

In the afternoon session, delegates divided into six round table discussions. Each discussion focused on the three areas: early identification of learning disability; support in custody; and support in court. In each category, delegates were asked to consider: what is working well at the moment; what else needs to be done; how this will improve the criminal justice system; and who needs to be involved to bring these improvements about.

The following is a collation of the results of those discussions.

### **Q1. What further work is needed to make sure that people with learning disabilities are identified at an early stage of the criminal justice pathway?**

Delegates were asked to consider a quote from the SOLD User group: **“we want to have appropriate support as soon as possible, once we have been picked up by the police”**.

#### **What is working well at the moment?**

Delegates gave three examples of practice which they considered to be working well currently.

- The Glasgow Community Triage project was cited as one example. The advice of mental health nurses is available to the police 24 hours per day, to assist with identification. However, it needs to be noted that this is specific to mental health issues, and may not be appropriate for people with learning disabilities.
- People who are already known to services are being identified early on in the journey. This would seem to suggest that information sharing is effective in some areas.
- Feedback from the police is appreciative of learning disability awareness training delivered by people with learning disabilities themselves.
- The appropriate adult service in Ayrshire provides 24-hour support, and is externally validated.

## What else needs to be done?

There was broad agreement that learning disability needs to be identified at the custody stage of the criminal justice pathway. And considerable discussion about how that can be achieved.

**Screening tools and other methods:** there was much discussion about the ways in which a learning disability might be identified, and the various screening tools currently in use, or development.

- Asking the person questions such as “which school did you go to?” can identify they have a learning disability.
- The tool described in the McKinnon Report. This recommends a triage approach similar to the project in Glasgow.
- Researchers at Newcastle University have developed a preferred tool.
- The Learning Disability Screening Questionnaire (LDSQ) is standardised and quick to administer. But it is costly.
- The screening tool used in England only seems to pick up people who already have a learning disability diagnosis.
- There was broad agreement that IQ was not a satisfactory way of defining learning disability.

Another method discussed was that of Identification, or ID cards. This is a card which a person can carry with them and show to people. The card explains the nature of their disability and the support they need.

- A number of delegates suggested it would be a good idea for people to carry ID cards.
- People with learning disabilities could take responsibility for identifying themselves.
- It has to be a personal choice to carry an ID card. It cannot be expected or imposed.
- Concern was expressed that if a person’s card fell into the wrong hands, it could expose them to bullying.

**Collaboration:** there was broad support for the involvement of other professionals and people, rather than leave sole responsibility to the police.

- It is a huge responsibility to ask the police to identify learning disability.
- The police do need to be more confident in their own judgement.
- Expertise offered by the NHS ought to be made use of. The Glasgow Community Triage was again mentioned as a good example of this. It offers early intervention, but may be difficult to implement in all areas.
- The police need advice. Speaking to social work could help with this. Although concern was expressed as to how this would be obtained at 2am.
- Anyone with knowledge of the person could help with accurate and early identification. This would include family, carers and friends.
- People with learning disabilities would like the police to get into the routine of asking them if they have a learning disability. One person added the police ask suspects about drugs and alcohol, so why not mental capacity?
- Appropriate Adults could be trained to identify learning disability.

**Complication:** There was discussion of factors that complicate the issue of identification.

- Police are reluctant to ask in case they seem rude.
- If someone is under the influence of drugs or alcohol, it could be difficult to identify a learning disability.
- Some people do not know or accept they have a learning disability. There was no clear idea about what to do in cases where the person was either unforthcoming or in denial.
- Some people are not comfortable revealing they have a learning disability, especially with strangers.
- People can present with multiple impairments and issues. People with learning disabilities are not a homogenous group.
- The stress of arrest and custody might cause anyone to present as less able than they normally would.
- Confusion over the distinction between learning disability and learning difficulty.

**Social Model:** A number of delegates suggested that attempting to formally diagnose a specific condition at this stage was unhelpful, and that an approach more in line with the social model of disability rather than the medical model would be preferable.

