

**learning  
difficulty  
e.g. ADHD**

**autistic  
spectrum  
disorder**

**acquired  
brain  
injury**

**communication  
support needs**

**dementia**

**learning  
disability**

**A Practice Guide for Defence  
Solicitors in Scotland:**  
representing clients with  
communication support needs

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by ARC Scotland

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# Foreword

I want Scotland to provide a justice system that is up-to-date, fair and respects the rights and diverse needs of all its users. Scottish Government's most recent Justice in Scotland: Vision and Priorities sets out our vision for a Just, Safe and Resilient Scotland and commits us to modernising civil and criminal law and the justice system to meet the needs of people in Scotland in the 21st Century.

As part of this vision, accused persons with communication support needs rightly need and deserve a justice system that is adaptable and accessible. Fairness in law can only be achieved when we all recognise and respond in a person-centred way to the individual needs of everyone interacting with the justice system. It is sometimes difficult and challenging – but absolutely critical if we are to have confidence that justice is applied fairly for everyone.

It's under this priority that I am pleased to introduce the SOLD Network's 'Guide for Defence Solicitors: representing clients with communication support needs' which provides essential and valuable practical guidance for solicitors in their important roles supporting clients and the wider justice system.

We know that there is an over-representation of people with communication difficulties in prison populations and our broader justice system. We all have a moral responsibility to support our most vulnerable populations and the SOLD Network, in collaboration with the Law Society of Scotland, have developed this best practice guidance to assist solicitors when representing people with communication support needs. This guidance forms part of a suite of resources and accompanies SOLD Network's 'Practice Guide for Support Staff' aimed at partner professionals and 'Improving Support for the Accused Person with a Learning Disability – in Police Custody.'

This responsibility starts with identifying that clients may have a communication support need. This guide highlights the range of support that is available to both solicitors and their clients and the benefit that can be gained from involving those supports in their work. This isn't just limited to the accused – other legal professionals working on both criminal and civil cases with victims and witnesses will also find guidance within this document relevant.

This Guidance is a crucial step to ensuring fair and equal access to justice for all, and recognises the particular contribution legal professionals can make to achieving that.

I am confident and hopeful that you will find this an invaluable guide, and that this will evidence itself in fair and just outcomes for people across Scotland.

**Foreword by Humza Yousaf MSP**  
Cabinet Secretary for Justice

# Contents

- Foreword
- 1. Introduction**
- 2. What we mean by 'communication support needs'**
- 3. How to recognise if someone has communication support needs**
  - Non-verbal signs to watch for
  - Verbal signs to watch for
- 4. Effective communication**
- 5. Additional supports:**
  - Appropriate adult
  - Independent advocacy
  - Support worker
  - Speech & language therapy
- 6. Special measures**
- 7. Crown Office and Procurator Fiscal's Service**
- 8. Unfit to stand trial**
- 9. About SOLD**
- 10. References**
- 11. Appendix:** Where to find more information about cognitive and neurological conditions

# Introduction

The purpose of this guide is to assist defence solicitors provide the best possible quality of service and legal representation to their clients who have communication support needs due to a learning disability, autism, acquired brain injury, foetal alcohol spectrum disorder, mental health problems, dementia, or the long-term effects of complex trauma.

Our principal aim is to help ensure that nobody in the justice system is at a disadvantage because they have a communication support need.

This guide has been produced by the SOLD Network in consultation with the Law Society of Scotland, Police Scotland, Scottish Courts and Tribunals Service, Crown Office and Procurator Fiscal Service, Scottish Prison Service, NHS, Scottish Legal Aid Board, Social Work, Independent Advocacy, speech and language therapists, appropriate adults and voluntary sector partners.

The guide focuses on defence solicitors as the work of SOLD is concerned with the accused person. However, the content will also be of assistance to other solicitors working with clients with communication support needs, and with civil cases as well as criminal.

The intention is not to help people avoid the consequences of their offending behaviour, or be treated more lightly in the justice system, but rather to ensure that once identified, they receive the right support, adapted to their needs. One size does not fit all.

There is evidence to suggest people with communication needs are at increased risk of giving false confessions and being interviewed unfairly.

Kassin, S.M. (2017) **False Confessions, Cognitive Science**

Kassin, S.M., Grisso, T., Drizin, S.A. & Gudjonsson, G.H. (2009) **Police-induced Confessions: risk-factors and recommendations, Law and Human Behaviour**

While further research is required to get a clearer picture of prevalence, it is likely that those with communication support needs account for a significant proportion of those who encounter the justice system in Scotland. A report by the Children's Commissioner published in 2012, showed communication disorders among young offenders of 60 – 90% (Children's Commissioners Office, 2012). The pilot of the Do-It Profiler, carried out by the Scottish Prison Service in 2016 found 39% of prisoners flagged as having some form of learning disability or difficulty. It is almost inevitable that some of the people represented by solicitors will have communication support needs.

### Key messages

- We all have the right to a fair trial (see reference to Article 13 of the United Nations Convention on the Rights of People with Disabilities, on page 16)
- We all have the right to fair and equal access to the justice system
- You need to be able to recognise when your client has difficulty with communication and understanding
- You need to be able to communicate effectively with your client
- You need to be aware of the supports that might be available to your client, and in what ways they can benefit both you and them

This publication offers guidance on how to identify and recognise if your client may be having difficulty with communication (expressing themselves) and understanding (taking in information), and how to enhance the effectiveness of your relationship and interactions with your clients. It directs you to other sources of information, advice and support that may be available to your client and provides advice on the benefit people with communication support needs can derive from those supports and resources.

The guide draws on insight from Defence Solicitors, people with communication support needs, and professionals who work with them.

**Refer to the report into Vulnerable Accused Persons published by The Law Society of Scotland:** <https://www.lawscot.org.uk/media/362501/vulnerable-accused-persons-report-final.pdf>

**Refer also to the report by the Equality and Human Rights Commission: Inclusive Justice: a system designed for all** [https://www.equalityhumanrights.com/sites/default/files/ehrc\\_inclusive\\_justice\\_a\\_system\\_designed\\_for\\_all\\_june\\_2020.pdf](https://www.equalityhumanrights.com/sites/default/files/ehrc_inclusive_justice_a_system_designed_for_all_june_2020.pdf)

**Please note:** the information and advice provided in this guide on ways of communicating more effectively were developed prior to the restrictions introduced in response to Covid-19. We will produce a supplementary document containing additional information which will be designed specifically for working with people with communication support needs during Covid related restrictions.

This document will be available on the SOLD website: <https://soldnetwork.org.uk/>

# What we mean by 'communication support needs'

## Further information

The SOLD user group has produced the following easy read guides to help people with communication support needs understand the justice system. Your clients might find them helpful. The guides can be downloaded for free using the links to the SOLD website.

### **Arrest: an easy read guide**

[www.soldnetwork.org.uk/wp-content/uploads/Arrest-an-easy-read-guide-SOLD.pdf](http://www.soldnetwork.org.uk/wp-content/uploads/Arrest-an-easy-read-guide-SOLD.pdf)

### **Going to Court: an easy read guide**

[www.soldnetwork.org.uk/wp-content/uploads/Going-to-court.pdf](http://www.soldnetwork.org.uk/wp-content/uploads/Going-to-court.pdf)

### **How to use our easy read guides**

[www.soldnetwork.org.uk/wp-content/uploads/Easy-read-guidance-SOLD.pdf](http://www.soldnetwork.org.uk/wp-content/uploads/Easy-read-guidance-SOLD.pdf)

This video of Steve Robertson, a member of the SOLD user group, talking about his own experience of the journey from arrest to court, is an insightful summary of the issues faced by people with communication support needs in the justice system in Scotland

<https://soldnetwork.org.uk/videos/improving-support-for-the-accused-person-with-a-learning-disability-from-arrest-to-court/>

We use the phrase 'communication support needs' to mean any person whose ability to understand and communicate is significantly impaired due to some form of cognitive or neurological impairment. This can include people with learning disabilities, acquired brain injury, foetal alcohol spectrum disorder, dementia, autistic people, and people with other neurodevelopmental disorders such as attention deficit hyperactivity disorder (ADHD). Mental health problems and complex trauma can also lead to significant communication difficulties. The information provided in this guide is not intended for supporting people whose communication support need is caused by sensory impairment, such as hearing loss.



