

Norah Fry Research Centre
University of Bristol

A POSITION PAPER

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The Joseph Rowntree Foundation has supported this project as part of its programme of research and innovative development projects, which it hopes will be of value to policy makers and practitioners. The facts presented and views expressed in this report, however, are those of the researchers and not necessarily those of the Foundation.

Thanks to:

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Cover Drawing: Riot by Michael Crabb

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First published in 1993 by
The Norah Research Centre

University of Bristol
32 Tyndall's Park Road
Bristol BS8 1PY

Phone 0272 238137 Fax 0272 466553

ISBN 1 874291 00 4

If a crime happens

you should tell the police,

the police should tell the Crown
Prosecution Service (CPS),

the Crown Prosecution Service should take the case to court.

This is what should happen. This book tells you some of the things that go wrong.

This book was written at a University. But we have tried to write some of it in very clear English for people who find reading difficult -see the left hand pages.

If you want to know more look across to the right hand pages. Perhaps ask someone to help.

If you want a tape of this, we will send you one.

If you want to say anything about this book, please write or send us a tape.

If there are any words you do not know, look at the dictionary on page 44.

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INTRODUCTION

People with learning difficulties are sometimes the victims of crime. This book tells you what we know about crime against people with learning difficulties.

INTRODUCTION

Now more people with learning difficulties live in the community, important questions are emerging about crime. What crimes are happening to people with learning difficulties? Are they reported and do cases reach the courts. If cases get to court, what happens? If not, why not? Are victims afraid to live an ordinary life?

Whilst much has been written concerning people with learning difficulties as defendants or offenders it appears that little significant attention has been given to general victimisation against this group, in the UK or abroad. Recently, sexual abuse has, received attention in many countries, but the lessons have not yet been applied more generally in relation to responding to other types of crime.

This position paper outlines relevant literature, and provides a current awareness of the nature of victimisation, police responses and reporting, and court procedures. It was written as the starting point for a research project at the Norah Fry Research Centre (university of Bristol), supported by the Joseph Rowntree Foundation - Crime against people with learning difficulties. The paper aims to provide a basis for research or other actions, which can contribute to minimising victimisation and maximising the means of support and redress for victims with learning difficulties.

BACKGROUND READING

Some people have already written about some types of crime against people with learning difficulties.

A lot has been written about sexual abuse.

There was a meeting at the House of Commons about sexual abuse. People have set up organisations about sexual abuse (see page 51 for addresses).

BACKGROUND READING

Awareness in academic circles, concerning the vulnerability of people with learning disabilities, seems to stem from the 1970s:

.... the scandals surrounding the treatment of ... mentally retarded ... persons ... require that an enlarged list of victims receive the attention of criminologist and other scholars (Drapkin & Viano 1974, p.121)

The theme was taken up in the United States by Balkin (1981) in a paper called 'Toward victimisation research on the mentally retarded'. In the UK, Disability, Handicap & Society provided some preliminary thoughts from Hewitt (1987) concerning 'The abuse of deinstitutionalised persons with mental handicaps'. The author is a former police officer.

More recently Margaret Flynn (1989) included an excellent overview of general victimisation as part of her study, *Independent living for adults with mental handicap: a place of my own*. This covers descriptions of types of victimisation, consequences, associated factors, and prevention. Lydia Sinclair presented some of the main issues concerning victims to parents in *Mencap News* (1992). From the United States *The Criminal Justice System and Mental Retardation* (Conley et al 1992), although largely concerned with people with learning difficulties as defendants, also "includes a short chapter on victimisation, dealing with prevalence, limitations of data, crime patterns, fear of crime and its consequences, possible strategies for the justice system, and victim assistance. There is one relevant empirical study: *Silent Victims* (Johnson et al 1988) from Australia.

A number of recent papers deal with a specific aspect of victimisation: sexual abuse. Dunne & Power (1990) have documented a small, community-based study of sexual abuse in Dublin, and a broader study is in progress in England, funded by the Joseph Rowntree Foundation (Brown 1991; 1992).. The Roeher Institute has published, *Vulnerable: sexual abuse and people with an intellectual handicap* (Senn 1988) which deals with Canada; Marchetti & McCartney (1990) investigated the characteristics of the abused, the abusers and the informers in residential settings in America; Thalinger et al (1990) dealt more generally with sexual abuse. Valerie Sinason (1992) approaches the topic from the perspective of a psychologist in *Mental handicap and the human condition: new approaches*. The British Institute of Mental Handicap has produced a very useful collection of papers, *Sexual abuse: where do we go from here?* (BIMH 1992), and the June 1992 issue of their *Journal, Mental Handicap*, was devoted entirely to sexuality, including sexual abuse (Craft 1992).

A meeting at the House of Commons in June 1992, chaired by Edwina Currie MP, promoted the work of the organisation YOICE. This was founded by parents who successfully pursued a case of sexual abuse, at a MENCAP home, through the courts (Cervi 1992a.). Similarly, the National Association for the Protection from Sexual Abuse of Adults and Children with Learning Difficulties (NAPSAC) links agencies and individuals. The organisation RESPOND offers therapeutic support, a phone line, training and networking. (See 'Useful addresses').

