



Improving support for people with learning disabilities

from arrest to court

SOLD Conference report
24th August 2016



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Introduction

This report collates the feedback from delegates who attended the SOLD conference 'Improving support for the accused person with a learning disability from arrest through to court', held on 24th August 2016 in Edinburgh.

This event focused on access to support from the point of arrest to the conclusion of the court process. This was partly timed to coincide with the Scottish Government's review of appropriate adult services, and partly because the SOLD User group had identified it as an important issue.

The conference was fully subscribed and was attended by 92 delegates, all of whom have an interest in the criminal justice system. This included senior professionals from the legal profession, representing the Judiciary (1 attendee), Law Society (3), Faculty of Advocates (1), Public Defence Solicitors' Office (2) Scottish Courts (5) and the Crown Office (5). Other professionals represented included Psychiatry (2), Clinical Psychology (6), Social Work (11), Health (7), Police (4), Prison Service (1), voluntary sector (10), independent advocacy (3), Scottish Government (4) academics (5), Appropriate Adult services (2), Local Authority (5), EHRC (2), SOLD staff (3) and support workers (5).

The conference was also attended by 5 members of the SOLD User group who are people with learning disabilities and have experience of the criminal justice system. This group also prepared a discussion paper that was circulated to all delegates in advance of the conference to help ensure that their views were included and considered. This is included in section 5: "The views of people with learning disabilities."

Keynote presentations were:

Steve Robertson, Director, People First (Scotland) and member of the SOLD User group: 'Experiences of the criminal justice system from a person with learning disability's perspective'

Lady Dorrian, Lord Justice Clerk: 'Offenders with learning difficulties – an even playing field?'

Iain Burke, Convenor, Law Society Equality & Diversity Committee: 'Supports available to accused people with support needs from a Defence perspective'

Alison Di Rollo, Solicitor General: 'Supports available to vulnerable witnesses and the accused from a Prosecution perspective'

Joyce Plotnikoff, Director, Lexicon Ltd: 'Intermediaries in England and Wales: messages for the developing role of appropriate adult in Scotland'

The event was Chaired by Sheriff Andrew Cubie, Deputy Director, Judicial Institute, and also included an introductory presentation by Dan Gunn, retired Prison Governor and Chair of the SOLD Advisory Group.

There was consensus among all of the keynote speakers about the importance of enabling full participation of the vulnerable accused person throughout the criminal justice pathway, and of fair and equal access to justice.

Quotes from these presentations have been used to illustrate the findings of this report. Films of the keynote presentations are available on the SOLD website:

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

The presentations were followed by round table discussions where delegates focused on the challenges and opportunities associated with:

- Identifying learning disability at the custody stage of the criminal justice pathway
- Ensuring the accused person with a learning disability receives the support they need in police custody
- Ensuring the accused person with a learning disability receives the support they need to participate fully in the court process

This report collates delegate feedback on these complex issues, from a range of professional and personal perspectives, and the solutions proposed by delegates to these challenges.

About SOLD

SOLD was established in response to the Keys to Life, (the 2013 Scottish Government strategy on improving the quality of life for people with learning disabilities), recommendation 46:

'That a national criminal action group is to be established in 2013, consisting of professionals in this field and working in partnership with people with learning disabilities, to identify challenges and promote opportunities and influence change and to provide support for people with learning disabilities in the criminal justice system.'

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

SOLD is led by a partnership between People First Scotland and the Association for Real Change (ARC) Scotland. Support and guidance for our work comes from a User group of people with learning disabilities who have experience of the criminal justice system, and an Advisory group of professionals and a representative from the User group.

There are over 250 members for the SOLD network. Our members come from a broad range of backgrounds including: voluntary sector providers, Police Scotland, NHS, Social Work, academic institutions, Scottish Courts, Scottish Government and the Crown Office and Procurator Fiscal Service (COPFS).

SOLD relies on the experience, knowledge and commitment of its members to achieve change.

What we do

SOLD aims to:

Reduce offending and improve support for offenders with learning disabilities in Scotland.

