Behind closed doors

Preventing sexual abuse against adults with a learning disability

UK VOICE

Respond

mencap

Contents

Summary

People with a learning disability have a right to engage, as everyone else, in sexual activity and a right to a private life. But people with a learning disability can be particularly vulnerable to sexual abuse and assault; indeed, the incidence of abuse of people with disabilities may be as much as four times higher than it is within the non-disabled population.[1] Sexual abuse is a major violation of human rights. People who are sexually abused are likely to experience humiliation, pain and torment and incur permanent emotional damage. The effects can be long lasting, impeding sexual relationships and affecting mental health. Sexual abuse causes real physical and psychological harm.

Mencap, Respond and Voice UK believe that everyone should have equal protection under the law and fair treatment from the criminal justice system. This is a mark of a civilised society, and a fundamental right. But as it stands, the law contains a number of loopholes and currently offers only limited remedy in cases of sexual abuse involving people with a learning disability. It does not provide a deterrent to abusers who deliberately target people with a learning disability for sexual gratification.

This report has been published in response to the growing concern that people with a learning disability who have been sexually abused do not receive equal and just treatment within the legal system. We know that cases of sexual abuse of people with a learning disability are often not reported, remaining known only to the offender and the victim. Few cases reach court and even fewer result in conviction. The disturbing cases detailed in this report highlight the type and extent of sexual abuse experienced by adults with a learning disability and how poorly the legal framework serves them. These cases demonstrate that new legislation is needed urgently in order to provide better protection from abuse and exploitation and ensure that abusers are successfully prosecuted and appropriately sentenced.

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1 Muccigrosso 1991

Proposals for change

Mencap, Respond and Voice UK call on Government to introduce new legislation in line with the recommendations of the Home Office report *Setting the Boundaries*[1], in order to strengthen the law on sex offences. We make the following proposals for change:

- It should be a criminal offence for an individual to have sex with a person with a severe learning disability who is unable to consent to that sexual activity.
- It should be a criminal offence for an individual working in a residential home or other care setting to have sex with a person with a learning disability living or receiving services in that care setting.
- There should be a criminal offence of obtaining sex with a person with a learning disability by threats or deception.
- There needs to be a new test to determine a person's capacity to consent to sexual activity.
- The sentence for the new offences should reflect the seriousness of the crimes. There should be a maximum sentence equivalent to the maximum sentence for rape, which is life imprisonment, for sexual abuse of a person with a learning disability.
- The police, Crown Prosecution Service (CPS) and judges must take part in an ongoing training programme to raise their awareness of how to support people with a learning disability.
- Abuse prevention work should be undertaken with people with a learning disability in order to raise awareness of situations in which they might be vulnerable.

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1 Home Office, July 2000

1. Introduction: the need for change

There are 1.2 million people with a mild or moderate learning disability and an estimated 210,000 people with a severe or profound learning disability in England alone. With almost all long-stay hospitals closing, more people with a learning disability are living in the community. Over the last twenty years, there has been a shift towards less institutionalised forms of care, such as residential or supported housing in the community. Most people with a learning disability live in the family home.

People with a learning disability now enjoy a more active presence in the community and live increasingly independent lives. They have the same right as other people to express their sexual feelings and engage in sexual activities. We know that there were some awful cases of abuse in long stay hospitals. However, it is clear that living in the community also brings risks to people with a learning disability. We need to recognise and respect the sexual autonomy of adults with a learning disability but also provide a framework that protects them from abuse.

In June 1998, the Government set up a review body to consider the existing law on sex offences and make recommendations for new offences. The subsequent report, *Setting the Boundaries*, recommends a number of new sex offences to protect individuals, particularly children and vulnerable adults, from sexual exploitation. The Home Office is currently considering the report. This report by Mencap, Respond and Voice UK builds on some of the recommendations in *Setting the Boundaries*, which specifically address the concerns of vulnerable adults, including those with a learning disability.

2. Sexual abuse of people with a learning disability

Abuse is a violation of an individual's human and civil rights by another person. Sexual abuse refers to a wide range of sexual activities that are in some sense forced upon the victim. It includes rape, sexual assault and other sexual acts to which a person with a learning disability has not consented or could not consent. It also includes instances where an individual is pressurised into consenting. It is not uncommon for emotional abuse, in the form of threats and intimidation, to be perpetrated alongside sexual abuse.