There are books to help people cope with sexual abuse

Government researchers do not ask people with learning difficulties who live in group homes about crime.

No-one has done any research about all sorts of crime against people with learning difficulties.

In recent years there has been more discussion about ways of coping with the effects of sexual abuse. In 1982 Anderson produced a paper, 'Teaching people with mental retardation about sexual abuse prevention'. More recently Community Care (1991b.) published an account of counselling for women who have experienced rape, and Haseltine & Miltenberger (1990) have considered 'Teaching self-protection skills to persons with mental retardation'. Two booklets, Jenny speaks out and Bob tells all, aim to help people describe their experiences of abuse (St Georges 1992). To assist with training staff, the Family Planning Association publishes a comprehensive booklet, Working with the 'unthinkable' - a trainers manual on the sexual abuse of adults with learning difficulties (Brown & Craft 1992).

On a more general level, the London Borough of Hammersmith embraced the victimisation of disabled people in a survey of needs, finding that people with disabilities are three times as likely to be conned into letting someone into their home and twice as likely to be attacked in the street (LBH 1992).

Unfortunately surveys such as the British Crime Survey (BCS) and the General Household Survey (GHS) omit the experiences of many people with learning disabilities. The definition of 'household' is limited, and therefore so-called 'institutions' are often not embraced by the surveys. Health Authority or Social Services staffed 'group homes' are excluded, and the status of a house with day-time staff or weekly visits is unclear. Research officers from the BCS are aware that 'better educated respondents seem more adept at recalling relevant events at interview', but no formal attempt has been made to include the views of less intellectually able people. As these surveys influence government policy, the lack of representation of people with learning difficulties raises important democratic questions.

There seems to be no comprehensive study of the victimisation of people with learning disabilities, which would equate with the type of information gained by the standard victim studies concerning others. The Home Office Victims' Charter (1990) sets out expectations concerning the general population, which provide a starting point for arguing for equitable outcomes for all citizens - including those with learning difficulties.

TYPES OF CRIME

Most crimes in Britain are to do with cars or stealing from houses. But crimes against people with learning difficulties are different. These are some of the crimes that happen:

- people shout threatening, abusive or insulting things in the street, like 'I'll hit you, you spastic!'
- people steal from them and sometimes attack them
- on buses people have thrown things at them, spat at or hit them
- other people break up things which belong to Day Centres and group homes
- men have tried to take women home for sex, or have taken their trousers down in front of women.

People with learning difficulties sometimes do crimes against other people with learning difficulties. What should happen to them?

TYPES OF CRIME

The nature of victimisation of adults with learning difficulties is likely to be different to the general picture. For example current surveys suggest that about one third of crime concerns cars and 95% of total recorded offences involve property (Home Office 1991). People with learning difficulties rarely drive and usually own little more than personal effects.

The type of victimisation suffered is suggested by informal reports from the West of England. These include harassment in public places, verbal abuse, theft, simple assault, abduction by car, arson at a group home, and exposure by a taxi driver. Vandalism of group homes and day centres seems common (especially of greenhouses), and it is interesting to note that residents and members are not usually considered as the victims in these circumstances, although feelings of annoyance and trauma may be considerable. The murder of a Bristol man, whilst walking from a pub to his home, received considerable attention from the Bristol press, including the offer of a reward (Harding; 1992). One incident which suggests a particular vulnerability of people with learning difficulties concerned sexual abuse by the manager of a group home. He had used hypnotism to help a woman therapeutically and then to put her into a trance while he assaulted her (Burton 1992:3). So-called 'ritual abuse' has also been mentioned from other parts of the UK.

Language is often used euphemistically in a manner that disguises that particular incidents, if perpetrated on members of the general populace, would clearly be labelled as crimes. 'Abuse' of a person with learning difficulties might be considered an 'assault' in the case of anyone else; 'sexual abuse' is often used when more accurately, the crime is 'rape' or 'indecent assault'. The title of a recent journal article. 'Role inappropriate sexual behaviour between therapist and client' might embrace anything from embarrassing comments to rape.

A specific perspective is the common occurrence of victimisation of people with learning difficulties by people with learning difficulties. Reports of minor incidents are numerous. Behaviour such as continual pinching of others by an individual in a day centre, would clearly be a crime if perpetrated in another setting. One Bristol day centre now addresses the issue of 'bullying', formally, with its members and has used drama as one means to do this. The Home Office suggests that people with learning difficulties should not be prosecuted where it is not in the public interest, but what about the feelings of a victim with learning difficulties? The conflicts of interest that arise from small crimes may well be resolved by using the informal 'mediation' organisations that are becoming more common (see Steer, A 1992, and MEDIATION UK - 'Useful addresses'). Police

Domestic Violence Units now have a protection as well as a prosecution role, and may also be a valuable source of support in incidents between people with learning difficulties. There have also been more serious instances. In January 1992 a man living in a Health Authority unit in Sheffield was charged with murdering his companion by setting fire to their house (Community Care 1991a.,p3).

