

Young people with learning disabilities who sexually harm others: the role of criminal justice within a multi-agency response

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Easy summary

- Young people with learning disabilities are more likely to be abused than other young people. Some young people who have been abused go on to sexually abuse other people.
- Young people with sexual behavior problems do not get help until after they have sexually abused someone else and the police are involved.
- If a young person is convicted of a sex crime it has a very bad effect on their future.
- There needs to be more help for young people with learning disabilities so that they do not sexually abuse others.

Summary

This paper outlines the key findings from a recent study of statutory service responses to young people with learning disabilities who show sexually inappropriate or abusive behaviours, with a particular focus on the involvement of criminal justice agencies. The study found that although inappropriate sexual behaviours were commonplace in special schools, and that serious acts of abuse including rape had sometimes occurred, education, welfare and criminal justice agencies struggled to work together effectively. In particular, staff often had difficulty in determining the point at which a sexually inappropriate behaviour warranted intervention. This problem was frequently compounded by a lack of appropriate therapeutic services. In many cases this meant that no intervention was made until the young person committed a sexual offence and the victim reported this to the police. As a consequence, young people with learning disabilities are being registered as sex offenders. The paper concludes by addressing some of the policy and practice implications of the study's findings, particularly those which relate to criminal justice.

Introduction

The complex issues surrounding young people with learning disabilities who show sexually inappropriate or abusive behaviours have received little research attention (Fyson et al, 2003). This is despite the fact that the issue of men with learning disabilities who sexually abuse has received considerable research attention in recent years (Brown & Stein, 1997; Brown & Thompson, 1997; Thompson & Brown, 1997 & 2006). It must be noted, moreover, that juveniles are known to perpetrate somewhere between one quarter and one third of all sexual crimes and that the 'peak age' for male sexual offending is known to be around puberty: 12-14 years (Hoghughi, Bhate & Graham, 1997; Hackett, 2004; Erooga & Masson, 2006).

Population studies of young people who sexually abuse others consistently show that young people with learning disabilities are vastly over-represented (Bagley, 1992; James & Neil, 1997; Manocha & Mezey, 1998; Bailey & Boswell, 2002) and specialist therapeutic services report a similar imbalance in the referrals they receive (Dolan et al, 1996; O'Callaghan, 1998). There could be many reasons for this, including the fact that children and young people with disabilities are more likely than their non-disabled peers to have experienced abuse of all kinds (Kelly, 1992; Cooke & Standen, 2002; NSPCC, 2003).

The few studies which have previously been undertaken into young people with learning disabilities who sexually abuse others have taken a psychological perspective and have usually gathered data from individuals engaged in specialist treatment programmes. As a consequence, their findings have begun to identify

patterns of abuse (Gilbey et al, 1989; McCurrey et al, 1998; Balogh et al, 2001; Firth et al, 2001) and the efficacy of treatments (O'Callaghan, 1998 & 1999; Lindsay et al, 1999) but have revealed little about the route by which these young people came to receive specialist input and the involvement or otherwise of criminal justice agencies in this process. By contrast, the present study sought to investigate both inappropriate and abusive sexual behaviours, in order to better understand the connections between the two and to identify how current education, welfare and criminal justice systems do or do not work together to support these troubled and troubling young people (Fyson, 2005).

Methodology

Two strands of data collection took place across four English local authorities.

The first consisted of a survey of special schools (n = 40; response rate = 65%), and follow-up interviews with staff in 10 schools. These explored the extent to which schools were aware of sexually inappropriate or abusive behaviours arising between pupils and how staff responded to such behaviours.

The second was a 12-month prospective survey of all cases of sexual abuse perpetrated by a young person with a learning disability which were known to statutory welfare agencies. A total of 15 cases were identified and a key worker from a child protection or Youth Offending Team (YOT) was interviewed in relation to each case. YOTs are multi-disciplinary teams, which include social workers, probation officers and police, who work with young people who have committed crimes or who are believed to be at risk of committing crimes. Each interview gathered basic

demographic data (age, gender, etc) as well as more in depth information about the young person's family background; any history of involvement with statutory services; details of the alleged abuse and of the involvement of both welfare and criminal justice agencies following the allegations being made.

Ethical considerations

Ethical approval was sought and received from relevant Local Research Ethics Committees prior to the commencement of the study. Interviews with school staff focussed on general issues of managing sexualised behaviours rather than on individual pupils. Interviews with child protection and Youth Offending Team workers were undertaken on the basis that no information would be divulged which might enable the researcher or others to identify an individual young person – such as their name or the school they attended.

Key findings

Special schools

The survey of special schools indicated that sexually inappropriate behaviour was commonplace. Overall, responses showed that 88% of special schools had experienced pupils behaving in sexually inappropriate ways, with around two-thirds of schools (65%) reporting such incidents as occurring at least once per term and almost one-fifth (19%) reporting that incidents arose on a weekly basis. The types of behaviour which had occurred ranged from public masturbation (reported by 58% of schools) to inappropriate touch (85%) and actual or attempted bodily penetration (15%). The latter finding was of particular surprise and concern, since it indicates

that very serious acts of abuse may sometimes occur even in highly regulated school environments.