Why people with a learning disability are vulnerable

People with a learning disability can be vulnerable to sexual abuse for a number of reasons. They may:

- have low self-esteem and therefore lack power within relationships
- depend on care staff and care services over long periods
- not possess the social awareness or education to detect or anticipate abusive situations
- be afraid to challenge potentially abusive situations. Many people with a learning disability have been taught not to question authority figures, and worry that the perpetrator will get angry or that they will get into trouble if they refuse
- lack the capacity to consent to sexual relations, as is the case for some people with a severe learning disability
- be unable to recognise after the event that abuse has taken place
- be afraid to report abuse after the event, although they recognise what has happened. Some people have communication difficulties. Others feel that nobody will believe them. Some people have feelings of guilt or shame that prevent them reporting abuse. Others feel that there is nobody to whom they can complain (especially if the perpetrator is a figure of authority).

These factors taken together can make people with a learning disability targets for abusers. The risks of disclosure are low and the risks of prosecution even lower.

The prevalence of sexual abuse

There is considerable evidence that people with a learning disability are at much greater risk of sexual abuse and assault than the general population. Research shows that the incidence of abuse among people with disabilities is as much as four times higher than it is among the non-disabled population. People with a learning disability are at the highest risk of abuse.

One recent study of the sexual abuse of people with a learning disability surveyed statutory agencies across the South East Thames Regional Health Authority. The results suggest that at least 1,400 adults with a learning disability are likely to be reported as victims of sexual abuse each year.[1] The majority of victims are women, but men are also at risk.

Clear patterns emerge of the abuse of people with a learning disability. Most of those abused have moderate to severe learning disabilities and have additional physical disabilities. Abusers are predominately male and are generally known to the victim. Of particular concern are the cases in which the abuser is a person in a position of trust, power or authority who takes advantage of that position in order to abuse.

The body of research linking disability with sexual abuse leaves no doubt that the problem is severe. It is clear that abuse is widespread and that the law offers only limited protection. Sex offenders consider people with a learning disability to be an easy target because they are vulnerable and may be reluctant to bring cases against their abusers.

The effects of abuse

The actions of sexual abusers can leave their victims permanently damaged. People who are sexually abused are likely to suffer psychological, physical and emotional damage. This can include depression, guilt, self-blame and low self-esteem. Their trust in carers, family and friends can be affected – sometimes permanently. There may be disturbances and changes in someone's behaviour,

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1 Brown, Stein and Tusk, *The Sexual Abuse of Adults with a Learning Disability: a Second Incidence Study*. Mental Handicap Research 1995.

particularly if they are unable to communicate. The damaging effects of abuse are compounded when – as is often the case – the abuser is well known to the person with a learning disability and the abuse takes place over a period of time.

3. Problems with the existing law

The existing law states that it is an offence for a man to have sexual intercourse with a woman who is known to be a “defective” (s. 6 and 7 Sexual Offences Act 1956). The law carries a maximum sentence of only two years. There are a number of criticisms of the existing law:

- It has to be proved that the victim is a “defective”, a demeaning and derogatory term. This involves the victim going to court and being questioned to test his or her abilities – effectively putting that person on trial. There have been few prosecutions and a number of those have failed. This is, in part, due to the existence of the defence that the perpetrator did not know the victim was a “defective”.
- The Sexual Offences Act only covers offences against people with a severe mental impairment who have been deemed by law as unable to give consent. It does not apply in cases where someone has a mild or moderate learning disability. These cases can be particularly difficult. An individual may technically consent under the law (in other words not demonstrate dissent), but in actual fact not understand what they were consenting to. In other instances, “consent” may have been obtained under pressure or duress (for example where the victim has an existing relationship with the perpetrator).
- Capacity to consent to sexual relationships is not defined in law. Without a firm legal underpinning, consent is an extremely difficult concept to interpret. Recent cases in courts involving people with learning disabilities have shown how variable interpretations of this can be. Legal difficulties are exacerbated where the victim has a severe mental impairment because it becomes even more difficult to establish consent. This creates a real barrier to prosecution in some of the most serious sex offences, such as rape, because these cases rely on proving lack of consent. Rape cases get downgraded to assault; the difficulty in being clear about consent reduces the scope of the potential charge.

- Few people who commit offences against people with a learning disability are brought to justice. There are a number of reasons for this:
  - People with a learning disability are less likely to report cases of abuse.
  - If a person with a learning disability reports abuse, they are less likely to be believed.
  - Communication difficulties may make it difficult for someone to tell others if they are unhappy, hurt or afraid.
  - Living in an isolated situation may mean someone does not have free communication with someone they can trust.
  - A person with a learning disability may fear a loss of service, retaliation from an abuser, or that they may be in trouble themselves if they report a case of abuse.