Carers and staff sometimes do crimes to people with learning difficulties.

One man died after he was made to stand in an icy cold lake, tied to a rope.

Sometimes people with learning difficulties go to prison when they have not done anything wrong.

In prison other prisoners do crimes against them.

A recent study of sexual abuse indicates that most of the perpetrators were other people with learning disabilities and that 'nearly 60 per cent of the victims were still accessible to the perpetrators' (Turk 1991, p.18). A case in Wales, where the rape of a resident of a group home was openly admitted by the offender (another resident), was dismissed with little consideration because there was no independent witness. One man was severely scalded when another resident at his house threw hot water over him. Police attended but took the matter no further, and attempts to initiate proceedings by his mother were blocked by solicitors on the basis that The offender "was not responsible for his actions." But was the status of the victim also a deciding factor? The victim, concludes, "Now if, I had done something like that to someone outside, I would have been sent down."

Frequently the perpetrators of rape and sexual assault are those with the responsibility of caring for the person concerned. A position of trust-becomes a position of power, which is abused. A similar pattern may be evident concerning other crime. Reading Crown Court heard recently how a 44-year-old cleaner who was

backward and illiterate died after his "guardian" forced him to stand in an icy lake on the end of a rope...David Miller was repeatedly hauled to the bank to be given a beating (Guardian 1992a.:3).

Miscarriages of justice, when people with learning difficulties have been wrongly accused and convicted, is a very worrying and multi- faceted aspect of victimisation (see Perske 1991). Up to eleven police officers from South Wales now face prosecution because of the wrongful conviction, for murder, of Paul and Wayne Darvell. Information about their propensity to confess to crimes they had not committed was not brought forward, and there is a suspicion that there were irregularities in police notebooks. The brothers also suffered at the hands of fellow prisoners because of the belief that they had committed a sex crime (Cambell 1992:22). A man who falsely confessed to armed robbery spent five months in prison –

he was at the bottom of the prison pecking order. He became a "boxing bag" for prison inmates, being beaten up and victimised frequently. He ended up having to do menial work for "prison bullies" (Singhal 1992).

There were apparently no proceedings against the prisoners concerned and the prison authorities for failure of duty.

The victimisation of offenders with learning difficulties in prisons has been noted in the United States. Reed (1988:416) concluded in one study, they are 'harassed, sexually assaulted, and taken advantage of in innumerable ways because they are easy targets'. This can precipitate a degenerative spiral. Another study concluded that the reason mentally handicapped offenders were more often disciplined for breaking prison rules was in part a reaction to 'verbal abuse, teasing, and general debasement in prison.' (Smith et al 1990:180). Victimisation may also come from prison officers (Santamour 1982:29).

WHAT IS A CRIME?

Sometimes people do not know that a bad thing is a crime. These things might be crimes -

- someone tells or pays a person to do something wrong
- a person is shouted at in the street or at the bus stop
- a person is locked in the bedroom at his/her group home
- a person is described in an untrue way in the newspaper.

Usually nobody does anything about these sorts of crime.

A crime can also happen if someone does not do something they should.

Like if a staff member does not help a person with a learning difficulty who needs help.

WHAT IS A CRIME?

Accurate recognition of victimisation is a prerequisite of seeking justice. Events such as these are not usually pursued through criminal or civil actions –

- youths paying a young person with learning disabilities to swear and goading others into petty crime. This might constitute incitement.
- verbal abuse of people waiting at a bus stop outside their day centre. Verbal abuse may be covered by the offence of 'Use of threatening, abusive or insulting words or behaviour likely to cause harassment, alarm or distress to others'.
- a defamatory description in a newspaper. In May 1991 the Sun newspaper was successfully sued for describing a child with behaviour problems as the 'worst brat in Britain' (Guardian 1991b., p3).
- locking someone in their bedroom or otherwise restricting their liberty, at a group home. This could be 'false imprisonment'.
- a 'fine' imposed by a care worker or nurse. Without legal sanction, this may be theft.

Mike Gunn (1990) proposes that crime committed by 'omission', (such as neglect by a carer), rather than 'act' (such as assault) may be a significant aspect of the lives of people with learning difficulties. Crimes of 'omission' are more difficult to identify and prove. Instances of alleged neglect at a mentally handicapped unit in Colchester included the failure to respond to a man with a cut lip who 'was left to drip blood into his lunch, and leaving a female patient alone in a bathroom of males (Cooper 1992, p11). The case resulted in the judge directing not guilty verdicts because of the unavailability of a witness.