**Please note:** In this guide we use the term 'autistic people', on the advice of people we work with. We acknowledge however that there are differing opinions, and some people prefer the term 'people with autism.'



The difficulties individual people experience with communication, and which effect their ability to participate fully in the justice system, will be different. It may negatively affect their ability to process information, their short-term memory, concentration, anxiety, impulse control, or a combination of all of these. Many people will be affected by more than one impairment.

**They will have some level of impairment that will inhibit their ability to communicate with you and to understand and retain your legal advice.**

Members of the SOLD User group, made up of people who have communication support needs with experience of the justice system, tell us that they want the same opportunity to appear in Court as everybody else. If they need support to do that, then that should be available to them and no one should be disadvantaged as a result of having a communication support need.

This is consistent with the United Nations Convention on the Rights of People with Disabilities:

*“States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages” (Article 13)*

# How to recognise if someone has communication support needs

The information provided in this chapter has been adapted from guidance previously developed in partnership between the SOLD user group, psychologists, and speech and language therapists with experience of working with people with learning disabilities.

**Reference:** *Communicating with people with a learning disability in the justice system*, The SOLD Network, (2017).

In an ideal world, your client will feel confident enough to be open with you about their communication support needs. However, you cannot rely on this being the case. Often people with these types of communication support needs are reluctant to disclose their difficulties, and can become quite adept at trying to hide them. This might be through fear of stigma, being bullied or for other reasons. It might even be that no one has ever talked to them about it, or due to their impairment they have little insight into their communication needs.

Use this link to test your ability to recognise someone with communication support needs:  
<https://www.youtube.com/watch?v=bemLJzDXOlk&feature=youtu.be>

Listed below are a simple selection of non-verbal and verbal signs that may help you recognise if your client has communication support needs.

This list is not exhaustive, nor anything to do with making a formal medical diagnosis. The priority is to identify if your client has communication support needs, and making arrangements to try and ensure they are not unfairly dealt with in the justice system.

#### What the solicitor says...

“Be alert to your client finding things difficult. And ask them if they need help.”

#### What the client says...

“Have a conversation with us about what difficulties we might be having, and what support we might find helpful. Please don't be scared to ask us if we have a learning disability. We won't be offended.”

If you have doubts about your client's ability to understand and communicate, you should give due consideration to the supports that may be available, for instance an appropriate adult (see chapter 5) or special measures (see chapter 6).

# Non-verbal signs to watch for:

## Confused, struggling to follow conversation

It might be plainly clear to you from the person's responses that they are struggling to follow the conversation. They might appear confused or lost, for example squinting their eyes, or using other gestures such as shrugging their shoulders. They might give a response that is slightly off target such as being on the right subject, but which does not answer the exact question.

## Lack of awareness of what is happening

The person might have difficulty keeping up with the pace of events or understanding the consequences of something that has happened. They might not seem to understand why you are there or why you want to talk to them. They might not seem to understand the seriousness, implications or even that what has happened could be a criminal offence, or that they could be in trouble

## Attention wanders

The person might find it difficult to follow one topic of conversation for as long as needed. They might become distracted by other things around, look at their phone, fidget, or start talking about something else

### What the client says...

"Trying to concentrate and work out what was going on and what they were saying was giving me a headache and making me feel dizzy."

## Over anxious – cannot be calmed

The person might appear to be disproportionately stressed, distressed, or anxious. Having a communication support need might cause the person to feel more vulnerable in stressful situations, or be frightened of people in authority. You might see behaviour such as crying, wailing, screaming, stammering, or rocking back and forth.

### What the carer says...

"As long as he was looking at me, he was fairly calm. But as soon as the solicitor spoke to him, he started raging at him. He just couldn't cope with the situation. It was too much stress for him."

### What the solicitor says...

"Being in custody is a daunting, frightening experience. Even as a solicitor you can feel intimidated. So think how your client must be feeling."

### **Becomes withdrawn, reluctant to communicate**

The person might feel overwhelmed by what is happening, and show a lack of emotion or response. One possible reaction to stress and anxiety could be to completely shut down all engagement. This can be particularly common with autistic people

#### **The Appropriate Adult's example:**

“The young autistic man was being questioned by police because he had been accused of assault. As soon as the interview began he pulled his jacket over his head and sat with his arms folded. He did not respond when anybody spoke to him.”

### **Unusual eye contact – too much or too little**

The person might have a poor understanding of common social boundaries and may appear to stare at you for too long. Alternatively, they may find it difficult to look you directly in the eye. This can also be particularly common with autistic people

## **Verbal signs to watch for:**

### **Cannot answer your questions**

If the person is struggling to understand what you are saying, they will struggle to answer your questions, especially if the conversation is going too fast for them. They might simply tell you they do not understand. If they cannot, or do not feel able to do this their difficulty might show itself in some of the ways listed below:

### **Answers 'yes' or 'no' with no additional information**

The person might frequently answer 'yes' or 'no' even when they have not understood the question. This can be because they do not want to look stupid or want to be helpful, or are searching for the answer they think you want to hear.

### **The Registered Intermediary's example...**

“The prosecutor had resisted my attempts to advise him on question structure and vocabulary beforehand, and asked George, ‘Do you think this injury is consistent with a bang on the head?’ I intervened asking for the word ‘consistent’ to be simplified.

The Fiscal Depute said, ‘George, you know what ‘consistent’ means, don’t you?’ George replied ‘yes.’

His defence barrister asked one cross-examination question: ‘What does ‘consistent mean?’

George replied, ‘I have no idea.’”

(As there is not a Registered Intermediary scheme in Scotland, this example is from a court in England)

### The appropriate adult's example...

"In police interview, the man I was supporting was asked the same question twice. The second time, his answer directly contradicted the first one. I intervened to find out why. He said he was trying to be helpful. The police officer didn't like his first answer, so he gave him a different one."

### Gives an answer that does not fit the question

The person might try to cover the fact that they did not understand your question by trying to second guess the answer or what they think you want to hear. For example telling you the month they were born instead of where they were born. Or for the question "where were you born?" they might miss the question word, and so respond to "when" instead of "where." It is very common for people to muddle up questions with words starting "wh."

### The appropriate adult's example...

"I remember one case where the police asked the accused what time he started drinking each day. He answered '7.30 in the morning'. I intervened because I suspected he hadn't understood, and he said he thought they were asking what time he took his dog for a walk."

**Further information:**  
See the end of chapter 4:  
Effective Communication

### Repeats what you have said

Rather than answer your question, if they have not understood, the person might repeat some of what you said. In particular, they might latch onto a key word you said and repeat that back to you. For example "were you at the bus stop on XXX Road earlier today?" The person repeats "the bus stop...bus stop...the bus stop," or "XXX road today."

### Repeats the same words or phrases, or changes the topic

The person might tend to repeat certain words and phrases to try to cover the fact they are not really following or simply to try to understand. Often these words might not fit with what you're talking about. They might suddenly start to talk about something unrelated, for example "cars," "the news," "sport."

### Struggles to give basic information

The person might struggle to remember and recount even quite basic information, such as the name of their street or give their date of birth.

### What the carer says...

"If you ask him what his date of birth is, he won't know what you mean. You have to ask him when his birthday is. You have to ask him the right way or he won't know what you're talking about."

# Effective Communication

This chapter is intended to provide some basic advice and guidance on ways to communicate with clients with communication support needs. This advice will make it easier for them to understand you. The guidance has been adapted from material previously developed in partnership among members of the SOLD user group, psychologists, and speech and language therapists with particular expertise in communication.

Please note: some passages in this chapter are written in first person. These represent members of the SOLD user group speaking in their own words.

**Reference:** Communicating with people with a learning disability in the justice system, The SOLD Network, (2017).

There are numerous barriers to effective communication with someone with communication support needs, including:

- Lack of time and/or opportunities
- Using complex language
- Over estimating/underestimating a person's communication ability
- Lack of awareness of communication issues
- Environmental factors (noise, distractions, stimulation)
- Individual factors (health, fatigue, sensory)

In order to achieve fair and equal access to the justice system your client needs to be able to express themselves effectively, and be able to understand and retain complex information, including about the different systems and processes within which they find themselves.

