



**Improving support for the  
accused person with a  
learning disability**

*in police custody*

**SOLD Conference report  
27<sup>th</sup> March 2017**



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# Introduction

This report collates feedback from delegates who attended the SOLD conference 'Improving support for the accused person with a learning disability in police custody', held on 27<sup>th</sup> March 2017 in Edinburgh. This was a follow up to the previous event held on 24<sup>th</sup> August 2016 'Improving support for the accused person with a learning disability from arrest through to court'.

The previous event raised a number of questions regarding support for vulnerable accused people. This event focused on some of those questions in more detail, particularly the challenge of identifying support needs at the custody stage of the criminal justice process, and the best way to support vulnerable people in police custody. We also attempted to broaden the debate to think in terms of communication difficulties generally, rather than being limited to learning disabilities.

The conference was fully subscribed and was attended by 90 delegates, all of whom have an interest in the criminal justice system. This included: Psychiatry (3), Psychology (1), Social Work (14), Health (5), Speech & Language therapy (7), Police (7), Prison Service (1), independent advocacy (4), Scottish Government (1), Mental Welfare Commission (2), academics (2), voluntary sector (11), Appropriate Adult services (6), EHRC (1), Law Society (3), Other legal professionals (5), (COPFS (5), SOLD staff (3), and support workers (4).

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. The group prepared a discussion paper that was circulated to all delegates in advance of the conference, and helped steer the debate. This is included in section 3: 'views of the SOLD User group'.

Keynote presentations were:

Allan Speirs, member of the SOLD user group, spoke on video about his experiences of being questioned by the police

Supt. Malcolm McCormick, Police Scotland, spoke about why early identification and getting the right support for the vulnerable accused person is important for the police

Dr. Iain McKinnon, Northumberland Tyne and Wear NHS, and Newcastle University, reviewed the evidence for the use of screening tools in police custody

Suzanne Smith, Dept. of Justice, Northern Ireland, spoke about the communication support provided by registered intermediaries in police interviews in Northern Ireland

Det. Sgt. Kirsty Baird, Police Scotland, spoke about the procedures in police custody and the service a vulnerable accused person ought to expect to receive

Stephen Heath, Clarity in Communication, spoke about the appropriate adult service in Scotland and explored ideas for improvements

Ch. Insp. Rosie Wright, Police Scotland, reviewed the community triage pilot in Glasgow and the value to the police of having out of hours nursing support for vulnerable accused in police custody

The event was Chaired by Derek Penman, HM Chief Inspector of Constabulary, and also included an introductory presentation by Dan Gunn, retired prison Governor and Chair of the SOLD Advisory Group.

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

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

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

- What is the most reliable way to identify in police custody that someone needs support with communication?
- What is the best way to support someone with communication difficulties in police custody?

This report collates delegate feedback on these complex issues from a range of professional and personal perspectives, and with reference to the previous event in August 2016, presents the solutions proposed by delegates to these challenges.

## About SOLD

SOLD is led by a partnership between **People First Scotland** [link] and the **Association for Real Change (ARC) Scotland** [link]. 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 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 Service (COPFS).

Use this link to become a member of the **SOLD network**  
[www.soldnetwork.org.uk/get-involved/](http://www.soldnetwork.org.uk/get-involved/)

If you have a learning disability and experience of the criminal justice system, and you would like to join our user group, please email:  
[Kenny.mckay@peoplefirstscotland.org](mailto:Kenny.mckay@peoplefirstscotland.org)

### Our aims:

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

The beneficiaries of our work also include people who have other significant communication difficulties, such as acquired brain injury, autism and foetal alcohol syndrome.

## Views of the SOLD User group

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

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

### The background

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

*‘States shall make the necessary arrangements to ensure that suspects or accused persons shall be in a position to practically and effectively exercise their right of access to a lawyer.’*

It also provides that a lawyer should be able to ‘participate effectively’ in the interrogation. One of the primary rationales for the right to legal assistance during interrogations is to safeguard the suspect’s right to remain silent. The lawyer must as a minimum be able to intervene to protect his client’s right to silence and to prevent unlawful or unfair behaviour of the police depriving the client of this right.

## **Members' Experience of police questioning**

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

In Scotland it is standard practice to get to speak to a duty solicitor on the phone before being interviewed. Their advice is usually to say 'no comment' to all questions. That is usually all the legal assistance you get for a police interview. This just does not work for us, or other people with learning disabilities. No one person in the user group was able to stick to the legal advice they got over the phone when faced with the police interview.

Some of us thought that if you say 'no comment' that means you are guilty. Some other members just forgot what the lawyer had said on the phone.

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

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

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

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



## Findings

Delegate contributions were gathered through an individual questionnaire and facilitated round table discussions. Following the first event in August 2016, we felt there was a lot of concern about making formal medical diagnoses. We were keen to revisit the issue and try to move the conversation on to thinking about this as a communication issue rather than a health one. The focus of attention ought to be on meeting people's communication support needs, regardless of the reasons for them.