- The key thing is to identify that the person is vulnerable and needs support, rather than diagnose a learning disability.
- Several delegates said the key thing is to assess the person's communication difficulties, and to identify the support they need.

Other views were expressed in response to this.

- The legal process prefers diagnosis. It is clear and straightforward.
- The notion of vulnerability is vague and imprecise.

**Other points raised:** there were one or two interesting comments made out with the general themes of discussion.

- Something needs to happen to kick start the process of change.
- Communication and the effective passing on of information could be better. Social Enquiry Reports are often ignored, even though they can contain useful information regarding a person's learning disability.

**Generally points of agreement:**

- Learning disability needs to be identified early
- This needs to be consistent across Scotland

## **How would this improve the criminal justice system?**

Delegates were asked to consider how early identification of learning disability might improve the criminal justice system overall.

- The accused person with a learning disability would get the support they need at the time they need it.
- Disability awareness among the police would be better generally.
- It would be helpful to the police at this stage.
- It would help to establish better working relationships between people with learning disabilities and the police.

## **Who needs to be involved?**

Delegates were asked to consider who needs to be involved if early identification is going to be improved.

- Police Scotland
- Appropriate Adults – the service in Ayrshire as an example
- Health professionals, especially learning disability nurses
- Social Work
- Everyone, not just experts. Lots of different people have important insight including friends and family.

## **Q2. What steps are needed to ensure that a person with a learning disability receives the support they need in custody, in a consistent way?**

One suggestion delegates were asked to consider, came from the SOLD User group: **that a new specialist post be created, solely for supporting vulnerable defendants from arrest to court. This could be funded and co-ordinated centrally to ensure consistent provision across Scotland.**

### **What is working well now?**

Only one example was suggested of a practice example which is currently working well.

- Appropriate adult service in Ayrshire

### **What else needs to be done?**

Discussions on this question focused largely on three areas: the role of appropriate adults; the arguments for and against creating a new role; and the role of defence solicitors. There was broad agreement about the value of the accused person with a learning disability having the support of someone with them during questioning by the police. Delegates recognised the importance of support with communication and the need for reassurance.

- Anxiety levels can rise during engagement with the police
- Support can make the person feel more comfortable

However, there was considerable debate around the best way this support could be delivered.

- Support could be delivered by an appropriate adult, an intermediary, or a social worker.

**Appropriate Adults:** Several delegates made the point that provision of appropriate adult services could be improved.

- Police should routinely get an appropriate adult if they have the slightest feeling that one might be needed, but the use of them is sketchy.
- Provision is hit or miss, it is not reliable.
- There should be reliable provision of good appropriate adult services.

**Limitations:** A number of delegates suggested that the current role of appropriate adult is too limited.

- Several delegates said there needs to be more clarity for the role, and what its purpose is. There also needs to be a system of quality assurance introduced.
- The role needs to extend to provide support for all that need it, regardless of status or diagnosis.
- Appropriate adults should work in partnership with other professionals, such as social work.
- There needs to be a change of legislation to prevent the possibility that the appropriate adult can be called as a witness to testify against the accused person.
- Some delegates made the point that this is an extremely rare occurrence, and that it had never happened in their experience.
- Others suggested that the possibility that it can happen could reduce the accused person's trust in the appropriate adult system.
- People are wanting help to understand the situation they are in and the choices they have, but appropriate adults are not in a position to provide this advice and support.
- Appropriate adults cannot provide legal advice. If a solicitor is not present, this could be a problem.

**Improvements:** A number of delegates made suggestions as to ways that the appropriate adult might be improved.

- People should have access to appropriate adults with specialisms, such as autism.
- Training for appropriate adults should be standardised to ensure a consistent service.
- Appropriate adults should be trained to help identify learning disability.
- The role of appropriate adult could be combined with another type of support. This might help to fill any gaps.

- Appropriate adults should have the confidence to intervene and help the person understand their circumstances and consequences of their decisions and actions. They should not assume person understands what is happening.
- Appropriate adults should work in partnership with defence solicitors. Both should be present when legal advice is being given. Also, the appropriate adult can ask for a pause in questioning, which the solicitor cannot.