Detailed below are some basic pieces of advice and guidance for you to consider when your client has communication support needs. These are generally effective ways of communicating.

## Build rapport

Help your client feel comfortable in the situation. Someone with a communication support need is less likely to communicate at their best if they are anxious.

Ask about their hobbies and interests, as this will put the person at ease and can help you to get an idea of how they communicate and how able they are.

### What the client says...

"Having a good relationship with your solicitor makes a big difference. I think you can be more open and honest with someone you know you can trust."

### What the solicitor says...

"Give your client lots of reassurance. Make sure they know you're on their side."

### What the client says...

"We want support from someone who is there for us."

### What the solicitor says...

"Building a bond of trust with your client is essential. You do that by engaging with them in an empathetic way. You need to show understanding and honesty. Make sure you are well briefed, and promise your client, 'I will act on your instruction.'"

## "Take us seriously"

Remember, a lot of people with learning disabilities have our views ignored at other times in our lives. Please do not do it too.

### What the solicitor says...

"I think it's good practice when preparing a defence that you do it in a way that allows your client to properly feel a part of the process. Talk through it so that they feel part of it. I always say to my client 'I need you to help me prepare your defence.'"

## "Please do not patronise us"

We might do things a bit differently but we are still people with the same rights as anyone else.

### What the solicitor says...

"Your client needs to know they can trust you. You've got to be able to communicate well, and just being friendly helps to build trust. Give your client lots of reassurance. Make sure they know you're on their side."

## “Listen carefully to us”

Sometimes people with learning disabilities might not say things in a straightforward way. We might use words you are not used to when we describe something. This does not mean we are talking non-sense. Check with us as we go. Maybe ask us to repeat something to clarify that you have understood us correctly.

### What the client says...

“The lawyer I got didn’t have any time for me. I was trying to get him to speak to someone that knew what had happened and could have been a witness for me, but he didn’t.”

### What the solicitor says...

“We solicitors are very good at talking. But we need to listen. Vulnerability goes much deeper than whether you tick a box to say you’ve got this condition or that condition. You need to do more than scratch the surface. You need to dig down to really find out what makes people tick, and find out what happened to them. That can take time, and sometimes that’s a challenge, but I’m a firm believer in taking the time you need. I will say to the Sheriff if I need to, ‘I’m not ready, I need more time to prepare this person’s defence.’ That’s easier to do when you’ve been practising for twenty-odd years, but pretty daunting if you’re newly qualified.”

## Explain and check it has been understood

Explain why your client is in this situation and what is likely to happen. It may be helpful to use the person’s name at the start of each sentence.

Using visual aids such as drawings, photos, and calendars for dates can work well for many people. This does not need to be prepared, or a work of art. Just a doodle on the back of an envelope can be used spontaneously to focus the person in on what you are saying.

For others it can create further confusion. Be prepared to be creative and to adapt. Ask the person what usually helps them and how they would like you to give them information. Sometimes people cannot think on the spot, but if you give them a few options they will be able to select one or reject them, but it will trigger an idea.

All information, written and verbal, must be fully understood by the accused and witnesses. Ensure written material is in plain English and short, simple sentences. Avoid large blocks of text. Use short paragraphs.

Encourage your client to let you know if they don’t understand something. Sometimes it is easier for a person to do this non-verbally, such as giving them a red card to hold up if they miss something or want you to repeat.

But do not assume that they are understanding. It is important to check. Do not just ask “do you understand?” as this can come across as almost aggressive to some people, or remind them of school. And many people will answer “yes” just to please you. It is better to summarise every few sentences, and after giving a chunk of information ask the person something like: “can I check I’ve explained everything properly?”; “can you tell me in your own words what we’ve been talking about?” This will give you a much better idea of how fully the person has understood, or which parts they have not picked up.



Also give the person something to take away. Even if the person cannot read themselves, it will help conversations with others later on, and remind them of the session. If possible, put this in the person's own words (perhaps as above, from them explaining their understanding back to you). This will help them retain the information.

### What the client says...

"Check that we have understood what we tell you, and that we have understood what you tell us. We might find it difficult to remember exactly what you tell us. It helps if you can say the important information a few times. Also, some people with learning disabilities might say yes when asked if we understand, even if we do not. This is often because we do not want to look stupid. It is best to ask us to repeat back to you any important things."

### What the solicitor says...

"I tend to do a recap at the end of the consultation, and check with the client how much they have understood. I also advise them they can phone me any time to ask questions. They don't have to remember everything first time. If they get home and think of something they didn't ask, they can phone me."

### Choose your language carefully

Emphasise key words and use concrete terms, not abstract terms, for example, 'at breakfast time' rather than 'early on'.

Break large chunks of information into smaller chunks and ensure you give your client time to understand the information.

Prepare your client for each stage of the communication, for example, 'David, I will now ask you some simple questions', 'David, can we now talk about your flat?', or 'David, I will now explain what we are going to do'.

Try to use, or at least start with, open-ended questions rather than closed, restricting questions that only require 'yes/no' answers.

There are exceptions to this. The person might only be able to give 'yes' or 'no' answers, so you will need to tease out the information. For instance, if open questions are not working, try writing a tick and a cross on a piece of paper, and see if the person can point to the yes/no answer. This is likely to be more accurate than a verbal response. From there you can search for more detail by asking a follow up question such as 'is it something to do with XXX?', or 'was it inside or outside?'

Tailor your language to the level of understanding of the person.

Ways of communicating are as individual as we are!

### What the client says...

“Get a better understanding of the person’s learning disability. Understand that you will have to break things down into chunks and take regular breaks.”

### What the solicitor says...

“Communication is vital. It is a vital skill for solicitors to have. You need to try and use language the client can understand.”

### What the client says...

“My solicitor understands my learning disability well. Without a solicitor who understands learning disability, you never get to know about special measures and all that stuff”

### What the solicitor says...

“You need to dig down to really find out what makes people tick, and find out what happened to them. That can take time, and sometimes that’s a challenge, but I’m a firm believer in taking the time you need.”

### Please do not talk in jargon”

Use plain English. Remember that some of the words you use all the time at work will still be jargon to us.

### What the solicitor says...

“It’s very easy for us to talk in jargon and forget that not everybody is familiar with it.”

### What the client says...

“There’s this diet, and that diet. I didn’t know what they were talking about at first. I thought diets were about food.”

### Be patient

Be patient and calm while communicating. Do not rush your client – they may need longer to process the questions and think about their answers. Ensure that you allow additional time for meetings and interviews.

Short bursts with breaks in between are better than a longer session.

### What the client says...

“Show us you have time to hear what we have to say. People with learning disabilities may take a bit longer to give you the information you need. But rushing us or being impatient is not going to help.”

### **Do not ask the same question over and over”**

Be aware that repeating the same question may suggest to your client that they have given the wrong answer when asked the first time. It can be helpful to ask the same question in a different way, particularly to check that the person has understood the question and to check the consistency of answers.

Several short sessions are likely to be much better than one long session. This may help with your client’s concentration levels and reduce anxiety.

Ensure the environment is free from distracting noises and that it is as calm as possible to help reduce anxiety.

Think carefully about the way you ask questions

### **What the client says...**

“If we do not understand the question you are asking, try to ask it in a different way.”

### **What the solicitor says...**

“That can take time, and sometimes that’s a challenge, but I’m a firm believer in taking the time you need.”

### **What the client says...**

“The thing with my solicitor is he never gives me big chunks of information. He’ll do it over thirty-minute sessions and take his time with me.”

Questions which include a negative or double negative, multiple questions and questions with complex vocabulary and sentence structure can be particularly confusing.

As a rule of thumb, try to stick to short sentences. It is better to say three sentences with some repetition, rather than one long complex sentence.

Suggestive or leading questions can put your client in an unfair position and are likely to result in an inaccurate response.

Some people with communication support needs can be more easily led during questioning due to suggestibility, acquiescence or confabulation (the creation of false statements or memories).

The quality of testimony given by a person with communication support needs can be influenced by the type of questions they are asked.

### **What the client says...**

“Please do not raise your voice or shout. It seems pretty obvious, but you would be surprised how many people behave like a rude tourist, as if shouting louder makes them easier to understand.”

