

# People with Learning Disabilities and the Criminal Justice System

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## **Foreword by the Scottish Consortium for Learning Disability (SCLD)**

**Lisa Curtice, Director and Lindsay Kinloch, Co Trainer**

Everyone has the right to be treated fairly and receive justice. We therefore welcome this Guide as a practical way of improving the response of the criminal justice system to people with learning disabilities. Our hope is that the Guide results in people with learning disabilities in Scotland always getting a fair hearing, whatever their reason for contact with the police or the courts.

The Guide brings together in one document why people with learning disabilities may experience difficulties in accessing formal procedures and how people at all levels in the criminal justice system can reduce these difficulties by following a number of good practice tips. We particularly welcome the emphasis on communication, which should make it easier for people with learning disabilities and those who work in the criminal justice system to understand each other.

We think that it is really important that this Guide does not sit in a drawer. We want it to be read and used by the whole range of people who can benefit from it, including the police, members of the legal profession, court staff, criminal justice social workers and prison staff. We hope that they will all see the Guide as an opportunity to increase their understanding of people with learning

disabilities and that they will continue to remember it as they go about their work..

It is equally important that people with learning disabilities know their rights and understand what happens in the criminal justice system. For that reason we also welcome the Easy Read version of this Guide. As they go about their everyday lives, people with learning disabilities, like any other citizen, need to know what is expected in particular situations. For example, they may find a purse in the street and want to make sure that the owner gets it back. It will then be important that they know what to expect in a police station and how to give the information required.

One of us is a trainer who has trained many kinds of professionals, including the police and nurses, to understand more about the lives of people with learning disabilities and the discrimination they can face. Both of us are aware that for any profession, fear of doing the wrong thing, or unfamiliarity, can cause discomfort. We find that direct contact with people with learning disabilities is a very good way to improve understanding on both sides. So we think that to support this Guide there should be training opportunities in which people with learning disabilities can describe their experiences and explain what others can do to enable them to receive fair treatment. We also think it is important for people with learning disabilities to become familiar with the help they can get if they experience harassment or crime.

## **Foreword by the Lord Advocate**

### **Frank Mulholland Q.C.**

All of us who work in the criminal justice system understand that victims, witnesses and people accused or suspected of crimes are all individuals. We should also understand that they have individual and particular needs, and rights that must be respected. Whether we are police officers, prosecutors, defence solicitors, judges, court staff, prison staff, or social workers, each one of us needs to be aware that any person we deal with – whether they are victim, witness or accused - may have learning disabilities.

In the past the criminal justice system hasn't always taken account of the needs and rights of people with learning disabilities. I think this may have happened because people involved just haven't understood what these needs and rights were, or what was needed to respond effectively to them.

I'm delighted that this Guide is now available. It will enhance our shared understanding of learning disability, and this will help to ensure that people with learning disabilities are treated fairly and get whatever assistance they need in order to take a full and effective part in the criminal justice system.

I'm grateful to Dr Keith Bowden, Dr Fergus Douds and Yasmin Simpson for writing the Guide. I'd also like to thank the individuals with learning disabilities who have contributed their



own experiences and insight to the development of the Guide, as well as the people working in support agencies and other criminal justice organisations who have also contributed to its production.

When each of us makes a positive contribution to ensuring that people with learning disabilities are treated fairly, and when we act with an understanding of their rights and needs, we will all be helping to ensure that the criminal justice system in Scotland is fair and effective for all.

## **Acknowledgements**

We are grateful to the help of many individuals and agencies in producing this Guide. We can't name everyone individually but would like to thank:

Association of Chief Police Officers in Scotland

Crown Office and Procurator Fiscal Service

ENABLE

Faculty of Advocates

Law Society for Scotland

Members of *The same as you?* Implementation Group

Mental Welfare Commission

People First

Scottish Consortium for Learning Disability

Scottish Court Service

Scottish Prison Service

Staff in the Health and Justice Directorates of Scottish Government

## **About this Guide**

This Guide has been written for:

- people with a learning disability (an Easy Read version is also available)
- families and carers of people with a learning disability
- advocacy workers
- professionals working in services for people with a learning disability
- professionals working in the criminal justice system.

## **How to use this Guide**

**If you are a person with a learning disability, a family member or carer, an advocacy worker or work for a support agency for people with learning disabilities** you can find out about the criminal justice process and how you will be treated. You can get information about your rights in Chapter 2. You can look at the criminal justice system and what different agencies within the system do by going to Chapters 3-7.

**If you are someone who works in the criminal justice system** you can get advice on how to respond to people with learning disabilities by going to the chapter that deals with your responsibilities (see Chapters 4-7). You can get general information on people with learning disabilities (and those with Autistic Spectrum Disorder (ASD)) and their rights at Chapters 1-3.

Please note that this Guide does not give you everything you may need to know; its aim is to provide you with some basic information.

Some people will want to see more details. Web links to more information are provided in the Guide. Chapters 10 and 11 explain how you can get more information and how to contact organisations and services that may be able to help.

Just remember that the Guide has important information about people with learning disabilities in Chapters 1 – 3.

## **Introduction**

The main aim of this Guide is to make people aware of how to help people with a learning disability when they come into contact with the Scottish criminal justice system.

People with a learning disability come into contact with the Scottish criminal justice system as:

- Witnesses
- Victims
- People accused or suspected of a crime
- People convicted of a crime.

People with a learning disability are more likely to be victims of, or witnesses to, crime rather than offenders.

This Guide aims to promote best practice, to stop disability discrimination and get people to think about how to use the law and services that are in place to protect and support people with a learning disability in Scotland.

People with a learning disability will then be better able to exercise their rights and responsibilities within Scotland's criminal justice system.

This Guide starts by giving help with identifying whether someone involved in the criminal justice system might have a learning

disability. This should lead to greater awareness of that person's communication and other support needs.

# 1. What is a Learning Disability?

Learning disability is a lifelong condition that means people need help to:

- understand new information;
- learn new skills, and
- cope independently.

[www.nhs.uk/Livewell/Childrenwithalearningdisability/Pages/Whatislarningdisability.aspx](http://www.nhs.uk/Livewell/Childrenwithalearningdisability/Pages/Whatislarningdisability.aspx)

A person with a learning disability may need extra support to live independently and to cope with everyday activities. The kind of help they need depends on the extent and nature of their disability. People with a learning disability have different levels of ability in thinking and dealing with everyday life. These are sometimes described as Mild, Moderate, Severe and Profound (see the International Classification of Diseases produced by the World Health Organisation).

Someone with a learning disability is likely to have extra communication needs that can make coping with certain situations difficult and stressful.

It is very important to remember that everyone with a learning disability is an individual who will have different areas that they struggle with. Everyday tasks that people with a learning disability may find difficult include:

- Filling in forms
- Following instructions/directions
- Concentrating for long periods
- Telling the time
- Understanding or describing time periods
- Remembering things
- Reading, writing and comprehension
- Explaining things
- Managing their home (doing shopping, cooking etc.)
- Managing money and bills
- Keeping appointments
- Using public transport on their own
- Understanding social norms and the world around us.

It will not always be obvious that someone has a learning disability (although some people do have clear physical characteristics, for example, people with Down's Syndrome). But there are questions you can ask or signs that will help you identify that the person may need extra support.

Asking people about the support they receive and the school they are at or used to go to is helpful. Some people with a learning disability may already be in touch with their local health and social work services. This may help to identify the kind of support that the person will need in going through the criminal justice system.



Some people with a learning disability may try to hide their condition so as to fit in or to avoid drawing attention to themselves.

It is possible for a person to be unaware they have a learning disability. They may never have used any support services or had an assessment. When a learning disability is not recognised this can mean the person will not receive appropriate support during their contact with the criminal justice system.

In the past there have been a number of different terms for 'learning disability', including mental handicap and mental retardation. These terms are now considered to be offensive and are no longer used.