More positively, the Court of Appeal recently ruled against the Tower Hamlets housing authority, concluding that 'a mentally handicapped person who is homeless or threatened with homelessness is entitled to have his application for housing considered by the local housing authority even though he is incapable of making the application himself (Guardian 1-g92b., p_25). Parents of children with special needs are increasingly using the courts to secure the right to a proper education for their children (Braid 1991). In County Durham, awards dating back to 1948 were made on the threat of high court action. It was successfully argued that it is the duty of the Social Services, not the claimant, to assess benefits properly (Brindle 1991, pp1,3). It is not always clear to what degree an obvious vulnerability of an individual with learning difficulties contributes to a particular act formally constituting a crime. There is clarity concerning sexual intercourse. It is an offence for a man to have extra-marital sexual intercourse with a woman who is a 'defective' or indecently to assault a man or woman considered to be in this

category. But what would be the situation if someone with limited understanding contracted HIV from someone with full understanding, who knew themselves to be infected, but who did not practise safe sex? The comment in one related situation was that the potential 'perpetrator' thought it was acceptable not to use a condom because his sexual partner lived in a hospital. A case in France may set a precedent. A woman infected with AIDS has been charged with poisoning her lover because she did not tell him she was HIV-positive (Reuter Paris, February 1993).

A greater awareness of what might be pursued through the courts (both through criminal and civil proceedings), by professionals, carers and people with learning difficulties is fundamental to encouraging reporting.

People with learning difficulties must learn to recognise crime. Social workers, the police and family need more information to help them.

WHAT HAPPENS TO VICTIMS?

Some people with learning difficulties have killed themselves when other people did crimes to them.

Some people are frightened to leave their homes and it is difficult for them to make friends and go to work.

But some people do not let a crime upset them. A man who had his bumbag stolen said, "I can't sleep now because of what happened, but I am still going to go out on my own",

It is not only the victims who are affected by a crime. People's partners, their family and friends get upset too.

WHAT HAPPENS TO VICTIMS?

Even the effects of moderate victimisation can be serious. The Independent, under a headline stating that a man 'died alone in his flat, a victim of Care in the Community, reported,

Shortly before he died, he was found with paint splattered in his dark hair. He said his "friend" had done it. Kay believes these same "friends" took his money and cigarettes, and saw him as a figure of fun. He was an easy and vulnerable target (Sage 1991a., p21).

In 1984 The Times (p2) reported that a mentally handicapped man jumped to his death after being urged on-by 'goulish yobs' shouting. We want some blood."

Margaret Flynn (1989) indicates more general, but certainly not unimportant outcomes:

- (i) personal debts are significantly more likely to occur when people are victimised' (p113);
- (ii) concerning 'relationships' - Arguably people who experience victimisation are unable to trust others and, regarding themselves as prey, they do not or cannot take the necessary steps to form relationships. Some people are too frightened to leave their homes, and inevitably this reduces their opportunities to meet others' (p118);
- (iii) victimisation is a factor 'associated with satisfaction with the home and location' - 'Victimisation lowers the quality of people's lives and imposes restrictions on them' (p121).

As part of a student's evaluation of a Community Service Volunteers work experience project in Bristol it was stated that such factors as people begging from them, the fear of harassment at bus stops and of problems if the last bus failed to arrive, reduced the number of locations in which people with learning difficulties would seek employment.

But negative effects should not be overstated. A report about a 25-year-old man with Down's syndrome is concerning, but demonstrates personal resilience -

he was approached by the boy who called him a spastic, pushed him against a wall and snatched his bumbag outside Holloway Tube station..."I lost my money, my purse, my mouth organ, my diary and my travel pass...I can't sleep now because of what happened, but I am still going to go out on my own' (Judge 1992).

Outcomes can extend beyond the immediate victim. Families and friends often feel themselves the 'victims' of a crime against one individual, especially if redress seems impossible. The boyfriend of a woman, whose Down's Syndrome child was allegedly sexually abused in a Suffolk home, shot and killed two workers there because of his frustration at not seeing justice achieved as he would have wished.

The fear of victimisation has less obvious outcomes. It is worth considering that many of the requests for the sterilisation of women with learning difficulties are, in part, supported by a fear of possible rape or other sex crimes. The woman, as a potential victim, is arguably prepunished for a crime that a man might commit against her. The likelihood of rape would never be given as a factor supporting the decision to sterilise a woman who did not have learning difficulties.

Despite a growing awareness of negative outcomes, the likelihood of victimisation rarely seems to feature as an aspect of planning, individually or collectively, for people with learning difficulties.

We know people with learning difficulties can be upset by crimes, but managers often forget about crime when they make plans.

REPORTING CRIME

People with learning difficulties often do not tell other people about the crimes that happen to them.

Sometimes when they tell someone and go to the police the police are not very helpful. People with learning difficulties are treated differently from other people.

There are special rules to follow when a person with a learning difficulty is in trouble with the police.

The police should take special care when they interview the person and another person, a parent or friend, should also be at the interview.

But, they do not have rules like this when the person with learning difficulties is the victim of a crime.

Many people do not understand the law and do not know what their rights are.

REPORTING CRIME

Reporting seems low. One Canadian study found that almost 75% of sexual abuse cases were not reported (Sopsey & Yarnhagen 1989). In part, this may be for fear of further traumatizing a victim through questioning. A case of exposure by a Bristol taxi driver was not taken further for this reason, although the taxi firm itself dealt very responsibly with the matter.

Police procedures and attitudes are likely to have a greater influence. After difficulty reporting an incident against a group home in the West of England, a sympathetic police officer is said to have told social workers informally not to give the name of the group home if they contact the police station in the future. To do so would probably lead to the report being ignored. Hewitt (a former police officer) details an instance in which a neighbour took a woman, who had been raped, from a community home to the police station.