**New Support Role:** Delegates were invited to consider the possible benefits of creating an entirely new support role, as suggested by the SOLD User group.

- There was notable support the notion that it would be an opportunity to create a national service that was consistent across Scotland.
- Other delegates repeated a preference for local flexibility.
- There was also broad support for a service that could provide support to all vulnerable defendants.
- A specific new profession could ensure any present gaps in support are covered.
- A number of delegates favoured the same person providing support right through the process. It was suggested that support at present is too disrupted.
- People with learning disabilities want to be supported by someone who understands the legal process and has no other interest than to support them.

**Solicitors:** Many delegates commented on issues with the way that some defence solicitors presently practice, and ways that practice might be improved.

- Legal advice that is given over the phone might be difficult to interpret.
- Under stress, people with learning disabilities might forget the advice they were given. This could have negative consequences for the outcome of an interview.
- It could be difficult for a person with a learning disability to stick to the advice of “no comment” if the solicitor is not present. They could be cajoled into answering too quickly.

- One delegate questioned whether if the legal advice is to say “no comment”, the police could simply record that, and forego the interview.

**Improved practice:** There was considerable support for the principle that the defence solicitor should always be present in person if the accused person has a learning disability.

- If the need for an appropriate adult is identified, it should be standard practice that the solicitor is present.
- Phone advice is not appropriate. Advice should be delivered in person.
- Additionally, one delegate suggested that there could be solicitors available who are accredited in learning disability training.

**Other points raised:** Out with the main themes of discussion, there were a number of other interesting comments made by delegates.

- There should be a standardised provision of support in custody across Scotland.
- Police have ultimate responsibility for bringing in support. They should get training to judge when this is needed. But the police cannot be experts in everything, so a decision would need to be made about what training would be most useful.
- There needs to be more thought given to the principle of accessibility. People should communicate in plain English.
- The Letter of Rights should be available in easy read, and different formats.
- Many delegates made the point that the whole legal process should be made easier for everyone to understand.

## **How would this improve the criminal justice system?**

Delegates were asked to consider how the criminal justice system as a whole might be improved if accused people with learning disabilities were to get the support they need whilst in police custody.

- A number of people made the point if better support made the system work more effectively, it would save money in the long term. This was a point also made by Iain Burke in his presentation.
- All professionals would be more aware of the challenges faced by people with learning disabilities.

### **Q3. What are the key features of effective support for people with learning disabilities in the Court process?**

Delegates were asked to consider a couple of quotes from the SOLD User group: “**we have the right to a fair trial,**” and “**before we get to court, we want support to understand the court process**”.

#### **What is working well now?**

(e.g. in terms of existing special measures)

Only one example was offered of a practice example that is currently working well.

- Some appropriate adult services where they provide support in court. e.g. Ayrshire.

#### **What else needs to be done?**

(e.g. are there aspects of the registered intermediaries scheme that might be expanded?)

This question generated a lot of debate, and discussions covered a diverse range of areas. The principal focus was on issues relating to the use of special measures, and ideas around provision of communication support in court. Amongst other things however, there was much conversation about how any changes or improvements would be resourced.

**Special Measures:** The majority of delegates appeared to agree there should be no distinction between a vulnerable defendant and a vulnerable witness when it came to giving evidence.

- Many delegates said there should be the same use of special measures for the accused as for witnesses.
- There is too much focus on witnesses and not enough on the accused.

There was considerable discussion about what needed to be done to improve access to special measures for accused people with learning disabilities.

- A number of delegates said there needs to be a change in practice.
- Others said more people need to be made aware of special measures.
- Several people suggested people with support needs ought to be given more time in court, in order to be supported to participate fully.

There were a number of comments made by delegates in relation to the difficulties experienced with special measures at present.

- Applying for them at present is ad hoc.
- The use of special measures is discretionary.
- They are not always granted when applied for.
- When you apply for special measures you do not always hear back whether they have been granted or not.