Some people may tell you they have a *learning difficulty*, not a learning disability. A person with a learning difficulty will have problems in one or two areas of their learning but will manage well in other areas of their development. There are many different types of specific learning difficulty. The best known is dyslexia where the person will have problems with spelling, reading and/or writing. They will usually be able to manage other aspects of their life without any significant problems. The link below provides further information on learning difficulties:

<http://www.open.ac.uk/inclusiveteaching/pages/understanding-and-awareness/what-are-specific-learning-difficulties.php>

People with a *learning disability* will have problems with a range of aspects of daily living. The situation is complicated by the fact that some people who are considered to have a learning disability prefer to use the term 'learning difficulty' when describing their situation. What is most important is that the extent of an individual's problems is recognised to provide them with the most appropriate support during their contact with the criminal justice system.

In the past reference was sometimes made to someone having a 'mental age of x'. Assessments of this kind applied a score based on what a child of a particular age would be expected to understand. However, comparing an adult person with a child in this way is now considered to be demeaning and unhelpful. It ignores the fact that the person should be treated as an adult with normal adult needs and rights (for example in relation to sexuality).

Adults with a learning disability in our community must be given the same respect and rights as all citizens. This includes being given appropriate levels of responsibility. [\*See the Rights Section\*](#)

### **Some other important facts about learning disability**

People with a learning disability should be treated as people first and only after that should the effects of their learning disability be taken into account, respecting the fact that they are all individuals.

Approximately 2-3% of the Scottish population have a learning disability (2 or 3 people out of every 100).

People with a learning disability are more likely to suffer from common mental health problems such as depression and anxiety, but also more severe and rarer conditions such as schizophrenia.

People with a learning disability also suffer from more physical health problems, for example, up to 30% have epilepsy.

Up to 40% of people with a learning disability have hearing and/or visual problems that can affect their communication and understanding.

Up to 90% of people with a learning disability have communication problems.

About 60% of people with a learning disability have some skills in symbolic communication, such as speech, signs or picture symbols.

About 80% of people with a severe learning disability do not acquire speech.

People with a learning disability are more vulnerable to bullying, exploitation and abuse. They are also often more suggestible and more easily influenced by others.

Learning disability is classified as a 'mental disorder' in some legislation, including the Adults With Incapacity (Scotland) Act

2000, the Mental Health (Care & Treatment)(Scotland) Act 2003, and the Vulnerable Witnesses (Scotland) Act 2004.

## **What about people with an Autistic Spectrum Disorder (ASD)?**

This Guide is mainly about learning disability rather than Autistic Spectrum Disorder. The term Autistic Spectrum Disorder is used because it is now recognised that there are a number of subgroups of ASD which can affect individuals across the full range of intellectual ability. Much of the advice in this Guide will be relevant to people with ASD whether or not they also have a learning disability.

For a diagnosis of ASD to be made, ALL of the following must be present:

- impairment of communication
- impairment of social interaction
- impairment of imagination/flexible thinking.

ASD affects the way a person communicates and relates to people around them.

People with ASD have difficulties with everyday social interaction.

People with ASD can have a different perspective and experience of the world.

A number of people with ASD also have a learning disability but everyone with ASD has problems making sense of the world around them. Some people with ASD carry a card, the 'Autism

Alert Card', which is designed to tell people about the condition, and asks them to show respect and tolerance.

Asperger's Syndrome is a form of ASD. This term is used to describe people with some autistic behaviour who are usually better able to function in society than others who have a more severe form of ASD.

For detailed guidance on people with ASD in the criminal justice system, including more communication tips, you should refer to the information booklet published by the National Autistic Society (NAS). Please note that this guidance is designed mainly for people living in England and Wales.

[www.autism.org.uk/working-with/criminal-justice/criminal-justice-system-and-asds.aspx](http://www.autism.org.uk/working-with/criminal-justice/criminal-justice-system-and-asds.aspx)

### **How can you tell if someone might have a learning disability?**

It's very important to identify whether a person has a learning disability. If this doesn't happen the individual may not receive the support that they need during their contact with the criminal justice system.

Some people may tell you that they have a learning disability. Other people may not want to reveal that they have a learning disability or may not understand the term. Sometimes family members, friends or staff members will let you know that a person has a learning disability.

It may not always be immediately clear that someone has a learning disability. To find out you may want to ask some of the following questions:

- Can you tell me where you live? Can you tell me who you live with?

This might identify that the person is still living with their parents or in supported accommodation with staff helping them.

- Do you have anyone to support you like a social worker, key worker, support worker, doctor or nurse?
- Is there anyone who helps you with things like paying your bills, cleaning or cooking?
- Where did you go to school? Did you have extra help at school?

Most people with a learning disability now go to mainstream schools and often have learning support. Some may have attended specialist schools or units, particularly older people with a learning disability.

- What do you usually do in the day?

Try to find out if they attend a day centre or have day opportunities or get extra support at college or in their job.

- Have you ever been in hospital? How long for and when? Do you know the hospital name?

This may help you to find out if they have used local learning disability or psychiatric services. It may also provide important clues about their physical and mental health.

Do you have an advocate or someone who helps you to speak up? Does someone help you to travel to places?

- Can you tell me how old you are? Can you tell me when your birthday is?
- Can you tell me what time it is?
- Can you read? Can you write?

Ask the person to read some simple text aloud, or get them to write down a simple sentence.

A learning disability may be hidden by other influences on behaviour. These could include mental illness, extreme anxiety brought on by a stressful situation, drugs and/or alcohol intoxication or withdrawal states.

### **Communicating well with people with a learning disability**

People with a learning disability may have difficulties speaking, understanding and expressing themselves. They may have problems remembering things or concentrating. They may have difficulties with social interactions.

To communicate well with people with a learning disability interviewers need to understand the difficulties that someone with a learning disability may have. They may need to change the way they communicate. They should always try and respond to each person's individual communication needs. Advice about how best to communicate and interact with a particular individual can often be given by family, carers or professionals involved in giving support.

Here are some practical tips which may help to improve communication with people with a learning disability.

- It's important to take time to establish rapport with a person with a learning disability so as to help them feel comfortable in the situation. Someone with a learning disability is less likely to communicate at their best if they are anxious.
- Always explain to the person themselves exactly why they are in this situation and what is likely to happen.
- It may be helpful to use the person's name at the start of each sentence.
- Building rapport, for example by asking someone about their hobbies and interests, can help you to get an idea of how they communicate and how able they are.
- The use of visual aids such as drawings, photos, a calendar for dates can be very helpful.
- Speaking slowly and clearly using simple language will help to increase the person's understanding.
- Avoid using jargon, long words or long sentences.
- It can be helpful to encourage the person to let you know if they don't understand something.
- Emphasise key words and use concrete terms not abstract terms, for example, 'at breakfast time' rather than 'early on'.
- Break large chunks of information into smaller chunks and ensure you give the person time to understand the information.



- Prepare the person for each stage of the communication, for example, 'David, I will now ask you some simple questions' or 'David, I will now explain what we are going to do'.
- Be patient and calm while communicating, don't rush the person you are talking to – they may need longer to process the questions and think about their answers.
- Try to use open-ended questions rather than closed (restricting) 'yes/no' questions.
- Avoid double-negative statements or vague questions such as 'You weren't in the shop, were you?'
- Be aware that repeating the same question may suggest to the person that they have given the wrong answer when asked the first time. It can be helpful to ask the same question in a different way, particularly to check that the person has understood the question and to check the consistency of answers.
- Be aware that a person with a learning disability may be eager to please or be acquiescent (likely to answer 'yes'). This can be checked by asking the same question in a different way, where you would expect a negative answer.
- Wherever possible, several short interviews or sessions are likely to be better than one long session. This may help with the person's concentration levels and reduce anxiety.
- Try to have interviews in a familiar environment and avoid changing the interview room. Ensuring the environment is free from distracting noises and that it is as calm as possible will help reduce anxiety.