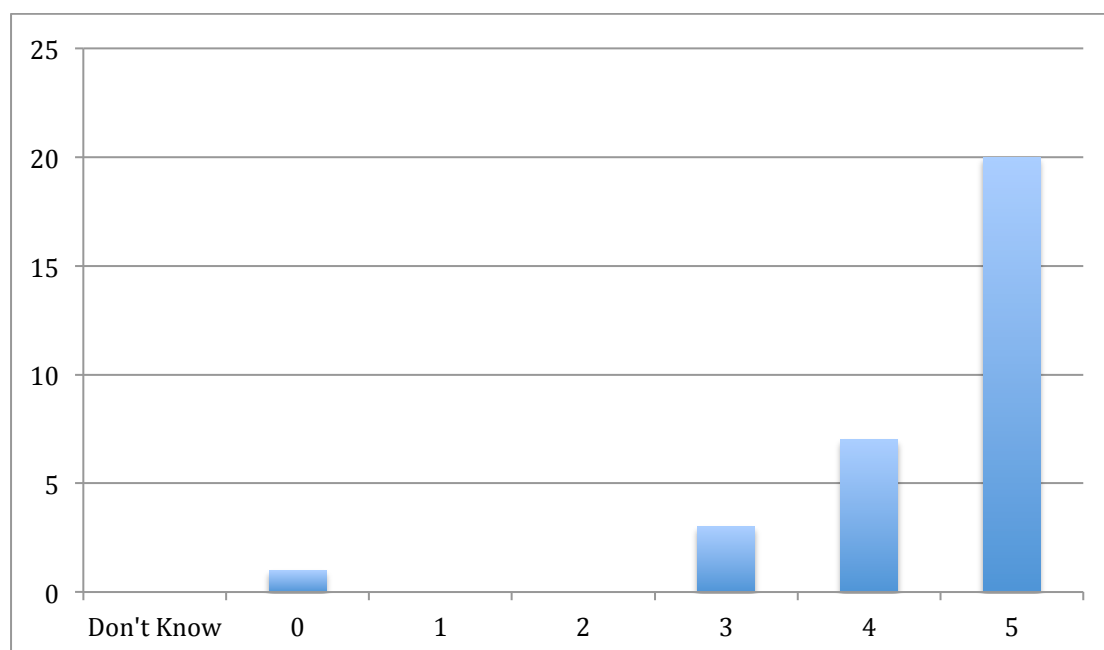
### **What is the most reliable way to identify in police custody that someone needs support with communication?**

The previous event in August concluded that there was a clear importance for being able to identify learning disabilities and other communication support needs at the earliest possible stage of the criminal justice pathway, but that further work was required to identify the best method for doing this. With regard to screening tools in particular, many delegates favoured the idea of having a tool that could be used in custody, but others were sceptical as to whether this was practical or achievable.

Delegates were asked this time to consider the question below:

**How important is it to have a screening tool that is implemented in Police Custody as standard practice?**

(0 = Not at all)      (5 = A lot)



The above chart reflects the value to the challenge of identification delegates thought such a tool would have if one could be developed. The most popular opinion expressed by delegates was that a consistent and robust national screening tool should be put in place.

Some people added to this the proviso that it did not need to be over complicated.

*“Has to be very basic to be applicable”*

## **Presentation**

At the previous event there was general agreement that a screening tool for use in police custody would be valuable in helping to identify learning disabilities and other communication support needs. However, there was uncertainty as to whether a suitable tool yet existed. We invited Dr Iain McKinnon, who has done a lot of work in this area to review the evidence for the use of screening tools in police custody, and for his opinion on how close we are to having a tool that is fit for purpose.

In his presentation, Dr McKinnon stated that he felt we had come a long way over the last ten years, and that the risk assessment framework that he is developing with Police Scotland and other forces in the UK represents a large improvement. However, he was also candid about the limitations of any tool and that there is still work to be done.

“This is not an end point. I think it’s important we learn from mistakes from this and that we make it right. What it doesn’t do is go into any of those things you discussed at your previous meeting around how do you assess communication skills. This is a screening tool. It is not intended to make diagnoses. It is not intended to go about finding out what people’s reading level is”.

Dr Iain McKinnon

“The overall message is I think we’ve come a long way in 10 years from where we were at with the Met, with their very, very brief screening questionnaire, to actually having something dedicated to mental health and learning disability within a risk assessment that is actually being used by a police force. It’s by no means an endpoint. It’s just a stepping stone on the way to doing something better”.

Dr Iain McKinnon

## Round table discussions

Discussions focused on the practicalities of using screening tools in police custody, their perceived limitations and what still needed to be done. Below is a summary of the themes that emerged from discussion.

### The use of screening tools

There was broad recognition among delegates that early identification was a difficult job for the police. This was reinforced during discussions by representatives from Police Scotland who stated that identification was a huge challenge for their officers.

Many delegates said screening tools had an important part to play in helping to meet that challenge. This reflected Supt McCormick's presentation in the morning:

"If we've not got the right tools, people can slip the net...we do need to have that proper screening tool." "How do we make sure we minimise the numbers that actually, when they come into police custody, and go through that whole criminal justice system, by which time it's all been horribly unfair".  
Supt Malcolm McCormick

In particular, many delegates were in support of the risk assessment tool that was being developed by Dr McKinnon. People appreciated the way it flagged up 'observations', prompting the person using the tool to judge if the person appeared to be confused or muddled, or if they were behaving strangely, and appreciated that this would be helpful in identifying communication needs.

Police representatives confirmed during discussions that the police are moving towards greater use of the McKinnon tool, which had also been stated earlier by Supt McCormick:

"Dr Iain McKinnon is currently developing a new risk assessment tool. So hopefully in terms of vulnerability assessment, can we get the questions better to help us try to ascertain if someone has a learning disability from the start. And that is a key issue."  
Supt Malcolm McCormick

### Concerns about screening tools

Delegates' concerns divided into two categories. Firstly there was concern that any screening tool might fail to identify everyone who needed support with communication. For instance, one person stated that screening tools were not good at identifying brain injury. This dilemma was acknowledged by Supt McCormick in his presentation:

“The challenge that I have is to ensure that all persons entering custody have fair and informed access to the justice system”.

Supt Malcolm McCormick

Dr McKinnon in his presentation highlighted that in evaluation trials the risk assessment framework had, perhaps inadvertently, proved quite successful at identifying a broader than intended range of people in need of support:

“They picked up 5 of the 6 people who had a learning disability using this so it’s only small numbers and probably doesn’t mean very much, but what we found was that the false positive rate went up as well, so they were picking up people who didn’t have a learning disability, using the learning disability screening tool. And that’s the problem with these tools. You improve the sensitivity, you improve the true positive rate, but you increase the false positive rate as well. But we found that even the people who were false positives on the learning disability part of the questionnaire, actually a lot of them also had other mental disorders as well. So ok, it’s not specifically about learning disability, but it is picking up more of those people you are actually worried about”.