We work to achieve this by:

- Providing a forum for professionals from all relevant sectors to share learning, identify challenges, develop and promote creative solutions
- Supporting and facilitating opportunities for people with learning disabilities to engage with, inform and influence the work of SOLD
- Increasing knowledge and awareness of issues concerning the relevant policy, legislation, practice framework, and the challenges and opportunities in the sector
- Working in partnership with the Scottish Government and statutory bodies to achieve change

In 2015, SOLD published *The Criminal Justice Pathway for People with Learning Disabilities*. This report addressed some key challenges and opportunities for change to help improve support and reduce offending amongst people with learning disabilities in Scotland.

The report can be downloaded for free from the SOLD website:

<http://soldnetwork.org.uk/resources/>

Become a member of the SOLD Network

Membership of SOLD is free and open to anyone who shares our aims. We invite membership from people with learning disabilities, professionals who work in the criminal justice system or provide support for people with learning disabilities.

SOLD members receive regular updates via email, with news of upcoming research, Government policy and consultations that affect the criminal justice system. You will also receive invitations to our SOLD network events.

To join, visit our website: www.soldnetwork.org.uk

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

@SOLDarcscot

For more information, contact Tony Bowman:

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Findings

Findings

Delegate contributions were gathered through an individual questionnaire and facilitated round table discussions. They were asked to consider challenges and opportunities related to:

- Identifying learning disability at the custody stage of the criminal justice pathway
- Ensuring the accused person with a learning disability receives the support they need in police custody
- Ensuring the accused person with a learning disability receives the support they need to participate fully in the court process

“I can’t even imagine how difficult it would have been without the proper support. For most of the people with learning disabilities who have been involved in the SOLD project, coping without support was the harsh reality. And I don’t think that is good enough and to be honest, I think that is unacceptable.”

- Steve Robertson, SOLD User group

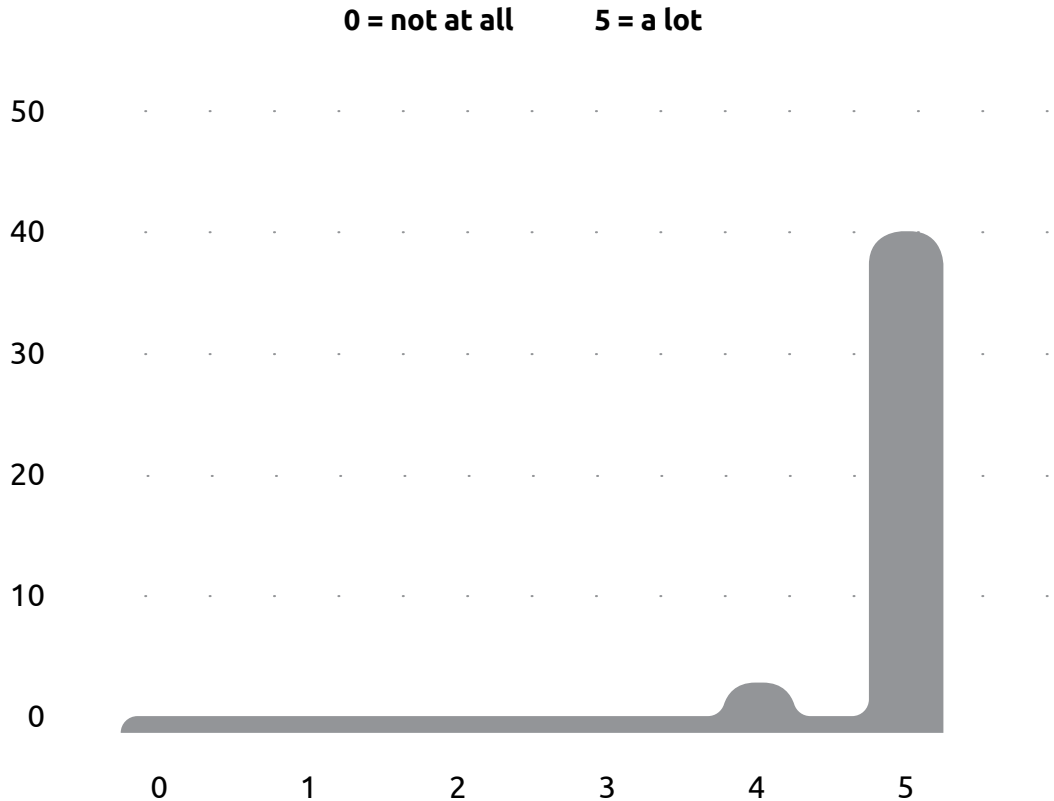
“The whole judicial system needs to be accessible and inclusive to all people, regardless of impairment.”

