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# **Enhancing Deaf People’s Access to Justice in Northern Ireland: Implementing Article 13 of the UN Convention on the Rights of Persons with Disabilities**

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# **Abstract**

Article 13 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) specifies that disabled people have the right to ‘effective access to justice’ on an equal basis with others. This includes Deaf people. There is a distinct lack of research which explores the extent to which Article 13 UNCRPD is implemented in practice and which actively involves Deaf people in its implementation and monitoring. This paper shares findings from a rights-based research study co-produced with a Deaf Advisory Group and a Deaf-led organisation. It explores the implementation of Article 13 UNCRPD in Northern Ireland through the experiences of key stakeholders across the justice system including police officers, solicitors, barristers and judges. The findings of this research study suggest that Deaf people’s access to the justice system is not well supported and that current provisions for Deaf people’s legal needs fall well short of what is required by the UNCRPD

# **Keywords**

Justice, UNCRPD, disability rights, discrimination, communication access, reasonable adjustment

# Introduction

Effective and timely access to justice is a key human right enshrined across international, regional and national law. The right of access to justice is supposed to apply equally to all individuals in society by simple virtue of being human, yet its implementation has been far from inclusive. This right has long been based on the overriding assumption that everyone is able to, and willing to, engage with and participate in the justice system without obstacle. For Deaf<sup>i</sup> people, this assumption has been undermined by the predominance of a charity model of disability which has viewed Deaf people as objects of charity or ‘tragic victims’ in need of care and protection (Charlton 1998; Fleischer & Zames 2011; Kusters, De Meulder and O’Brien 2017; Shapiro 1994) rather than as active subjects, or indeed, as potential perpetrators, victims or witnesses of crime, or parties in civil law cases.

The adoption of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in 2006 directly addresses these concerns by making clear that disabled people are rights-holders. This article focuses on a subset of that population: Deaf people (Batterbury 2012; Murray 2015; Murray et al. 2018). Article 13 of the UNCRPD specifies that disabled - including Deaf - people have the right to “effective access to justice” on an equal basis with others (UNCRPD 2006). This includes provision of procedural and age-appropriate accommodations to facilitate Deaf people’s roles as direct and indirect participants in all legal proceedings, including at investigative and other preliminary stages (Article 13(1)). In order to ensure effective access to justice, state parties are required to promote appropriate training for those working in the field of administration of justice, including police and prison staff (Article 13(2)). Despite these obligations, there is a distinct lack of academic research which

explicitly explores the extent to which Article 13 UNCRPD is being implemented in practice. Further still, there is a dearth of research which actively involves Deaf people in its development, fieldwork and analysis, and which examines how Deaf people are involved in the implementation and monitoring of the UNCRPD. This is despite empirical evidence from the Deaf community highlighting lack of access to justice as an issue across the world (Kermit, Mjøen, and Olsen 2011; Macdougall 2001; Miller 2001; Napier et al. 2016; Olsen and Kermit 2015; Young, Monteiro, and Ridgeway 2000). The importance of involving Deaf people in research is not simply a matter of ‘best practice’ or an á la carte option for so-called innovative research practices. Full and effective participation is distinctly obligated under both Article 4(3) and Article 33(3) UNCRPD. The Committee on the Rights of Persons with Disabilities has noted in its General Comment that:

By guaranteeing the participation of organizations of persons with disabilities..., persons with disabilities would be able to better identify and point out measures that could either advance or hinder their rights, which ultimately yields better outcomes for such decision-making processes. Full and effective participation should be understood as a process, not as an individual one-time event. (UN 2018: para 28)

This article explores the implementation of Article 13 UNCRPD through the experiences of key stakeholders (duty-bearers) across the justice system.<sup>ii</sup> It draws upon findings from a Disability Research, Independent Living and Learning (DRILL) funded co-produced project between the British Deaf Association Northern Ireland (BDA(NI)),<sup>iii</sup> a Deaf Advisory Group (DAG) whose members are drawn from the Deaf community in Northern Ireland, and three academic researchers. In contrast to day-to-day practices whereby duty-bearers are generally positioned as gatekeepers to rights and holders of power (Alston and Goodman 2012;

Donnelly 2013), this study seeks to invert traditional power relations by situating rights-holders, in this context – Deaf people, as project leads and advisors rather than research subjects. The article begins by setting out the project context and methods before highlighting findings from interviews with duty-bearers across the justice system. It concludes by reflecting on ways forward and identifying key requirements for effective and rights-based implementation of access to justice for Deaf people.