Dr Iain McKinnon

In addition to this, during discussions representatives from Police Scotland explained that procedures are regularly reviewed and ‘near misses’ in which people do appear to have slipped through the net are looked at again to see what can be learnt from those missed opportunities.

The second concern was that it would be unwise to rely solely on a screening tool as a method of identification.

*“Important tool, but can’t stand alone”*

*“Important, but this should not result in over reliance on the tool and cut back with staff training”*

The most popular opinion expressed by delegates was that although a screening tool was a valuable resource in terms of helping to identify learning disabilities, it should not be the only one, and that having a range of methods, opportunities and supports available to the police would lessen the likelihood of people being missed.

## **Alternative approach – focus on communication**

There was significant support among delegates for shifting the focus from seeking to identify specific conditions such as learning disability, and to focus instead on the broader issue of communication support needs.

Representatives from Police Scotland stated themselves that the essential issue is communication, and that getting that right will make a big difference. They added that this has to include front line officers, not just those working in the custody suite.

This view was supported by other delegates who said that focusing on a specific tool was less important than ensuring effective communication.

*“not important for learning disability, but very important for communication need”.*

A number of delegates said that whilst diagnosis can be helpful, it is often less helpful than simply being able to meet the person’s communication needs in that situation at that time. Diagnosis maybe helpful later in the process, but whilst in custody the key is to ensure people are able to understand what is happening and are able to engage fully with the process.

## **What further work is needed to make sure this can be achieved?**

Delegates broadly agreed that the tool being developed by Dr McKinnon ought to continue to be piloted, and that those pilots needed to be robustly evaluated in order to gather reliable evidence. Many delegates said it was still too early to tell just how effective screening tools are in custody, and that further research is still needed. Some delegates expressed concern that much of the available evidence is very old.

Delegates were clear that a range of interested professionals in addition to the police need to be involved in taking this work forward. These included health professionals, social workers, psychiatrists and psychologists, vulnerable people with experience of the criminal justice system and the people who know them best.

In his presentation Dr McKinnon informed the conference of the implementation of the tool by Northumbria Police that should provide an opportunity for practical evaluation:

“Northumbria police have implemented this now. What they’ve done is put the learning disability and mental health questions together in one vulnerability section...questions about difficulties reading and writing, did they receive extra help at school, and have they ever had contact with learning disability services, plus further prompts...we’re going to see how this is working out, we’re not sure yet. We’re doing the evaluation in the autumn”.

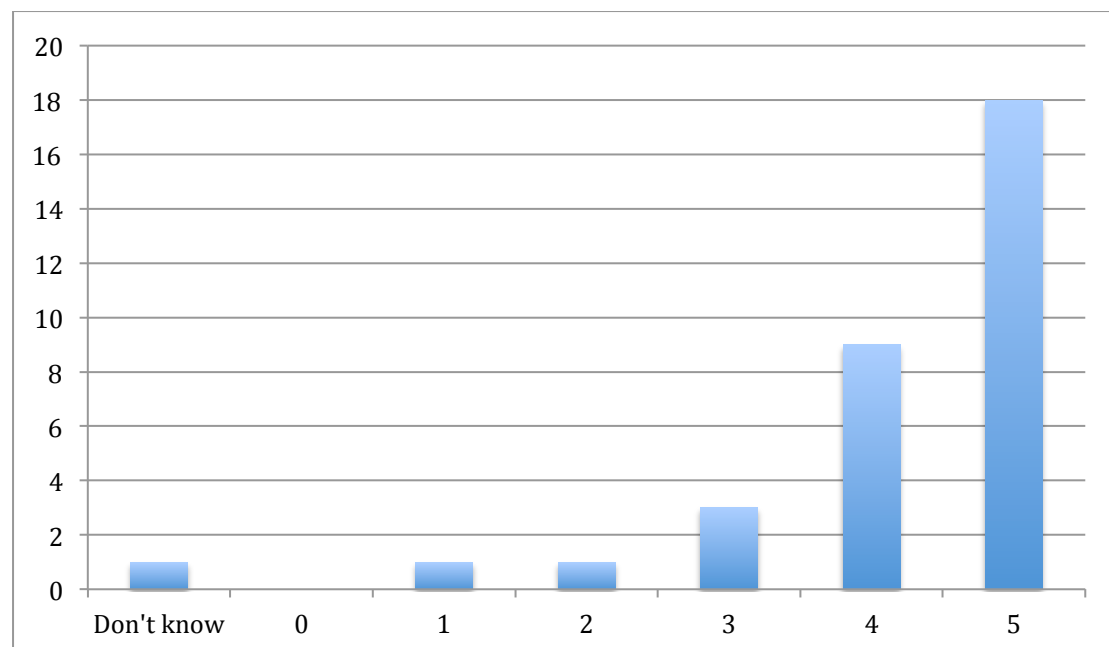
Dr Iain McKinnon

The presentation from Suzanne Smith on the work of the registered intermediary service in Northern Ireland generated a considerable amount of interest and conversation. Many delegates felt that much could be learnt from their work, especially in terms of focusing on communication support needs, rather than identification of specific conditions.

Delegates were asked to consider the following question:

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

(0 = Not at all)      (5 = a lot)



At the previous event in August 2016, when we first began to address the question of identification, a number of delegates cited the Glasgow community triage pilot project as an example of collaborative working from which lessons could perhaps be learnt. The pilot involved community mental health nurses working alongside the police. In cases where people in mental health crisis

were reported to the police, the aim was to divert them to appropriate health services and avoid police custody. In response to this we invited a representative from Police Scotland to present a review of that project to delegates to see what potential there might be for such an approach being adapted to assist with the identification of learning disabilities. The intended outcome however, would be access to support rather than diversion.

