [survivors] is they will have a level of vulnerability about them ... And they are mainly women.' Derek commented that 'there's always an inequality of position' in these cases.

However, others were less knowledgeable about the power relations involved in sexual violence, in relation both to social and political structures and to specific organizations. 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 are, it might be a bit Empire-ish, but nonetheless ... You know, sending kids out to go camping and make 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.

⁷⁹ S. Cho et al., 'Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis' (2013) 38 *Signs: J. of Women in Culture and Society* 785.

⁸⁰ J. C. Tronto, 'An Ethic of Care' (1998) 22 *Generations: J. of the Am. Society on Aging* 15.

⁸¹ J. Swain, *A Hybrid Approach to Thematic Analysis in Qualitative Research: Using a Practical Example* (2018).

James identified the imperialist underpinnings of the Scouts and connections to military protection of the British Empire.⁸² However, he did not recognize that the Scouts have played a role in reinforcing forms of masculinity and gendered ideals imposed through colonialism and imperialism that connect to sexual violence.⁸³ Instead, he attributed sexual abuse to ‘misdemeanours of individuals from years ago’ rather than seeing it as, in part, a product and reflection of the institutional cultures, values, and structures that enabled abuse and silenced those who were abused. As such, some of the interviewees had problematic understandings of sexual violence, which could have shaped their engagement with their clients and potentially contributed to re-traumatization. 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.⁸⁴

This was also evident in the interviewees’ descriptions of trauma, where the focus was 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 that they had a good understanding of trauma and its impacts throughout the interview. For example, four interviewees recognized that trauma could be ‘different’ for everyone, and Natalie emphasized that trauma affected ‘some’ clients but not all, even if the abuse may have had ‘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 legitimize their victim status,⁸⁵ 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 interviewees 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 have reflected humility and appropriate recognition that he was not a therapist,⁸⁶ James went 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 indicate a trauma-informed approach. Kat said: ‘We have a lot of problems with bringing these cases forward, as 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 of her clients had been ‘so damaged’ reflects and contributes to a harmful discourse that rape is inevitably traumatic,⁸⁷ removing any possibility for healing. While James and Kat both conveyed problematic sentiments, none of the other interviewees identified social, cultural, or historic contexts of trauma, nor how

⁸² Y. R. Magrass, ‘The Boy Scouts, the Outdoors & Empire’ (1986) 10 *Humanity & Society* 37; V. Bailey, ‘Scouting for Empire’ (1982) 32 *History Today* 5.

⁸³ M. Lugones, ‘Heterosexualism and the Colonial/Modern Gender System’ (2007) 22 *Hypatia* 186; C. Midgley (ed.), *Gender and Imperialism* (1998).

⁸⁴ 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 Rev.* 2481.

⁸⁵ F. E. Raitt and S. Zeedyk, ‘Rape Trauma Syndrome: Its Corroborative and Educational Roles’ (1997) 24 *J. of Law and Society* 552; D. Miers, ‘Positivist Criminology: A Critique Part 2’ (1990) 1 *International Rev. of Victimology* 219, at 227.

⁸⁶ Maki et al., op. cit., n. 19, p. 35.

⁸⁷ R. McGarry and S. Walklate, *Victims: Trauma, Testimony and Justice* (2015) 42.

its manifestation and impact can be shaped by patriarchy, racism, ableism, and other structural power relations.⁸⁸ Instead, they explained trauma in a narrow individualized sense, potentially perpetuating the medicalization and depoliticization of sexual violence.⁸⁹

In terms of the interviewees' sources of sexual violence and trauma knowledge, three mentioned the special interest group on child abuse (which is part of the Association of Personal Injury Lawyers) and said that there was '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: '[T]hey tend to focus more on procedural updates, legal updates ... but occasionally they might have lectures from psychiatrists or people who help people.' By contrast, Harry explained that at his firm 'every six months, we have a refresher on re-traumatization and engaging with your clients'. Similarly, Victoria's firm sought out specialists to bring in and discuss working with traumatized clients and limiting vicarious trauma, which was reflected in her confidence in talking about trauma. Nevertheless, she – alongside six other interviewees – said that it was largely 'learning on the job'. The extent to which 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 practice, many of our interviewees were keen to know about others who were working in this area and did not feel that there was much support or a network outside of their firm.