## **Project Context**

An Access to Justice consultation exercise carried out by the British Deaf Association (BDA(NI)) (2016) noted that Deaf people in Northern Ireland face a range of barriers in accessing the justice system. These include communication barriers with the police service, inaccessible information/websites, obstacles to contacting emergency services, and exclusion from jury service (BDA(NI) 2016). Subsequent research with Deaf people in Northern Ireland by Elder and Schwartz (2018) and Schwartz and Elder (2018) back up these findings, highlighting the contested meaning of ‘reasonable adjustment,’ barriers to legal services and a need for greater cultural awareness. There is a growing body of research on the barriers Deaf people face around the world in the domain of justice (see for example, Kermit, Mjøen and Olsen 2011; Lundeberg and Breivik 2017; Napier and Spencer 2008; Olsen and Kermit 2015; O’Rourke, Glickman and Austen 2013; Wakeland, Rose and Austen 2019. Napier and McEwin (2015) argue that, for Deaf people to be better supported within the justice system, sign language users around the world must be seen as members of a linguistic and cultural minority and should be provided with interpreters in court for that reason alone. Batterbury (2012) suggests that there needs to be an official sign language policy or legislation in place or there can be no language justice. The provision of sign language interpreters to Deaf

suspects, defendants, and offenders has long been an issue of concern with Miller (2001:328) arguing that inconsistency of provision results largely ‘from the ignorance of criminal justice professionals regarding deaf people's communication needs and accommodation options.’ Additionally, Mor (2017) highlights that this historic unequal access to justice violates the rights of Deaf people and limits their ability to exercise their basic rights of accessing justice.

Studies that explicitly use Article 13 UNCRPD as a framework for empirical research led by Deaf people are noticeably absent. This is where the present article expands the current literature related to barriers to justice that Deaf people face and makes a specific contribution to the field. While there is a growing body of important literature that has examined justice issues for Deaf people, these have either been pre-adoption of the UNCRPD (that is, pre-2006) or their findings have not been in the specific context of the UNCRPD. Using the UNCRPD as an explicit framework, as in this article, plays an important role in holding duty-bearers to account and in raising awareness of concomitant obligations on the part of duty-bearers. It is crucial that any framework contains a clear understanding of what Article 13 requires. As Mor (2017) notes, Article 13 employs a broad understanding of the legal process: it specifically mentions ‘all legal proceedings,’ which may include criminal as well as civil proceedings, administrative hearings, and quasi-judicial tribunals, as well as the preliminary stages that precede the formal stage of a trial, including any inquiries run by investigative and other agencies. It also recognises the many roles that Deaf people may play in legal proceedings, as litigants, defendants, victims, and witnesses, but potentially also as lawyers, judges, and jury members (Flynn 2015; Ortoleva 2011). Further understanding of Article 13 can be gleaned from a content analysis of Concluding Observations issued by the Committee on the Rights of Persons with Disabilities as part of the State periodic review

process.<sup>iv</sup> Table 1 summarises the range of recommendations by theme, made by the Committee made regarding Deaf access to justice globally.

There must be sufficient numbers of registered and professional sign language interpreters for all stages of legal proceedings, including in courtrooms and police stations.
Interpreters must be of ‘high quality’.
Information, communications and documents on legislation and court proceedings must be made available in accessible formats, including sign language.
Deaf people should have access to assistive technologies.
There should be ‘protocols’ or guidance setting out available supports and how Deaf people can access justice.
There should be a national plan to ensure adequate accessibility to judicial facilities in terms of physical and communication access.
There should be access for Deaf people to civil proceedings on an equal basis with others.
There should be guidance for Deaf people on how to access justice.
All legal professionals should be provided with training on the UNCRPD and the importance of reasonable accommodation.
Deaf people’s organisations should be involved in delivering training.
There should be funding to allow training to be developed and delivered.
Deaf people should be provided with sign language interpreters to enable them to participate fully and equally as jurors in court proceedings

**Table 1: Summary of UNCRPD Committee Recommendations Related to Article 13**

These recommendations provide a conceptual framework and a set of consistent benchmarks against which implementation of Article 13 can be monitored.