## **2. *The same as you?* and Rights**

*The same as you?* was published in 2000 by the Scottish Government and was a significant and wide ranging review of the needs of people with a learning disability in Scotland.

The review process involved consultation with all of the key stakeholders in Scotland including people with learning disabilities and their families and carers, statutory organisations and the voluntary and private sector.

The following themes came out of the review and are a key part of the Scottish Government's policy for people with a learning disability:

- People with a learning disability should be valued. They should be asked and encouraged to contribute to the community they live in. They should not be picked on or treated differently from others.
- People with a learning disability are individual people.
- People with a learning disability should be asked about the services they need and be involved in making choices about what they want.
- People with a learning disability should be helped and supported to do everything they are able to.
- People with a learning disability should be able to use the same local services as everyone else, wherever possible.

- People with a learning disability should benefit from specialist social, health and educational services.
- People with a learning disability should have services which take account of their age, abilities and other needs.

You can get more information about *The same as you?* at the link [www.scotland.gov.uk/ldsr/docs/tsay-00.asp](http://www.scotland.gov.uk/ldsr/docs/tsay-00.asp)

### **The rights of people with a learning disability**

Historically people with a learning disability often had their rights ignored. Decisions were frequently made on their behalf by others, even when the person was fully capable of making their own decisions.

The introduction of the Adults with Incapacity (Scotland) Act 2000 makes it clear that decisions should only be made on behalf of a person with a learning disability in very limited specific circumstances. This should happen only when (1) that person has been assessed as being incapable of making that specific decision and (2) someone has been given legal powers under the Act to allow them to make such a decision. You can find out more at the link [www.scotland.gov.uk/Topics/Justice/law/awi](http://www.scotland.gov.uk/Topics/Justice/law/awi)

Changes in attitude towards the rights of people with a learning disability can be seen in the publication of the UK Parliament Report by the Joint Committee on Human Rights *A Life Like Any Other? Human Rights of Adults with Learning Disabilities*.

[www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/40/4002.htm](http://www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/40/4002.htm)

An Easy Read version of this report is available at [www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/40/40ieasyread.pdf](http://www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/40/40ieasyread.pdf)

The report highlights the following rights:

- You have the right to life
- You have the right not to be treated badly or punished in a cruel way
- You have the right to freedom
- You have the right to a fair trial in court if the police think you have broken the law
- You have the right to respect for your own private life
- People should respect your family life.

Under the Disability Discrimination Act (1995) all public services had a legal responsibility not to discriminate against disabled people, or to provide a poorer quality of service because of their disability. The revised DDA (2005) came into force in December 2006. It placed new statutory duties on public bodies to eliminate discrimination and harassment of disabled people. It also promoted greater equality of opportunity for disabled people.

The Equality Act 2010 replaces the existing anti-discrimination laws (including the DDA) with a much easier and consistent single Act. People with a 'protected characteristic' (which includes a learning disability) now have specific rights. These rights also apply to people who 'associate with' someone who has a learning disability, such as their family or friends or to someone who is thought to have a learning disability even though they don't.

Public bodies, including the NHS, local authorities, police, prosecutors, courts and prison service (and other organisations that provide services to the public on behalf of these bodies) must:

- advance equality of opportunity between disabled persons and others
- eliminate discrimination that is unlawful under the Act
- eliminate harassment of disabled persons that is related to their disabilities
- eliminate victimisation where a disabled person is trying to obtain their rights
- foster good relations between disabled persons and others
- take positive action to overcome or minimise disadvantage for disabled people, even where that involves treating them more favourably than others.

You can get more information about the Equality Act at <http://www.equalityhumanrights.com/legal-and-policy/equality-act/>

and there's also useful information at:

[www.direct.gov.uk/DisabledPeople/RightsAndObligations/YourRights/fs/en](http://www.direct.gov.uk/DisabledPeople/RightsAndObligations/YourRights/fs/en)

Crimes committed against anyone with a disability (including a learning disability) may be treated more seriously by the criminal justice system. This will happen if the person committing the crime showed hatred or prejudice towards the victim because of their disability. You can find out more about these crimes under the Offences Aggravated by Prejudice (Scotland) Act 2009 or at <http://www.scotland.gov.uk/Topics/Justice/crimes/8978>

People with learning disabilities are often helped to get their rights through advocacy services. Self advocacy groups bring individuals together and support them to present their own individual view or the view of a group. Other options include citizen advocacy or professional advocacy where the person will be given individual support to express their views. Where the person with learning disabilities is unable to do so, the advocate will represent that person's views.

Advocacy services can be very helpful to individuals with a learning disability who are involved in the criminal justice system and will help them to speak up for their rights in that context. More information on advocacy can be found at [www.siaa.org.uk/content/view/14/27/](http://www.siaa.org.uk/content/view/14/27/)

### **3. Learning Disability and the Criminal Justice System**

People with a learning disability come into contact with the criminal justice system as:

- Witnesses
- Victims
- People accused or suspected of crimes
- People convicted of crimes.
- Jurors - this Guide does not cover this particular issue (see Scottish Courts website

<http://www.scotcourts.gov.uk/courtusers/jurors/index.asp>

This Guide aims to promote best practice, to stop disability discrimination and get people to think about how to use the law and services that are in place to protect and support people with a learning disability in Scotland.

This means that it's very important for people in the criminal justice system to consider whether or not someone might have a learning disability and make any necessary adjustments to promote fairness.

People with a learning disability are more likely to be victims of, or witnesses to, crime rather than offenders.

People with a learning disability are more likely than other people to become victims of crime because of:

- Limited ability to identify risky situations

- Lack of understanding of the motivation of others
- Communication difficulties
- Poor social understanding
- Vulnerability to being tricked, deceived or exploited by others.
- Being targeted as 'easy victims' who will not report crimes to the authorities.
- Being more likely to live in high crime neighbourhoods.

Joint working between agencies, such as health, social work, housing, education and criminal justice services, is often needed to help keep people with a learning disability safe and provide the support they need.

Just because someone has a learning disability doesn't mean that they won't be able to give information about a crime. People with a learning disability can describe what they saw or heard if they are provided with the right support. For example, they may be able to have a supporter present in court when they give their evidence.

### **People with a learning disability who are accused or suspected of crimes**

It's important to recognise that people with learning disabilities are often able to take responsibility for their actions. Prosecution and conviction can help some people with learning disabilities to understand the consequences of their actions and discourage them from committing more offences.



The support needs of an individual accused or suspected of a crime need to be met at each stage of the criminal justice system to ensure that they receive fair and equal treatment and have the same opportunities as other people accused of crimes.

As with the general offending population, offenders with a learning disability may commit a wide range of offences, with a similar range of causation and motivation.

For some people with learning disability the criminal justice system may not be an appropriate option, for example people with more significant learning disabilities. If a person's condition means that they can't cope with the demands of the criminal justice system then they should be assessed by a professional from within a learning disability service. They may then be diverted to a more appropriate setting that can address both their care needs and their offending behaviour. This issue is recognised in legislation and in practice. *See the section on [Unfitness to Stand Trial](#)*

Joint working between agencies is also needed to help people with a learning disability to change their offending behaviour.

## **4. Information about and for the Police Service**

This part of the Guide is designed to:

- make police officers aware of how to help people with a learning disability who come into contact with the police service
- help people with learning disabilities, their families and support workers get information about what the police do.

People with a learning disability come into contact with the police as:

- Witnesses
- Victims
- People accused or suspected of crimes
- People convicted of crimes.

This Guide aims to promote best practice, to stop disability discrimination and get people to think about how to use the law and services that are in place to protect and support people with a learning disability in Scotland. (A learning disability counts as a 'protective characteristic' for the purposes of the Equality Act 2010 and therefore people with a learning disability are entitled to all the rights under that Act.)

People with a learning disability are more likely to be victims of, or witnesses to, crime rather than offenders.