4. Reforming the law

The starting point is that consenting sexual activity between adults should be respected and should not be subject to the intervention of criminal law. People with a learning disability have the same right as everyone else to engage in sexual activities and to express themselves sexually in an appropriate fashion. Many people with learning disabilities are married or have established long-term sexual relationships. A number are successful parents.

Comparisons are often made within our legal framework between adults with a learning disability and children. Clearly this is inappropriate. Families can feel frustrated because they see vulnerability rather than age as the relevant legal factor in abuse cases. The authors of this report believe that the law should recognise the vulnerability of adults with learning disabilities and protect them, but that it should not treat adults with a learning disability as children. They have the right to have fulfilling sexual relationships, and many do so. Reform of the law would send out the positive message that adults with a learning disability are adults first and foremost, but adults who should also be afforded strong protection from abuse.

The law needs to balance the right of people with a learning disability to have a private life, including sexual relations, with their need to be protected from abuse. The criminal law has a role to play where sexual activity is not consensual or where society decides that vulnerable people require additional protection. This should include additional protection for people with a learning disability from non-consensual sexual activity, which has the potential to inflict physical, emotional and psychological harm. The law should also provide a robust and comprehensive framework for the redress of grievances.

Determine people's capacity to consent

Consent is crucial in determining whether a sexual act or relationship is abusive. The current law is not clear in determining capacity to consent. The BMA and Law Society suggest that a person must understand what is proposed and its implications, and must be able to exercise choice (to reflect situations where someone is in a position of power).[1] We suggest setting a functional test of capacity to consent. This means establishing whether an individual has the capacity to consent to a specific decision, in specific circumstances. In terms of sexual relations, a capacity test would be likely to include the following elements:

- An individual would need to have specific kinds of knowledge in order to consent to sexual activities.
- An individual would need to understand the basic elements of sexual behaviour and be able to distinguish that sex is different from personal care such as bathing of the body, and from a medical examination.
- An individual should understand that sex can have reasonably foreseeable consequences, such as pregnancy or sexually transmitted disease.

Recommendation

- **There should be a new test to determine a person's capacity to consent to sexual relations.**

Protect people who cannot consent

Some people's level of learning disability is so severe that they could not be regarded as able to consent to sexual activity in any circumstances. They would be unable to understand what was being asked of them or to communicate their consent, or lack of it, in any way. A specific offence that relates to sexual abuse of a person with no capacity to consent is a necessary legal safeguard. It is justifiable because of the need to protect the interests of vulnerable individuals. Those who cannot understand the nature or potential consequences of sexual activity should not be judged to have been able to consent to sex under the law.

There should be no defence on the grounds that the perpetrator believed the victim could in fact consent. Once it is established that an

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1 BMA and Law Society, *Assessment of Mental Capacity: Guidance for Doctors and Lawyers*. BMA 1995.

individual is not able to understand the nature of the sexual act because of their disability, it cannot be a defence that the accused thought that the individual gave their consent.

Recommendation

- **The offence of “sexual intercourse with a defective” should be replaced by the offence of having “sexual relations with a person with a severe learning disability who is unable to consent to that sexual activity”.**

Prevent the exploitation of relationships of care

Many sex offenders have worked their way into positions of trust, for example through their involvement in services for people with a learning disability. They may deliberately choose employment in the caring professions because of their vulnerable populations and the intimate nature of the work.

Care environments may offer opportunities for abuse without detection. Care staff have legitimate access to vulnerable people, often one-to-one access. This can include providing intimate personal care. Abusers may be successful at their jobs, respected or admired by colleagues, and seen as respectable members of the community. They can be adept at avoiding detection and disciplinary charges.

The Longcare Inquiry in 1998 was established as a result of the exposure of extensive abuse of adults with learning disabilities in Buckinghamshire. The inquiry revealed a ten-year history of systematic sexual, physical and mental abuse of people with a learning disability. The inquiry also found that social services had failed to act on the appalling conditions prevailing in the service, despite allegations of abuse.

Care staff are in a position of power or influence over the person they care for because of the nature of the working relationship. This power imbalance undermines the ability of the person who is cared for to give free consent and may inhibit their ability to seek help in an abusive situation. A sexual relationship between a staff member and a person with a learning disability is intrinsically unequal and should be considered unacceptable.