## **Methods**

Given that the perspectives of Deaf people in Northern Ireland had been ascertained through the BDA(NI) (2016) Access to Justice consultation and the work of Elder and Schwartz (2018) and Schwartz and Elder (2018), it was decided by the project partners that the present study would focus on the perspectives and experiences of duty-bearers across the justice system. The aims of this research project are to:

1. Examine the perspectives, knowledge, and experiences of legal professionals on Deaf people's engagement with the justice system;
2. Identify ways in which Deaf people's access to the justice system could be better supported by legal professionals;
3. Identify training and resource needs among legal professionals; and
4. Utilise the evidence to inform information sessions with legal professionals, future training, and project outputs.

This article addresses the first two aims. The remainder of this section outlines the role of the Deaf Advisory Group and the qualitative research that was undertaken.

### **Deaf Advisory Group (DAG)**

In line with a rights-based approach to research (Lundy and McEvoy 2012), the Deaf community in Northern Ireland played a core role in the research project. In addition to a

Deaf organisation leading the project, the research team formed a DAG.<sup>v</sup> This is not, strictly speaking, a ‘method,’ but an overarching principle of the project. Members of the DAG were recruited from the wider Deaf community in Northern Ireland by the BDA(NI) Project Officer. The DAG consisted of 11 Deaf people in total: five females and six males. Members had varying degrees of hearing loss and all were fluent in British Sign Language (BSL). Some had prior experiences of engaging with the justice system at various levels or knew people who had; others had no prior engagement at all. The research team met face-to-face with the DAG five times across the project and maintained regular communication outside of these times via the Project Officer on WhatsApp. This allowed for short, signed video clips to act as a form of communication between members. The research team applied the DAG’s expertise to all aspects of the research process, from research design, reviewing the ethics application, identifying who to interview, the types of questions to ask, analysis of the findings, and the identification of themes and development of recommendations. Findings arising from the research element of the study provided evidence for the DAG to input directly into the design and delivery of the information sessions for the Deaf Community and legal professionals,<sup>vi</sup> as well as project outputs such as ‘tips for legal professionals’ and short signed information videos and roleplays online for the Deaf community with some members of the DAG taking a leading role in front of the camera.<sup>vii</sup>

## **Qualitative Research with Legal Professionals**

Focus groups were carried out with legal professionals from across Northern Ireland. The aims of the focus groups were, firstly; to examine stakeholder perspectives, knowledge and experiences of engaging with Deaf people across the justice system, and secondly; to identify training needs of legal professionals so Deaf people could be better supported when accessing the justice system. A purposive sampling strategy was adopted with the aim of recruiting

from six distinct groups across Northern Ireland – solicitors, barristers, prison officers, police officers, tribunal panel members and members of the judiciary– identified by the DAG as key justice actors. Potential participants were contacted through key gatekeepers in leading or membership organisations such as the Law Society (for solicitors); the Bar Library (for barristers); Police Service of Northern Ireland headquarters; the Prison Service of Northern Ireland headquarters; the Courts and Tribunals Service (for tribunal panel members) and the Lord Chief Justice Officer (for members of the judiciary), and provided with an information sheet detailing the aims and objectives of the study, voluntary participation, procedures for anonymity and confidentiality and withdrawal from the study, data storage and use of information, along with a consent form. Completed consent forms were returned to the research team by email. The principle of voluntary participation was reiterated at the beginning of each focus group. Prior to the focus groups, the academic team asked the DAG what kind of questions they felt it was important to ask legal professionals in these focus groups. Questions were then drafted and shared with the DAG and amendments made in line with the DAG feedback before the focus groups began. Where it was not possible to recruit to a focus group, or where individuals expressed preference, individual semi-structured interviews were carried out. In total, 35 legal professionals took part in the study and a point of ‘theoretical sampling’ was reached (Creswell 2012). The sample can be seen in Table 2 below.

<b>Legal Professional Group</b>	<b>Number (N)</b>
Police officers	4
Prison Service officers	12
Solicitors	3
Judiciary	4

