



## **Improving support for the accused person with a learning disability in Police Custody**

### **Round Table Discussions**

The event you will be attending includes round table discussions in the afternoon session. This document provides information about the topics we will be discussing. In order to make the best use of the discussion time available we would appreciate it if you could consider these in advance of the conference. The keynote presentations on the day will also address these subject areas.

In August 2016 SOLD held an event entitled **“Improving support for the accused person with a learning disability from arrest to court”**.

The purpose of this event, **“Improving support for the accused person with a learning disability in police custody”** is to address in more detail some of the issues raised previously. Our aim is to draw upon the broad experience and knowledge among delegates to identify practical solutions to the questions set out below. Your responses will inform the future work of SOLD with relevant organisations.

Many delegates will not have been at the previous SOLD conference. To view the findings report from this event, please use the following link:

<https://soldnetwork.org.uk/improving-support-for-the-accused/>

The event you will be attending seeks to address two principal questions:

**1. What is the most reliable way to identify in police custody that someone needs support with communication?**

## **2. What is the best way to support someone with communication difficulties in police custody?**

### **1. What is the most reliable way to identify in police custody that someone needs support with communication?**

The previous SOLD event concluded that: *“Further work is required to explore the best method of identifying learning disability and other significant communication needs in police custody.”*

Although delegates agreed that people with communication difficulties needed to be identified at the custody stage, there was no agreement about the best way to achieve this. Screening tools and collaborative working were both mentioned as possible solutions.

At the round-table sessions we will discuss:

What are the key features of identifying a communication support need that can be implemented in custody?

What practical arrangements are needed for a screening tool to identify everyone with a communication support need?

What further action is required?

### **2. What is the best way to support someone with communication difficulties in police custody?**

The previous SOLD event arrived at the following conclusions concerning support in police custody:

*“There is a need for improved collaboration and communication between the police, other agencies and individuals in custody.”*

*“Defence solicitors ought to attend in person to provide legal advice to a vulnerable accused person.”* Scotland is the only country in the UK where this is not standard practice.

*“There is concern about the scope of the role of the Appropriate Adult, and interest in creating a new justice support role.”*

*“There is interest in developing a Registered Intermediary scheme in Scotland.”*

The SOLD User group told us that good support requires time to prepare, understanding of communication needs, and a level of trust. In the Criminal Justice system, people need proactive, confidential support right through the process. They believe the best way to fully meet communication support needs would be to create a new Justice Support role.

In advance of the round-table sessions please consider:

How important is it to have a screening tool that can be implemented in police custody as standard?

How effective would support from health professionals be at identifying people have communication support needs and getting access to the right support?

What needs to happen for it to be standard practice in Scotland that accused people with communication support needs have a lawyer present when they are interviewed by the Police?

Is it possible for an Appropriate Adult service to fully meet communication support needs?

What can we learn from the Registered Intermediary service in Northern Ireland?

Is a new Justice Support service the only way to fully meet communication support needs?

What further action is required?

## Views of the SOLD User group

Below are the points that members of the group have identified as being important in any support services for people with a mental disorder in relation to detention and custody.

- 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
- The police to ask us if we have a learning disability or if we need help to understand
- Support from someone who knows a lot about the criminal justice system and how to support people with a learning disability
- Support from someone who cannot be called as a witness against us
  
- Support from someone with the skills to:
  - Explain the charges, process and our rights in a way we can understand
  - Make sure we understand what the police and others are asking
  - Help us think through questions and give a clear answer
  - Work alongside our lawyer
  - Work alongside people who know us and our needs best
  - Spot and step in if we are finding the process too difficult, and say if we need a break or something should be changed
  
- Support to be there for us:
  - In interviews with the police
  - In meetings with lawyers and other professionals
  - In arranging reasonable adjustments to the court process
  - When we go to court
  - From someone who cannot be called as a witness against us
  
- For it to be standard practice that we have our lawyer with us when we are interviewed by the police
  - Scotland is the only country in the UK where this is not standard practice for vulnerable defendants

## Members' experience of police questioning

### The background

In 2013 a European Union directive<sup>1</sup> set out the rights of citizens to legal assistance during questioning. It said:

'States shall make the necessary arrangements to ensure that suspects or accused persons shall be in a position to **practically and effectively exercise their right of access to a lawyer.**' It also provides that a lawyer should be able to 'participate effectively' in the interrogation.

One of the primary rationales for the right to legal assistance during interrogations is to safeguard the suspect's right to remain silent, the lawyer must as a minimum be able to intervene to protect his client's right to silence and to prevent unlawful or unfair behaviour of the police depriving the client of this right.

### Members Experience

We all have a learning disability. That means we need help to understand new information; to learn new skills, and to cope independently. It also means we have extra communication needs. This can make coping with situations involving lots of information very difficult and stressful.

In Scotland it is standard practice to get to speak to a duty solicitor on the phone before being interviewed. Their advice is usually to say no comment to all questions. That is usually all the legal assistance you get for a police interview.

This just does not work for us, or other people with learning disabilities. Not one person in the user group was able to stick to the legal advice they got over the phone when faced with the police interview.

Some of us thought that if you say no comment that means you are guilty.

Some other members just forgot what the lawyer had said on the phone.

Have we really had any useful legal advice if we either cannot understand it or simply forget what you have been told?

We think we have not '**practically and effectively been able to exercise our right to access a lawyer**'. As a result, we think that in Scotland, people with learning disabilities are interviewed without proper legal support.

We do not think that it is good enough that Scotland is the only country in the UK, and one of very few in Europe to allow this to happen. We should have a lawyer with us during all interviews by the police, unless we clearly say we do not want one.

*1. Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in the European Arrest Warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and authorities when deprived of liberty, OJ 2013, L 294/1.*