The police doctor shouted at the victim and caused her to cry. She was distressed by the police interrogation which the good neighbour terminated because she not only saw the injured party getting very distraught but believed that there was the possibility of her striking one of the officers (1987, P 130)

Sir Frederick Lawton, a retired Lord Justice of Appeal, considers that there is a 'widespread belief among officers [of a similar "rank], and probably reality, that promotion depends upon having a record of successful prosecutions (Dyer 1991, p;3). If the police generally view crime against people with learning difficulties as unlikely to lead to convictions, their interest and support may be likely to be less than for crimes against other citizens.

More positively, a police investigation of a sexual abuse case in Derbyshire was handled with extreme sensitivity by officers who were experienced in working with children. The result was a successful prosecution. In a similar case in London, although it was decided not to prosecute, the 'message' from the police to the victim was clearly that she was right to report and that what had happened to her was wrong, which is a small but worthwhile outcome in itself. In the case of an assault against a Bedfordshire man, the police attended very quickly and caught the attacker. They used matching blood samples and photographs as evidence, which avoided the need for the victim to attend court in order to mount a successful prosecution.

Police procedures concerning offenders with learning difficulties are laid down in Home Office Circular 66/90 -Provision for Mentally Disordered Offenders. It recommends that 'particular care' is taken with interviewing, that a parent or other responsible person should be present, and that this person should also sign any document arising from an interview. The requirement, under the Code of Practice to the Police and Criminal Evidence Act 1984 (revised, 1 April 1991), for an 'appropriate adult' to be present at a police interview is now well known, although exactly who this should be and who pays, is unclear (see Sandell 1992; Singhal 1992). (But why use the word 'adult' and not appropriate person? 'Adult' reinforces the notion of a childlike status for people with learning difficulties.) Citizen Advocacy schemes might usefully investigate involvement in this area. The Police Foundation has produced guidance in Police interviewing of the Mentally Handicapped (Tully & Cahill 1984;) based on careful research. Similar approaches would be valid when people with learning difficulties are victims, but they have not been formally applied, except in Greenwich which uses its appropriate adult scheme for victims.

Low reporting may also result from ignorance of procedures. The Scottish Society for the Mentally Handicapped gives brief guidelines in Sex, Laws and Red Tape (McKay 1991). Sex and the Law (Gunn 1991) provides a consummate guide for staff. More directly, abuse of adults with a mental handicap/learning disability - Procedural guidelines, prepared by the Nottingham Health Authority and Nottinghamshire Social Services Department, describes formal procedures in detail for professionals (Notts. H.A/S.S. 1992). This also contains a valuable 'Outline of the Legal Position', by Mike Gunn. Recognising and responding to the abuse of adults with learning disability, from Greenwich, is similar (1992). An outline of work by Wiltshire Social Services is described by Catriona Marchant in Community Care (1992). A number of authorities have now formulated guidelines on sexuality. The discovery and reporting of a case of sexual abuse in Grampian region, which led to a successful conviction, was attributed to the region's new guidelines, and the training and awareness of workers (Community Care 1992, p2).

Of equal import to a concern that crimes are not reported to the police is an almost total absence of civil proceedings on behalf of people with learning disabilities. A 'mentally disordered individual may sue by the help of a 'next friend' under Order 80, Rules of the Supreme Court. Do people with learning difficulties use consumer protection law, Trading Standards Departments, Small Claims Courts, or the Data Protection Act?

The views of victims who do not want to pursue an incident provide another aspect. The Law Commission concludes. 'It is not generally clear at what stage intervention against the person's apparent wishes is justified, or who should be

responsible for taking this action.' (1991. p7). The wishes of victims must remain central but can be difficult to support if they appear based on minimal knowledge and experience of how police and justice systems work or on fear of retaliation. People with learning difficulties will sometimes consider the maintenance of social harmony more important than retribution or punishment. An individual relating a story of sexual harassment in a day centre photographic dark room placed more importance on ensuring that the perpetrator's wife did not find out, than on reporting and official action.

Even when a report is made and taken seriously, general attitudes can hinder investigation. The Independent (Dunn 1991, p5) pointed out the difference in media attention given to the disappearance of an attractive Oxford student and that given to Jo Ramsden, a young woman with Down's Syndrome. The paper suggested that because "She's not attractive in the classic way, Ms Ramsden did not capture press imagination. Her abduction did not receive the immediate press publicity that may have helped trace her. Ms Ramsden's body was found after eleven months, ten miles from home. Five months later, a man was charged with her kidnapping.

Encouraging reporting and ensuring appropriate action when an incident is reported are pivotal parts of the route to justice, yet these aspects of the overall picture are marked by worrying inconsistencies at all levels.

Sometimes victims do not want to tell anyone about a crime because they do not want to cause problems

(for example, if a member of the family does the crime).

People with learning difficulties must learn to tell people when bad things happen.

Staff and police must listen and do something.

THE COURTS

When people with learning difficulties are victims of crimes their cases often do not get to the Court.