The chart above demonstrates that although delegates recognised the importance of collaborative working, some had doubts about the contribution a triage model could make to identification. This was reflected in discussions.

*“Only useful if they currently receive support. Many people in the community do not have a social worker”.*

### **Triage model**

Two delegates stated that the triage model appeared to be an effective way of diffusing some challenging situations and that it would be helpful when people were experiencing mental health crisis. Another felt it would also be an effective way to quickly identify adults who needed help with communication. Having NHS staff based in custody suites would provide a support to the police in identifying communication needs.

One delegate expressed caution that NHS staff do not have access to all medical records, so if the defendant was registered with a different health board, this information would not be available.

This means that NHS staff would need to rely on their ability to quickly assess defendants' communication ability without necessarily having access to medical records as a back up.

### **Collaborative working**

More broadly there was support among delegates for the importance of collaborative working to achieving a reliable method of identifying communication needs. One delegate stated that health and social care integration should make this more practical, and several recognised that it made sense for community psychiatric nurses (CPN) and other specialist staff such as community learning disability nurses (CLDN) to be working alongside the police. One delegate suggested a mobile NHS workforce could work in partnership with the police.

The most popular view was that the more multi-disciplinary the approach could be, the better, and that it made sense to involve all partners with information about people with learning disabilities. This could include social work, advocacy and other partnerships through community justice such as education. One delegate added that this was often more difficult than it needed to be.

Whatever system was adopted, several delegates stated it would be important to have a nationally consistent service. This would need to be properly staffed and funded, with clear guidelines and joint training.

One delegate expressed a caution however that professional boundaries should still be maintained and that any partnership arrangements should not lead to a dilution of professional competence.

### **Information sharing and access to records**

There was considerable debate amongst delegates around the subject of sharing information, particularly between professional sectors. The most popular view was that there should be an integrated record system with real-time information sharing across the police, health, social work and other public protection partners, and that this would help to flag specific issues. One delegate added that the police do already have access to a vulnerable persons' database, and that this can also tie up with social work. Another delegate identified concern hubs as a source of information, but questioned how they could link with social work's care first database.

More than one delegate cautioned that there could still be privacy issues with regard to information sharing, and that attention needed to be given to this. Another delegate added that because more and more people do not meet the eligibility criteria for mainstream services, fewer people in future will be covered by health and social care records, and therefore information sharing will be a diluted resource. In fact for many people, their needs will only begin to be identified when they enter the criminal justice system.

On the subject of police's own records, more than one delegate asked if the police could check their system to see if a defendant had needed support when questioned previously. There was some debate as to whether the police keep these records. However, one delegate did state that in future if a defendant has had an appropriate adult, this will be flagged if that person comes into custody again. Another delegate added that it would be helpful if police data systems could also indicate if the person was known to health or social work.

### **Other factors that play an important part in identification**

During discussions, delegates suggested other factors that could play an important role in identification, as there was still a risk of people – especially those who do not meet common eligibility criteria for mainstream services, but who still have communication support needs – being missed and not receiving the support they need.

### **Training**

The most popular of these suggestions was for better and increased training. Delegates stated that training for custody officers in particular was essential, and that this should be a mandatory part of refresher training.



Representatives from the police stated they are looking for more awareness training. Custody suite training is currently being redeveloped, and so delegates felt this was a good time to be thinking about the best form that awareness training might take. More than one delegate stated that people with learning disabilities with lived experience of the criminal justice system could play a significant part.

One delegate acknowledged the amount of time invested by registered intermediaries in Northern Ireland in training police officers to identify appropriate referrals.

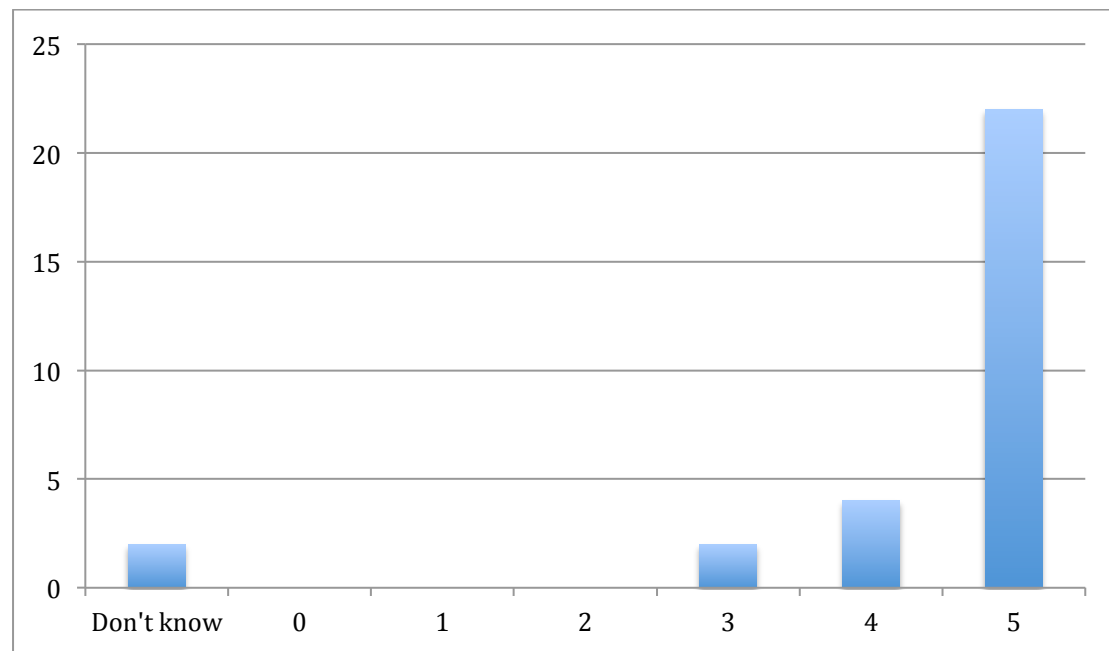
Another delegate suggested that many voluntary sector organisations might not be aware of the contribution they could make to informing the police about people's support needs. One more delegate stated that if more people with communication support needs carried alert cards with them, containing a named contact, this would help to reduce the burden on police custody officers. Although it was cautioned that some people do not carry them because they do not want to disclose their learning disability or other support needs.