Sometimes people with a learning disability are categorised as having a 'mental disorder' (under the Adults with Incapacity (Scotland) Act 2000, the Mental Health (Care & Treatment) (Scotland) Act 2003 and the Vulnerable Witnesses (Scotland) Act 2004). They will then have certain safeguards and rights.

The police may need help with identifying whether someone involved in the criminal justice system might have a learning disability. This should lead to greater awareness of that person's communication and other support needs. You can get information on this at the [communication section of this Guide](#).

### **What should police officers do if they think someone has a learning disability?**

If a police officer is interviewing someone they think may have a learning disability, or if they are told this (by a carer, professional or the person themselves) they should make sure that there is an Appropriate Adult present to help at the interview. You can find more guidance about Appropriate Adults at:

[www.scotland.gov.uk/Topics/Justice/law/victims-witnesses/Appropriate-Adult/Guidance](http://www.scotland.gov.uk/Topics/Justice/law/victims-witnesses/Appropriate-Adult/Guidance)

Scottish Appropriate Adult Network -  
[www.scotland.gov.uk/Topics/Justice/law/victims-witnesses/Appropriate-Adult/appropriateadultnetworks](http://www.scotland.gov.uk/Topics/Justice/law/victims-witnesses/Appropriate-Adult/appropriateadultnetworks)

The role of the Appropriate Adult is to:

- Facilitate communication between the police and the person with a learning disability

- Help the person understand why they are being interviewed
- Help the person understand the questions they are being asked
- Help the police to ask questions in the best way
- Help the police to understand the person's answers
- Tell the police if they think there is a need to stop the interview
- Provide support which enables the person to communicate as well as they can.

Appropriate Adults have been specially trained for this role and each police force has information about how to access their local Appropriate Adult Service. Family members, carers and paid staff are not Appropriate Adults. But, in some circumstances, police may find it helpful to allow another person to be present who knows the person with a learning disability. This might be to give extra reassurance or help with more specific communication needs. This person would not replace the Appropriate Adult.

Appropriate Adults can't provide legal advice to a person being interviewed but can help the person to understand their right to get this from a solicitor. Appropriate Adults and solicitors have different jobs. If a solicitor attends an interview this does not mean they replace an Appropriate Adult.

If resources allow Appropriate Adults could also be used to support people with a learning disability to understand other investigative

police procedures, such as fingerprinting or video identification parades. This is recommended where possible.

The police may take photographs of the crime scene. They may also need to take samples from a person accused of a crime and also in some cases from a victim. These samples could be blood, hair or a sample from the mouth.

### **Key issues**

- Police should make sure that throughout the interview suspects with a learning disability fully understand and are reminded about the police caution.
- People with a learning disability may be unable or struggle to read.
- People with a learning disability often have memory problems.
- The use of police 'jargon' such as 'arrested', 'suspected' and 'accused' can be confusing, so should be fully explained.
- Some people with a learning disability may make false confessions to the police, thinking that this will mean they can go home more quickly. They may not understand what will happen if they say they are guilty when they aren't.

The Appropriate Adult can help with communication about these things.

Police officers interested in more detailed advice will find helpful information in a document developed by the National Policing Improvement Agency in England and Wales.

[http://www.npia.police.uk/en/docs/Mental\\_ill\\_Health.pdf](http://www.npia.police.uk/en/docs/Mental_ill_Health.pdf)

Although this is written for the legal system in England and Wales it provides good advice on interviewing vulnerable adult witnesses, including a lot of detail on different types of questioning.

If a police officer believes that a person with a learning disability may not be medically fit to be interviewed they should arrange for an assessment by a Forensic Physician (FP). If the FP believes that the person is not mentally fit to be interviewed they should arrange for a psychiatric examination. An FP should also be called if an officer is concerned about a person's fitness to remain in police custody.

If the circumstances of an offence raise Adult Protection issues for an individual the local authority social work department must be contacted (see below for information about Adult Protection).

[www.scotland.gov.uk/Publications/2009/01/30112831/0](http://www.scotland.gov.uk/Publications/2009/01/30112831/0)

It is important that any report sent by the police to the Procurator Fiscal highlights the fact that the victim, witness or accused has a learning disability.

## **5. Information about and for Prosecution and Defence**

This part of the Guide is designed to:

- make prosecutors and defence lawyers aware of how to help people with a learning disability who come into contact with them
- help people with learning disabilities, their families and support workers get information about what the prosecution and defence lawyers do.

People with a learning disability come into contact with the prosecutor or a defence lawyer as:

- Witnesses
- Victims
- People accused of crimes
- People convicted of crimes.

This Guide aims to promote best practice, to stop disability discrimination and get people to think about how to use the law and services that are in place to protect and support people with a learning disability in Scotland. (A learning disability counts as a 'protective characteristic' for the purposes of the Equality Act 2010 and therefore people with a learning disability are entitled to all the rights under that Act.) People with a learning disability will then be better able to exercise their rights and responsibilities when involved with the criminal justice system.

People with a learning disability are more likely to be victims of, or witnesses to, crime rather than offenders. Sometimes people with a learning disability are categorised as having a 'mental disorder' (under the Adults with Incapacity (Scotland) Act 2000, the Mental Health (Care & Treatment) (Scotland) Act 2003 and the Vulnerable Witnesses (Scotland) Act 2004). They will then have certain safeguards and rights.

### **What the prosecutor does**

When the police have investigated a crime and there is enough evidence against a person (who will usually be over 16) the police will prepare a report on the case for the Procurator Fiscal. (The Procurator Fiscal is often just called 'the Fiscal' or 'PF'.)

The Procurator Fiscal is the public prosecutor in Scotland. The Procurator Fiscal decides whether someone should be prosecuted and in what court the case should be heard.

The PF has to take into account the interests of the victim, the accused and the public interest in making any decisions. The PF may decide to prosecute and the accused will then be brought before a judge. The PF has to present to a court enough evidence to prove 'beyond reasonable doubt' that an accused person is guilty.



The PF can also decide not to prosecute and can use what are called 'direct measures' such as warnings, fiscal fines, compensation offers and diversion (referral for specialist support or treatment). The Procurator Fiscal may decide to take no action. If the accused isn't prosecuted the victim can ask for an explanation for that decision.

Crimes committed by children under 16 are usually dealt with by the Scottish Children's Reporter (See the Scottish Children's Reporter Administration <http://www.scra.gov.uk/home/index.cfm>)

Some serious crimes committed by a child are reported to the PF as well as to the Reporter. Such cases might be dealt with by the Reporter or be prosecuted.

Any victim or witness who is known to have a learning disability will be offered help through the Victim Information and Advice Service (VIA) which is part of the prosecution service. A member of VIA staff will contact a victim or witness at an early stage in the case when that person is known to have a learning disability. (For more information see <http://www.copfs.gov.uk/Victims-Crime/Victims-Crime>.)

### **What the defence lawyer does**

People accused of crimes can have a solicitor, called a defence solicitor or defence agent, to help them. This person works with the accused to prepare them for prosecution and trial. The defence solicitor has the right to see key aspects of the

information about the case that have been collected by the prosecutor, including statements made to the police by witnesses.

People accused of crimes can also have a lawyer (called an advocate) to help them in court. This happens when the case is a very serious one and the trial is in the High Court.

### **How can the prosecution or defence tell if someone might have a learning disability?**

Information collected by the police should tell the Procurator Fiscal and defence that a witness, victim or suspect has a learning disability. At other times relatives or carers may explain this. But sometimes people with learning disabilities are not identified by the police so it is important that prosecutors and defence should be given advice about how to tell that someone may have a learning disability. See the section of this Guide [How can you tell if someone might have a learning disability?](#)

### **Interviews by the Procurator Fiscal or defence solicitor**

Sometimes the Procurator Fiscal or someone on their behalf, known as a precognition officer, speaks to witnesses about the case and the evidence they will give. This is called precognition. It often takes place at the Fiscal's office, and is a chance to make sure the Fiscal knows as much as possible about the case.