# Additional support

**Further information:**

For an **online training resource** to help you learn how to improve your communication skills, contact:

[www.rcslt.org/learning/the-box-training](http://www.rcslt.org/learning/the-box-training) - a communication e-learning tool for professionals working in the justice system. This has been developed by the Royal College of Speech and Language Therapists

For **advice from a speech and language therapist**, contact the TalkLinks service:

[www.talklinks.org/](http://www.talklinks.org/) - training, advice, assessment and communication services

For **guidance on effective communication**, and suggestions of tools and resources that might help, contact The Advocate's Gateway:

[www.theadvocatesgateway.org/](http://www.theadvocatesgateway.org/) - practical, evidence-based guidance on vulnerable witnesses and defendants

## Additional support: Appropriate Adult

### Purpose

The role of the Appropriate Adult is mainly to facilitate communication between the person and the police, although they can have a role at other stages of the justice pathway. They are independent of the police and other justice agencies. It is the responsibility of the police to request the attendance of an appropriate adult in custody.

A person is entitled to the support of an Appropriate Adult to “facilitate effective communication” if owing to mental disorder they appear unable to understand what is happening, or communicate effectively with the police.

### What the solicitor says...

“I will say to the police ‘we should get an appropriate adult’. I will say ‘this interview is not going ahead otherwise.’”

**The criteria for entitlement to the support of an appropriate adult is set out in section 42 of the Criminal Justice (Scotland) Act 2016**

<http://www.legislation.gov.uk/asp/2016/1/section/42/enacted>

An appropriate adult is distinct from a support worker. There has been confusion at times about the distinction between the two roles, and the police have asked a support worker to act as appropriate adult. An appropriate adult has a specific and specialised role, and a support worker is not qualified to do this. A support worker is not an appropriate adult.

*(See later in this chapter for more information on the role of a support worker).*

### What the Appropriate Adult says...

“I bring independence, one hundred percent. And that’s crucial from a safeguarding point of view, having an extra pair of eyes in the room. My role in the interview is different. I sit and watch the person. All I’m worried about is whether the person understands, and whether the police understand them. If I see someone’s eyes gloss over – and that happens – then I intervene and say ‘I think we’re done here.’

Please don’t assume if I don’t say anything, I’m not doing anything. I shouldn’t need to say anything. The idea is not to be involved. If I have to be involved, then something’s not going well.

Understand the value of me being in the room. It’s not the same whether I’m in the room or not. My presence alone changes the dynamic in the room.”

An appropriate adult must make sure the person understands that their conversations are not confidential. Anything your client says that could be used as evidence, the appropriate adult must pass on to the Police

An appropriate adult must not be alone with your client

**For reference: Guidance published by the Law Society of Scotland can be accessed via the following link:**

<https://www.lawscot.org.uk/members/journal/issues/vol-65-issue-03/ap-proprate-adults-a-legal-framework/>

## What can an appropriate adult do to help your client?

The main responsibility of an appropriate adult is to assist with communication in police interviews. They should make sure your client understands the questions they are being asked, is able to answer those questions, and help the person feel more at ease.

They should sit in a position from which they can watch your client's face. This allows them the advantage of being able to monitor your client's level of understanding and distress. If your client appears confused or under emotional stress, they can intervene and ask for the interview to be paused.

### What the client says...

"The appropriate adult came straight up to me and introduced herself. She asked me how I was feeling, and that meant a lot to me, you know what I mean. She showed a bit of empathy and understanding. In the interview, she could see I was struggling a bit. She asked if it was ok to have a break and check how I was feeling. It was good observation, because I was struggling, and she saw that. But she did it in a nice way. She was looking out for me, but not in a way that upset the police."

### What the solicitor says...

"An appropriate adult who can provide the client with emotional support and explain things in a helpful way is an asset."

If you have the slightest doubt about your client's ability to understand and communicate, then you should consider suggesting to the police that they request an appropriate adult prior to the interview.

#### Further information:

See the Scottish Government website:  
<https://www.gov.scot/policies/victims-and-witnesses/appropriate-adults/>

## Additional Support: Independent Advocacy

Independent advocacy is a support service available to people with learning disabilities and other communication support needs. The duty on local authorities and health boards in Scotland to provide advocacy services is enshrined in the Mental Health (Care & Treatment) (Scotland) Act 2003.

### Refer to section 259 of the Mental Health (Care & Treatment) (Scotland) Act 2003

#### Purpose

- Independent advocacy is independent from statutory and other services, such as the police or social work. Independent advocacy will
- support people to express their own needs and make their own informed decisions
- support people to gain access to information and explore and understand their options
- speak on behalf of people who are unable to speak for themselves, or choose not to do so
- safeguard people who are vulnerable or at risk of discrimination.

Some advocacy organisations have experience and expertise in supporting people through the justice system. However, provision of independent advocacy differs from one local authority area to another (see right for more information).

#### Further information:

Contact the Scottish Independent Advocacy Alliance (SIAA) to check what services are available in the person's local authority area:  
[www.siaa.org.uk/find-advocate/](http://www.siaa.org.uk/find-advocate/)

### What the solicitor says...

"I would love every client to have a support worker or an advocacy worker."

### What can independent advocacy do to help your client?

An advocacy worker will have experience of supporting people in similarly stressful situations, and will have insight into the emotions your client will be feeling, and effective ways of helping people cope. They are also independent of all other services and free from any possible conflict of interest. An advocacy worker has important knowledge of your client that can be helpful to you. They know the person; they have insight into the person's communication ability, and how to communicate effectively with your client. They also see your client regularly, so can help them remember what you have said, ensure your client is fully prepared for meetings with you, and provide emotional support with the stress of the justice system. If your client has an advocacy worker, involving them in your work can help things go more smoothly and effectively.

### What the advocacy workers say...

"Having advocacy support in the justice system can make a massive difference to your client. We can take them through the whole process. We know the process and can guide your client through it. We can explain what's happened and what's going to happen next.

We can function as a memory recorder. Your client is often stressed and unable to take in all the information. We can help them to understand everything that is going on, and to remember it. A solicitor will likely only have time to meet once with their client to give them information. We are available to repeat that information endlessly."

### What the client says...

"I don't know what I'd have done if I hadn't had my advocate. They helped me find a good solicitor. And helped them understand my learning disability.

I think it is important that support is available at this time. It took me a long time to get my head around the process and I needed some reassurance.

I was able to get lots of reminding by my advocate, and my solicitor always explained the process clearly. These things really helped."

### What the Solicitors say...

"Involving supporters is a great thing to have wherever possible. Being able to tap into other agencies that can help is something we need to do more of."

# Additional support: Support Worker

## Purpose

Many people with learning disabilities and/or other communication support needs who have been assessed by the local authority social work department as having sufficient level of need will have a package of support to help them maintain as independent a life as possible. A team of individual support workers will work on a one-to-one basis with the person for an agreed number of hours each week. Support can include: managing finances; dealing with correspondence; maintaining a social life; being active in community life; finding work; or education.

### What the client says...

"I dread to think what would have happened to me if I didn't have my support worker to help me through it all. It's a very stressful thing to go through and all kinds of stuff starts going through your head. He helped me stay calm and remember what was happening, and what I need to do."

### What can a support worker do to help your client?

A support worker with experience of working with your client will have a good understanding of the person's communication ability and support needs, and is likely to see them regularly. A support worker can:-

- Help to facilitate communication between you and your client, and help them to remember the legal advice you give
- Ensure your client is fully prepared for meetings with you
- Provide emotional support with the stress of the justice system
- Support your client to understand the justice processes and at each stage, what is going to happen next

Your client can request their support worker is present with them during the police interview. This is to provide emotional support only. They must not interfere with the questioning and is only permissible at the discretion of the interviewing officer. A support worker can also act as a named supporter under special measures, and sit with your client in court. This will

provide your client with emotional support, and will help the person remember decisions that were taken by the court and the significance of those decisions.

If your client has a support worker, involving them in your work can help things go more smoothly and effectively.

### What the solicitor says...

"It can be helpful, at least in early meetings with clients, if they do have some support with them. Someone who understands their communication ability. The support can help to open the communication flow between solicitor and client."

### What the support worker says...

"There was a lot I was able to do when the man I supported was charged with an offence. I helped him to find a solicitor. His plan was to walk down the high street and randomly call at offices. I helped him to find a solicitor with the right expertise. I helped him to make an appointment to visit her, and to have everything with him that he needed. I was also able to explain his support needs to the solicitor.