- Iain Burke, Convenor, Law Society Equality & Diversity Committee

Identifying learning
disability at the custody
stage of the criminal
justice pathway

In their individual questionnaires, delegates were asked the following questions:

How important do you think it is that people with learning disabilities are identified at an early stage in the criminal justice process?



This question did not require delegates to offer comments, however, one person stated:

“Incredibly important. Don’t think a tool will do this. Think you need training and educated professionals to do this effectively.”

How effective are we at identifying people with learning disabilities at an early stage of the process?



Again, delegates were not required to add comments for this question, but one person stated:

"I think it is different in different areas."

The first chart shows there was agreement about the importance of being able to identify learning disability at the beginning of the criminal justice pathway. The second chart demonstrates that the majority of delegates felt we do not effectively identify people with a learning disability at an early stage.

Round table discussions

The subject of early identification of learning disability generated considerable interest among delegates.

There was a range of opinions expressed on the best way this could be improved. These fell into the broad themes of screening tools, collaboration and communication.

- **Screening Tools**

“Liaise with clinicians to identify suitable screening tools.”

“Best approach is to communicate with the individual.”

Many delegates favoured a screening tool that would allow the police, with the collaborative support of other professionals such as learning disability nurses, to identify learning disability in custody. This would confirm the vulnerability of the individual, and that an appropriate adult ought to be requested.

However, there were other delegates who expressed doubts as to whether screening in custody could work reliably. Some felt that screening tools take too long to complete for the length of time the accused person is likely to be in custody.

Some delegates were opposed to the use of a screening tool in custody on the grounds that it would exclude other vulnerable accused people who also require support. It was suggested that, regardless of impairment, a more constructive approach would be to focus on assessing the individual’s communication ability and the support required to meet that need. This would be similar to the way Registered Intermediaries in England and Wales provide people with communication support to participate in the court process.

very beginning, and we must have somebody who is completely independent, who can support that person without fear of being called as a witness, or being said to be influencing or directing the person in any way.”

- Iain Burke, Convenor, Law Society Equality & Diversity Committee

- Improved collaboration and communication

“Should be cross-agency – a collaborative approach.”

“Enhanced communication between agencies and information sharing.”

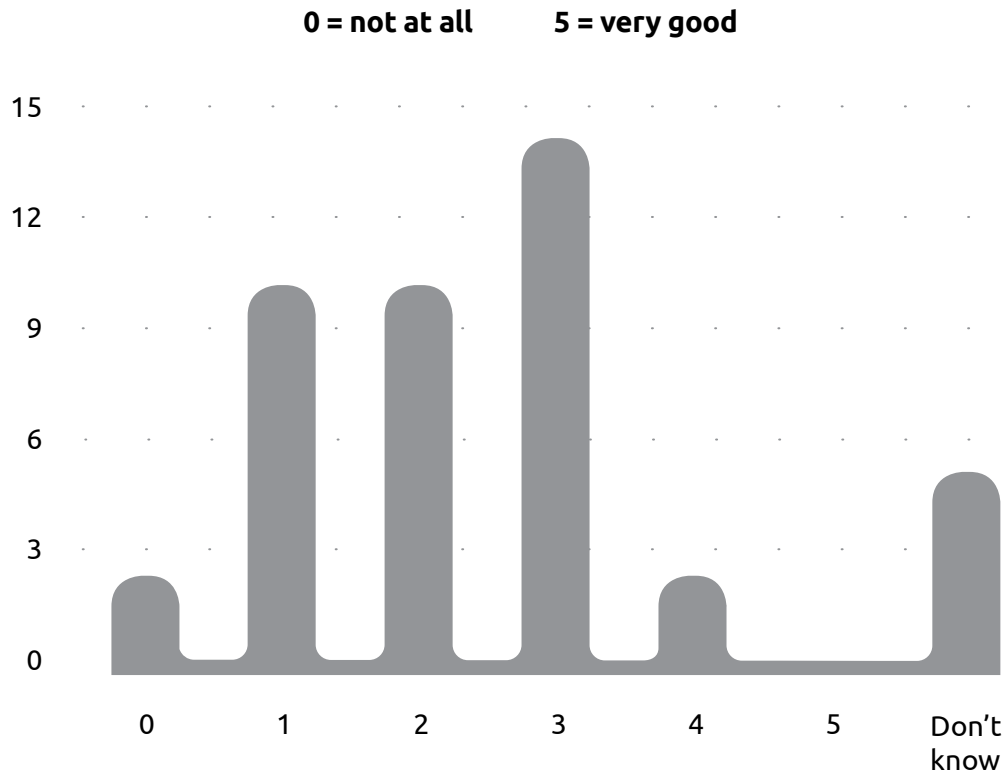
Regardless of delegates’ views on the value of screening tools, many delegates said that a more collaborative approach was necessary to enable the police to utilise the knowledge of other professionals, most notably learning disability nurses and other health professionals.