Barristers	3
Tribunal members	9
<b>Total</b>	<b>35</b>

**Table 2: Recruited Sample**

It is particularly interesting to note the relatively high number of prison officers that took part in the study. It is not entirely clear why this is the case but could partly have been due to the fact that the Disability Champion for the Northern Ireland Civil Service is also the Director of the Prison Service for Northern Ireland. Due to the themes that are the focus of this paper, only the data from police officers, solicitors, barristers, judges, and tribunal panel members are presented here.<sup>viii</sup> Focus groups/interviews took place at professionals' place of work in an assigned meeting room set aside for this purpose and lasted approximately one hour. Each focus group/interview was audio recorded and transcribed with consent. Ethical approval for the study was received from the Research Ethics Committees in Queen's University Belfast, Rowan University, and Syracuse University. The research team used a constant comparison method and constructivist grounded theory approach to conduct their data analysis (Charmaz and Mitchell 2001) allowing for a simultaneous evaluation and collection of data and findings following focus groups and interviews (Charmaz 2005). Bogdan and Biklen's (2007) coding procedures were used to analyse the data and data was coded in three phases: open coding, axial coding, and selective coding. This systematic process helped identify salient themes emerging in the project (Creswell 2013) and maintained inter-coder reliability (Patton 2002). What follows is an overview of some of the key findings.

# Findings

In this section, study themes are outlined in the following four key areas: (a) legal professionals' experiences of working with Deaf people; (b) a system designed by and for hearing people; (c) using interpreters; and (d) jury service.

## **Legal Professionals' Experiences of Working with Deaf People**

Several themes arose in the interviews with policymakers, police officers and judges when they were asked about their experiences in working with Deaf people. Legal professionals in the study had limited experience of working with Deaf people. This included those with a career of over 30 years to date. As noted below, there appears to be a comparatively high level of under-reporting of crimes or incidents from the Deaf community, and underutilisation of legal advice services; not because there are no incidents to report or need for legal advice, but because of, among other factors, a lack of sustained interaction with the Deaf community. This can mean that any interactions that do take place with the Deaf community are perceived as 'one-offs' rather than indicative of a community-wide issue with a need for community-wide solutions.

Communication is not just the Deaf person's concern. The need for a sign language interpreter runs both ways: both the legal professional and the Deaf person need a sign language interpreter to communicate effectively with each other. A police officer with the Police Service of Northern Ireland (PSNI) demonstrated an awareness of this duality of communication:

I have always said if a Deaf person walks into the police station, they don't need an interpreter because they can sign perfectly well. [But] *I* can't. They can communicate but I can't understand them, so I'm the one who needs an interpreter and we do provide interpreters completely free. (PSNI Officer)

The same officer confessed to feeling distressed that a Deaf person who needed the police was forced to contact police in England even though she lived near a police station in Northern Ireland:

I take great pride in the uniform that I wear and I was a little embarrassed about the fact that [the police] had let down this [Deaf] lady because she had to contact [England] police although she lived within a couple of miles of the [local PSNI] station. I thought it was a terrible indictment on the services that we offer. (PSNI Officer)

Asked if he had any direct interaction with a Deaf person, a police officer replied that he had not, even though he had been in the job for nearly thirty years. Admitting his lack of awareness of the size of the Deaf community within his policing area, the officer agreed that the lack of interaction between the police and the Deaf community may have had something to do with crime being under-reported by this community. A police officer serving for three decades without seeing meaningful interaction between the police force and the Deaf community should be a red flag anywhere. Similarly, judges who took part in the project spoke of how they had either rarely or never come across a Deaf person in their roles:

Only because..., by doing this you've triggered that thought in my mind, you know?  
Why am I not, I mean I've been a barrister for thirty years and a high court judge now for three years, and I have not had a Deaf person appear in front of me, I haven't been asked to represent a Deaf person, in any capacity whatsoever. So [pause] I'm asking myself the question now, is there a problem even before they get to court? (Judge)

Sensitivity to the physical dynamic of giving testimony in open court is necessary to ensure effective communication in the room. One judge recounted their experience of doing so to date:

[When] a witness is asked a question by the barrister, the witness is supposed to give their evidence to the judge, they're supposed to look up in this direction [indicating]. But [for] someone with a hearing impairment, that's not easy. So, what I have done in the past is [to have] the sign language interpreter stand here, at an angle, [indicating] where I can see the witness, and it makes them feel more comfortable. What I have to make sure is that there's nothing blocking the witness from seeing me, and that the lawyers can see them as well. (Judge)

As this response discloses, sightlines in the courtroom must incorporate an awareness of the physical layout in terms of effective communication for Deaf witnesses giving evidence. A Deaf witness needs to see and be seen by the judge while also being accessible to the interpreter and counsel. Elsewhere, a tribunal panel member recalled being mistaken about his assumption that utilising a team of interpreters would allow him to take notes:

I've had at least one case here where both parents were Deaf, and it was unusual in the sense that I think the father came from Derry and the mother came from Belfast, and the Derry man did Irish sign language and the Belfast mum did British sign language. So, we had to have two interpreters doing British sign language and [Irish] sign language. I thought [since] this is going to be slow; I'm going to be able to take notes. But it actually was very complicated, and it took an awful lot of concentration.