In between meetings with his solicitor, he needed a lot of reminding about the procedures and remembering his solicitor's advice. I was able to help him with that. He tended to fixate on the best possible outcome like just being let go. But I was able to remind him about all the possible outcomes, and help him manage his anxiety, especially when he went to court."



Ask your client whether they get support from anywhere, and if they would agree to being helped by a support worker when you work with them.

### Further information

Practice Guide for support staff: people with communication support needs in the Scottish Criminal Justice System

In February 2019, SOLD published the second edition of a guide to help support workers understand how they could effectively support people in the justice system. It could give you an insight into the ways a support worker might be able to help your client.

A copy of the guide can be downloaded for free using this link:  
[www.soldnetwork.org.uk/wp-content/uploads/SOLD-practice-guide-support-workers-criminal-justice.pdf](http://www.soldnetwork.org.uk/wp-content/uploads/SOLD-practice-guide-support-workers-criminal-justice.pdf)

## Additional Support: Speech & Language Therapist

This chapter provides information on the role of a speech and language therapist (SLT) in facilitating effective communication, and how this could assist you in working with your client. It also highlights that legal aid may be available in some circumstances to cover the cost of SLT support.

### Purpose

An SLT is a specialist in communication: identifying communication difficulties and facilitating communication between individuals and their communication partners by giving specific advice and support. An SLT can provide a detailed assessment of a person's communication ability, and advise on appropriate ways of communicating more effectively with the person.

The knowledge you gain about your client's communication by involving a SLT in your work could have benefit in other stages of the justice pathway, especially in court.

### What the speech and language therapist says...

"Speech and language therapy is the key component that makes everything else work more effectively."

### What the client says...

"I'm 61 and I have always thought I was a bit odd and had trouble talking to people. No-one ever explained why this was. You are the first person who has told me that I am slow at processing and lack understanding of non-verbal and non-literal communication. Whatever the verdict, I have really learned something today."

## What can a speech and language therapist do to help you and your client?

An SLT can provide:

- Comprehensive and detailed communication assessment which covers all aspects of the person's communication: particularly their ability to express themselves and how they understand information. This could include: levels of attention; hearing and listening; sensitivity to sound; social communication (how they understand the social aspects of communication, such as whether they can understand abstract language or are likely to take things literally, or whether they are capable of understanding inferences and idioms); eye contact; personal space; understanding of language and vocabulary; reading ability
- Communication Profile: this will provide a detailed overview of the person's communication difficulties and needs. This might be incorporated into the communication assessment
- Opinion on the implications of the person's communication ability in terms of the justice system. For example, in relation to the person's capacity to be interviewed, understanding of a police caution, fitness to plead, or the type and suitability of special measures
- Advice and recommendations about facilitating communication with the person. For example, level of vocabulary, how many 'key words' they can understand at one time, breaking information into small chunks, using gesture and facial expressions, photos, pictures, or symbols
- Help with the person's understanding of complex information, and words associated with the justice system. For example, translating legal documents into an accessible format to increase the person's ability to understand complex information and to give informed consent
- Help with planning interviews to achieve the best quality of evidence from the person.
- Help for the person to manage their anxiety in stressful situations.
- Training on resources and strategies to facilitate communication with the person

## What the solicitor says...

'The speech and language therapist helped me take instructions. He put matters in simple terms, enabling me to have a worthwhile discussion about the nature and seriousness of the offences.

His professionalism was beyond reproach and his report was of great assistance to the judge by helping him to understand my client's difficulties'

Below is an example of recommended strategies for conducting a verbal interview following a communication assessment

### Recommendations to facilitate communication:

- Ensure you have Mr AB's attention before giving important or complex information.
- Try to avoid 'communication overload'.
- For important information break information into small 'chunks', and back up with visual methods to help him focus and aid comprehension.
- Talk normally but try to use shorter sentences and pause frequently.
- Summarise and recap sections of information - ask if he has any questions or if there was anything he did not understand.
- To check understanding of your information ask him to repeat back what you have said (asking him to summarise). If he has problems - try to explain things in another way.

# Special measures

The Criminal Justice (Scotland) Act 2016 makes provision for interim liberation. The person can be released from custody to come back for interview at a later date. This could create an opportunity for more detailed preparation to be done in advance of the interview, and could include a communication assessment by a speech and language therapist.

**Please note:** You could gain benefit from involving a speech and language therapist in your work. Their advice and guidance could help facilitate your own communication with your client, and could also help minimise the disadvantage your client could face at each stage of the justice pathway.

Legal aid may be available to cover the cost of a communication assessment, if it is shown to the Scottish Legal Aid Board (SLAB) that this is needed to prepare your defence. Prior authority from SLAB would be needed setting out the circumstances and what is required. You would need to show that your client has no other means of communication support, for example a support worker, or independent advocacy worker.

For more information contact the Scottish Legal Aid Board [www.slab.org.uk/solicitors/legal-aid-guidance/criminal-guidance/](http://www.slab.org.uk/solicitors/legal-aid-guidance/criminal-guidance/)

**For more information,**  
or to obtain the services  
of a Speech and Language  
Therapist, contact  
either the Royal College  
of Speech and Language  
Therapy - [www.rcslt.org/](http://www.rcslt.org/)  
or The TalkLinks service -  
[www.talklinks.org/](http://www.talklinks.org/)

Special Measures when appearing in court, especially having a Named Supporter with them, can really help your client to manage their stress and anxiety, help the person give their best evidence and understand to the best of their ability. This will help to make the most of the defence you have prepared with your client. It is the responsibility of the defence solicitor to request special measures for the accused person.

### What the Named Supporter says...

“Having the support of somebody with you in court is hugely important. We’ve been able to keep a lid on the person’s emotions, and prevent them from getting into more trouble by venting their frustration or stress. We can help the person calm down, and recognise when to ask for a time-out.

Stress and anxiety are a big problem for people in court, and it makes it difficult for people to take in information. So we can do that for them. We can function as a memory recorder. We can help them to remember everything that happened in court, and to understand it.

To be honest, just by us being there, it tends to force the professionals in court to take account of the person’s support needs. They can’t ignore it if we’re there.”

A range of special measures can be available to your client:

- Having a Named Supporter sit with the person
- Evidence taken by a commissioner prior to trial: a commissioner is appointed by the court to take the person’s evidence. This is recorded on video, and can be used when the person cannot manage the whole court process. For instance, if they are unable to switch attention between one person and another
- A statement made prior to trial: a document or recording which contains the person’s evidence. This could be an extract from a police interview. Again, this can be used if the person is unable to follow the whole court procedure
- Using a TV link from another room: the person sits in front of a TV set with cameras and a microphone and can normally only see the person speaking to them from the courtroom

There are two further special measures that are available only to victims and witnesses, not to the accused person:

- Giving evidence behind a screen
- The court being closed to the public

Most special measures are of limited benefit to a person with communication support needs. This is because they were mostly designed to help overcome the effects of intimidation rather than communication difficulties. However, they should still be used and selected carefully according to the person’s individual communication support needs.

## What can special measures do to help your client?

Members of the SOLD user group report that having a Supporter with them in the courtroom is of particular benefit to them.

They tell us:

- The emotional support of having somebody with me and helping me feel more at ease
- They can recognise when I am becoming stressed and ask for a break
- They can help me to understand what is happening
- When the court is not in session they can help me to understand what has happened and what is going to happen next
- They can help me understand who the different people are in court, and what everybody's role is
- They can help me to understand and remember any decisions that the court makes
- They can help me to understand the legal advice you give me

In spite of having the same entitlement as vulnerable victims and witnesses (with the exception of two of the measures shown), special measures are much more rarely requested for the vulnerable accused person.

## What the solicitor says...

"In my experience, the most effective measure is having a supporter with the client in court. I think it makes a big difference to the client just feeling that someone is there with them and they're not so exposed."

**References:** Vulnerable Witnesses (Scotland) Act 2004  
Victims & Witnesses (Scotland) Act 2014

## What the client says...

"For the trial, my solicitor was able to get special measures put in place. These were extra time for me to check I was understanding things. And I could have a supporter sitting beside me in the dock. These things were reassuring but of course it was still very difficult.