If a case gets to Court it is often not successful.

One judge said that an attack on a person with learning difficulties by a member of staff at a day centre was not serious:
"It was like a parent smacking a child".

People are sometimes treated as if the crime is their fault.

The Crown Prosecution Service decides if a case should go to Court.

Sometimes they stop a case that involves a person with a learning difficulty because they think that:

- going to court may not be good for the witness
- the witness may not be able to tell the difference between what is true and what is not true.

THE COURTS

Few cases reach the courts. A study of sexual abuse in the South East Thames health region found that of 113 cases, only 11 went to court (Cervi 1992:14). If cases reach the courts, conviction rates seem low. Sobsey & Varnhagen (1989) found that in Vancouver, of 20 cases where charges were laid, only nine resulted in convictions. A small-scale survey by the Zonta Club of Hong Kong found conviction rates concerning sexual abuse 'disturbingly low' (Lau 1988, p3).

Attitudes

Court attitudes underlie some of this failure. Following the case of an alleged attack on a 48-year-old man by a member of staff at a day centre, it was reported -

"It was not a serious act of violence," said Judge Williams, who likened the incident to a parent smacking a child and later regretting the action (Western Telegraph 1991).

Back in 1958 L.A. Dexter pointed out in 'A social theory of mental deficiency'

...if a person of low intellectual ability gets into some sort of trouble the difficulty is more or less automatically attributed to 'mental defect' whereas if a person of 'normal intelligence' gets into a similar difficulty. it is not regarded as symptomatic of anything in particular (p923).

"Blaming the victim" remains an aspect of the reaction to victimisation of people with learning difficulties.

The adversarial system in British courts can prompt a style of questioning that is completely unacceptable. In one case of sexual abuse a lawyer phrased a question to the victim along the lines, "You wet the bed every night and you think that someone would want to sleep with you" (VOICE 1992). But even those advocating on behalf of people with learning difficulties can display questionable attitudes. In one instance a lawyer stated, in court, of a man who had moved in to the community, -When he was in hospital, he never left the grounds, so he had no need for clothes' (Sage 1991b., p6).

Prejudice from the Crown Prosecution Service (CPS) can also confound the achievement of justice. In 1986 the Director of Public Prosecutions decided to take no further action in a case of sexual abuse at a nursing home. The reason given was

that it would be wrong to expose mentally subnormal children to the ordeal of giving evidence' (Hewitt 1987, p133). A care worker who was accused of sexually abusing seven people was spared a court appearance because the CPS decided that the victims would not be credible witnesses, according to police sources (Cervi 1992b:14). Kenneth Clarke, Home Secretary was asked to pursue this with the CPS but concluded that the decision was satisfactory. VOICE proposes that if the CPS makes a decision not to prosecute, on the basis that a case will not succeed because a person has learning difficulties, it should do so only after meeting those concerned, i.e. not simply from reading reports (Downey 1992, p15).

Attitudes also seem to influence sentences. Recently, a man who had sexual intercourse, illegally, with a 'defective' was given two years in prison although the usual sentence for rape is from five years to life imprisonment (McCormack 1991, p 144). In a similar case, a judge stated that he was, "taking an exceptionally lenient course" in sentencing a social worker to three years probation for having sexual intercourse with a 20-year-old woman in his care. The reason was that the man had been promoted from maintenance worker to social worker without training, and that this mitigated his actions (Guardian 1991a p5). Conversely, in a case where the manager of a group home hypnotised a woman and sexually assaulted her, the judge stated that a life sentence was severe because the man's plea of not guilty had forced the woman through the ordeal of giving evidence (Burton 1992:3).

Well intentioned work can contribute to unhelpful attitudes. Literature which emphasises the suggestibility of people with learning difficulties when they are offenders or suspects, can reinforce ideas that they are poor witnesses as victims. Advertisements for the book *Unequal Justice* (Perske 1991) carry this quote from a man with an IQ of 49...on the witness stand:

"Jerome, did you also assassinate President Lincoln?"

"Yes," Jerome said.

"Did you assassinate President Kennedy."

"Yes", Jerome said.

Those discussing court procedures must consider the effects of their arguments and publicly from the perspective of offenders and victims.

There is similar concern about current research investigating the degree to which people with learning difficulties are reliable (accurate and honest) as witnesses. Even if research proves that reliability is no less, inevitably the fact of doing the research can suggest to the public and legal profession that there is some reason to believe that people with learning difficulties are inherently less reliable.

Similar crimes should get similar sentences.

But sometimes people who commit crimes against people with learning difficulties get treated differently. They might get shorter sentences or are let off.

The way a Court works can make a person with learning difficulties so nervous they cannot give evidence.

People in the Court may use words that people with learning difficulties cannot understand so they become confused.

People at the Court say people with learning difficulties are not good witnesses because they cannot remember clearly.

Processes and evidence-giving

Court processes clearly contribute to the high rate of failure amongst the few cases that do reach the courts. Recently at the Old Bailey, a case was thrown out because the victim became so distraught during the long period in the waiting room that she could not give evidence. It is not uncommon that victim and accused meet one another whilst waiting for a case to be heard.