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

Delegates were asked to consider the following question:

**How important is it that every accused person with a communication support need has a lawyer present in the police interview?**

(0 = Not at all)      (5 = A lot)



**Please note:** the Criminal Justice (Scotland) Act 2016 creates a mandatory requirement for a solicitor to be present during a police interview where the defendant has a communication difficulty:

s.33 Consent to interview without solicitor

(2) A person may not consent to being interviewed without having a solicitor present if -

(c) the person is 16 years of age or over and, owing to mental disorder, appears to a constable to be unable to -

- (i) understand sufficiently what is happening, or
- (ii) communicate effectively with the police

The Act also makes provision for the use of interim liberation, whereby the detained person can be released from custody to return for questioning at a later date.

The above chart shows that delegates were broadly in favour of routinely having a solicitor present during the police interview. The most popular opinion was that this would ensure the defendant was able to keep to the solicitor's advice. Offenders with learning disabilities have said they find it difficult to do this following a telephone consultation. This is especially true where the advice is to say "no comment" to every question.

Did you get advice from a lawyer before the interview? "Just say no comment right through...but it's hard to say no comment right through..."

So you could not stick to the lawyer's advice? "I tried to, but the police kept firing questions...like saying fast questions".

Allan Speirs, SOLD User group

What should happen in the police interview? "Well, have somebody...have a lawyer in their with you, or an advocate, to explain the questions. What I should have done is ask the lawyer to come in and sat there with their notes. Then the lawyer can say to them 'look you need to stop there. I need to talk to my [client] like I've seen on the telly. To stop the interview to explain to my, what's that word...to speak to your client".

Allan Speirs, SOLD User group

*"Absolutely"*

*"Difficult to understand why this doesn't happen"*

Some delegates expressed concern that this support would be less effective where the solicitor had little knowledge or experience of communicating with people with learning disabilities.

*"This can vary as many solicitors don't have a good knowledge of communicating with adults who have a learning disability"*

*"Communication, plus other areas of difficulty will need supportive person. Lawyer may not be supportive or understand the condition"*

One delegate suggested it should depend on the severity of the case and would not be necessary in every case, especially where the defendant was familiar with criminal proceedings.

## **Round table discussions**

Discussions focused on whether increased use of interim liberation and planned interviews would make a difference, the practicalities of having a solicitor present and what is required to make their attendance possible.

## **What would be the benefit of solicitor attendance?**

*“I didn’t want to say ‘no comment’. I felt I hadn’t done anything wrong. ‘No comment’ made me feel guilty”* (SOLD User group member)

Members of the user group have regularly said that in reality they find it difficult to maintain this ‘no comment’ position. Invariably, the lawyer is not there with them, and the appropriate adult is not allowed to give legal advice.

Many delegates recognised that having a solicitor present would make it easier for vulnerable defendants to keep to the legal advice given. One person suggested people with learning disabilities would find it more difficult to explain why they were innocent and were more likely to confess to something they had not done.

Some delegates again cautioned that it should not be assumed that a solicitor’s presence will be a benefit to the defendant. Many solicitors will have no experience or knowledge of communicating with people with learning disabilities. Solicitors require training the same as other professionals.

A number of delegates questioned the point of continuing with an interview if the defendant is only going to answer ‘no comment’. One delegate from the police clarified that they pursue ‘no comment’ interviews in order to give the defendant a fair chance to put their side.

## **What is required to make solicitors’ attendance possible?**

Delegates pointed out that currently time pressures in custody, and the resources available to law firms, make it difficult to ensure the presence of a solicitor.

In discussion about how this could be addressed, it was clear the most popular opinion was that legislation was required to ensure that a lawyer was standardly present during interviews with vulnerable defendants. One person said Scotland should follow the example of England and Wales, and put this measure into law.

Many people also stated that all professionals involved including the police, sheriffs and fiscal service officials should take responsibility for ensuring solicitors’ attendance. Two people also said that solicitors themselves needed to demonstrate a commitment.

## **Interim liberation and planned interviews**

Many delegates saw increased use of planned interviews as an opportunity to introduce the flexibility that would help to facilitate solicitor presence.

*“for low-grade offences, where’s the risk in releasing to bring back later”* (SOLD User group member)

In a presentation in the morning, one of the police representatives had indicated the police's interest in trying to make greater use of planned interviews where possible:

"What I think we're trying to work towards is that if officers attend an incident and realise there is someone there who requires a little assistance with communication, do we need to continue with that inquiry right there and then? On quite a lot of occasions we probably don't. I think taking it to where we would ideally like to be is that planning and preparation could be carried out before hand before we even come and talk to you, before we even interview you...and when we come to speak to you everybody has already had a chance to make it better for you."

Police Scotland

This was supported by Stephen Heath, who spoke as an appropriate adult service provider:

Many delegates cited the new Criminal Justice (Scotland) Act, 2016 as a means to ensuring solicitor attendance.

*"With the new Criminal Justice Act coming in, the private consultation with your solicitor will extend to them being in your interview."*

Delegates stated the provision in the new Act for interim liberation would allow for interviews to be delayed and planned for a time when the solicitor was available. One delegate from the police said the new option of being able to postpone the interview should allow them to bring people back when support was in place. They felt this ought to be the norm to ensure people are questioned appropriately in a way they can engage with and understand.