Delegates discussed the subject of effective information sharing between professional agencies. There were many comments suggesting that where there is pre-existing knowledge of the person’s learning disability, it would assist the police in ensuring the accused person has prompt access to support if this information were available to them. There were also comments stating the importance of personal knowledge of the accused individual, and that friends, family and any professional who knows the person well could also have a valuable contribution to make.

Ensuring the accused person with a learning disability receives the support they need in police custody

In their individual questionnaires, delegates were asked the following question:

How effective are we at providing people with learning disabilities the support they need while in police custody?



Comments included:

"Improvements need to be made."

"Provision is patchy – something of a postcode lottery."

“I think it varies in different areas. I think the difficulty might also be that not everyone will be ‘diagnosed’ with a learning disability, but still require support.”

“I scored 4, but that is based on our service in [local authority area]. Not so sure about the rest of Scotland.”

The above chart shows that a small amount of delegates felt that a good level of support was provided in custody, however the majority pointed to a need for improvement of support for people with learning disabilities in police custody. This is likely to reflect the varying provision of appropriate adult services in different parts of Scotland.

Round table discussions

Discussions focused on the roles of appropriate adults, defence solicitors and the possibility of developing a new specialist justice support role.

Overall, there was agreement about the value of the accused person with a learning disability having the support of someone alongside them when being questioned by the police, however there was debate about the best way of doing this.

“So far as a right to a fair trial is concerned, what requires to be secured is the ability of the vulnerable suspect to understand the nature and potential significance of police questioning, the nature and extent of his rights, and to exercise them in a meaningful way.”

- Lady Dorrian, Lord Justice Clerk

“Even though I said I understood, now looking back there was lots of bits I didn’t understand. But I was scared to say I didn’t understand because I was worried I’d come across as obstructive, or that I was being difficult, or not helpful.”

- Steve Robertson, SOLD User group

- **Appropriate Adults**

“The Appropriate Adult role requires to be strengthened – at present it is not fit for purpose.”

“Clear guidance and protocol needs developed nationally.”

There were two parts to this discussion: the provision of appropriate adult services across Scotland, and the definition of the role itself. Discussions previously with professionals had revealed confusion about the Appropriate Adult role.

Although it was recognised that in some areas of Scotland, Appropriate Adult services were providing a reliable service, many delegates were concerned about the lack of consistency in provision of the service. In some parts of the country, services are reliant on volunteers and cannot guarantee that someone will be available when requested by the police.

Some delegates suggested the level of support provided was too limited. For instance, they are unable to offer reassurance or advice, or to work together with the defence solicitor.

In their briefing paper (section 5), the SOLD User group set out what support they felt accused people with learning disabilities needed in police custody. This includes a more proactive approach, explaining their rights, and working with the defence solicitor. [Because the Appropriate Adult can be called as a witness, the solicitor will not speak with the accused person when they are present].

Some delegates expressed support for a nationally organised Appropriate Adult service, with nationally enforced service-level standards. This would help to ensure a more consistent level of provision across Scotland.

Although some felt this could be achieved by making changes to the role of Appropriate Adult, others agreed with the SOLD User group that the role as currently defined, could not meet all the needs of accused people with learning disabilities.

“The Appropriate Adult had no time with me prior to the interview to help gauge my level of understanding or my ability to communicate.”

- Steve Robertson, SOLD User group

“It is this inconsistency that is one of the single biggest barriers to people with difficulties getting the help they need.”

- Iain Burke, Convenor, Law Society Equality & Diversity Committee

- **Defence Solicitors**

"All identified learning disabilities must have solicitor present at interview."

"Solicitor attendance at police station should be compulsory."