Problems of evidence-giving are central. The Law Commission (1991, p40) concludes that, 'Evidential problems may make it particularly difficult to obtain convictions for offences against mentally disordered people.' In a recent court case concerning alleged rape of a 16-year-old woman, her evidence was deemed unacceptable because her 'mental age' was stated to be less than eight, and children younger than eight used not to be able to give evidence under oath (McCormack 1991, p143). The judge apparently considered that actual age referred to by law and a subjective view of mental age proposed by a professional were synonymous. Even with children under eight, evidence can be heard without an oath and taking, or not taking, the oath is no longer important.

The transcript of another case depicts the confusion of a 20-year-old women which could have been avoided ;-

Judge: Do you understand what an oath is?

Mary: No

Judge: When you swear to tell the truth, will you tell the truth?

Mary: (No answer)

Judge: If you are asked to tell the truth, will you tell the truth?

Mary: I don't know.

Judge: Does an oath on a Bible bind you?

Mary: (No answer)

Social worker: Would it be all right if I help her out with the question?

Judge: No, it would not.

Prosecuting counsel: My Lord, I wonder if the term "bind you" would be understood by this lady?

Judge: Do you believe in God?

Mary: Could be yes, could be no.

Judge: Let her be shown a bible, please, usher. If you are asked to tell the truth today, will you tell the truth?

Mary: Yes.

Judge: That book will make you tell the truth, will it?

Mary: Yes.

(Cuffe 1991, p15).

A paper from the United States in 1988 (Kaufuold & VanderLaan) argued that mentally retarded victims could give evidence leading to successful convictions, if procedures are sensitive. Preparation seems a key to successful evidence-giving. Thomas & Mundy [1991] describe work with a woman, who had been sexually abused by her father, which included visits to a court, role plays, and familiarisation with court language.

To make going to Court less frightening, the organisation VOICE has had some ideas. They say it is good to take the person with a learning difficulty to see what the Court is like before the trial, and to meet the people who work there. It may be good if the judge has normal clothes - not a wig and gown.

In Scotland there is a special report about interviewing people with learning difficulties.

In a recent case of sexual abuse in the UK, the victim was permitted to give evidence from behind a screen, and barristers and judges removed their wigs and gowns to create a less intimidating atmosphere.

The prosecution was successful, and the parents of the victim formed the organisation, VOICE, to promote the lessons from the case. VOICE identifies points for consideration -

Support and belief in the person

Allowances for their disability

Pre-trial methods of Court familiarisation

Duration of time to bring to trial

The laws of advocacy

Awareness of the witness's limited ability by the Judiciary/Jury

The role of liaison with the police Authorities and the Crown Prosecution Services

The use of a video link at disclosure interviews

(VOICE 1991)

Instances of present good practice include-

getting an assessment from an independent psychologist before the case comes to court. This can avoid a possible delay in proceedings because a report is requested during a hearing, or the case being arbitrarily thrown out by a judge because the person's intellectual status is suddenly brought to light during proceedings;

swearing in of the court before the witness/victim arrives;

introducing the officers of the court to the vulnerable person, before proceedings begin.

Two general points need to be thought about before people give evidence -are they suggestible and how will they cope with the pressure of a court-room? Two technical points must then be considered. Is the evidence admissible? The judge must decide if it is safe to put evidence to the jury on the grounds of the witness's competence and ability to tell the truth. Is the evidence reliable? This is often for the jury to decide. In Germany 'statement reliability analysis' has been used since 1954 (Kohnken 1990). But such methods can be counterproductive -they can further disadvantage people who cannot meet the methodological needs of the testing process.

One of the most helpful developments in the field of evidence-giving is a report concerning interviewing for Procurators Fiscal in Scotland (Bull & Cullen 1992) - 'Witnesses who have mental handicap'. The document makes the important point that 'there are no absolutely essential differences between mentally handicapped and other people which demand radical differences in tone and style on the part of the interviewer' (p9). It provides guidelines for interviewing which are essentially applicable to interviewing anyone, but assume greater importance with people with learning difficulties.

Another new idea for people who cannot speak or write but who need to give evidence in Court is to talk through another person.

They could use computers or point to letters of the alphabet on a board. But the Courts have not accepted this idea yet.

In Canada and America there are some laws that are used to help people with learning difficulties. But making special laws for people with learning difficulties may not be the right thing to do.

It might be better if the general law changed so it treated everyone, including people with learning difficulties, in a fair way. This would make the general law better, because it would help everybody.

The use of video evidence and video links is another area to consider.

Facilitated Communication, supporting an individual who chooses not to speak or write to use a letter board or computer keyboard to spell out words, may prove another important development in achieving justice for those with more severe intellectual problems. Unfortunately this system has been unsuccessful so far because of a suspicion that the facilitator, not the witness, is making the responses. One solution may be to ask the facilitator to swear an oath that he/she is not interfering.