Witnesses might also be asked for a precognition by the defence solicitor who will be helping the person accused of a crime. Many

people worry that they might help the person who committed the crime if they tell the defence solicitor anything.

But speaking to the defence solicitor can be helpful, as it will show what evidence there is against their client (the accused) and help the solicitor give the best advice. Sometimes this might be to advise the accused to plead guilty. If the accused pleads guilty there won't be any trial.

The PF may decide it would be helpful for a witness with communication difficulties to have someone with them at precognition. The support would come from the person who is best placed to help the witness to communicate. This might be an Appropriate Adult [\*See Information for and about the Police Service\*](#) or it could be someone already working with the witness who understands their ability to communicate.

Precognition interviews can provide PFs and defence solicitors with an indication of whether an individual should be considered as a 'vulnerable witness'. (See section in Chapter 6 or [www.scotland.gov.uk/Resource/Doc/37432/0010040.pdf](http://www.scotland.gov.uk/Resource/Doc/37432/0010040.pdf) .)

Precognition interviews can also provide defence solicitors with an indication of whether an individual should be considered fit to stand trial.

### **Other key issues**

- People with a learning disability may be unable or struggle to read.

- People with a learning disability often have memory problems.
- The use of legal jargon should be avoided.
- Some people with a learning disability may make false confessions, thinking that this will mean they can go home more quickly. They may not understand what will happen if they do this.

## **Issues at court**

Detailed information about fitness to stand trial is found in Part 7 of the Criminal Justice and Licensing (Scotland) Act 2010.

[www.scottish.parliament.uk/s3/bills/24-CrimJustLc/b24bs3-aspassed.pdf](http://www.scottish.parliament.uk/s3/bills/24-CrimJustLc/b24bs3-aspassed.pdf)

If there is doubt about fitness to stand trial a psychiatric or psychological assessment should be requested.

The prosecutor or the defence solicitor or advocate must report to the judge (who is called a sheriff in the Sheriff Court) or a court official if they are aware that a person involved in a case may have a learning disability. The judge has the power to request a formal assessment of the person's condition.

If a person with a learning disability is giving evidence in court they may need extra support. This can be done in two ways:  
(1) Making adjustments to suit the particular person, such as allowing them to sit down while giving their evidence or to take frequent breaks.

(2) Under the terms of the Vulnerable Witnesses (Scotland) Act 2004.

This Act introduced 'special measures' to provide particular kinds of support when adult vulnerable witnesses are giving evidence in court. (This support may also apply to people accused of a crime who have a learning disability.) You can find more information at [www.scotland.gov.uk/Resource/Doc/37432/0010040.pdf](http://www.scotland.gov.uk/Resource/Doc/37432/0010040.pdf)

If there is a real risk that the 'completeness, coherence and accuracy' of a person's evidence will be reduced as a result of fear or distress, or 'mental disorder' (which includes learning disability), guidance on the Act says that there are four questions which lawyers should think about:

1. Is the witness potentially vulnerable?
2. Is there a significant risk that the vulnerability will affect the quality of the witness's evidence?
3. What support and assistance might benefit the witness?
4. What special measures might benefit the witness and help improve the quality of their evidence?

The special measures which may be made available are:

- (i) a screen;
- (ii) a live television link from another part of the court building or other place outwith that building;
- (iii) a supporter;
- (iv) prior statements as evidence in chief;
- (v) taking evidence by a commissioner.

These measures can be used alone or in combination. It is the judge who decides whether an adult should be allowed to give their evidence using special measures.

### **Ability to give evidence**

The prosecution or defence decide who should be called as a witness in a criminal case. Before a witness gives their evidence in court the prosecutor or defence solicitor/advocate has to consider whether that witness or a person accused of a crime understands the difference between truth and lies. Often, this will mean speaking to those who know the person best and consulting experts.

Another change made by the Vulnerable Witnesses Act was the removal of the 'competence test' for vulnerable witnesses. Before this change a judge had to test at court whether a vulnerable witness was 'competent' to take the oath or affirmation to tell the truth. This meant that the witness had to show an understanding of the duty to tell the truth and be able to distinguish between truth and lies. Sometimes people with a learning disability who might have been able to give important evidence were not allowed by the judge to give their evidence and felt unfairly treated.

Now the judge can't stop a witness from giving evidence because the judge thinks the witness doesn't understand the duty to be truthful or the difference between truth and lies. It's up to the

judge or jury to make a judgement about each witness's truthfulness and reliability after each witness has given their evidence.

People with a learning disability who are witnesses or victims can get help from Victim Support Scotland (VSS)

[www.victimsupportsco.org.uk/page/index.cfm](http://www.victimsupportsco.org.uk/page/index.cfm). VSS provides emotional support, practical help and information to victims and witnesses.

Victim Support Scotland - through its Witness Service - can help people to understand what will happen at court and take people to see what a courtroom is like before they have to go to court.

### **Other key points**

- The [communication section of this Guide](#) explains that people with a learning disability respond better to certain types of questions (for example 'open' rather than 'closed' questions have been found to give more accurate accounts).
- It is important for lawyers to recognise that some people with a learning disability can be more easily led during questioning due to suggestibility (being easily persuaded), acquiescence (accepting what the other person says) or confabulation (creating false statements or memories).

- The quality of testimony given by a person with a learning disability is strongly influenced by the type of questions that are asked.
- Questions which communicate the answer required (such as yes/no questions, either/or and leading and repeated questions) can cause problems for a witness with a learning disability and could prevent a fair trial for the accused.
- Questions which include a negative or double negative, multiple questions and questions with complex vocabulary and sentence structure can be particularly confusing.
- Suggestive or leading questions can put a person accused of a crime who has learning disabilities in an unfair position.
- It's important for court professionals to tailor their language to the level of understanding of the accused. The communication advice above provides some useful practical tips.
- Those defending and those supporting a person who is known to have learning disabilities have a duty to ensure that their situation has been assessed, communicated to others involved in the hearing and made as stress-free as possible.



## **6. Information about and for Court Staff**

This part of the Guide is designed to:

- make court staff aware of how to help people with a learning disability who come into contact with them
- help people with learning disabilities, their families and support workers get information about what the Scottish Court Service (SCS) does.

People with a learning disability come into contact with the courts as:

- Witnesses
- Victims
- People accused of crimes
- People convicted of crimes
- Jurors (this Guide does not cover this particular issue – see Scottish Courts website - <http://www.scotcourts.gov.uk/courtusers/jurors/index.asp> )

This Guide aims to promote best practice, to stop disability discrimination and get people to think about how to use the law and services that are in place to protect and support people with a learning disability in Scotland. (A learning disability counts as a 'protective characteristic' for the purposes of the Equality Act 2010 and therefore people with a learning disability are entitled to all the rights under that Act.) People with a learning disability will then be better able to exercise their rights and responsibilities when involved with the courts.

People with a learning disability are more likely to be victims of, or witnesses to, crime rather than offenders. Sometimes people with a learning disability are categorised as having a 'mental disorder' (under the Adults with Incapacity (Scotland) Act 2000, the Mental Health (Care & Treatment) (Scotland) Act 2003 and the Vulnerable Witnesses (Scotland) Act 2004). They will then have certain safeguards and rights.

### **How can the courts tell if someone might have a learning disability?**

By the time most people with a learning disability come into contact with the courts their needs should have been recognised. But this will not always happen and staff in the Scottish Court Service should be aware of how to tell if someone might have a learning disability. See the section of this Guide [How can you tell if someone might have a learning disability?](#)

The prosecutor or the defence solicitor must report to the judge or other official if they are aware that a person involved in a case may have a learning disability. The judge has the power to request a formal assessment of the person's condition.

### **Support for people with learning disabilities in court**

If a person with a learning disability is giving evidence in court they may need additional support. This can be done in two ways:

(1) Making adjustments to suit the particular person, such as allowing them to sit down while giving their evidence or to take frequent breaks

(2) Under the terms of the Vulnerable Witnesses (Scotland) Act 2004.