"We're finding that more and more of our appropriate adult support in Ayrshire is for planned interviews by the police...More and more are arranged interviews."

Stephen Heath, Clarity in Communication

One delegate stated the Scottish Government have invested money in developing solicitor consultation rooms in custody suites to facilitate face-to-face consultations, and therefore the presumption has to be that the liberation option will be used more often so that the person can come back in a planned way and would have their lawyer present.

### **Time to prepare**

Many delegates also recognised that increased use of planned interviews would create other opportunities for improving support in the process. The importance of taking time to develop a rapport with a person with learning disabilities was stated as a key component of being able to provide effective

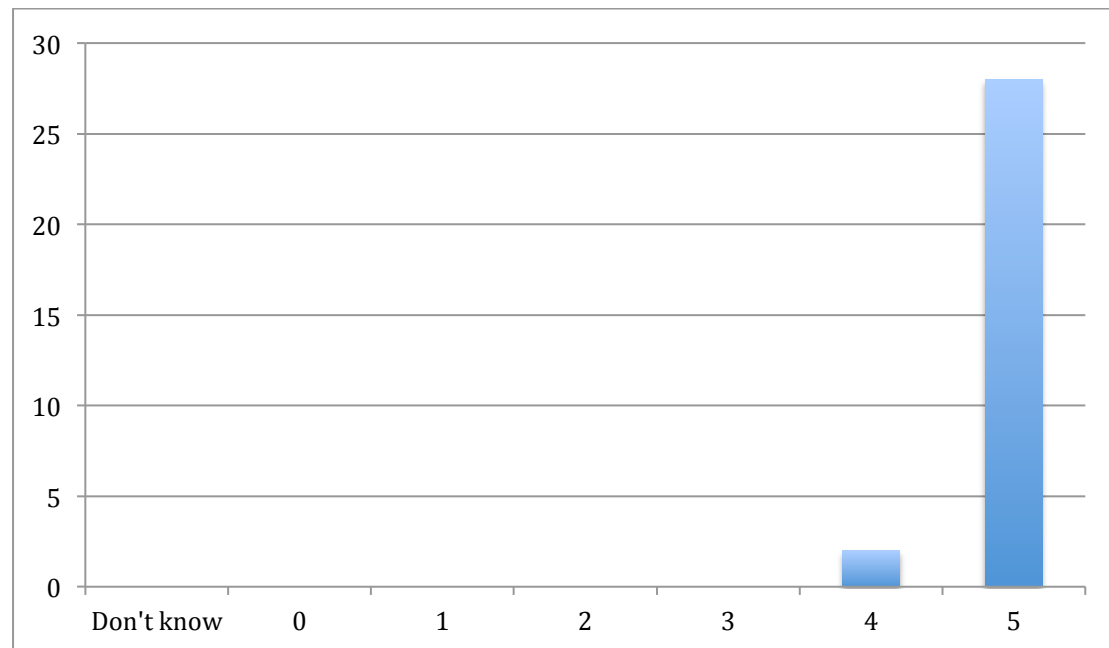
support. One suggestion was that interim liberation could create more time for the appropriate adult to spend with the defendant prior to the interview.

Another delegate suggested we should be speaking to speech and language therapists. Interim liberation could provide an opportunity to carry out a detailed communication assessment with the defendant, and for that information to be shared with the police.

Delegates were also asked to consider the following question:

**How important is it that people get proactive, confidential support right through the criminal justice process?**

(0 = Not at all)      (5 = A lot)



The above chart demonstrates that a strong majority of delegates supported this proposition. Members of the SOLD user group when talking about their own experiences have said they would have benefitted from support that was more active in helping them to understand and communicate, that was available to them right the way through the process from first being detained to the conclusion of their trial and that conversations with the person providing support should be in confidence.

The most popular opinion was that clear understanding and communication were essential elements of fair and equal access to justice.

*“Very real need for impartial role in order to communicate all aspects of the process”*

*“The support needs to be consistent all the way through the process to ensure fairness to the adult”*

*“Absolutely”*

*“Essential if fairness in criminal justice is the aim”*

One delegate made the point that this would involve considerable change to the current appropriate adult role.

*“Depends on role. Appropriate Adult should not have solicitor-type confidentiality as this changes the nature of the role”*

### **Round table discussions**

In discussions, delegates were asked to consider the most effective way of ensuring every person with a communication support need gets the right support in police custody. In addition, three further questions were asked:

- **Can the appropriate adult role be adequately adapted to meet these needs?**
- **What can be learnt from the work of registered intermediaries?**
- **Do we need a new justice support service?**

### **Can the Appropriate Adult role be adequately adapted?**

Overall, opinion was divided. Several delegates felt that too many changes and too much investment would be required for this to be practical. Others stated they felt the role was simply not fit for purpose and would never be capable of meeting the support needs of vulnerable defendants. A small majority of delegates said they felt the role could be adequately adapted, but this would require investment and numerous changes.

Regardless of whether they felt successful adaptation was possible, a clear majority of delegates agreed there was a need for substantial change. One delegate felt that a strong, national service should be enough.

### **Client confidentiality**

This issue was raised in Stephen Heath’s presentation:

“No client confidentiality...In other words, if someone has disclosed something to the appropriate adult, they are in the evidence chain, and they must tell that to the police.”

Stephen Heath, Clarity in Communication

There was considerable discussion around the subject of client confidentiality. The most popular opinion was this was one of the most significant factors undermining the effectiveness of the appropriate adult role. Six delegates stated that the principle of trust is needed for support to be effective, and that the lack of confidentiality damages the relationship of trust.