Even with the support I got it was still extremely difficult and stressful. I can't even imagine how difficult it would have been without support."

You should give careful consideration to the benefits special measures can provide for your client, especially having a named supporter sit with them, and make the request.

In England and Wales, Registered Intermediaries are available to provide communication support for vulnerable victims and witnesses in Court. In Northern Ireland, this service also includes vulnerable accused people, and in police custody.

Registered Intermediaries are communication specialists, and usually from a speech and language therapy background. They will carry out a communication assessment with the person which will usually include the person's ability to understand, attention span, and their response to leading questions. They will make recommendations, such as the level of language to use, style of questions, length of time to pause between questions, and the use of adaptations to reduce stress, amongst others. The plan for questioning a vulnerable witness is agreed at a ground rules hearing, prior to either the start of the trial or the witness giving evidence.

**For more information** about registered intermediaries please contact the Advocate's Gateway: [www.theadvocates-gateway.org/intermediaries](http://www.theadvocates-gateway.org/intermediaries)

# Crown Office and Procurator Fiscal Service

The Crown Office and Procurator Fiscal Service (COPFS) is the public prosecutor in Scotland. When presented with a case, COPFS will decide if a crime has been committed, if there is enough evidence to prove that the person committed the crime and if it is in the public interest to prosecute the person, or deal with them in another way.

Diversion from prosecution is a process by which COPFS can refer a case to social work as a means of addressing the underlying causes of alleged offending.

**National guidelines on diversion from prosecution are available from Community Justice Scotland:** <https://communityjustice.scot/wp-content/uploads/2020/06/Diversion-from-Prosecution-Guidance-Version-4.0-FINAL-VERSION-April-2020.pdf>

## What the Prosecutor says...

“It is important that the Defence Solicitor ensures all relevant and applicable information on the accused person is passed to COPFS. The more comprehensive information we have about the person, the more appropriate our decision about the case will be. Therefore, the Defence Solicitor should pass on all the information they possess on the person’s disability and their support needs.”

The types of information relating to your client that will assist COPFS in deciding what action to take are:

- The attitude of the individual to the specific offence and to offending more widely
- The family background of the individual and any formal or informal support network in place
- Whether the individual has been, is currently or will in the future be in education, employment or training
- Any known issues with alcohol, drugs or any other dependencies and whether support is in place
- Any known mental health issues
- Any known disability
- Any other vulnerabilities
- Any risk factors that are not covered above.

You should pass on to COPFS all information you have regarding your client's communication support needs. This will allow the Prosecutor to make as well informed a decision as possible as to whether it is in the public interest to prosecute your client in court, or deal with their case in another way

Any relevant information about the individual should in the first instance be provided to the Police through the Reporting Officer responsible for the case. This will allow that information to be provided to the Prosecutor from the outset. Information may also be provided to the Prosecutor directly if you are aware the case has already been reported by the police to COPFS or alternatively the Defence Solicitor representing the accused if one has been appointed.

### What the solicitor says...

"I have to think tactically. If I want my client's vulnerability informed to the Court, I make sure the police record it. This only works if the person can read, but I write a pre-prepared statement with my client, which discloses their vulnerability. I ask the interviewing officer to ask my client at the end of the interview if they have anything else to say. At that point, the client reads out the statement."

**More information** on the procedure followed by COPFS in deciding if it is in the public interest to prosecute are outlined in the Prosecution Code:

[www.copfs.gov.uk/images/Documents/Prosecution\\_Policy\\_Guidance/Prosecution20Code20\\_Final20180412\\_\\_1.pdf](http://www.copfs.gov.uk/images/Documents/Prosecution_Policy_Guidance/Prosecution20Code20_Final20180412__1.pdf)

(See page 8 is the start of the public interest considerations)

Members of the public can also contact COPFS directly to pass on information about your clients' support needs:

**COPFS call centre** - Enquiry Point: 0300 020 3000. They deal with the vast majority of customer queries. Telephone lines are open **Monday to Thursday from 08:30 to 17:15** and **Friday from 08:30 to 17:00**.

Calls can be made through RNID Typetalk. Please prefix our telephone number with 18001. Deaf sign language users should text on 07825 280346, specifying if you would prefer your reply by sms, text or email.

**COPFS public web site:** [www.copfs.gov.uk/](http://www.copfs.gov.uk/)

**Refer to the report into Vulnerable Accused Persons published by The Law Society of Scotland:** <https://www.lawscot.org.uk/media/362501/vulnerable-accused-persons-report-final.pdf>

# Unfit to stand trial



In some circumstances the accused person can be deemed by the Court to be unfit to stand trial. This chapter aims to provide some insights that Defence Solicitors should be aware of.

The measures set out below apply to people who are suffering with a mental illness. They also apply to people with learning disabilities, are autistic, or have other conditions leading to communication support needs, listed previously.

Please be aware that there are reasons why your client might become upset if you question whether they are fit to stand trial. Firstly, people with learning disabilities and other conditions can be sensitive about feeling they are being treated differently from everybody else. Members of the SOLD user group argue they should be able to have their day in court, with the support they need. Secondly, losing legal capacity, and becoming subject to for instance, a Guardianship Order, can have far reaching implications for a person's life. Your client might assume that being unfit to stand trial is the same as losing legal capacity, and this could cause them anxiety.

You should always assume in the first instance, that the accused person is fit to stand trial. Please do not assume the person is unfit just because they have a learning disability or another condition. However, we recognise that if you do have concerns about your client's fitness to stand trial or instruct you, then you have a professional obligation to request an assessment for the person.

You should also consider what would be the most appropriate assessment for your client. If the person appears to have a mental illness, a psychiatric assessment might be best. If your client's difficulty is with communication rather than mental illness, then a speech and language therapy assessment might be the right option. You could also request a psychological assessment.

### What the psychiatrist says...

"The bar for judging someone to be unfit to stand trial needs to be set quite high because the options for the Court are limited once a trial cannot take place."

**Please note:** If you have concerns about your client's fitness to stand trial, you have a professional obligation to request an assessment for the person. However, it will be important that you:

- explain carefully to your client the reasons for the assessment, and make sure they understand
- reassure your client that the question over their fitness to stand trial is only concerned with the justice process itself, and has no implications beyond that. It does not mean that they will lose their legal capacity.

Your client can be deemed unfit to stand trial if the Court decides, due to a mental (or physical) condition, the person is incapable of participating effectively. This decision will take account of the person's ability to understand: what they have been charged with; the need to enter a plea; the purpose and details of a trial; the evidence given; and the person's ability to instruct a solicitor. It is the responsibility of the Court to make the final decision. The Court can request reports from one or all of a psychiatrist, a psychologist or a speech and language therapist to help inform the decision.

The criteria are set out in section 53F of the Criminal Procedure (Scotland) Act 1995

An assessment report will provide a professional opinion as to whether, on the balance of probability, your client is fit to stand trial. An assessment can be requested by the court, or the Crown Office and Procurator Fiscal Service, or by the Defence Solicitor.

### What the solicitor says...

“If I have concerns about my client’s vulnerability, I will raise it with the Fiscal at the very outset. We should flag things up to the PF.”

The assessment could advise that your client is fit to stand trial, but recommend that supports be put in place for the person’s communication support needs, such as perhaps one or more special measures, to enable them to stand trial.

The threshold for ‘unfitness’ is set quite high, because the Court has only limited options if a trial cannot proceed. Instead of there being a trial, there will be an ‘examination of facts’ hearing under section 55 of the Criminal Procedure (Scotland) Act 1995.

### What are the possible outcomes for your client?

If your client is assessed as unfit to stand trial and, by examination of facts, found to have committed the offence(s), mainstream court disposals such as prison or a community payback order are no longer available options. Your client will not have a criminal record.

### What the psychiatrist says...

“Have consideration for what the end outcome for your client could be before you choose to go down this pathway.”