There are many cases in which staff members have exploited their position to make people with a learning disability participate in sexual acts. Typically, these cases do not involve violence or threats; many people with a learning disability are likely to comply because of the perpetrator's authority or the relationship of trust. The absence of force may well reflect the power a staff member holds over a person with a learning disability in their care. If a relationship of trust does exist, it makes it difficult for a person with a learning disability to refuse and to risk displeasing the staff member. Compliance, therefore, should not be confused with informed consent.

This report argues that the law should be strengthened to protect people with a learning disability who live in residential accommodation or similar care settings. We advocate the introduction of "abuse of trust" offences to cover abuse by individuals in positions of trust or authority over a person with a learning disability.

Recommendation

- **It should be an offence for an individual who works in a care setting to have sex with a person with a learning disability who uses the service. Care settings should be broadly defined to include services in domiciliary or residential care, day services and leisure services. There should be a schedule of the occupations and settings to which this aspect of the law would apply, and this should include all care and additional support roles.**

  This legislation should apply both to paid and unpaid employees and to volunteers; volunteers are likely to have levels of power in a caring relationship that are similar to those held by paid staff. There should be enhanced standards of protection for people with high intimate care needs.

Ensure that sentences reflect the seriousness of the crime

Sentencing should be fair and suit the crime. It should reflect the vulnerability of the victim. It seems nonsensical that a vulnerable adult (and their family or carer) should have to grapple with the appalling effects of abuse whilst the perpetrator is given a sentence equivalent to petty robbery or theft. The penalty should not be downgraded because an individual does not have the capacity to consent because of their disability.

Recommendation

- **The seriousness of the new offences (that of sexual relations with a person with a severe learning disability who is unable to consent to that sexual activity, and that of individuals working in a care setting having sex with a person with a learning disability who uses the service) should be reflected by a maximum sentence equivalent to the maximum sentence for rape, which is life imprisonment.**

Criminalise abusers who obtain sex by threats or deception

As we have seen, some abusers actively seek out situations in which people with a learning disability are vulnerable. They may seek to gain employment or to volunteer in services where they have direct access to people with a learning disability.

Sexual abusers who target people with a learning disability often rely on their ability to gain their trust. They may persuade them to engage in sexual activity with small gifts or promises of friendship.

Abusers may use their position of power to coerce or deceive a person into participating in sexual activity. Threats that would probably be ignored by others can assume a greater significance for a person with a learning disability such as: “I will tell your parents if you don’t do as I say,” or “I will tell your mother that we have done bad things.” There have been occasions where sex offenders have identified and “groomed” a person with a learning disability, inappropriately inducing them to have sex. This has included introducing a person to pornography, and teaching them about sexual acts with the intention of engaging in abuse.

Legislation should protect people with a learning disability whether they live at home, in a residential setting or use specific services. It should also criminalise sexual abusers who target people with a learning disability. This would include such cases as where abusers linger outside youth clubs or similar services frequented by people with a learning disability.

Recommendation

- **There should be a specific offence of obtaining sex with a person with a learning disability by threats or deception.**

Get cases fairly through the courts

Where an offence against a person with a learning disability is reported, the police and the Crown Prosecution Service (CPS) are less likely to take action, because of concerns about the person's credibility in court.[1]

The CPS has to be satisfied that it is in the public interest to bring a prosecution, and that the prosecution has a good chance of success. We have learned of cases in which a person with a learning disability is not regarded as a credible witness. This can prevent a prosecution from proceeding. Another reason that cases may not be taken forward is the belief that it would be too traumatic for a person with a learning disability to appear as a witness.

Hilary Brown estimated that only 6% of cases of alleged sexual abuse of people with a learning disability were prosecuted[2]. Research has also found that of 284 suspected cases of sexual abuse of people with a learning disability, only a quarter (63 cases) were investigated by the police. Just two of these (less than one per cent) proceeded to court, and only one resulted in a conviction.[3]

The Government has recognised that too many court proceedings have been abandoned, or were not begun, because a vulnerable witness has been unable to give their side of the story or has feared reprisals if they did. It recognises that people with a learning disability need support to give evidence in court.