This Act introduced 'special measures' to provide particular kinds of support when adult vulnerable witnesses are giving evidence in court. This support may also apply to people accused of crime who have a learning disability. Details are provided at [www.scotland.gov.uk/Resource/Doc/37432/0010040.pdf](http://www.scotland.gov.uk/Resource/Doc/37432/0010040.pdf)

There are two helpful guides available online:

'I am a witness in court'

[www.scotland.gov.uk/Resource/Doc/152425/0040997.pdf](http://www.scotland.gov.uk/Resource/Doc/152425/0040997.pdf)

'Helping people with a learning disability who go to court'

[www.scotland.gov.uk/Resource/Doc/152441/0040998.pdf](http://www.scotland.gov.uk/Resource/Doc/152441/0040998.pdf)

If there is a real risk that the 'completeness, coherence and accuracy' of a person's evidence will be reduced as a result of fear or distress, or 'mental disorder' (which includes learning disability), the guidance says that there are four questions which lawyers should think about:

1. Is the witness potentially vulnerable?
2. Is there a significant risk that the vulnerability will affect the quality of the witness's evidence?
3. What support and assistance might benefit the witness?

4. What special measures might benefit the witness and help improve the quality of their evidence?

The special measures which may be made available are:

- (i) a screen
- (ii) a live television link from another part of the court building or other place outwith that building;
- (iii) a supporter;
- (iv) prior statements as evidence in chief;
- (v) taking evidence by a commissioner.

These measures can be used alone or in combination. It is the judge who decides whether an adult should be allowed to give their evidence using special measures.

### **Ability to give evidence**

The prosecution or defence decide who should be called as a witness in a criminal case. Before a witness gives their evidence in court the prosecutor or defence solicitor/advocate has to consider whether that witness or a person accused of a crime understands the difference between truth and lies. Often, this will mean speaking to those who know the person best and consulting experts.

Another change made by the Vulnerable Witnesses Act was the removal of the 'competence test' for vulnerable witnesses. Before this change a judge had to test at court whether a vulnerable

witness was 'competent' to take the oath or affirmation to tell the truth. This meant that the witness had to show an understanding of the duty to tell the truth and be able to distinguish between truth and lies. Sometimes people with a learning disability who might have been able to give important evidence were not allowed by the judge to give their evidence and felt unfairly treated.

Now the judge can't stop a witness from giving evidence because the judge thinks the witness doesn't understand the duty to be truthful or the difference between truth and lies. It's up to the judge or jury to make a judgement about each witness's truthfulness and reliability after each witness has given their evidence.

People with a learning disability who are witnesses or victims can get help from Victim Support Scotland (VSS) [www.victimsupportsco.org.uk/page/index.cfm](http://www.victimsupportsco.org.uk/page/index.cfm). VSS can provide emotional support, practical help and essential information to victims and witnesses.

Victim Support Scotland through its Witness Service can help people to understand what will happen at court and take people to see what a courtroom is like before they have to go to court.

## **Other key points**

- All information, both written and verbal, must be fully understood by the accused and witnesses.
- Ensuring accessible material is available will help to speed up the process and ensure a fair trial for the accused.
- The [communication section of this Guide](#) explains that people with a learning disability respond better to certain types of questions (for example 'open' rather than 'closed' questions have been found to give more accurate accounts).
- It's important for judges and court staff to recognise that some people with a learning disability can be more easily led during questioning due to suggestibility, acquiescence or confabulation (the creation of false statements or memories).
- The quality of testimony given by a person with a learning disability is strongly influenced by the type of questions that are asked.
- Questions which communicate the answer required (such as yes/no questions, either/or and leading and repeated questions) can cause problems for a witness with a learning disability.
- Questions which include a negative or double negative, multiple questions and questions with complex vocabulary and sentence structure can be particularly confusing.
- Suggestive or leading questions can put a learning disabled accused in an unfair position.
- It is important for court professionals to tailor their language to the level of understanding of the accused and for the judge to do this also.

- Those defending and those supporting a person with learning disabilities have a duty to ensure that their situation has been assessed, communicated to others involved in the hearing and made as stress-free as possible.

There are two helpful guides available online:

*I am a witness in court*

[www.scotland.gov.uk/Resource/Doc/152425/0040997.pdf](http://www.scotland.gov.uk/Resource/Doc/152425/0040997.pdf)

*Helping people with a learning disability who go to court*

[www.scotland.gov.uk/Resource/Doc/152441/0040998.pdf](http://www.scotland.gov.uk/Resource/Doc/152441/0040998.pdf)

## **Unfitness to stand trial**

When it is considered that an individual is unfit to stand trial and criminal procedures are continuing an 'Examination of the facts' will be held to establish whether the accused committed the crime.

More information on unfitness to stand trial can be found in

*Mental Health (Care and Treatment) (Scotland) Act 2003: Code of Practice- Volume 3*

[www.scotland.gov.uk/Publications/2005/09/16121646/16474](http://www.scotland.gov.uk/Publications/2005/09/16121646/16474)

## **Before sentence**

If found guilty, many people with a learning disability will be seen by social workers from criminal justice social work services before being sentenced by the court (see Chapter 7). The judge may ask for a Criminal Justice Social Work Report from a criminal justice social worker. The purpose of the report is to help the judge in deciding what the sentence should be.

Reports may also be requested from other professionals such as psychiatrists or psychologists.

## **Sentences**

Like everyone else convicted of a crime, people with a learning disability can receive a range of sentences such as fines, community payback orders, imprisonment etc. You can find more information at:

<http://www.victimsofcrimeinscotland.org.uk/the-justice-process/after-the-verdict/>

The judge can also consider the mental health needs of an offender as part of a sentence. For example, a community payback order may include a condition that the offender has to have psychiatric or psychological treatment. In a few cases this may mean that the person needs to be in a psychiatric hospital under a 'compulsion order'.

More details on this can be found in *Mental Health (Care and Treatment) (Scotland) Act 2003: Code of Practice- Volume 3 compulsory powers in relation to mentally disordered offenders*  
[www.scotland.gov.uk/Publications/2005/09/16121646/16474](http://www.scotland.gov.uk/Publications/2005/09/16121646/16474)



## **7. Information about and for Criminal Justice Social Work Services**

This part of the Guide is designed:

- to help people with learning disabilities, their families and support workers get information about what criminal justice social workers do
- for criminal justice social workers who don't have previous experience to make them more aware of how to help people with a learning disability.

People with a learning disability are most likely to come into contact with social workers as people convicted of crimes.

But sometimes people with a learning disability who are witnesses, victims or who have been accused of a crime may come into contact with criminal justice social work services.

This Guide aims to promote best practice, to stop disability discrimination and get people to think about how to use the law and services that are in place to protect and support people with a learning disability in Scotland. (A learning disability counts as a 'protective characteristic' for the purposes of the Equality Act 2010 and therefore people with a learning disability are entitled to all the rights under that Act.) People with a learning disability will then be more able to exercise their rights and responsibilities when involved with the courts. People with a learning disability are more likely to be victims of, or witnesses to, crime rather than offenders.

People with a learning disability are more likely to be victims of, or witnesses to, crime rather than offenders. Sometimes people with a learning disability are categorised as having a 'mental disorder' (under the Adults with Incapacity (Scotland) Act 2000, the Mental Health (Care & Treatment) (Scotland) Act 2003 and the Vulnerable Witnesses (Scotland) Act 2004). They will then have certain safeguards and rights.

By the time most people with a learning disability come into contact with the courts their needs should have been recognised. But this will not always happen. So staff in criminal justice social work services may need to think about whether someone might have a learning disability. See the section of this Guide [How can you tell if someone might have a learning disability?](#)

### **Other key points**

- Any guidance or instruction, reports, literature or workbooks given to people with a learning disability must be easy to read and understand.
- The [communication section](#) of this Guide explains that people with a learning disability respond better to certain types of questions (for example 'open' rather than 'closed' questions have been found to give more accurate accounts).
- It can be particularly helpful to use visual materials to assist clients to give accounts of their offending behaviour. Examples

could include drawings of what happened during an offence, or of their emotional state.