One practising appropriate adult said they felt hamstrung by the fact they do not have client confidentiality and can be part of the evidence chain. They added it can make it more difficult to develop a strong and trusting relationship with the person they are supporting. Another said the possibility of being called as a witness causes them anxiety.

It was also pointed out that client confidentiality would allow for support in facilitating communication between the vulnerable person and their defence solicitor, which is currently not possible.

## **Investment**

The most popular opinion among delegates was that improvements would not be possible without greater investment. One delegate pointed out that funding for appropriate adult services is still variable across the country, and the level of funding often came down to the willingness among interested parties in an area to drive improvements.

## **Effectiveness of support provided**

At the previous event there had been considerable discussion about the role of the appropriate adult itself, with many delegates feeling it was too restricted to allow for people's communication support needs to be properly met. The SOLD User group had stated in their briefing paper that they wanted a more proactive form of support to help them understand questions and communicate their answers. One conclusion from that event was that the appropriate adult role did not have the scope to provide this.

This time, in his video presentation, Allan Speirs of the SOLD User group echoed this conclusion:

Did the appropriate adult ask you about your support needs before the police interview? "No she never asked any questions".

What could the appropriate adult have done to help you? "If they'd explained it so I could understand the question".

"She never asked them to stop, or asked me questions. I mean that's kind of, key justice".

Did you feel you had any help during the interview? "No I never had anybody during the interview. But the appropriate adult was there. She just sat there. When I asked her to explain a question to me, she went like that to me" [Allan puts his hand up, like directing traffic to stop]. "Justice was wrong".

Allan Speirs, SOLD User group (extract from video shown in the morning)

In his presentation, Stephen Heath suggested another reason for support not being adequate might be as a result of the way services are delivered and that this does not give people the experience they need to develop the necessary professional confidence. A police interview can be an intimidating environment for anyone not accustomed to it.

“There are 528 appropriate adults across Scotland. There are varying groups of them in terms of need and use. And when you take out four areas in Scotland that are lean in terms of service delivery, in other words they’re dealing with quite a few calls, you’re left with 495 appropriate adults, dealing last year with 2,335 calls, or roughly 5 each per annum. If you go deeper in some areas the use is 1.3 per appropriate adult...and for me this kind of indicates experience levels, practical skills, confidence...their needs to be a build up of experience and confidence to be able to challenge that [style of questioning]”.

Stephen Heath, Clarity in Communication

This concern was reflected in discussions about the number of appropriate adult services that rely on “volunteers” to perform the role on an ad hoc basis, as an adjunct to their primary post. In many areas this is done by social workers on a rota. Some delegates suggested this often had a negative impact on the quality of support that was provided, and that the service provided varied across Scotland.

One delegate repeated the point Stephen Heath had made in his presentation that if people are only called upon once or twice a year to perform the role, this does not give them enough experience to develop the skills and professional confidence needed.

It was suggested that a smaller, professional team of dedicated specialists would deliver a more effective, consistent service. For instance appropriate adults could be trained to have the same skills as registered intermediaries and that perhaps the two roles could be morphed together to create a single, comprehensive service.

One other concern raised was with the amount of time available to the appropriate adult to build a rapport with the person they are supporting, and to assess their communication ability. One SOLD User group member at the previous event had said there was no time allowed for this in his own experience. Stephen Heath reiterated this also:

“I use the word brief consultation because it is brief...I don’t think it’s long enough, and neither do my appropriate adults”.

Stephen Heath, Clarity in Communication

It was suggested also that more routine use of interim liberation and planned interviews might provide an opportunity for appropriate adults to have more time prepare with the defendant.

### **Provision of service**

At the previous event concern was raised about the lack of consistency of provision of appropriate adult services across Scotland, often meaning interviews had to proceed without one. The point was made this time that the new Criminal Justice (Scotland) Act 2016 makes such provision a legal duty. This should mean that a service is available when required across the country.

### **What can be learnt from registered intermediary support?**

At the previous event, Joyce Plotnikoff spoke about the work of registered intermediaries in England and Wales. This generated considerable interest among delegates, largely due to the detail of communication support provided. One comment was that it “seems an obvious solution” to the challenges of facilitating communication in the criminal justice system. However, this support in England and Wales is only available to victims and witnesses and only in Court. References were made to the registered intermediary scheme in Northern Ireland where support is available both to defendants, and at the police custody stage. For this reason we invited Suzanne Smith, from the registered intermediary service in Northern Ireland, to talk about her work.

“We’re impartial, neutral, objective and transparent. We’re there to facilitate communication...during the police investigation stage, and also we follow that on through to the court stage. So we’re there through the whole process, and ideally it’s the same one of us”.

Suzanne Smith, registered intermediary service, Northern Ireland

One delegate asked directly about client confidentiality to clarify the legal status of registered intermediaries in Northern Ireland:

**Delegate:** *“Do you facilitate solicitor – client interviews prior to police interviews and if so are you covered by legal privilege of non-disclosure?”*

**Intermediary:** *“We are covered by legal privilege, and a good solicitor will use us for exactly that reason”*

**Delegate:** *“So it’s accepted that at no time can you be a witness?”*

**Intermediary:** *“No, I can’t be a witness”*

Suzanne also detailed the way that intermediary support helps to facilitate effective communication in the police interview:

“Ideally we’ve done our assessment and you’re bringing the person back in for questioning, and we’ve had a chance to sit down with the police officer (interviewing officer) and really go through our assessment findings, and really go through planning of the interview, planning of the questions, looking at the vocabulary, and looking at the types of props that might help, if any”.

“We then sit in on that interview, and if we feel that the person is not understanding, or if we feel that there is vocabulary or language being used that the person isn’t able to understand, or there’s anything happening that they’re not understanding or we can help in any way, we’re jumping in, we’re trying to assist”.