5.2 | Building positive relationships

To attract and retain clients, lawyers must develop positive relationships with them⁹⁰ – which is a crucial aspect of trauma-informed lawyering.⁹¹ For this reason, personal injury lawyers may be inclined towards 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 representation through a legal process – someone whose purpose is to account for the survivor's rights and needs – can have a significant positive impact.⁹² As Amanda emphasized, 'the first letter is a client care letter ... [Y]ou've got to care for your client.' Compared to other personal injury cases, Laney said that 'it's very much a personal service', and Victoria explained: '[Y]ou do learn much more about [sexual violence survivors] 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 was building up a 'good rapport' (Derek) because the clients needed 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, a number of the interviewees reported having to work harder and spend more time doing this in sexual violence cases.

⁸⁸ Becker-Blease, op. cit., n. 57, p. 133; Gómez et al., op. cit., n. 57, p. 171.

⁸⁹ Muttillo et al., op. cit., n. 18, p. 1044; Beres et al., op. cit., n. 31, p. 142.

⁹⁰ Boon, op. cit., n. 16, p. 297.

⁹¹ Lambe et al., op. cit., n. 22.

⁹² F. E. Raitt, 'Independent Legal Representation for Complainants in Rape Trials' in *Rethinking Rape Law: International and Comparative Perspectives*, eds C. McGlynn and V. E. Munro (2010) 283.

Many of the interviewees talked about the impact that the violence and trauma sometimes had on clients' behaviours, reflecting characteristics of trauma⁹³ and how they would accommodate it. For instance, Victoria said: '[T]hey'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: '[S]ometimes you've just got to sit there and ... I mean ... 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 that 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 was '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, these interviewees understood the importance of showing patience, restraint from judgement, and respect for why clients may behave in particular ways. Their response was often to ensure that they were readily contactable while setting boundaries to provide a level of predictability – all qualities that Shauneen Lambe and colleagues emphasize are important for trauma-informed lawyer–client relationships.⁹⁴ In addition, these discussions underscore the potential for sexual violence cases to cause harm to lawyers, and the need to ensure their mental and emotional wellbeing.⁹⁵

5.3 | Ensuring safety, trust, and transparency

Safety was not explicitly mentioned very often but was reflected in the interviewees' discussions of specific practices that they had 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.' She was aware of the importance of giving her clients time to prepare for their meetings and to determine when they were psychologically and physically safe to speak, which aligns with SAMHSA guidance.⁹⁶ Lisa gave a different example, explaining that she typically met sexual abuse clients with a colleague because

when [someone is] 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 traumatized 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 that 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 was to offer a sense of safety but, as

⁹³ See Section 2.

⁹⁴ Lambe et al., *op. cit.*, n. 22.

⁹⁵ See further Section 5.7.

⁹⁶ SAMHSA, *op. cit.*, n. 53, p. 11.

Derek explained, it was also 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-traumatized 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 interviewees reported 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.⁹⁷ Mia said: ‘[T]he 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: ‘[I]f 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 emphasized 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 the fact that the aspects of justice important to survivors are not always, or often, met by the civil justice system. They align with Hildur Antonsdóttir’s interviews with sexual violence survivors about their perspectives on 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’.⁹⁸ 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.⁹⁹ 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 that can prevent a claim or limit the amount of compensation negotiated, such as limitation periods.¹⁰⁰

Most of our interviewees showed a good understanding of why building trust with clients who had survived sexual violence was so important, and of the need to be transparent and to adapt 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 lawyers would 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 sexual violence survivors takes more time, personal contact, and commitment, and some lawyers may not see a trauma-informed approach as cost effective, particularly where a ‘sausage factory firm’ takes up abuse work because of ‘financial incentives’ (Victoria). Given that there is a significant risk that the civil process could re-traumatize survivors,¹⁰¹ it is imperative that lawyers

⁹⁷ This reflects the guidelines from the YJLC: Lambe et al., op. cit., n. 22.