The survey also indicated that, when seeking support for pupils whose sexualised behaviour required a response above and beyond that available from school staff, there was a preference for approaching child welfare rather than criminal justice agencies. Over half of schools (54%) had sought help from social services in relation to a pupil's sexual behaviour, compared to only 23% having sought assistance from the police and a mere 8% having approached their local Youth Offending Team.

Interviews with school staff revealed first and foremost a concern that pupils should not be unnecessarily labelled as sexual abusers, nor be held to higher standards of behaviour than other young people. However, staff did acknowledge that the behaviour of some pupils could give genuine cause for concern:

“Sexual behaviours can become quite serious behaviours, because if people do it out of school – or as they get older – it can have dire consequences”
(Teacher)

As an example of this, another interviewee described how a pupil had been arrested by the local police after being found masturbating in public.

Within the school setting, however, staff were anxious to ensure that they responded consistently to any untoward sexualised behaviours. This was neither a simple nor a straightforward task, for a number of reasons. Firstly, few special schools (19% of those who responded to the survey) had policies in place to guide staff responses to

this type of behaviour, so most muddled through using a combination of general behavioural policies and child protection procedures. Secondly, because of the lack of clear policy guidelines, many staff were uncertain if or when a particular behaviour warranted an intervention. This then led onto the third difficulty, which was a lack of clear and consistent recording of incidents so that any patterns of repeat or escalating behaviour could not be recognised and responded to. All of these issues were compounded by a lack of confidence about when a sexual behaviour required input from external services, a problem which in many schools had been exacerbated by past experiences of seeking help from social services or elsewhere and not getting the desired support.

As already noted, more than half of the special schools surveyed had sought help concerning pupils' sexual behaviour from social services. Although many school staff praised individual social workers, they were often critical of the organisational response – which was typically geared towards launching child protection investigations and not towards offering advice or support.

None of the few schools which had approached their local Youth Offending Team for help with sexual behaviour problems felt that the response from this quarter had been positive. The fact that this line of inquiry had not been successful was surprising, given that YOTs have a crime prevention remit in addition to their role of working with known juvenile offenders. It may be that resources are too tight for YOTs to fully engage in preventative work, or it may be that YOT staff (as will be discussed further below) do not have the skills or knowledge necessary to work effectively with young people with learning disabilities.

By contrast, of the one quarter of special schools that had approached the police regarding sexual behaviour between pupils, two-thirds were satisfied with the support offered. When this topic was raised during interviews, staff explained that in most instances the police only became involved if a child was subject to social services child protection procedures. However, all schools have a designated 'link officer' from their local constabulary and in some instances schools had made use of this relationship by involving police officers in teaching about personal safety or reiterating the message about acceptable and unacceptable public behaviour following untoward sexual incidents within the school.

"We might involve the community policeman in terms of just explaining if this happened outside what the consequences would be, but that depends on the understanding of the pupil." (Teacher)

Child welfare services

The characteristics and family background of the young people who were the subjects of case study interviews with child protection and Youth Offending Team workers (n=15) were as follows:

- 14 were male and 1 was female
- 13 were white British and 2 were black/dual heritage
- Their ages ranged from 11-17 at time of the alleged incident
- 5 were attending special school and 10 were in mainstream education
- 13 were known or believed to have themselves been abused: this was based on previous registration on the child protection register, disclosure by the young person during the course of therapeutic work, or other known facts

about their family life – such as having a registered sex offender living in the family home

- Only 4 lived in two-parent nuclear families; 3 were in foster care; 2 had mothers who were also learning disabled

Most of the behaviours noted in special schools, rather than being sexually abusive - i.e. non-consenting sexual acts which resulted in trauma on the part of the victim, tended towards being sexually inappropriate, for example the use of sexualised language or one-off incidents of inappropriate touch. By contrast, interviews with professionals from child protection and Youth Offending teams almost exclusively concerned young people with learning disabilities who had committed serious acts of sexual abuse. The reason for this appeared to be the fact that, unless social services were already involved in the young person's life for another reason, they only became involved in sexual behaviour issues once they had escalated into sexual offending and a victim had complained to the police.

Of the fifteen cases for which key worker interviews were undertaken, 12 had come to the attention of social services following police investigation of an alleged sexual crime – typically rape, attempted rape or serious sexual assault. This was despite the fact that, in 7 cases, the young person had a known history of sexually inappropriate behaviour. This means that either the young person's school or another statutory welfare agency had raised concerns about the young person's sexual behaviour, but child protection and/or Youth Offending Teams had failed to respond. The 3 cases held by social services which had not been referred by the police were all situations where the young person was already receiving their support: in two cases the young people were already being fostered when their sexually problematic behaviour

became apparent, and in a third case the young person was the subject of care proceedings.

Of the 12 cases which had come to the attention of welfare agencies via the police, only 4 had avoided full involvement in the criminal justice system. This appeared to be more by chance than by design, with the police stating in two cases that they had insufficient evidence to press charges and in another case dropping charges once they had been sent a report describing the nature of the young man's learning disability. This left 8 cases where criminal justice had run its course – resulting in 2 individuals receiving final police warnings and 6 others court convictions for various sexual offences, including 2 who were convicted of rape. Of those young people who were convicted in court only 2 received custodial sentences. The remainder were given community orders and were subject to the supervision of a Youth Offending Team. All of the 8 individuals who had either been convicted or received a final police warning were placed on the sex offenders register.