Substantial consideration was given to the issue of communication support for people with learning disabilities in court. Over all there was broad agreement about the need for support, and the majority of opinion favoured the use of intermediaries, as introduced by Joyce Plotnikoff in her presentation, as opposed to extending the use of appropriate adults.

- Awareness is increasing that support services need to improve.
- It is in everyone's interest that fairness happens for all.

Some delegates provided comments to explain why the question of support may have been over looked in the past.

- Everyone has a different perception of what fairness is.
- All people that work in the criminal justice system have their own perspective, and are under pressure to get their own job done.

This last comment would seem to hint at the importance of a collaborative approach if change is to be achieved: Collective agreement about prioritising the need for support.

**Appropriate Adults:** Delegates discussed the use of appropriate adults to provide support in court.

- One person said appropriate adults ought to be given jurisdiction in court.
- It was acknowledged that in some areas appropriate adults do provide this support, but there is a lack of consistency across the country.
- One delegate said appropriate adults are not familiar with the court system.

**Registered Intermediaries:** There was considerable interest in the idea of using intermediaries to provide support in court.

- The experience in England of the intermediary scheme is very useful.
- This could be adopted in Scotland.
- We need to look further afield than just England. The service developed in Northern Ireland is better.
- The intermediary role is different altogether.
- If it facilitates better communication and understanding, it would be ludicrous not to use it.

**Other point of view:**

- One person suggested independent advocacy could provide support through the whole process, but that provision was patchy.

**Resources:** There was some discussion about financial resources and how provision of a support service in court could be resourced.

- We need to find a solution to the resource issues.
- Funding is crucial if this is to work.
- Money could be recycled from efficiencies in the court system. If support makes the system less wasteful, then it should save money in the long term. This was a point also made by Iain Burke, during his presentation.
- A number of delegates suggested local authorities should find the budget.

There were a number of other issues which were covered during discussions.

**Consistency:** The point was made that people with learning disabilities need to receive the same standard of support,

regardless of the court in which they appear, or which part of the country.

- Provision needs to be consistent across all types of court.
- Provision needs to be consistent across all areas of Scotland.
- There needs to be legislation and quality assurance built in.
- Several delegates said the Scottish Government needs to give clarity about the way forward.

A number of delegates commented on the need for local flexibility in any system.

- A locally implemented system is preferable.
- Nationally co-ordinated systems usually result in local inconsistencies.

**Diversion:** One delegate raised the issues of diversion, by which a person with a learning disability could be diverted away from the criminal justice system to for instance, forensic hospital services. Reference was made to the Community Triage project in Glasgow. However, this was specifically aimed at people with mental health problems. It may not be appropriate for people with learning disabilities.

- It was acknowledged that there is confusion about what diversion means.
- Some people want to have their say in court and prove they haven't done anything wrong.

**Communication:**

- Communication is disconnected – not all written reports get passed on, even to the sheriffs.
- Information gathered at the early stages of the criminal justice system does not get past on to the later stages.
- Information does not get passed down the line.
- Details of a person's learning disability could be included in the antecedents.
- The procurator fiscal needs more information about the accused, not just the offence.

**Other points raised:**

- Need an understanding Judge.
- There should be training for all in the criminal justice system, court staff as well as police and solicitors.

- Early assessment is crucial for getting the right supports in place.
- The length of time between arrest and court could have psychological effects in terms of stress.

## **How might these improve the criminal justice system?**

Delegates were asked to consider how the criminal justice system as a whole might be improved if accused people with learning disabilities were to get the support they need to participate on court.

- An improved relationship between court and the accused person with a learning disability.
- Should help to avoid re-offending. Especially if support goes right through, including aftercare.
- Should help to avoid long term hospital care.
- Should help to avoid the need for risk management plans if people are dealt with properly.

## **Who needs to be involved?**

Delegates were asked to consider who needs to be involved if support for people with learning disabilities in court is going to be achieved.

- Solicitors.
- Appropriate adults/intermediaries.
- Social Work.
- Health services.
- Police Scotland.
- People who ensures people with learning disabilities have their day in court.
- Someone to support the whole process.