



## Background

Over the course of the project, SOLD has considered issues relating to people with learning disabilities at all stages of the criminal justice pathway. These have included through-care in prison, access to healthcare in prison, diversions from prosecution, support post-release, contact with criminal justice social work services. This event focused on access to support from the point of arrest, to the court process, of which the issue of early identification of learning disability is a key element. This was partly timed to coincide with the Scottish Government's review of appropriate adult services, and partly because the SOLD User group tell us this is important to them, regardless of timing.

### Early Identification

**The No One Knows report (2008) states:**

*“The first point of contact that suspects have with the criminal justice system is generally at the police station and it is here that people with learning disabilities in particular, and people with learning difficulties should be identified. There are a number of reasons for this, the most fundamental being to ensure justice; the right to a fair trial as protected by common law and enshrined in Article 6 of the European Convention on Human Rights (ECHR)”.*

The No One Knows report is now eight years old, and yet early identification of learning disability in the criminal justice system remains an unresolved challenge. There is still not a standardly agreed method of identifying that a person has a learning disability in police custody. A number of screening tools have been developed. For instance, the Do-It Profiler has been shown to produce effective results in prison, but it takes time. The police

have told us that people are not generally held in custody for long enough to complete a comprehensive assessment. The Learning Disability Screening Questionnaire (LDSQ) is comparatively quick to implement. But it is expensive.

McKinnon et al recommended using a short targeted screen within a wider health screen, and enlisting the help of health professionals in the custody suite. Others argue, that in accordance with the social model of disability, an overly medical approach to making a formal diagnosis is unhelpful at this stage of the process. Attaching a label is less important than focusing on the individual and assessing what support they need.

Organisations within the criminal justice system are subject to the same legal duty to comply with equality legislation as every other public body. Finding a solution to this challenge is an essential part of ensuring people get the support they need as promptly as possible.

Members of the SOLD User group have said: ***“Support from someone who is there for us as soon as possible after we are picked up by the police until the end of the court process”***

## **Support in Custody**

**People with Learning Disabilities in the Criminal Justice System (2011)** states:

*“Some people with a learning disability may make false confessions to the police, thinking this will mean they can go home more quickly. They may not understand what will happen if they say they are guilty when they aren’t”*

This is only an example, and it may be a little dramatic. But it does highlight that a tendency towards acquiescence and suggestibility is one factor that can make people with learning disabilities more vulnerable under questioning, and how important it is for people to receive the support they need in police custody, if fair access to justice is to be achieved.

There are two common complaints about appropriate adult services as provided at present. Firstly, that there is no

consistency of coverage across Scotland. In some areas, services are adequately funded and organised. In other areas, they rely on volunteers, and there is no guarantee somebody will be available when needed. Secondly, that the role itself is not clearly defined, and that there is confusion even among people providing the service, about their remit and purpose. Some people have said to us that the role is too passive, and needs strengthening.

A solution to this challenge needs to be found if the accused person with a learning disability is to have reliably fair access to justice.

Members of the SOLD User group have said they want to be supported by someone who can explain procedures and rights ***“in a way we can understand”*** and **be able to work alongside their lawyer and other people who know them.** They have also expressed concern that the **appropriate adult could be called as a witness to give evidence against them.**

## **Support in Court**

**The No One Knows report (2008)** relates some of the experiences of people with learning disabilities of going to court. For instance:

***“I couldn’t understand but I said ‘yes, whatever’ to anything because if I say, ‘I don’t know’ they look at me as if I’m thick. Sometimes they tell you two things at once”.***

And:

***“I didn’t know what was going on and there’s no one to explain things to you. They tell you to read things and in court you can’t just ask for help. The judge thinks you can read and write just because you can speak English”.***

This has to be balanced against the fact the appearing in court can be an intimidating experience for anyone. However, for a person with a learning disability, it is particularly the added difficulties of communication and understanding which put them at risk of being unfairly disadvantaged.

There has been growing awareness of the need for reasonable adjustments to make it easier for people to give evidence in court. And vulnerable witness legislation has introduced a range of special measures. But until now attention has perhaps focused more on the needs of the vulnerable witness, and less on the vulnerable accused.

In some areas in Scotland, appropriate adult support is available in court. But this provision is not consistent across the country. In other parts of the UK, work has been done through the registered intermediary scheme, to develop communication supports in court. But this again, is only available to witnesses, not the accused.

The ability to understand what is happening, and participate fully in proceedings, are fundamental elements of a fair trial. A solution to this challenge needs to be found if accused people with learning disabilities are to have access to a truly fair trial.

Members of the SOLD User group have said: ***“To be questioned in a way that is not deliberately trying to confuse us. The questions should be about finding the truth, not making a fool of us”***

And: ***“We have the right to a fair trial. If we do not understand the court process, it should be explained in a way we can understand”***