The options available to the Court (further medical reports can advise the Court on available options) are:

- In the case of minor offences, the reports may make no recommendation, and the Court may take no further action; instead dismissing the case and making **No Order**.
- For more serious offences, your client can be referred to mental health services. This could involve:
- **Welfare Guardianship Order:** a Guardian (in this situation usually the local authority) is appointed by the Court to take responsibility for making decisions on the person’s behalf. This can cover such matters as where the person lives, who they associate with, access to the internet, etc.
- **Compulsion Order:** applies to offences that could incur a custodial sentence.
- **Compulsion Order and Restriction Order (CORO):** this applies to the most serious offences and where there is deemed to be a significant risk of harm to the public if the person remains at large. It means the person will be detained in hospital and their activities outside of the hospital will be restricted. The Scottish Ministers need to agree to treatment plans, and have final authority on risk management plans (including whether the person can move to a less restricted environment).
- **Supervision and Treatment Order:** this is a community-based Order, requiring the person to receive treatment under the supervision of a mental health or learning disability team.

There are two other orders available to the Court:

- **Interim Compulsion Order:** this can be used to allow for more information on the person to be gathered before a final sentencing decision. It is usually used when consideration is being given to a final recommendation of Compulsion Order and Restriction Order.
- **Temporary Compulsion Order:** this is applicable after the examination of facts hearing, but before a disposal has been made. It can be used to allow the person to receive treatment in hospital, with the aim that they will recover sufficiently to be able to return to Court to stand trial after a period of time.

The final two Orders are more likely to apply if your client is suffering an episodic mental illness, such as schizophrenia or bipolar disorder, rather than long term communication support need such as a learning disability or is autistic.

#### What the solicitor says...

“It is very important though that the client is listened to, and is allowed to say what they think will work best for them.”

**Please note:** Being judged unfit to stand trial will put your client on a particular path. Getting the assessment is important, and should be requested if there are concerns. Understanding where that may lead in terms of proceedings is also important. For instance, for minor offences it may lead to no recommendations on disposal, and no Order. But for serious offences it can lead to mental health disposals.

Again, at this point we have to acknowledge that there is tension here for many people who have communication support needs. In an ideal world, members of the SOLD user group say they would prefer to have their day in court like everybody else, with support if they need it. However, we understand that if you have concerns about your client’s fitness to stand trial or instruct you, then you have a professional obligation to request an assessment for the person. If a person is unable to participate effectively in a trial, the fairness of the process may be lacking.

If you feel that to stand trial would be unfair to your client, and that a referral to mental health services would be the right outcome, then you could request a psychiatric assessment. But consider carefully which would be the most appropriate assessment. If your client’s difficulty is with communication rather than mental illness, then a speech and language therapy assessment might be the right option.

#### What the psychiatrist says...

“For more serious offences where multi-agency input would benefit the person, the legal framework can provide access to services.”

### What the solicitor says...

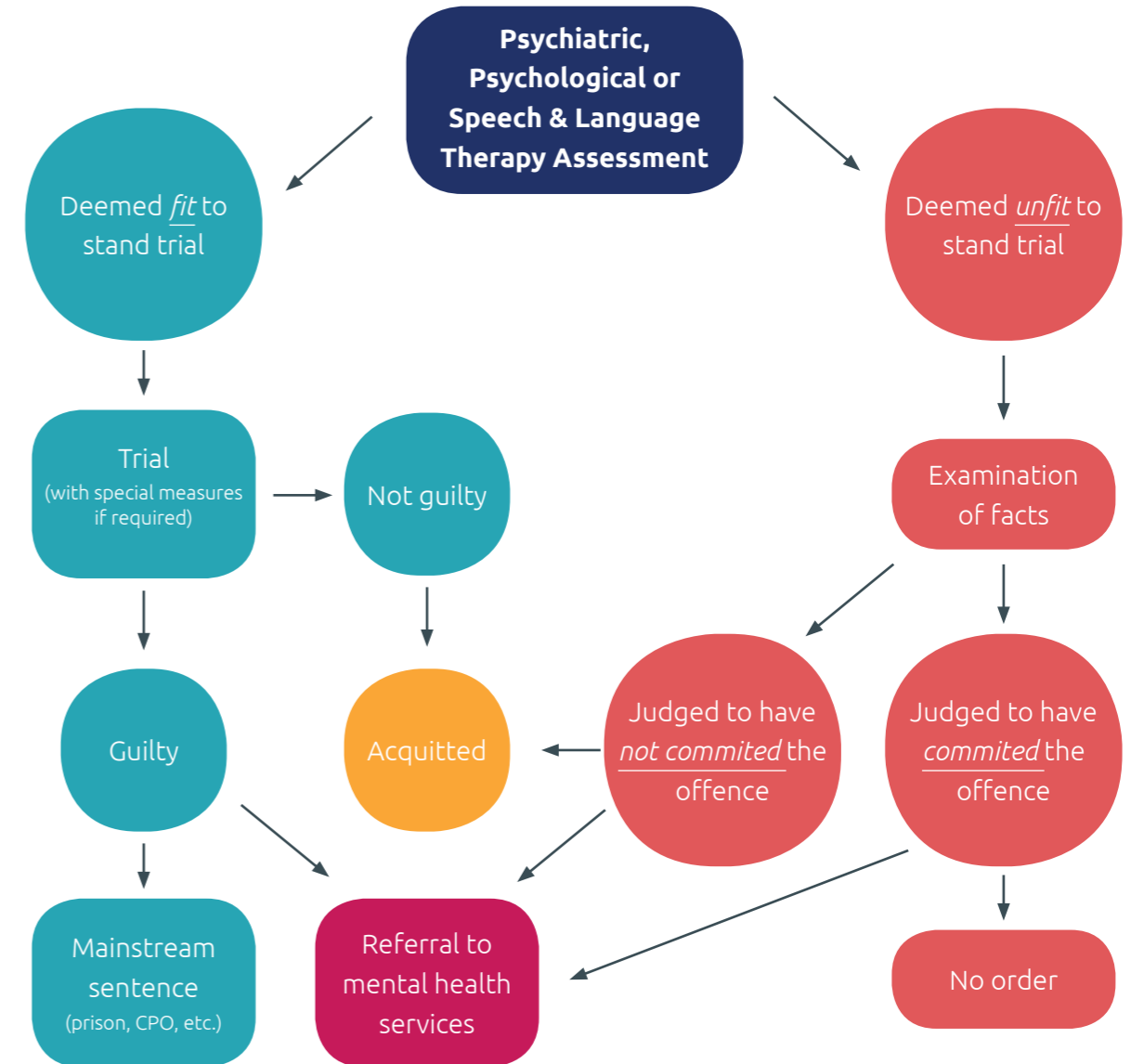
“In my experience, it’s best to ask the Legal Aid Board for a psychiatric assessment before the case goes any further. The benefit to the client is that they might get treatment they need, and they might avoid prison.”

Please note for clarification: in a legal aid case, a solicitor can ask SLAB for authority to obtain this assessment.

**For reference:** [61] There is no stipulation as to the nature of the evidence upon which the court may be satisfied as to unfitness. It is difficult, however, to conceive of circumstances in which the court would make a decision of a mental unfitness said to arise from a medical condition without the evidence of a psychiatrist, psychologist or other appropriate medical professional. The consequence of a finding of unfitness in most cases will be an examination of the facts, although provision is made (section 54(2)) for desertion pro loco et tempore by the court on the application of the prosecutor. Such a course of action may be appropriate, for example, in the case of a temporary unfitness.

(Murphy v. HM Advocate [2016] HCJAC 118) <https://www.scotcourts.gov.uk/search-judgments/judgment?id=3eae24a7-8980-69d2-b500-ff0000d74aa7>

The diagram below illustrates the pathway your client could take.



# About SOLD

## Further information

On the procedures concerning fitness to stand trial, see the Code of Practice (volume 3) in relation to the Mental Health (Care & Treatment) (Scotland) Act 2003:

<https://www.gov.scot/publications/mental-health-care-treatment-scotland-act-2003-code-practice-volume-3-compulsory-powers-relation-mentally-disordered-offenders/pages/5/>

To find a psychiatrist, see the Royal College of Psychiatrists Scotland website: <https://www.rcpsych.ac.uk/mental-health>

To find a psychologist, see the British Psychological Society website: <https://www.bps.org.uk/lists/EWT>

To find a speech and language therapist, see the Royal College of Speech & Language Therapy website: [www.rcslt.org/](http://www.rcslt.org/)

**SOLD aims to reduce offending and improve support for offenders with significant communication support needs in Scotland.**

We do this by:

**1. Providing a forum for professionals from all relevant sectors to share learning, identify challenges and develop solutions**

**2. Enabling people with communication support needs to inform and contribute to all aspects of the work of SOLD**

**3. Increasing knowledge and awareness of approaches to meet the support needs of people who have communication support needs in the justice system**

**4. Achieving change that improves support for people with communication support needs who are accused or convicted of committing a crime.**

The work of SOLD is funded by the Scottish Government Community Justice Division.