(Tribunal Panel Member)

Here, the judge arranged for a team of interpreters to handle the different sign languages presented by the Deaf parties in the case. Many judges operate under the assumption that one interpreter can handle multiple parties and multiple sign languages. As this judge learned, the communication turned out to be 'very complicated' taking 'an awful lot of concentration'. These examples demonstrate the inconsistency of practice and the reactive nature of support provided rather than use or existence of any systems-wide or co-produced strategy.

### **A System Designed by and for Hearing People**

The ability of Deaf people to access services of police, solicitors or barristers, to participate effectively in court proceedings and to settle into the prison environment on an equal basis with others is hampered by a range of factors. Accessing services across the justice system is unsurprisingly problematic since, as a barrister who took part in the study highlighted, the system was never set up in the first place with Deaf people in mind:

Court is what's called 'the adversarial system,' where you have questions and answers and things, it's all done in that very traditional style to quickly put questions to people. And that is obviously difficult if it's a deaf person who is involved in it. So,

the adversarial system was never designed thinking of deaf or hard of hearing people who have just that difficulty in following it or picking up the questions. (Barrister)

Rethinking what a justice system designed by and for everyone, including Deaf people, might look like, and challenging so-called 'natural' practices is an important exercise in ensuring a system that reflects the 21<sup>st</sup> century as envisioned by the UNCRPD.

When asked about his personal experiences in working with Deaf people at his police station, a member of the PSNI reflected on how some police officers react when they encounter Deaf people in the community. At times, the relationship between police officers and Deaf people may be perceived as fear on the part of both parties.

So Deaf people sometimes get put into the too difficult box. If a police officer stops a member of the, say somebody driving a car who's Deaf, and that person starts signing the police officer will probably just wave them on, because they, they just freeze... And the Deaf person seeing the reaction from the police officer, I don't know how they think that is. They probably don't regard it as fear, but it is fear. The police officer's like, 'I don't know what to do here', you know, 'how do I manage this? I'm out of my depth, I can't, I don't know what to do'. But I don't know what the Deaf person sees. The Deaf person might see a dislike, they might see a distrust. (PSNI Officer)

This police officer goes on to say that aside from the fact that an inaccessible police station is a liability and can lead to a court case, steps to make the station more accessible to all people is the moral thing to do. Some of the barriers he identifies include using an audio phone to

contact the police and providing excessive text on their website. He describes some of those steps below:

We recommend that members of the Deaf community email us through the PSNI website... but when I've looked at that, and the deaf people I've spoken to, they've said it's confusing. They said it's too heavy on text, it assumes quite a high standard of literacy. The education system, as I've been finding out, has let a lot of Deaf people down. The standard of education that they've received is poor. (PSNI Officer)

Similar issues arise in the context of accessing solicitors' services. One solicitor explained that there is a need for training, so solicitors are more aware of the needs of Deaf people. '[Lack of access] does come from ignorance on the part of the profession. It doesn't come from any ill will.' Whether intentional or not, the barriers that confront Deaf people in the justice system require a heavy lift in being removed.

## **Using Interpreters**

Issues relating to sign language interpreters emerged as a significant theme. There was a distinct lack of knowledge among participants across all legal professions in the study about how to book a sign language interpreter. This was in part because the majority of participants did not see themselves as being in a situation where one was required. It was clear that there were situations where Deaf people would have benefited from an interpreter but where other means of communication were used instead. The lack of knowledge of how to get an interpreter suggests a reactive rather than proactive approach to engaging with Deaf people across the justice system and has the potential to delay access to appropriate legal redress in a way that is distinctly different from the hearing community:

Interviewer: If you were asked to book an interpreter, would you know how to do that?

Solicitor: I wouldn't have a clue.