- In some cases it may be helpful to use role play scenarios to help a person describe what happened.

## **Diversion to social work**

In some cases the Procurator Fiscal may offer someone who has been charged with an offence the option of diversion from prosecution to criminal justice social work services. This can prevent people becoming involved in the court process while making sure that work takes place with them to stop them from committing crimes. (See [www.cjsw.ac.uk/cjsw/98.html](http://www.cjsw.ac.uk/cjsw/98.html) for more information.)

## **Throughcare services**

Throughcare is used to give services to prisoners during and after their sentence. Prisoners who must be given throughcare are serving a prison sentence for four years or more, or have special conditions attached to their sentence (such as a Supervised Release Order) or have committed sexual offences.

The aims of throughcare are:

- To help in planning for the release of prisoners who the law says have to be supervised when they leave prison, working jointly with prison social work services.

- To supervise people where the law says they have to be supervised after they leave prison.
- To make sure that all high risk offenders are supervised effectively.
- To provide effective advice, guidance and help to all prisoners seeking a service within 12 months of leaving prison.

So criminal justice social workers will be involved with people leaving prison who are on:

- Statutory Supervision
- Life Licence
- Parole Licence
- Non-Parole Licence
- Extended Sentences
- Supervised Release Orders

### **Work with prisoners before they leave prison**

Social workers based in prisons and in the community write assessments for parole reports. This helps the Parole Board and the First Minister in making decisions about early release on parole, and about conditions as part of parole and non-parole licences. People with a learning disability can get some help in presenting their case to the Parole Board. This help can be from a social worker, their personal officer or from someone else in the prison that they feel they can talk to about parole.

## **Voluntary help**

Criminal justice social work services must provide advice, guidance and help to prisoners who seek it within 12 months of release.

Social work criminal justice services and community learning disability teams can work together, for example, through joint assessments and joint treatment programmes.

More information about criminal justice social work services can be found at: [www.scotland.gov.uk/Topics/Justice/public-safety/offender-management/offender/community/16910](http://www.scotland.gov.uk/Topics/Justice/public-safety/offender-management/offender/community/16910)

## **Multi-Agency Protection Arrangements (MAPPA)**

MAPPA is a system to make sure that formal arrangements are in place between police, social work, housing and health services to ensure that appropriate support is provided to people who have been convicted of a sexual offence and present a continuing risk to the community. This will include people with a learning disability who commit such offences. In future MAPPA may include some people who commit violent offences.

More information is provided at:

<http://www.scotland.gov.uk/Topics/Justice/public-safety/protection>

## **8. Information about and for the Prison Service**

This part of the Guide is designed to:

- make prison staff (and those who work with prisoners such as staff transporting prisoners) more aware of how to help people with a learning disability who come into contact with them
- help people with learning disabilities, their families and support workers get information about what the Scottish Prison Service (SPS) does.

This Guide aims to promote best practice, to stop disability discrimination and get people to think about how to use the law and services that are in place to protect and support people with a learning disability in Scotland. (A learning disability counts as a 'protective characteristic' for the purposes of the Equality Act 2010 and therefore people with a learning disability are entitled to all the rights under that Act.) People with a learning disability will then be more able to exercise their rights and responsibilities when they or members of their family are in prison or a young offender's institution (YOI).

People with a learning disability are more likely to be victims of, or witnesses to, crime rather than offenders. People with a learning disability can be categorised as having a 'mental disorder' (under the Adults with Incapacity (Scotland) Act 2000, the Mental Health (Care & Treatment) (Scotland) Act 2003 and the Vulnerable

Witnesses (Scotland) Act 2004). They will then have certain safeguards and rights.

### **How can people working with prisoners tell if someone might have a learning disability?**

By the time most people with a learning disability come into contact with prison staff their needs should have been recognised. But this will not always happen and staff working with prisoners should be aware of how to tell if someone might have a learning disability. See the section of this Guide [How can you tell if someone might have a learning disability?](#)

For those who don't have experience please see the section about how to [communicate well with a person with a learning disability](#)

### **Support within a prison setting**

Prison or YOI (rather than hospital) may be the most suitable place for the individual, if they can be given the attention and support they need.

But in some cases the individual's learning disability or behavioural disturbance may be so severe that they need to be transferred to a healthcare setting. See [Transferring Prisoners to Secure Medical Units/Hospital](#) for information on about this.

It is important that Prison Healthcare Teams are aware of any offender with a learning disability.

They can make contact via the Scottish Forensic Network LD Services Prison Directory; this contains a contact name for a professional working in each of Scotland's learning disability services. This contact can help to establish if the individual has been under the care of their local learning disability or mental health service. Also, especially for prisoners serving short sentences, contact points/follow up can be arranged to provide support after release. For more information see the link below: [www.forensicnetwork.scot.nhs.uk](http://www.forensicnetwork.scot.nhs.uk)

A person with a learning disability is generally more vulnerable to bullying or abuse than others. This vulnerability is greater in a prison setting and there is a need for staff to carefully monitor prisoners with a learning disability. The first night in prison may be especially difficult for people with a learning disability.

It's important to place people with a learning disability in areas within the prison or YOI where staff are best able to monitor and promote their safety and security and ensure they are not exploited. This could be in the main wing, a protected area or in some cases the Healthcare centre. People with a learning disability in prison also need to know about how to make a complaint, if they are not happy with how they are treated by staff or by other prisoners.



The individual will be on 'Enhanced Integrated Case Management' if they are sentenced to more than four years. If they are serving four years or less they will be on 'Standard Integrated Case Management'. Both processes aim to reduce re-offending, identify risk and make plans to help the individual so that they don't commit more offences. The needs of each person in prison are assessed and monitored at 'Case Conferences', where staff working with individuals in prison and sometimes family members help the person to try and meet their needs.

People with learning disabilities who are in prison/YOI should have equal access to treatment and educational/occupational programmes, which may need to be adapted to suit their particular requirements.

## **Release and resettlement**

(Also see [Throughcare](#) in Chapter 7.)

It's important to ensure that a person with a learning disability who is leaving prison is registered with a GP in the community to which they are returning.

If the person has complex needs or has additional mental or physical health problems it is also important to establish links with their local Community Team for people with a learning disability (CLDT).

## **Transferring prisoners to secure medical units/hospital**

A small number of people with a learning disability need to be treated in specialist secure healthcare services rather than prison. A person with a learning disability will usually receive their specialist assessment and treatment within one of the secure learning disability units in Scotland, or less often within one of the forensic mental health units.

The legal process is described in the following link:

[www.scotland.gov.uk/Publications/2005/09/16121646/16579](http://www.scotland.gov.uk/Publications/2005/09/16121646/16579)

## **9. Information about health and social work services supporting people with a learning disability**

### **Community Learning Disability Teams (CLDTs)**

Almost every Scottish local authority/NHS Health Board has a Community Learning Disability Team. These are multi-disciplinary teams who can give advice and take referrals. CLDTs consist of a range of professionals such as community learning disability nurses, psychiatrists, clinical psychologists, social workers, speech and language therapists, occupational therapists, physiotherapists, dieticians, podiatrists and arts therapists. CLDTs often operate an open referral system, accepting referrals from the person themselves, relatives or carers, or other related professionals. Some teams undertake work with children and most support adults with learning disability.

Individuals may already be known to their local CLDT, although it's not uncommon for people with a learning disability to have had no previous contact with services.

CLDTs vary in their experiences of commissioning services and working directly with offenders.

Some learning disability services may have teams or identified individuals who work specifically with offenders or they may have arrangements in place with local forensic mental health teams.

## **Specialist secure in-patient/hospital facilities**

Scotland has a range of secure in-patient beds for people with a learning disability. There are different levels of security, depending on how serious a crime has been committed or how difficult an individual is to look after.