SOLD is led by a partnership between People First Scotland and ARC Scotland. Support and guidance for our work comes from a user group of people with learning disabilities and autism who have experience of the justice system and an Advisory group which is Chaired independently, and comprised of professionals from across the justice system. The User group are also represented on the Advisory group.

**ARC Scotland** is a national charity that advances knowledge, practice and policy in health and social care for the benefit of people with learning disabilities or other additional needs. We are committed to people with learning disabilities or other support need being at the heart of their services and communities.

**People First Scotland** is a collective self-advocacy organisation that seeks to change the way people with learning disabilities see themselves and are thought of by society, and to influence law and social policy that affects people with learning disabilities.

There are over 330 members of the SOLD network from a broad range of backgrounds including: voluntary sector providers, Police Scotland, NHS, Social Work, academic institutions, Scottish Courts and Tribunals Service, Scottish Government and the Crown Office and Procurator Fiscal's Service (COPFS).

#### **Get involved with SOLD**

Membership of SOLD is free and open to anyone who shares our aim. This including people with communication support needs, their carers, professionals in the justice system or those providing support for people with communication support needs. To join, visit our website: [www.soldnetwork.org.uk](http://www.soldnetwork.org.uk)

Alternatively, you may wish to keep up to date with us via **twitter: @SOLDarcscot**

**For more information, contact Tony Bowman:** [tony.bowman@arcuk.org.uk](mailto:tony.bowman@arcuk.org.uk)  
0131-663 4444

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[www.theadvocatesgateway.org/](http://www.theadvocatesgateway.org/) **The Advocate's Gateway**

[www.cycj.org.uk/](http://www.cycj.org.uk/) **Centre for Youth and Criminal Justice**

[www.crownoffice.gov.uk/](http://www.crownoffice.gov.uk/) **The Crown Office and Procurator Fiscals Service**

[www.familiesoutside.org.uk/faqs-jargon/faqs/](http://www.familiesoutside.org.uk/faqs-jargon/faqs/) **Families Outside**

[www.forensicnetwork.scot.nhs.uk/](http://www.forensicnetwork.scot.nhs.uk/)

**The Forensic Network**

[www.keyring.org/](http://www.keyring.org/) **KeyRing**

[www.lawscot.org.uk/](http://www.lawscot.org.uk/) **The Law Society of Scotland**

[www.mygov.scot/crime-justice-and-the-law](http://www.mygov.scot/crime-justice-and-the-law)

[www.peoplefirstscotland.org/](http://www.peoplefirstscotland.org/) **People First (Scotland)**

[www.rcslt.org/](http://www.rcslt.org/) Royal College of Speech & Language Therapists  
[www.sacro.org.uk/](http://www.sacro.org.uk/) **SACRO**

[www.scotland.police.uk/](http://www.scotland.police.uk/) **Police Scotland**

[www.scottishappropriateadultnetwork.co.uk/](http://www.scottishappropriateadultnetwork.co.uk/) **Scottish Appropriate Adults Network**

[www.scotcourts.gov.uk/](http://www.scotcourts.gov.uk/) **Scottish Courts and Tribunals Service**

[www.scotland-judiciary.org.uk/29/0/Glossary](http://www.scotland-judiciary.org.uk/29/0/Glossary) **The Judicial Institute**

[www.sentencingcouncil.org.uk/about-sentencing/](http://www.sentencingcouncil.org.uk/about-sentencing/) **The Sentencing Council**

<a href="http://www.shinementoring.org/">www.shinementoring.org/</a> <b>Shine Mentoring Service</b>	Community Justice (Scotland) Act 2016
<a href="http://www.siaa.org.uk/">www.siaa.org.uk/</a> <b>Scottish Independent Advocacy Alliance</b>	Criminal Justice (Scotland) Act 1995
<a href="http://www.slab.org.uk">www.slab.org.uk</a> <b>Scottish Legal Aid Board</b>	Criminal Justice (Scotland) Act 2003
<a href="http://www.soldnetwork.org.uk">www.soldnetwork.org.uk</a> <b>The SOLD Network</b>	Criminal Justice (Scotland) Act 2016
<a href="http://www.sps.gov.uk/">www.sps.gov.uk/</a> <b>Scottish Prison Service</b>	Criminal Procedure (Scotland) Act 1995
<a href="http://www.socialworkscotland.org/">www.socialworkscotland.org/</a> <b>Social Work Scotland</b>	Equality Act 2010
<a href="http://www.talklinks.org/">www.talklinks.org/</a> <b>Talk Links</b>	Management of Offenders etc (Scotland) Act 2005
<a href="http://www.victimssupportscotland.org.uk/">www.victimssupportscotland.org.uk/</a> <b>Victim Support Scotland</b>	Mental Health (Care & Treatment) (Scotland) Act 2003
<b>UN Convention on the Rights of People with Disabilities</b>	Prisoners and Criminal Proceedings (Scotland) Act 1993
<b>Relevant Legislation</b>	Protection of Vulnerable Groups (Scotland) Act 2007
Adult Support and Protection (Scotland) Act 2007	Rehabilitation of Offenders (Scotland) Act 1974
Adults with Incapacity (Scotland) Act 2000	Social Work (Scotland) Act 1968
	Victims and Witnesses (Scotland) Act 2014
	Vulnerable Witnesses (Scotland) Act 2004

# Appendix

A few pointers to where you might find more detailed information on specific cognitive and neurological conditions.

## Learning Disability

For more information:

**People First (Scotland)** - [www.peoplefirstscotland.org/](http://www.peoplefirstscotland.org/)

**Scottish Commission for Learning Disability** - [www.sclld.org.uk/](http://www.sclld.org.uk/)

**Scottish Learning Disabilities Observatory** - [www.sldo.ac.uk/](http://www.sldo.ac.uk/)

## Autistic Spectrum Disorder (ASD)

For more information:

**Scottish Autism** - [www.scottishautism.org/](http://www.scottishautism.org/)

**National Autistic Society** - [www.autism.org.uk/](http://www.autism.org.uk/)

## Acquired Brain Injury (ABI)

For more information:

**Headway** – [www.headway.org.uk/](http://www.headway.org.uk/)

**Scottish Acquired Brain Injury Network (SABIN)** - [www.mcns.scot.nhs.uk/types-of-network/national-networks-in-scotland/nmcns/sabin4/](http://www.mcns.scot.nhs.uk/types-of-network/national-networks-in-scotland/nmcns/sabin4/)

## Dementia

For more information:

**Alzheimer Scotland** - [www.alzscot.org/](http://www.alzscot.org/)



### **Foetal Alcohol Spectrum Disorder (FASD)**

For more information:

**FASD Scotland** – [www.fasdscotland.com](http://www.fasdscotland.com)

### **Learning Difficulties (ADHD; Dyslexia; Dyspraxia; etc.)**

For more information:

**Salvesen Mindroom Centre** - <http://www.mindroom.org/>

### **Complex Trauma**

For more information:

**The Resilience Learning Partnership** – [www.resiliencelearningpartnership.wordpress.com/](http://www.resiliencelearningpartnership.wordpress.com/)

**The Centre for Youth and Criminal Justice** - [www.cycj.org.uk/wp-content/uploads/2016/09/SCLC-identification-of-care-leavers.pdf](http://www.cycj.org.uk/wp-content/uploads/2016/09/SCLC-identification-of-care-leavers.pdf)

### **Mental Health**

For more information:

**Support in Mind** - [www.supportinmindscotland.org.uk/](http://www.supportinmindscotland.org.uk/)

**Health in Mind** - [www.health-in-mind.org.uk/](http://www.health-in-mind.org.uk/)

**Penumbra** - [www.penumbra.org.uk/](http://www.penumbra.org.uk/)

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[www.soldnetwork.org.uk/publications](http://www.soldnetwork.org.uk/publications)