Most delegates agreed that giving legal advice to vulnerable defendants by telephone is not satisfactory. Many delegates agreed that if the accused person has a learning disability or any other vulnerability, the solicitor should always attend in person.

There was also agreement among delegates that the solicitor and, either the Appropriate Adult, or whoever else is supporting the accused person, ought to be able to work together. At present, the possibility of the appropriate adult being called as a witness, prohibits them from supporting the accused person in meetings with the solicitor.

"It was not until the end of the interview that they told me that if I'd said no comment, I could have went back to make a statement with my solicitor present. But nobody told me this before the interview."

- Steve Robertson, SOLD User group

Note of clarification: the accused could go back to be interviewed under caution, with his solicitor present.

- **New Specialist Justice Support Role**

“There is need for a new role.”

“This support person can be involved through entire process.”

In their briefing paper, the SOLD User group suggested that an entirely new specialist post should be created. This would be responsible for supporting vulnerable defendants from arrest to conclusion of the court process. During the round table discussions, many delegates expressed interest in this idea.

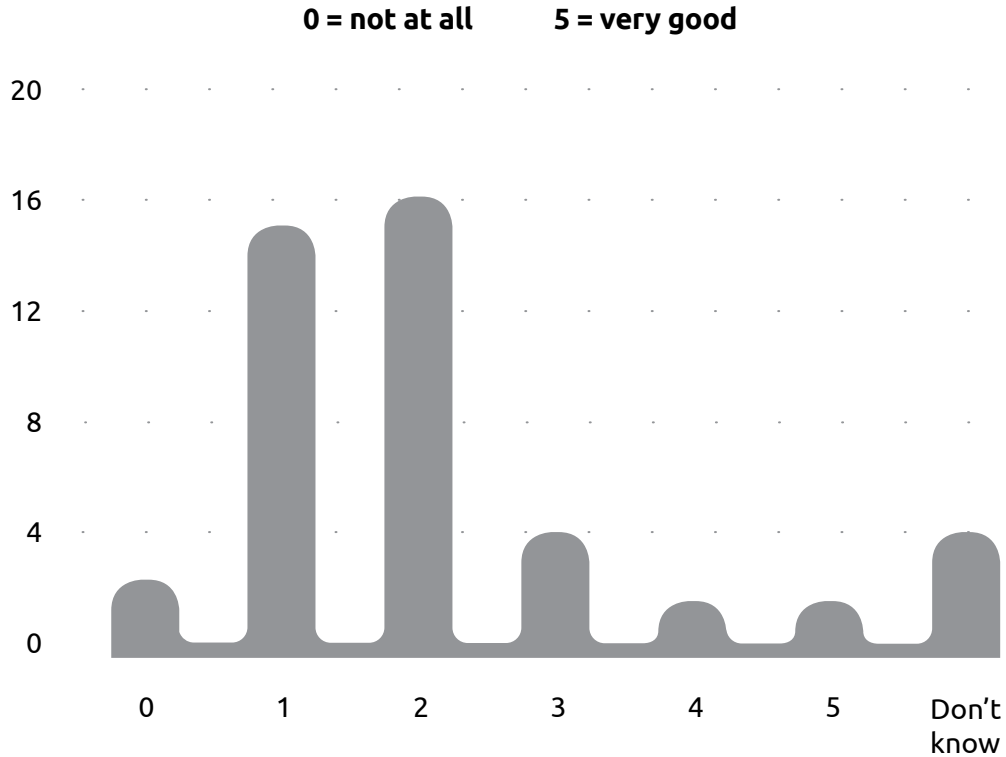
Some delegates suggested that creating a new role could be an opportunity to ensure that all current gaps in provision are covered: for example, removing the possibility of being called as a witness. This would allow for support to be provided in the accused person’s meetings with the solicitor.

Many delegates stated that any new role should provide support for all defendants with a communication need, not only those with a diagnosed learning disability. This could include people with autism or acquired brain injury. There was also significant agreement with the accused being supported by the same person from arrest and through the court process. Presently, only one Appropriate Adult service in Scotland provides support in court.

Ensuring the accused person with a learning disability receives the support they need to participate fully in the court process

Delegates were asked the following question in their questionnaires:

How effective are we at providing people with learning disabilities the support they might need while engaged in the court process as the accused?



Comments included:

"Poor."