⁹⁸ Antonsdóttir, op. cit., n. 11, pp. 278, 279.

⁹⁹ McGlynn and Westmarland, op. cit., n. 69.

¹⁰⁰ For a discussion of limitation periods in this context, see S. Ring et al., *Child Sexual Abuse Reported by Adult Survivors: Legal Responses in England and Wales, Ireland and Australia* (2022) ch. 8.

¹⁰¹ Macfarlane, op. cit., n. 12, p. 84.

working in this area understand the possible impacts of sexual violence and trauma and adapt their practices accordingly.

5.4 | Minimizing re-traumatization

A crucial part of trauma-informed practices is minimizing re-traumatization. However, most interviewees were not well versed in strategies that would achieve this for sexual violence survivors. The interviewees confirmed that they had not received training about re-traumatization 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,¹⁰² most had had to develop their own strategies for minimizing re-traumatization.

One of the most common strategies, outlined by five interviewees, involved minimizing the number of times that a client had to repeat their story of abuse: ‘[F]or 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 that she asked her clients to tell their story directly to the psychiatrist rather than to herself, because she could ‘get most of what [she] need[s]’ from the psychiatrist’s report. Many of the interviewees 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 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 model of civil law’s ‘ideal victim’, whose individualized harm can be traced to the abuse.¹⁰³ There seems to be little room for the lawyers to challenge this within the confines of the civil process.

A few interviewees employed strategies that spoke to the broader socio-cultural and gendered context of re-traumatization.¹⁰⁴ These interviewees recognized, as a starting point, the importance of ensuring that the client knew that they were believed and that blame was 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 recognizing the harm – especially if the client’s experience has been dismissed or covered up by people in positions of authority – can minimize re-traumatization. Significantly, recognition is frequently cited as an aspect of justice from the perspectives of sexual violence survivors,¹⁰⁵ which indicates connections between trauma-informed work and securing justice.¹⁰⁶

Some interviewees were unsure where to draw boundaries in their attempts to minimize re-traumatization. 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

¹⁰² See Section 5.1.

¹⁰³ On the connection between the ideal victim and trauma, see B. Spalek, *Crime Victims: Theory, Policy and Practice* (2006) 23.

¹⁰⁴ See Section 2.

¹⁰⁵ McGlynn and Westmarland, *op. cit.*, n. 69, p. 188.

¹⁰⁶ On this connection, see Randall and Haskell, *op. cit.*, n. 24, p. 522.

potential for lawyers to be exposed to harm, but it is often difficult to establish effective boundaries without specialist training. Lisa explained:

I actually drove [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 minimize re-traumatization than others, and there certainly appeared 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 minimizing re-traumatization in relation to sources of trauma aside from sexual violence but that can intersect with such violence, such as racial trauma.¹⁰⁷ Generally, though, minimizing re-traumatization 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.

5.5 | Promoting empowerment, voice, and choice

There was consensus among the interviewees that civil claims for sexual violence could be empowering for survivors because clients could choose and instruct their own lawyer, 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 was taken away from sexual violence survivors via the actions of the perpetrator, aligning with Elizabeth Reeves,¹⁰⁸ Amanda emphasized that these uneven power dynamics must not be 'replicated' within the lawyer–client relationship. Some of the interviewees stressed that survivors had to 'get a voice in there' (Amanda) and be heard (Harry). This meant providing 'recognition' and 'validation' of the harm that they voiced (Natalie, Victoria, and Amanda),¹⁰⁹ which in the case of the civil justice system was 'when an insurance company puts a hand in their pocket' (Harry).