The opinions of interviewees about the criminal justice response to these young people varied according to both the nature of the alleged abuse and the young person's personal circumstances. In one case where a young man had received a conviction his social worker commented that "Criminalising him doesn't really help and may just make the rest of his life more difficult". However, a social worker who was working with a different young person reflected very differently:

"We are in a position where it is clear he has committed a crime and yet not admitted to it, so no charges were made and no work can be done with him. You do feel weak and ineffective. Certainly somewhere along the line there

should be a bit more power to try and work with him. And maybe if charges had been pressed that would have given us the lead to work more fully with him.”

Regardless of any criminal justice involvement in the case, very few of these young people were receiving any specialist therapeutic support to help prevent them from committing further acts of sexually inappropriate or abusive behaviour. At the time of interview only 2 were receiving such support, although a number of others had been through therapeutic assessment, only to be refused further treatment on the grounds that their learning disability and/or 'refusal to engage' made them unsuitable for the programme available.

This meant that in most cases, support was being provided by either the Youth Offending Team (in cases where a conviction had been obtained) or child protection teams (in cases where no criminal justice **response** had been forthcoming). In both cases the workers involved often believed that they lacked the skills and knowledge necessary to work effectively with these young people. YOT work with young offenders was often linked to set programmes of work, undertaken on a group basis, and not pitched at the right speed or ability level to meet the needs of a young person with learning disabilities. Work undertaken by child protection social workers was normally on a one-to-one basis, but often lacked structure or obvious purpose.

Conclusion

All of the professionals who were interviewed as part of this research were concerned at the current lack of effective co-ordination between services and the

dearth of therapeutic options for young people with learning disabilities who show sexually inappropriate or abusive behaviours. On many levels it appeared as if this group of young people were organisational, as well as social, outcasts – nobody really wanted to take responsibility for their welfare. This created a situation in which early warning signs were noted by schools, but no further intervention was forthcoming unless and until a criminal act of abuse had been committed. This meant not only that other people (usually other children and in several instances other children with disabilities) were suffering abuse as a direct consequence of institutional inaction, but also that young people with learning disabilities were ending up on the sex offenders register when, with the right input at an earlier stage, this fate might have been avoided.

The study also raises a number of important legal issues. The first is that of sex offender registration (see Longo & Calder, 2005, for a detailed exposition of this topic in relation to juvenile abusers). Under current UK law, anyone with a conviction or final warning for a sexual crime against a person aged under 16 is automatically placed on the sex offenders' register. This applies equally to all offenders, whether adult or juvenile, although the minimum duration of registration is less for juveniles. However, given that almost of the victims of young people who sexually harm others are also children or young people this means that juvenile abusers are – in practice - more likely than their adult counterparts to be placed on the sex offenders' register.

Secondly, despite the considerable progress made over recent years, the court process is still highly problematic for people with a learning disability. The 'special measures' introduced in *Achieving Best Evidence* (Home Office, 2002), apply only to vulnerable or intimidated witnesses, not the accused. The measures include giving

evidence, and being cross-examined, by video link from a separate room; giving pre-recorded evidence in chief; or having an intermediary appointed to provide support throughout the court process. However, people with learning disabilities who stand accused of a crime still remain subject to the same adversarial process as other defendants, despite the fact that they are less well equipped to cope.

The final question is whether these young people should be treated as victims or perpetrators of abuse, when in most cases they are both. The temptation is always to argue for diversion away from **the** criminal justice **system**, since sex offender registration will further limit the already limited life opportunities available to young people with learning disabilities. However, there are also strong counter-arguments which remind us not only to think more closely about the need for justice for victims of sexual crimes, but also to consider whether criminal justice interventions may sometimes provide the containment necessary (be that physical or psychological) to enable offenders to access treatment which may prevent further – often more serious – offences from being committed.

Perhaps the most pressing need is not for changes in the criminal justice system but for earlier and more effective intervention, both for young people with learning disabilities who have been the victims of abuse and for any who begin to show signs of developing sexually inappropriate behaviour. Only by this means can we hope to break the cycle of abuse which at present blights the lives of an unnecessarily large proportion of people with learning disabilities.

Good practice statement

Following the completion of this research a free half-day workshop was provided in each participating local authority, for staff from education, welfare and criminal justice agencies to discuss the implications of these findings for their professional practice. In addition, copies of the full report were sent to each interviewee. Further dissemination has been undertaken through both academic and practitioner-oriented publications.

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Accessible abstract

- Young people with learning disabilities are more likely to be abused than other young people. Some young people who have been abused go on to sexually abuse other people.
- Young people with learning disabilities with sexual behavior problems are not getting help until after they have sexually abused someone else and the police are involved.
- Being convicted of a sex crime has a very bad impact on a young person's future.
- More help needs to be provided to young people with learning disabilities so that they do not sexually abuse others.