In 1998 the Home Office published a report, *Speaking Up for Justice*, which outlined the extent to which people with a learning disability did not enjoy equal access to the criminal justice system. It put forward 78 proposals to encourage vulnerable witnesses to give their best evidence in criminal cases. The Youth Justice and Criminal Evidence Act 1999 set the legal framework for those changes. It sets out a number of measures to help vulnerable witnesses give evidence in court, including people with a learning disability.
The following special measures can be authorised:

- use of screens to ensure that the witness cannot see the defendant
- use of video recorded evidence

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1 Mencap report *Barriers to Justice* 1997.
2 Brown et al. 1995.
3 Mencap report *Barriers to Justice* 1997.

- court officials to wear ordinary clothes instead of court dress of wigs or gowns
- allowing an approved intermediary to help the witness communicate with the legal representatives
- allowing the witness to use communication aids.

We need to ensure that all witnesses with a learning disability are empowered to give their evidence, and do not suffer injustice because they are not taken seriously or are not supported in court. This highlights the importance of raising awareness among the police, the CPS and judges of the needs of people with a learning disability. The Government is committed to a programme of training but implementation has been slow.

Recommendation

- **Everyone concerned with the criminal justice system – including the police, the Crown Prosecution Service and judges – should take part in an ongoing training programme, so they can identify and respond to the needs and concerns of people with a learning disability.**

5. Tightening standards for people who work with vulnerable adults

The Care Standards Act 2000 includes measures to prevent unsuitable people from working with vulnerable adults in care settings. The Secretary of State for Health will maintain a list of people unsuitable to work with vulnerable adults. People on that list will be banned from working in areas where people are likely to be vulnerable, including residential care homes, hospitals and other settings. Employers and organisations that provide volunteers who work with vulnerable people will be required to check the list before they recruit staff or volunteers.

The Care Standards Act also creates new, independent bodies that will regulate and inspect care establishments in England and Wales. Social Services Departments will no longer be responsible for inspections. These new inspection powers were introduced after a number of scandals involving ill treatment or abuse.

Government guidance was issued in 2000, entitled *No Secrets: Guidance on Developing Multi-Agency Policies and Procedures to Protect Vulnerable Adults from Abuse,* which covers England, and *In Safe Hands*, which covers Wales.[1] It details how agencies should work together to protect those at risk from abuse and to make sure robust procedures are in place to deal with incidents of abuse.

The guidance has been sent to all key agencies including health, social services, and the police. Directors of social services are expected to co-ordinate the development and implementation of local multi-agency procedures. Organisations developing anti-abuse polices are expected to ensure that staff are aware of their duty to report instances of abuse, know who to report it to, and understand the process for carrying out any investigations.

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1 Guidance was issued in Northern Ireland in 1996: *Vulnerable Adults Guidelines*.

Recommendations

- **More work should also be done directly with adults with a learning disability to help them recognise abusive situations and to know how to seek help and support. There needs to be more work in developing joint training across agencies, and for these initiatives to be widely publicised and regularly evaluated. People with a learning disability need to be involved as trainers.**
- **For adults with a learning disability who disclose abuse that occurred during their childhood, there is a definite need for skilled interventions. Protocols for investigating allegations made by vulnerable adults need to build on those developed for children. Investigations need to start from a position of assuming that there is substance to the allegation. When police officers take evidence, adults with a learning disability must be accompanied by an appropriate adult.**

6. Conclusion

People with a learning disability have a right to a private life and to a life free from abuse. They should not be exposed to greater harm than the general population because of their disability.

We must do everything possible to protect vulnerable people with a learning disability from abuse and respond to abuse when it does take place. The law must be reformed to deter sexual abusers. The existing loopholes must be closed to ensure that abusers are appropriately punished.

People with a learning disability and their families have been neglected and let down by the criminal justice system. This has to change. We have made a number of recommendations to provide them with greater safeguards. We cannot afford to be complacent, and we look forward to Government introducing legislation as a matter of urgency.

The seriousness of this issue is demonstrated by the current failure to get abuse cases to court and to successfully prosecute abusers. The human damage is shown by the personal stories that follow.

Personal stories

These stories relate the experiences of people with a learning disability and their families, based on their accounts. Names have been changed to protect the identity of all parties.

Peter Lord

Peter is 17 years old. He has autism, learning disabilities, and a severe speech and language disorder. Psychiatric assessments confirmed him as coming under the definition of “mentally defective” under the Sexual Offences Act. Peter was in a specialist boarding school until he was 12, and now lives at home.

When Peter was 16, he began to talk about meeting a friend called Chris at the recreation ground. He started to go there every week. After a while Peter’s mother became suspicious, particularly when for the first time she discovered pornographic magazines in Peter’s room. Peter said that Chris had given these to him. As Chris did not appear to be known in youth circles, Peter’s mother contacted the police for advice.