Some interviewees expressed that they had to navigate between the requirements and outcomes of the civil justice system and what survivors wanted from the process, which did not always align.¹¹⁰ Mia reflected on this and the importance of giving priority to clients' choices, even though this might not have been compatible with what she considered to be the best legal advice, such as avoiding trial at all costs. As such, she provided 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

¹⁰⁷ Gómez et al., *op. cit.*, n. 57, p. 171.

¹⁰⁸ Reeves, *op. cit.*, n. 68, pp. 701–702.

¹⁰⁹ McGlynn and Westmarland, *op. cit.*, n. 69, pp. 188–189.

¹¹⁰ Antonsdóttir, *op. cit.*, n. 11, pp. 278–279.

of a tailored approach in terms of what the client sees is justice and what they want the outcome to be.

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: ‘[I]f 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 was important that client voices were heard, it was also her legal duty to help clients to make ‘informed’ choices. These interviewees seemed to recognize the challenges and limitations of the civil justice system with respect to the level of voice and choice that survivors could be afforded. However, not all did so. For example, Derek explained that his job was to help clients to make ‘practical’ decisions that would result in a level of financial security and access to medical treatment, rather than ‘emotional’ decisions that 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 that survivors do not feel that their choices are being respected, potentially generating feelings of frustration, dissatisfaction, and powerlessness.¹¹¹

The interviewees’ discussions of empowerment, voice, and choice showed that many of them recognized what these concepts meant 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 interviewees critically reflected on broader issues, such as how survivors’ expressions of harm must be individualized and attributed only and linearly to the abuse to secure compensation, which, from a legal perspective, is the name of the game.¹¹²

5.6 | Attending to 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,¹¹³ including those associated with patriarchy, racism, poverty, disability, homophobia, and their intersections.¹¹⁴ For personal injury lawyers working on sexual violence cases, this broader understanding is important to avoid overly focusing on the individual and medicalizing a social and political problem. However, 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 relationship between civil claims and gender (in)justice beyond the individual case; (2) limited consideration of the role of legal systems in reproducing the oppression of racialized and marginalized communities; and (3) a failure to adopt an intersectional analysis of sexual violence and trauma.

The interviewees felt that their work could be ‘exceptionally rewarding’ (Derek) and ‘meaningful’ (Lisa) because it could help people who had had traumatic experiences to access justice, which was both a ‘real privilege’ (Amanda) and a ‘huge responsibility’ (Derek). However, the interviewees engaged in this type of work for a variety of reasons, and there were some fundamental

¹¹¹ Ring et al., *op. cit.*, n. 100, p. 130.

¹¹² See Section 2.

¹¹³ SAMHSA, *op. cit.*, n. 53, p. 11; Maki et al., *op. cit.*, n. 19.

¹¹⁴ Becker-Blease, *op. cit.*, n. 57, p. 133; Prussing, *op. cit.*, n. 33.

differences in terms of their perceptions of justice for sexual violence survivors. These differences were 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 had both made a conscious decision to focus on adult cases of sexual violence, frequently against high-profile defendants who had '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 conceptualized 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,¹¹⁵ particularly financial and reputational, but she believed that it was a 'really positive step' that her firm was 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 was viewed as important, but often conceptualized 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 reflected Julie Macfarlane's approach to the use of civil law.¹¹⁶ This contrasted with the views of most of the other interviewees, who typically regarded compensation for the individual client as the overarching purpose of these cases. While this may technically have been accurate – these were civil claims for compensation – there was a much narrower sense of social justice, and it is possible that this restricted their practice and the way in which they communicated with their client. The 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 was thus individualized and medicalized, and the broader social and cultural forces that enable this violence were overlooked.