Legislative change

A lead, in terms of legislative change may come from North America. In Massachusetts, a Disabled Persons Protection Commission was set up in 1986 to 'establish standards and procedures for the prompt implementation of a system of investigation and remediation of instances of abuse and neglect of disabled persons.' (see Hewitt 1987, P 135). The Abuse Investigation Division of the Office of Protection and Advocacy was created in 1985, in Connecticut (see Furey & Haber 1989), and there is now a statutory requirement for staff to report abuse. Provided they do so in good faith, they are protected from civil or criminal liability. In the Legislative Assembly of Alberta, Canada, the Vulnerable Persons Protection Act is in progress (Day 1992). It is arguable, however, that general law should be amended to 'ensure that it serves the needs of vulnerable people, rather than promoting the idea of 'difference' through separate legislation.

In Nova Scotia a court protocol has recently been introduced to provide support and accommodation to all victims and witnesses who have communication problems, including those with mental disabilities (Nov.Scot. 1991). Viewing evidence-giving more as a matter of facilitating communication and less as one of competence might provide a productive way forward.

WHAT NEXT?

The Norah Fry Research Centre at Bristol University has a research project.

This project will look at:

- all the things that happen to victims of crime
- why crimes happen
- telling someone when a crime happens
- what happens in court
- things like the Victim Support Scheme.

WHAT NEXT?

Comprehensive research, building on work concerning sexual abuse, which examines all facets of victimization and subsequent processes, is a starting point for achieving justice for people with learning difficulties. This paper provides an awareness of the current position, which prompts the following questions -

(i) The experience of victimisation

- * What types of crimes occur?
- * Do some adults seem more vulnerable, because of their age, gender, sexual orientation, or race, for example?
- * Are crimes recognised as such by victims, carers and professionals. If not, why not?
- * How are victims affected in the short and long-term? Does victimisation create a fear of leaving the house. for example?
- * How might surveys such as the British Crime Survey embrace adults with learning difficulties who are victims?

(ii) The causes of victimisation

- * What are the common settings of victimisation, e.g. in the street, on public transport, in shopping centres, or in rural locations?
- * What seem to be the precipitating factors and what are the stated motives of offenders?
- * Are there reasonable means of avoidance, that do not culminate in blaming the victim?
- * How can public or police awareness minimise the incidence of victimisation?

(iii) Reporting

- * Why are some incidents reported and some not?
- * What is the police response?
- * How can reporting be encouraged?

When people with learning difficulties are victims of crime they should get justice like other people.

We must find out about all the things that happen to victims.

Then we can make things better.

(iv) Court procedures

- * How many cases reach the courts and why /why not?
- * How many convictions are obtained?
- * What are the perceived and stated reasons for success or failure in court?
- * What are the attitudes of court officials?

(v) Other actions

- * Is the Victim Support Scheme used? If so, how?
- * Are there other channels of formal or informal victim support?
- * Are people insured against theft and are claims made?
- * What is the involvement of the Criminal Injuries Compensation Board?

The eventual achievement of justice for people with learning disabilities seems dependent on a familiar circle of interdependent factors. Reporting will be improved by better identification of victimisation and the likelihood of greater success in the courts. Success in the courts will be achieved by better investigation, preparation, and improved procedures which are likely to be prompted by more reporting. Success in the courts is likely to deter victimisation and increase access to support and redress through Victim Support and the Criminal Injuries Compensation Board. The need to encourage productive attitudes is common to all levels of involvement.

DICTIONARY

Abuse (Abusive)	Something that harms a person
Case	A legal report of a crime
Crime	The bad thing that breaks the law
Crown Prosecution Service	The people who decide if a case goes to court
Evidence	Facts about crime
Insulting	Showing no care or respect for a person
Legal	To do with the Law
Researcher	Someone who asks questions to get information
Sentence	Punishment given by a Court – like prison or a fine
Sexual Abuse	When someone is touched sexually in a way they don't want
Threatening	Behaving in a way that frightens a person
Victims	People who have had bad things done to them
Witness	Someone who has seen a crime

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SW9 6DZ

071-7359166

RESPOND

A service for people who have been sexually therapeutic support, advice, training, networks.

49 Forest Road
London
E11 1JT
071 2676578

VOICE

A support and action group for people with mental disabilities who have been sexually abused, aimed at supporting families gaining public awareness and campaigning for changes in the law.

Julie M. Boniface
P.O. Box 238
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Phone 0332 519872

National Association for the Protection from Sexual Abuse of Adults and Children with learning Disabilities

Aims to establish links between concerned agencies and individuals working with adults and children who have been sexually abused or who are at risk of abuse.

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MEDIATION UK Arranges mediation between parties who might otherwise pursue grievances through the police or courts, by trained volunteer mediators.

82a Gloucester Road
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BS7 8BN

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Now more people with learning difficulties live in the community, important questions are emerging about crime.

What crimes are happening to people with learning difficulties? Are they reported and do cases reach the courts. If cases get to Court what happens? If they do not why not? Are victims afraid to live an ordinary life?

This position paper provides a current awareness of the nature of victimisation, police responses and reporting, and court procedures.

In order to involve people with learning difficulties in research and provide them with a basis to argue for change, a 'parallel text' for those who find reading difficult is provided.