The police and social workers warned Peter’s mother to try to prevent Peter from associating with Chris, as they believed Peter was being “groomed”. Chris is 45 years old, a convicted sex offender, and a known paedophile.

Peter’s mother’s attempts to prevent him from seeing Chris made Peter angry and secretive, and he continued to see him on a regular basis. Peter’s mother contacted Chris to warn him to stay away. All informal approaches failed. Peter’s mother sought legal advice and was told that it was unlikely that she would have any success in placing an order against Chris, as Peter was over 16 years old and was actively seeking contact with Chris.

Almost 12 months later, Peter’s mother found a note written by her son which recounted sexual relations between him and Chris. Chris was arrested on the basis of the note and charged with gross indecency, indecent assault and possession of indecent photographs. Photographs were recovered of Peter, naked in Chris’s garage.

Peter did not have the capacity to consent to sexual relations with Chris. A psychiatric assessment of Peter concluded:
"He does not have any understanding of sexual activities and he has no understanding at all of the consequences of being involved in a sexual relationship."

During the case's committal hearing, the CPS dropped the case on the grounds that the only evidence available was from Peter himself and that it was not possible to rely on everything he said. The CPS also concluded that Peter would not be able to give evidence in the way that current rules require in a criminal trial.

This conclusion was not consistent with the conclusion of the psychiatric report. This said: "It is possible to help Peter give evidence in the ways I have outlined…and therefore in my opinion as a mental health professional, it would be negligent to the mental health of other young disabled people to allow offences such as this to go untried."

The report also noted: "Peter is a vulnerable young man as are many other young people in his position, and I am sure that it is important that they have access to the same protection by the law as those without such disabilities. (There is of course the constant worry that paedophiles will learn only to target young men such as Peter if this offers them immunity from prosecution)."

Peter's mother says: "The fact that Peter's mental state renders him 'highly suggestible' is the ideal criteria for Chris's victims. By the definition required by the Crown Prosecution Service, what hope has any parent of protecting their son or daughter in similar circumstances?

"The dismissal of our case gives a green light to all paedophiles to carry on their sordid activities free from the fear of prosecution…the legacy of paedophile activity will haunt us forever."

The proposals in this report would help to prevent future cases like Peter's, because:

- **it would be an offence to have sexual relations with somebody with a learning disability who cannot consent to that activity**
- **it would be an offence to obtain sex by threats or deception**
- **support would be available so that the case would not be contingent upon Peter's performance in a conventional trial situation.**

David Jenkins

This account uses the real names, as quoted in the reports of court proceedings.

David Jenkins was a support worker in a residential unit supporting a large number of adults with learning disabilities. Jenkins admitted to having sexual intercourse with a woman resident when it was discovered she was pregnant and DNA tests confirmed that he was the father.

The CPS decided to prosecute Jenkins for rape rather than the offence of having sex with a "mental defective" under the 1956 Act, which carries a maximum sentence of only two years. Experts agreed that the young woman could name only some body parts, could not distinguish pictures of sexual intercourse from other pictures, and had no understanding of pregnancy or contraception.

When the case opened, Glynis Murphy, Professor of Clinical Psychology of Learning Disability, Tizard Centre, gave evidence during legal argument in the jury's absence. She argued that in order to consent to sex, a woman must be able to understand "what is proposed and its implications and must be able to exercise choice." She cited BMA and Law Society guidance on the issue of consent.

But after reviewing the law and rape cases, Judge Simon Coltart decided that the guidelines were wrong. He said that on the basis of a case heard in the 1800s there had to be consideration of whether consent could have been given through "animal instinct". If consent can be given through animal instinct then understanding becomes irrelevant. David Jenkins was able to walk away from court. A powerful signal has gone out that people with a learning disability can give consent through "animal instinct", which allows abusers to claim that their sexual relations are in fact not abusive.

The proposals in this report would help to prevent future cases like this, because:

- **there would be a new definition of capacity to consent, based on a person's knowledge and understanding of sex and its implications**
- **it would be a criminal offence for an individual who works in a residential home or other care setting to have sex with a person with a learning disability who receives services in that setting.**

Liz Peters

Liz is a 22-year-old woman with Down's syndrome and severe learning disabilities. From 1996 to1999 she and her sister Karen, who also has Down's syndrome, lived in a residential home close to their parents' home.