Judges also highlighted the difficulty that can arise in ensuring the courts are aware of the need for an interpreter and of the key role that barristers and solicitors play in this process. When asked about the process of Deaf people receiving reasonable adjustments<sup>ix</sup> in the civil courts, a judge said:

[F]rom the court's perspective we need the legal representatives to have informed us beforehand that there is a person with disability, whether it be deafness or multiple disability, so that we can make the appropriate arrangements...But we have limited numbers of interpreters, so we would prefer to have about eight weeks' notice to ensure that those arrangements can be put in place. Sometimes it's at the last minute that we're asked, and that's no good. That means cases have to be adjourned until such time as there is an interpreter available. (Judge)

Some participants indicated that while they knew how to book an interpreter, they did not know how long it would take from the initial telephone call until an interpreter could be on site. Others had experienced delays and were concerned about the implications of this on court cases. It was not just the time taken to get an interpreter, but the complexity of applying for Legal Aid<sup>x</sup> so that an interpreter could be paid for and arranging a date for a tribunal or court hearing or meeting far enough in advance to suit all parties. There are also potential

implications where a Deaf person is placed under arrest. and their rights and the reasons for arrest need to be communicated.

The delay [in accessing an interpreter] is going to be longer [compared to a spoken language interpreter] because they're going to have to physically come down to the station. So, again a deaf person is going to be held for longer without knowing what's happening, on average, than a foreign national would. (PSNI Officer)

The potentially serious consequences of not having a suitably qualified interpreter during court proceedings was highlighted by one participant from the PSNI:

[Colleague] had told me a story in police college about some [Deaf] fellow who got a heavier sentence in court because of a misinterpretation [by the interpreter]. So, whenever this [Deaf] person told the court that he was sorry, it was interpreted [by the interpreter] as he had made a mistake, as in it was an admission but not remorse because of the misinterpretation. And his sentence was higher than it ordinarily would have been...But because he was profoundly Deaf, he couldn't hear what the interpreter told the court. So, he said sorry and he believed that the court was aware he was sorry, but the court went on what the interpreter had said. (PSNI Officer)

There was acknowledgement among solicitors, barristers and members of the judiciary that not having access to a suitably qualified interpreter in court proceedings impacted on an individual's right to a fair hearing. One participant who was representing a Deaf client in court highlighted the need for the judiciary to be aware of the purpose and role of interpreters:

Once they'd heard the plaintiff's evidence, and we had two signers in court, the judge said 'those interpreters can go home now' which meant the deaf person wouldn't have been able to follow the rest of the hearing. And we had to explain to the judge why we needed the interpreters to remain in the courtroom... there is such a lot of work to be done just to explain the very basic needs of people with any disabilities in accessing the justice system. (Solicitor)

There was also considerable confusion or lack of awareness surrounding who had responsibility for payment of interpreters. This was a particular issue for solicitors who, as private entities, are generally required to cover interpreter costs themselves when arranging meetings with Deaf clients.

Some solicitors offer initial consultations for free to see if they can get work in from people. But the solicitor then would pick up the cost. There is an argument for some form of government assistance in these situations, because interpreters are just so expensive in this jurisdiction. (Barrister)

A solicitor suggested that a fund be set up by the Law Society so that interpreter fees could be provided *pro bono* as a potential funding solution. In addition to providing an essential funding pot and allowing Deaf people to have equity of choice in accessing legal services, this would also have the indirect consequence of raising awareness among solicitors, of Deaf people's communication needs.

## Jury Service

The UN Committee on the Rights of Persons with Disabilities has increasingly commented on cases where Deaf people are excluded from jury service (UN 2016a). The main concern centres around the provision of ‘reasonable adjustments’ and the presence of an interpreter or third-party during jury deliberations. This has been the case in the UK where Deaf people who require an interpreter are effectively excluded from being a juror. The logistics of how a Deaf person would participate in jury service with an interpreter was noted by judges; specifically, that a Deaf person requiring a sign language interpreter would have to be excused from jury duty:

[Having an interpreter in the jury room], in my view it can’t happen, because you are essentially then having thirteen people in the jury room, and no matter how good the interpreter would be, they are not going to be able to deal with what is going on in the jury room... They all talk at once. You know, it’s not a matter of, ‘Right Juror Number One, what is your view on this? Blah blah blah blah blah blah.’ ‘Thank you. Juror Number Two, what do you think?’...That’s not how it works. Jury discussion can be a very animated time, and no matter how good an [interpreter] is, they’re not going to be able to interpret everything. And also how do you know how well they’re interpreting? (Judge)

It is of note that when this judge explains the problem of a 13th juror, they do not say the problem is the views of an unsworn 13th person, but rather the problem is the accuracy of interpretation and the ability or inability of a judge to determine whether the interpreter is

doing a good job. Another judge explained how the courts are used to only accommodating people who are fluent in spoken English:

The jury is twelve people and can go down to nine if people are ill and things. But I don't see how an interpreter can ever be in the jury room. I mean we don't allow someone on the jury who comes along and says 'I speak German only.' I have occasionally disallowed people to sit on the jury because they don't speak English properly and they don't understand English properly. (Judge)

As noted by DAG members during a meeting with senior judges during the project, those who speak other foreign languages may have the opportunity to participate in jury service in their language country of origin. Deaf people in the UK do not have this option in their home country. Other participants suggested that, while complex, and subject to legislative change, it may be possible to ensure that interpreters are bound by an oath of confidentiality in jury deliberations:

I suppose there's no reason why an interpreter can't be bound by an oath of not communicating what goes on in the jury room. The sanctity of the deliberations can be maintained. And it would need quite a skilled person to do that. It's one thing communicating what one person's saying to another, but to have eleven people would be a challenge. (Judge)

The judge acknowledges the challenge of interpreting deliberations of a large number of people in a jury room. There was also concern at the increased risk of potential breaches of confidentiality from having an additional person in the jury room. This was exacerbated by

recent high-profile court cases in Northern Ireland where members of respective juries had unlawfully shared information about the trial on social media (BBC 2018). That interpreters are already strictly bound by confidentiality requirements did not appear to reassure those judges who took part in this project. This is perhaps indicative of a lack of awareness of the nature and content of interpreter ethics. While jury service is never a pleasant experience for anyone, exclusion from jury service means Deaf people effectively become second class citizens.

## **Conclusion**

Article 13 UNCRPD has three key elements. Deaf people: (a) have the right to access justice on an equal basis with others; (b) are to be provided with procedural and age-appropriate accommodations; and (c) are to be supported as direct and indirect participants in all legal proceedings. The findings of this study suggest that Deaf people's access to the justice system is inconsistent and not well-supported. In light of Article 13 obligations, alongside the Committee's commentary and Concluding Observations, it would appear that current provisions in Northern Ireland for Deaf people's legal needs fall well short of what is required by the UNCRPD.

Deaf people's engagement with various institutions of justice risk being perceived as 'one off' instances requiring only 'one off' reactive measures. Significant communication barriers remain, most notably access to and payment of interpreters across legal settings, and knowledge of what and how supports should be put in place. Other barriers include the absence of accessible documentation on legislation and court proceedings and the lack of protocols or guidance setting out available supports for Deaf people. Nor is there any

evidence of Deaf people being involved in decision-making, implementation and monitoring processes related to Article 13 UNCRPD. These extensive barriers contribute to the silencing of Deaf people's experiences of crime, as well as their experiences of administrative and civil law matters, and ultimately prohibit effective access to justice. At worst, it forces Deaf people into positions of significant vulnerability in situations where rights should be most at the fore; for example, in the reporting of serious crime, individual arrest, trial, or imprisonment. It is further concerning that in the context of 21<sup>st</sup> century citizenship and emphasis on civic duty, that sign language users are being prevented from being full citizens on an equal basis with others through their exclusion from jury service; something which is a clear violation of Article 13 UNCRPD.

Parallels can be drawn from this study with the existing body of research on the types of barriers Deaf people encounter when seeking access to justice (Kermit, Mjøen, and Olsen 2011; Miller 2001; O'Rourke, Glickman, and Austen 2013). Across the world, a common vocabulary of discrimination, inaccessibility and inherent inequalities have been used to discuss Deaf people's attempts to access justice on an equal basis with others (for example: Lundeberg and Breivik, 2017; Olsen and Kermit 2017). Understanding these barriers require an understanding not only of Deaf people's experiences of those barriers (authors 2018; authors 2018), but of how barriers come to be constructed, embedded and reinforced in complex and relational ways (Wakeland, Rose and Austen 2017). This paper makes a distinct contribution by adding a discourse of rights and empowerment to existing vocabulary surrounding Deaf people's access to justice. Rights discourse through the lens of the CRPD presents an opportunity to reconstruct the narrative from localised discrimination to systematic global injustices and persistent rights violations. While calls for more training and awareness are long-standing, the CRPD makes such training an obligation on all states

parties. Rights discourse also brings the ways in which any training is developed to the forefront, as central to the fulfilment of international obligations. Training without the active involvement of Deaf people in its development and delivery is insufficient. This is ultimately a duty for individual states. However, this requirement for all individual states has the potential to affect the globalisation of Deaf equality training in new, coproduced ways. While the findings presented here are not necessarily unique to Northern Ireland, the ability to situate these within a rights-based discourse amplifies the possibilities that can result.