"Depends on area. Seems quite poor in many areas and a little better in others. Seems there is a resistance to Appropriate Adults being involved in the court process. There needs to be an individual that can provide this support."

The above chart demonstrates the prevalent view among delegates that currently the accused person with a learning disability is not supported to participate fully in the court process.

A minority of delegates felt the present provision of special measures is sufficient. However, a majority were clear that improvements were needed. Joyce Plotnikoff's presentation on the Registered Intermediaries scheme in England and Wales helped to raise awareness of a different approach.

- **Round table discussion**

Delegates agreed that fair access to justice is in everyone's best interests. In his presentation, Steve Robertson from the SOLD User group made clear the SOLD User group's view that this must include the right of every citizen to have their day in court, and that diversion from prosecution is not necessarily in the best interests of many people with learning disabilities.

Delegates felt that achieving fair access to justice would also depend upon improving communication support, consistency of support and the application of special measures. The principle focus of discussion was on the provision of communication support in court and the use of special measures.

"The state must also ensure that the accused is properly equipped to have effective participation in his or her fair trial."

- Lady Dorrian, Lord Justice Clerk

- **Communication support**

"The Registered Intermediary role seems an obvious solution."

"Requires Appropriate Adults to attend courts."

"We should look at Northern Ireland Intermediary model as quoted by Joyce Plotnikoff as being an improvement on the England & Wales model."

The need for the vulnerable accused person to receive effective support with communication in court was raised by many delegates. Most agreed that improvement is needed in this area. As the above quotes illustrate, there was interest in exploring the use of Registered Intermediaries (RI) as a mechanism to provide this. The RI conducts an intense period of preparatory work with the vulnerable person prior to the trial to assess the person's communication ability. [Joyce Plotnikoff used the example of a person who invariably answered "yes" to closed questions. Therefore, only open questions were used when this person was giving evidence]. The RI will then identify what supports will enable the person to participate in the court process. For example an object the person can carry with them into the witness box, to help them manage their anxiety.

References were made to the Registered Intermediary scheme in Northern Ireland, where the support is available to the accused, unlike in England and Wales, where it is limited to vulnerable witnesses.

However, some delegates suggested expanding the role of Appropriate Adults to provide support in court.

“Intermediaries can transform the quality of the questioning process in a very positive way. They are particularly effective in helping witnesses with learning disabilities.”

- Lady Dorrian, Lord Justice Clerk

“Even if questions are short and simple, they are often far too fast. Pace of questioning is actually quite difficult when people need time to process the question.”

- Joyce Plotnikoff, Lexicon Ltd

- **Consistency**

“Consistency across all areas ensuring the same person support throughout the journey.”

Most delegates agreed that provision of support in court needed to be consistent, both in terms of the quality of service provided, and in terms of availability across Scotland. This would most likely require a nationally organised service, with nationally enforced service-level standards, to help ensure a consistent level of provision, similar to suggestions made to improve the Appropriate Adult service.

- **Special Measures**

“Tailored special measures for trial court.”

There was broad agreement that provision and access to special measures should be the same for the vulnerable accused, as they are for the vulnerable witness. With the exception of two of the measures, this is already the case, however, we heard that these special measures were rarely requested for the accused in practice. This points to the need for a change in cultural attitude, whereby in order to ensure participation in a fair trial the needs of the vulnerable accused are in general accepted as equal in status to those of the vulnerable witness.

“The Northern Ireland Intermediary scheme has learned from the problems in England, and they have included work with the accused in their pilot programme.”

- Joyce Plotnikoff, Lexicon Ltd

Full details of the findings from the questionnaire and round table discussions, plus background information to the topics discussed, are available from the SOLD web site:

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

How might the criminal justice system benefit by improving support for the accused person with a learning disability?

Delegates suggested four key ways in which improving support for the accused person with learning disabilities would positively impact on the wider criminal justice system:

1. Vulnerable people would receive the support they needed at the right time. This would begin as early in the process as possible and be available throughout. The effect would be to make the criminal justice system more fair and equal.
2. Working relationships would be improved between the vulnerable accused person and the various professionals involved at each stage of the pathway.

“Traditional, adversarial questioning in court, how we do it, is probably the least effective way to elicit reliable, accurate and comprehensive evidence from witnesses.”