In September 1999, Liz's mother Ros received a telephone call from the home, telling her that Liz had made allegations of sexual abuse against a male care assistant. When she visited the next day, Ros found Liz frightened, disturbed and refusing to talk. The care assistant had been suspended.

When Liz gave her statement to the police, her family and the police officers were astounded. Liz would only talk if she was sitting on her mother's lap and described sex acts that they felt she could only have known about through experience. What Liz described was horrifying. Liz alleged she had been raped and also forced to participate in oral sex and masturbation. The care assistant was alleged to have used both physical and emotional abuse to ensure her co-operation, by hitting her and pulling her hair; and by threatening that her parents would not want her any more if she told anyone, and that his wife would kill her if she found out.

It seemed that Liz had spoken to a member of staff some time previously, saying that she was "having an affair" with the care assistant. Her allegations were not taken seriously, and it was suggested that she was telling "stupid stories". It appeared that on another occasion, two staff members had found Liz and the assistant alone in a room together in a compromising position which should have given rise to suspicion, yet no action was taken. Action was finally taken only when Liz confided in a senior care worker.

The case against the care worker took over 16 months to come to court. Because of the lack of forensic evidence, the CPS decided not to proceed with a charge of rape but with the lesser charge of "sex with a mental defective", which carries a maximum penalty of two years. To be classed as a "mental defective", Liz had to undergo tests to ascertain that her IQ is below 50.

When Liz and her parents arrived at the court, they found that the arrangements that had been agreed to support Liz were changed on the day. Liz had agreed to be a witness on the understanding that there would be a screen between her and the defendant. This was

challenged, though the screens were eventually put in place. Liz was not allowed to carry her comfort toy or to have her sister sitting next to her in the witness box, both of which were measures that had previously been agreed.

After the jury was sworn in, Liz's competence as a witness was discussed. Two psychologists – who had never met Liz and had not prepared a report on her social or awareness skills – decided that she was not a competent witness and the case was dismissed. Liz has since seen a consultant psychiatrist who considers that she would have been quite competent to testify.

Liz and her parents are angry. Not just about the alleged abuse, but because Liz has been denied her right to testify in court. As Ros said: "The message is that if a person has a learning disability, you can go out and do what you like, because they don't count as citizens."

Liz now lives at home with her parents and her sister Karen, who has also left the home where the abuse took place. Liz has post-traumatic stress disorder. She is receiving counselling and psychiatric help, but is still disturbed, has flashbacks, and has developed a serious eating disorder.

It is understood that the care worker involved resigned from his job as a result of Liz's case, and had also resigned from his previous job due to similar allegations. It is believed that he has now taken up new employment in another care home in the area.

The proposals in this report would help to prevent future cases like Liz's, because:

- **it would be an offence for a staff member in a residential home or other service to have a sexual relationship with somebody using the service**
- **effective ongoing training for all those involved in the criminal justice system – including the police, the CPS and judges – would support and strengthen measures set out in the Youth Justice and Criminal Evidence Act 1999. The Act will put in place measures to support people with a learning disability giving evidence in court, such as the use of screens, video evidence and the support of an intermediary.**

Sarah Simmonds

Sarah is 25. She has severe learning disabilities and her speech can be very hard to understand, especially by people who do not know her well. She lives in a social services residential care home and has regular contact with her family.

Two years ago, Sarah told her mother that Andrew, a member of staff at the home, had come into her bedroom, fondled her breasts, touched her between her legs, and made her touch his penis. He told her not to tell anyone, but Sarah told her family. Sarah was very clear about this information and remained consistent in her story. She was clear that she did not like it, and said that she had asked him to stop.

Sarah's mother reported the incident to social services and an investigation was conducted. The staff member was suspended during the investigation. The police were informed and they interviewed Sarah, but they found it hard to understand what she was saying. Informally, they acknowledged that they believed Sarah, but they advised her family not to press charges. They said that people in court would not understand what she was saying. They also felt that Sarah would not be able to withstand the pressures of a court case in which she would be the primary witness in relation to a charge of indecent assault.

Andrew's employers continued their investigation. It was a long and drawn out process, during which Sarah was denied access to counselling, despite her emotional confusion and distress. After 18 months, which were very difficult for Sarah and everyone involved in caring for her, Andrew was dismissed.

At no stage was there any clear acknowledgement of Sarah's allegations. There was tacit acceptance that she had been abused, and funding was later granted for counselling to go ahead. However, the lack of formal acknowledgement has made it harder for Sarah and her family to carry on after the abuse. The task of planning for her long-term future is now more complex.