As academics, the research team are not, strictly speaking, duty bearers in the context of the UNCRPD. However, Article 4(3) and 33(3) provide a clear avenue by which we, as D/deaf people and Deaf-led organisations can be actively involved in implementation and monitoring, thereby shaping legal and policy responses. The development and provision of information sessions under this project is an example of how Article 13 UNCRPD can be used to promote training for those working in the field of justice while also empowering Deaf people and meeting human rights obligations. The project has also facilitated recognition of the multiple roles Deaf people may play in legal proceedings, primarily as litigants, defendants, victims, and witnesses. The research team has been struck by the appetite for change among the legal professionals who took part in this project. There is a clear desire to engage with the Deaf community and to learn, with the initial ‘obligatory’ nature of the CRPD acting as a critical trigger. The research team hopes that this project will establish a solid foundation upon which a systems-wide response can be built. Using UNCRPD rights as a set of actionable benchmarks and as a bridge to informing rights-based practice on the ground offers untold potential across the globe.

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<sup>i</sup> In line with the project organisational lead's approach (British Deaf Association, Northern Ireland), we use the term 'Deaf' in this article with a capital 'D' to refer to those who define themselves as culturally Deaf with sign language as a first or preferred language unless otherwise stated. The term 'deaf' with a lowercase 'd' is used to describe people with a hearing loss generally.

<sup>ii</sup> This includes police officers, prison officers, members of the judiciary, solicitors, barristers and members of the tribunal system.

<sup>iii</sup> The BDA is a Deaf-led UK-wide charity that campaigns and advocates for Deaf people who use British Sign Language. BDA(NI) is the Northern Ireland regional office.

<sup>iv</sup> Fifty-six sets of Concluding Observations were analysed for a scoping review as part of the project; that is, all Concluding Observations that had been produced by the Committee at the time of analysis in 2018 when the task was undertaken. The countries included were: Haiti, Nepal, Oman, Russian Federation, Seychelles, Slovenia, Sudan, Latvia, Luxembourg, Montenegro, Morocco, Panama, United Kingdom of Great Britain and Northern Ireland, Armenia, Bosnia and Herzegovina, Canada, Cyprus, Honduras, Iran (Islamic Republic of), Jordan, Republic of Moldova, Bolivia, Colombia, Ethiopia, Guatemala, Italy, United Arab Emirates, Uruguay, Chile, Lithuania, Portugal, Serbia, Slovakia, Thailand, Uganda, Brazil, European Union, Gabon, Kenya, Mauritius, Qatar, Ukraine, Cook Islands, Czech Republic, Dominican Republic, Germany, Mongolia, Turkmenistan, New Zealand, Republic of Korea, Ecuador, Mexico, Australia, El Salvador, Paraguay, and China.

<sup>v</sup> Two out of three members of the research team are D/deaf while the third identifies as an ally to the Deaf community.

<sup>vi</sup> Throughout the project we used the term 'legal professionals' broadly to encompass all those working in the justice system, including police officers, prison officers, solicitors, barristers, tribunal panel members and members of the judiciary. Tailored Deaf Equality sessions were held for each of these groups. In total 154 legal professionals attended the sessions. Separate information sessions were held for the Deaf community including a Facebook Live session led by a police officer, and sessions on drink driving, scams and how to access legal aid. A drop-in session was held with two solicitors allowing individuals to access legal advice with communication support as required. Tours were held of two court houses and two police stations – one in the Belfast area and one in the North West. In total 137 Deaf people took part in the sessions.

<sup>vii</sup> Videos include information and role plays with a solicitor and senior barrister, a police officer, and how to access legal aid. See <https://bda.org.uk/accesstojustice-bsl/>

<sup>viii</sup> ~~For reasons of space we are not able to cover all findings that emerged from the study.~~ Findings specifically relating to the prison service are the subject of a separate paper in development.

<sup>ix</sup> The term 'reasonable adjustment' is used in the Disability Discrimination (Northern Ireland) Act (1995) while the term 'reasonable accommodation' is used in the UNCRPD (Article 2). For more information see authors (2018).

<sup>x</sup> Legal aid here refers to the provision of financial assistance to help meet the costs of legal advice, family mediation and representation in a court or tribunal. For information on the legal aid system in Northern Ireland see Dickson (2018)

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### **Competing Interests**

The authors have no competing interests to declare.

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