- Lady Dorrian, Lord Justice Clerk

3. Providing the supports that would enable the vulnerable accused to participate fully would make the whole system, but particularly the court process more effective and efficient, and in the longer term likely to save money.

“If you resource this at the beginning, you’ll make savings down stream.”

- Iain Burke, Convenor, Law Society Equality & Diversity Committee

4. Intervention made within the criminal justice system will help to raise awareness of support that individual may need, including support to address their offending behaviour. This will be especially true for people whose learning disability was not previously identified, and may lead to a reduction in re-offending amongst people with learning disabilities.

The views of people with learning disabilities

SOLD are committed to including the views of people with learning disabilities in our work. The SOLD User group is made up of people with learning disabilities who have experience of the criminal justice system as the accused person. Prior to the conference, they were consulted on the supports they felt would enable them to participate fully from the point of arrest to conclusion of the court process.

The following list of expectations was circulated to delegates in advance of the event and formed a focal point throughout the round table discussions:

From arrest, to court

- Support from someone who is there for us as soon as possible after we are picked up by the police until the end of the court process
- The police to ask us if we have a learning disability or if we need help to understand
- Support from someone who knows a lot about the criminal justice system and how to support people with a learning disability
- Support from someone who cannot be called as a witness against us.

- Support from someone with the skills to:
 - Explain the charges, process and our rights in a way we can understand
 - Make sure we understand what the police and others are asking
 - Help us think through questions and give a clear answer
 - Work alongside our lawyer
 - Work alongside people who know us and our needs best
 - Spot and step in if we are finding the process too difficult, and say if we need a break or something should be changed.

- Support to be there for us:
 - In interviews with the police
 - In meetings with lawyers and other professionals
 - In arranging reasonable adjustments to the court process
 - When we go to court
 - From someone who cannot be called as a witness against us.

The court process:

- Before getting to court, support to understand the court process
- A lawyer who understands, or is helped to understand, learning disability
- Enough time to prepare with our lawyer before appearing in court
- To be questioned in a way that is not deliberately trying to confuse us. The questions should be about finding the truth, not making a fool of us
- The information about the extra support we need to be passed on so we are not starting again when we move on to our sentence
- Always have the chance to stand trial with reasonable adjustments if we need them
 - We have the right to a fair trial. If we do not understand the court process, it should be explained in a way we can understand
 - A communication expert who can be involved to aid the process
 - Extra time, more breaks, clearer language, re-wording difficult questions and changing parts of the process. These should be based on our individual support needs.

Conclusions

Having collated all of the feedback from the individual questionnaires, the round table discussions, the keynote presentations and the input of the SOLD User group, the following conclusions can be drawn.

- It is important to identify vulnerability and learning disability early on in the criminal justice pathway
- Further work is required to explore the best method of identifying learning disability and other significant communication needs in police custody
- There is a need for improved collaboration and communication between the police, other agencies and individuals in custody
- There is a need for improved support for the accused person with a learning disability in police custody
- People with learning disabilities want proactive support from the same person from arrest to the conclusion of court
- There is a need to ensure a consistently high standard of support across Scotland
- There is concern about the scope of the role of Appropriate Adult, and interest in creating a new justice support role
- Defence solicitors ought to attend in person to provide legal advice to a vulnerable accused person

- There is a need for improvement in the way the vulnerable accused person is supported in court
- Accused people with learning disabilities want the right to their day in court and a fair trial
- There is interest in developing a Registered Intermediary scheme in Scotland
- More needs to be done to ensure the needs of the vulnerable accused are in general accepted as equal in status to those of the vulnerable witness.
- The criminal justice system would benefit from these changes.

Next Steps

The SOLD Network intends to:

- Work with partners to help develop training materials for frontline police officers to increase their confidence in judging when an accused person has support needs
- Work with partners to review the evidence base for the use of screening tools in police custody
- Work with partners to explore areas of learning from the Registered Intermediary scheme and help to improve support in court for vulnerable accused people in Scotland
- Work with partners to explore the possibilities of developing the SOLD User group's proposal for a new criminal justice support service, which would provide consistent support to vulnerable accused people throughout the criminal justice pathway.

We will continue to:

- Circulate information to SOLD network members
- Host further events
- Publish information and guidance
- Deliver training to criminal justice professionals
- Involve people with learning disabilities in our work.

The work of SOLD is funded by the Scottish
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