Similar issues also exist around perceptions of the criminal legal system. Most interviewees said that they would only take on a case 'on the basis we can obtain the criminal case or the police file' (Laney). James stated: '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 reflected the challenges for personal injury lawyers to gather evidence themselves, there was no recognition that it means that the civil system typically responds to only a small pool of survivors – approximately one in six – who report to the police.¹¹⁷ Furthermore, no interviewees recognized that

¹¹⁵ For further discussion, see the literature on 'cause lawyering'; see for example A. Sarat and S. A. Scheingold, *Cause Lawyering: Political Commitments and Professional Responsibilities* (1998).

¹¹⁶ Macfarlane, op. cit., n. 12.

¹¹⁷ Rape Crisis England and Wales, *Rape and Sexual Assault Statistics: Sources* (2024), at <https://rcew.fra1.cdn.digitaloceanspaces.com/media/documents/Rape_and_sexual_assault_statistics_sources_February_2024_xM27tE0.pdf>.

the criminal legal system privileges white sexual violence survivors,¹¹⁸ 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 require greater emphasis on critical reflection, ‘cultural humility’,¹¹⁹ and a race-informed approach to trauma and healing.¹²⁰

5.7 | Minimizing vicarious trauma

There are common challenges experienced by lawyers 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 excessive workloads for poor rates of pay. However, 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 redress for those consequences. Certain cases make a mark due to their severity or their negative outcomes, and several interviewees said that such cases still played on their mind, despite the passing of time.

Moreover, some of their descriptions of their reactions to and handling of sexual violence cases displayed characteristics of vicarious trauma.¹²¹ The interviewees described feeling increasingly ‘numb’ when reading the details of new cases (Lisa), and that they felt that they had had to become ‘a bit dead inside’ (Victoria) and that they were no longer an ‘empathetic person’ (Harry). This seeming loss of emotion existed alongside feelings of great emotion: of being ‘in tears at times reading some of the entries’ (Lisa); of being ‘buried in the emotion of all my clients’ (Charlie); and of feeling more ‘horrified’ about the ‘cover-up of the abuse’ than about the abuse itself (Charlie). The injustices that clients had experienced over the course of their lives were, in Amanda’s words, ‘completely unforgivable’. Knowing that they could not change any of this led 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 had implications for the interviewees’ professional practice, but also wider consequences for their 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, though there is evidence of some excellent practice emerging.¹²² However, the interviewees described disparities in the level of support on offer, which was usually due to restrictions on time and resources, especially in the smaller legal firms. Firms with formal policies for addressing vicarious trauma were typically large and resource rich, and the interviewees from these firms described having access to ‘mental health helplines’, ‘healthy mind advocates’, ‘counselling over the phone’, and ‘private health insurance’. This support did not appear to be tailored to the trauma of working on sexual violence cases (apart from in the case of one large firm, which paid for an expert to speak to lawyers about sexual violence trauma). By contrast, the interviewees from smaller firms spoke mostly about the importance of informal support, whereby ‘everyone takes

¹¹⁸ R. K. Thiara and S. Roy, *Reclaiming Voice: Minoritised Women and Sexual Violence* (2020).

¹¹⁹ Maki et al., *op. cit.*, n. 19.

¹²⁰ Comas-Díaz, *op. cit.*, n. 72.

¹²¹ See Section 2.

¹²² Fleck and Francis, *op. cit.*, n. 20, p. 5.

responsibility for everyone' (Derek) and the working culture was '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 were labelled as 'graphic' and password protected if they could cause harm – that is, because they contained 'naked images of female body parts or male body parts', 'dead bodies', or 'post-mortem' images from the pathologist. This prevented 'illicit access to unnecessary information and harmful images or videos' as well as 'accidental access'. At Elsie's firm, lawyers always had a mixture of cases so they were not only working on sexual violence cases. In addition to a supportive working culture, the interviewees spoke of the importance of personal resilience and professional distance, of having good support networks, and of engaging in hobbies and exercise outside of work. Overall, the interviewees seemed to have awareness of the risks of vicarious trauma, and described some good informal and formal practices that align with Joanna Fleck and Rachel Francis' suggestions.¹²³ Nevertheless, a greater level of knowledge and training about best practices and support was needed and wanted by the interviewees.