Sarah's family now feels that they have to keep an eye on her all the time in case anything else happens to her. Sarah is very confused and finds it hard to understand what is going on. She cannot understand why Andrew has not been sent to prison. She is angry that her family won't let her go out and about like she used to. She keeps remembering what Andrew did to her – especially at night. Often she gets very upset and her mother has to come into her room to comfort

her. Sarah used to have a boyfriend called Simon and used to enjoy cuddling him. She doesn't like him to touch her anymore because it reminded her of Andrew, so Simon has ended the relationship.

The proposals in this report would help to prevent future cases like Sarah's, because:

- **it would be a criminal offence for a staff member in a residential home or other service to have a sexual relationship with somebody using the service. With this in place, it could have been easier to prosecute Sarah's abuser, who may conceivably have been deterred in the first place by the existence of this offence**
- **Sarah would also have benefited from measures to support people with a learning disability to give evidence in court, and better training to staff working in the criminal justice system.**

Vicky Smith

Vicky is in her early 20s. She has communication difficulties and a severe learning disability, so severe that she could not be regarded as being able to consent to sexual activity in any circumstances. She used to live in sheltered accommodation in the north of England, provided by a housing association.

Vicky was forced to have sexual intercourse with an agency worker who worked at the home. It was her first sexual experience. Vicky has no understanding of the basic elements of sexual behaviour and no appreciation that sex can have foreseeable consequences such as pregnancy or sexually transmitted disease.

Vicky's parents noticed that their daughter's behaviour changed dramatically. She became extremely withdrawn and appeared to be very unhappy and distressed. Her mother noticed that Vicky also started to miss her periods. A medical examination revealed that Vicky was pregnant and DNA testing confirmed that the agency worker was the father. However, it was only when her parents alerted the home that the staff became aware of the sexual assault and that Vicky was pregnant. Consequently, Vicky was 17 weeks pregnant before it was possible to arrange a termination. Vicky was subsequently removed from the home, which caused her further disruption and stress.

It appeared that neither the housing association nor the agency had carried out police checks on the worker. It was unclear whether they had even taken up any references. The worker was working alone and unsupervised.

The proposals in this report would help to prevent future cases like Vicky's, because:

- **it would be a specific offence for a staff member in a residential home or other service to have a sexual relationship with somebody using the service. With this in place, the worker who raped Vicky could have been brought to justice, or conceivably have been deterred from abusing Vicky in the first place.**

Organisations involved in this report

Mencap

Mencap represents the views and daily experience of people with a learning disability and their families. Mencap campaigns for equal rights by challenging discrimination and disadvantage, raising expectations and removing barriers to social inclusion. We work closely with MPs, Peers, Government, civil servants, local authorities and the media to promote the rights of people with a learning disability.

Mencap directly improves the lives of people with learning disabilities through its own services, which include residential, education and employment services, as well as leisure opportunities and individual support and advice.

We are striving to achieve our vision of a world where all people with a learning disability have choice, opportunity and respect, with the support they need. We work to deliver change wherever these rights are compromised.

Mencap's campaigns department can be contacted on 020 7696 6952. Or see Mencap's website: www.mencap.org.uk

Respond

Respond is a voluntary organisation and registered charity, core funded by the Department of Health. Respond provides counselling and psychotherapy to people with learning disabilities who have been sexually abused, and to those who have gone on to abuse others. Through assessment and treatment, alongside support, advice, training and supervision for professional carers and family members, we seek to increase awareness, knowledge and understanding of the issues of sexual abuse, learning disability and psychotherapy support.

We are a national organisation based in central London. We provide a direct clinical service from our London premises. We deliver training across the country and telephone and e-mail advice through our Helpline: 0845 606 1503 and our website: www.respond.org.uk. We can also be contacted by phone on 020 7383 0700.

Voice UK

Voice UK is a national voluntary organisation. It serves people with a learning disability (both adults and children) who have experienced crime or abuse and their families and carers, and campaigns for changes in the law and practice. We provide a telephone support line Monday to Friday 9-5. Calls have consistently increased since the service began. So far this year they have averaged almost 200 a month. Of the calls concerning individuals who have been abused, roughly half come from parents and relatives and half from professionals in many services, e.g. health, social services, the independent sector, police and lawyers. Some people want direct information, but sometimes they just want to be listened to and believed. Voice UK can be contacted on 01332 202555. www.voiceuk.clara.net

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