Suzanne Smith, registered intermediary service, Northern Ireland

### **Round table discussions**

The responses to Suzanne Smith’s presentation on the work of registered intermediaries in Northern Ireland were generally very positive and enthusiastic with some describing it as a “great initiative” and “excellent support”. There were aspects of the intermediary role that appealed to some delegates. The most popular concerned the specialist skills applied to assessing and supporting people’s communication needs, and the level of detail involved. Delegates were particularly impressed by the recommendations passed to the police on how to conduct the interview with the person. One delegate stated that this approach would improve the whole process and lead to better support.

Several delegates felt this type of support would be useful in other stages of the process too, including court cases and preparation of social work reports. One person commented it would be helpful in improving vulnerable people’s experiences of the criminal justice system in general. Another added that it was an excellent model of support.

Many delegates recognised the benefit of intermediaries having client confidentiality, and that the clear independent, neutral legal status was an important element of being able to perform an effective support role.

Two people were impressed by the practice of matching the particular skills and experience of the intermediary to the needs of the person. Wherever possible, if the defendant had a learning disability they would be matched with an intermediary whose experience was in that area of work. Additionally, one delegate expressed approval for the amount of time that was invested in preparing with the defendant prior to the interview.

Concerns were raised in regard to two areas. The first of these concerned professional boundaries. In Northern Ireland, intermediaries work alongside

appropriate adults and share responsibilities in police interviews. One delegate suggested it could get very crowded, and one feared it would undermine the status of the appropriate adult. The suggestion was raised again whether it would make more sense to combine the two into one single role.

The other concern was over how an intermediary service could be funded. Local authority budgets were already under pressure, and delegates questioned whether there could ever be funding for another service in addition to appropriate adults. One suggestion was that it ought to be funded by Government. If the intermediary model were to be pursued there would need to be assurances about nationally consistent standards and governance and national funding would help to ensure this. One delegate stated they would not want to see the same variations in standards across regions as with appropriate adult services.

There was also a suggestion that an intermediary service could be provided on a consultancy basis as a way of reducing the costs.

### **Do we need a new Justice Support Service?**

The idea of creating an entirely new specialist service that could provide support right through the process, and which would have client confidentiality, was first proposed by the SOLD User group in their discussion paper, which was circulated to delegates in advance of the event. Discussion at the previous event showed there was some interest among delegates, particularly as an opportunity to ensure all current gaps in support could be covered.

However, discussion this time seemed to reveal that support for this option had increased. The largest number of delegates identified this as the preferred way forward. Many delegates stated the importance of learning lessons from the registered intermediary role along with other effective services. The importance of a new service being placed on a statutory footing and adequately funded was also stated.

Other delegates said it was important to have a conversation about this, and that it had to be regarded as an option if concerns about the appropriate adult role could not be adequately addressed.

Three delegates again raised the suggestion of morphing the roles of appropriate adult and registered intermediary into one new service. One delegate asked where advocacy fits within all this? It being an essential element of providing the person with a voice.

## **Proposed solutions**

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, SOLD propose the following as possible ways forward.

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

- Continue to develop and improve Dr McKinnon's risk assessment tool that is being developed currently with Police Scotland
- Continue to monitor evaluation reports of risk assessment tool as implemented by various police forces across the UK
- Continue to investigate ways that a triage approach could assist the police with identifying learning disabilities and other communication support needs
- Investigate ways of expanding the opportunities for the police to have access to advice and guidance of health professionals
- Health professionals with experience of learning disability and other communication support needs could be based in police custody suites
- Work should be done to remove barriers to information sharing and police access to information about people's learning disabilities held by other agencies. Privacy is important, but this is about the person being able to receive much needed support
- Further training and resources for police officers in custody and the front line, especially involving people with lived experience.

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

- Increased use of planned interviews for vulnerable defendants
- Routine use of interim liberation and planned interviews for vulnerable defendants once the new Criminal Justice Act provides for this
- The purpose and benefit of any available communication support needs to be explained to vulnerable defendants in a way they can understand. This is probably best done by the person who will be providing the support

In the short term, lessons learned from the work of registered intermediaries should be introduced:

- The use of props to aid communication should be considered for police interviews, for example the defendant having a red card they can hold up to indicate they do not understand or need help
- Vulnerable defendants should be referred to speech and language therapy services for a communication assessment prior to a planned interview
- This assessment should form the basis of a communication plan which should travel with the person right the way through the criminal justice system
- Appropriate adults should use the time created by interim liberation to meet with the person at least once prior to the police interview. This should be to help establish a rapport, and to develop their own sense of the person's communication ability and support needs.

SOLD would support a pilot project to test the effectiveness of these ideas.

In the longer term, a new justice support service should replace the existing appropriate adult service. The new service should have the following characteristics:

- Client confidentiality/legal privilege
- A dedicated, professional service
- Focus on communication support
- Jurisdiction to provide proactive communication support throughout the criminal justice process, including facilitating between person and defence solicitor, police custody, crown office, court and preparation of social work reports
- Incorporation of the roles of registered intermediaries and appropriate adults into one single role
- Centrally funded, with national standards and a clearly defined statutory role
- Fully independent of all other statutory services

SOLD would support a pilot project to test the effectiveness of this idea.

## Next Steps

The SOLD Network intends to:

- Work with partners to develop materials for frontline officers to assist them in recognising that a detained person needs support with communication
- Work with partners to explore ways of involving speech and language therapists in improving communication support in custody
- Work with partners to explore areas of learning from the Registered Intermediary scheme to help improve support for vulnerable people
- Work with partners to explore ways a triage approach could assist the police in identifying communication support needs in custody
- Work with partners to develop guidance for defence solicitors when representing people with learning disabilities and other communication needs
- Work with partners to explore ways of developing the SOLD user group's proposal for a new criminal justice support service which would provide consistent support to vulnerable detained and 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