6 | 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. However, 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 literature on trauma-informed practices to delineate seven key principles that should underpin a trauma-informed approach in the context of law, and be emphasized when trauma is connected to sexual violence: (1) recognizing the impact of sexual violence and trauma; (2) building positive relationships; (3) ensuring safety, trust, and transparency; (4) minimizing re-traumatization; (5) promoting empowerment, voice, and choice; (6) attending to cultural, historical, and gender dimensions; and (7) minimizing vicarious trauma. Through interviews with personal injury lawyers who represented sexual violence survivors, we explored their understandings of sexual violence and trauma and how this shaped their working practices. The specific context of 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 our interviewees had a very good understanding of sexual violence and the impact of trauma, and 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 interviewees, there was less confidence in, and fewer examples of, practical ways to ensure survivors' physical and emotional safety, and how best to minimize re-traumatization. Similarly, most of the lawyers were acutely aware of the potential of

¹²³ Id.

their cases to have a negative impact on their own mental wellbeing – perhaps a reflection of the broader attention to wellbeing in the profession¹²⁴ – but less sure about the best ways to minimize 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.

While many of the lawyers highlighted that civil compensation claims could offer survivors a form of accountability, recognition of harm, and financial support to receive appropriate health treatments, some were at pains to emphasize that this did 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 medicalization 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.¹²⁵ It is not clear from our study whether this is inherently the case due to tort law's 'architecture of bias',¹²⁶ or whether lawyers could work to disrupt the trauma framing more than our interviewees suggested was possible. Potentially, then, the use of tort law is doing more harm than good.

However, there were two interviewees who focused on social justice and political aims, taking more of a 'cause lawyering' approach to their sexual violence cases.¹²⁷ While these interviewees did not necessarily have better practices in terms of developing positive relationships with clients or preventing vicarious trauma, they placed greater emphasis on empowering survivors, attracting media and political attention to their cases, and identifying potential broader impacts of cases. They also recognized the potentially oppressive impact of legal mobilization on clients, which is documented in the literature.¹²⁸ This raises questions about the role of tort law in movements to end sexual violence,¹²⁹ and about the relationship between this form of lawyering and trauma-informed practices. These questions, though, are for another day.

We close by highlighting the need for more general training and education on trauma-informed lawyering, and specific training developed for lawyers working in different areas of law or different contexts of trauma. It is good to see momentum building across the UK, and specifically in Scotland regarding the Victims, Witnesses and Justice Reform (Scotland) Bill, which is embedding trauma-informed practices in the legal system. However, the aim to ensure that as many lawyers and other legal actors as possible are taking a trauma-informed approach should not be at the expense of losing sight of differences between contexts, which can affect 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 also recognize

¹²⁴ 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 J. of the Legal Profession* 41.

¹²⁵ Becker-Blease, *op. cit.*, n. 57, p. 133; Prussing, *op. cit.*, n. 33.

¹²⁶ M. Chamallas, 'The Architecture of Bias' (1988) 146 *University of Pennsylvania Law Rev.* 463.

¹²⁷ Sarat and Scheingold, *op. cit.*, n. 115.

¹²⁸ L. Vanhala and J. Kinghan, 'The "Madness" of Accessing Justice: Legal Mobilisation, Welfare Benefits and Empowerment' (2022) 44 *J. of Social Welfare and Family Law* 22, at 23.

¹²⁹ As Lisa Vanhala and Jacqueline Kinghan point out, there is little analysis of the use of tort law in the literature on legal mobilization, strategic litigation, and law and social movements; 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).

the limitations as well as the potential of law and legal processes to empower survivors and to be used for social justice.

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