**High Security:** provided by The State Hospital. This service is for men; it would be very unusual for a woman to require high secure care.

**Medium Security:** from 2011 provided by the Rowanbank Clinic in Glasgow. This service is for men and women. A small number of men will also access hospital care in England if they require medium security.

**Low Security:** provided by many local Health Boards, though sometimes individuals will have to be treated further away from home. The majority of wards are for men only and unfortunately women may have to access hospital care in England if they require low security.

Information about specialist forensic services can be provided by the Scottish Forensic Network (Tel: 01555 842018).

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

## **Local authority services**

Community care social work services provide a wide range of services and support to adults who are in need of additional care and support. They work with individuals to determine their needs, and arrange services to meet these assessed needs.

Local authorities may provide day services, short breaks/respite care and long term care for a range of people including care and support at home, direct payments, equipment and adaptations and information and advice on debt and welfare benefits. Many of the support services for people with learning disabilities are provided by independent agencies under contract to a local authority.

Some people with learning disabilities or their families employ their own workers through direct payments or play a part in directing their own care (through self-directed support).

## **Adult Support and Protection Act**

A law called the '[Adult Support and Protection \(Scotland\) Act 2007](#)' came into force on October 2008. This law applies to adults (people aged 16 or over) who are unable to safeguard their own well-being, property, rights or other interests, are at risk of harm or self-harm and are affected by disability, mental disorder, illness or physical or mental infirmity.

In other words, the Act covers those adults who are vulnerable to being hurt or harmed by other people mainly because they are less able to protect themselves.

Where a local authority believes that there is a risk of serious harm to an adult they can ask a judge to make a legal order to protect that person.

The judge can order a full assessment of the situation and removal of the person at risk from a risky situation for up to 7 days. The judge can also ban anyone who may harm the adult at risk from seeing that person for up to 6 months.

You can get more information on Adult Support and Protection at: <http://www.scotland.gov.uk/Resource/Doc/1095/0059478.pdf>

### **Adult Protection Committees**

Part 1 of the Adult Support and Protection (Scotland) Act 2007 creates an obligation on councils to establish multi-agency Adult Protection Committees. These committees are responsible for overseeing local adult protection policies in their area. They will also be responsible for monitoring and advising on adult protection procedures, for ensuring appropriate cooperation between agencies and for improving the skills of those with a responsibility for the protection of adults at risk. You can get more information at: <http://www.scotland.gov.uk/Publications/2009/01/06115617/0>

## 10. Additional Information and Resources

Resources about publishing accessible information:

If you are planning to produce your own documentation or visual aids, these organisations offer help, guidance, advocates to advise, etc.

British Institute of Learning Disabilities, *Fact Sheet on Communication*

[www.bild.org.uk/pdfs/05faqs/communication.pdf](http://www.bild.org.uk/pdfs/05faqs/communication.pdf)

Change, *Words to Pictures Scheme*

[www.changepeople.co.uk/default.aspx?page=14126](http://www.changepeople.co.uk/default.aspx?page=14126)

Change, *Accessible Information Guidelines*

<http://www.changepeople.co.uk/productDetails.php?id=2010&type=3>

Mencap's *Make it Clear* campaign home page

<http://www.mencap.org.uk/document.asp?id=1579>

Change, publications including Picture Bank CDs

[www.changepeople.co.uk/default.aspx?page=9541](http://www.changepeople.co.uk/default.aspx?page=9541)

Photosymbols, [www.photosymbols.com](http://www.photosymbols.com)

List of Books, *Beyond Words* titles

[www.rcpsych.ac.uk/publications/booksbeyondwords/bbwtitlesa-z.aspx](http://www.rcpsych.ac.uk/publications/booksbeyondwords/bbwtitlesa-z.aspx)

Royal College of Speech & Language Therapists, *Adult Support and Protection Communication Toolkit*

[www.rcslt.org/asp\\_toolkit/adult\\_protection\\_communication\\_support\\_toolkit/ASP\\_toolkit\\_contents](http://www.rcslt.org/asp_toolkit/adult_protection_communication_support_toolkit/ASP_toolkit_contents)

## Resources about what happens in court

*Being a witness: a guide for child and adult vulnerable witnesses* - A CD Rom that includes useful information about going to court, video clips of witnesses giving evidence in court and using special measures, as well as a virtual tour of a courtroom. This is also available in DVD format. Published by the Scottish Government  
Hard copies available by phoning: 0131 244 2213

*Being a witness – going to court - A booklet for adult witnesses in criminal and children's hearing court proceedings* Published by the Scottish Government.

Hard copies available by phoning: 0131 244 2213

<http://www.scotland.gov.uk/Publications/2006/04/26124648/0>

*Being a witness – the use of special measures - A booklet for adult witnesses in criminal and children's hearing court proceedings*  
Published by the Scottish Government.

Hard copies are available by phoning: 0131 244 2213

<http://www.scotland.gov.uk/Publications/2006/04/26124813/2>

*What happens next?* A DVD resource for people with a learning disability. Published by Lanarkshire ACE, Speak Out Advocacy Project. The DVD is available by phoning: 01355 230202

*I am a witness in court – a guide for people with learning disabilities*- An Easy Read booklet published by the Scottish Government.

Hard copies are available by phoning: 0131 244 2213.

<http://www.scotland.gov.uk/Publications/2006/10/23095025/0>

*Special measures for vulnerable adult and child witnesses: a guidance pack*

[www.scotland.gov.uk/Publications/2008/04/21142140/0](http://www.scotland.gov.uk/Publications/2008/04/21142140/0)

## Information for victims of crime

*Information leaflet on National Standards for Victims of Crime*  
Published by the Scottish Government.

Hard copies are available by phoning: 0131 244 2213

[www.scotland.gov.uk/Publications/2005/02/20746/53358](http://www.scotland.gov.uk/Publications/2005/02/20746/53358)



*Victims of Crime in Scotland* - A Scottish Government website with information for victims. [www.scottishvictimsofcrime.co.uk](http://www.scottishvictimsofcrime.co.uk)

*Our Commitments to Victims and Witnesses* Published by the Crown Office and Procurator Fiscal Service.

Hard copies are available from 0131 226

2626 <http://www.copfs.gov.uk/Publications/2010/11/Our-Commitments-Victims-and-Prosecution-Witnesses-Information-Booklet>

<http://www.copfs.gov.uk/Publications/2010/11/Our-Commitments-Victims-and-Prosecution-Witnesses-Information-Leaflet>

#### Resources for advocacy:

British Institute of Learning Disabilities, Advocacy homepage  
[www.bild.org.uk/04advocacy.htm](http://www.bild.org.uk/04advocacy.htm)

Mencap, Advocacy Strategy

<http://www.aqv59.dsl.pipex.com/MencapAdvocacystrategy.pdf>

Voice UK, advice for advocacy and self-advocacy groups

<http://www.voiceuk.org.uk/train-equalaccess2.htm>

The UK Advocacy Network (UKAN)

<http://www.u-kan.co.uk/publications.html>

#### Resources for legal advice for vulnerable people:

Voice UK, access to legal advisors [www.voiceuk.org.uk](http://www.voiceuk.org.uk)

<http://www.voiceuk.org.uk/eatj.htm>

Mind, *Carers' Factsheet*, Legal Advice

Legal Unit, Mind, Granta House, 15-19 Broadway, London E15 4BQ

Hard copies are available from: 020 8519 2122

[www.mind.org.uk/Information/Factsheets/Carers/#Legal\\_advice](http://www.mind.org.uk/Information/Factsheets/Carers/#Legal_advice)

*Directory of Expert Witnesses* (Psychological experts able to advise on a given area in court) <http://www.bps.org.uk/e-services/find-a-psychologist/expertwitness.cfm>

### Resources for the police:

Scottish Appropriate Adult Network

[www.scotland.gov.uk/Topics/Justice/law/victims-witnesses/Appropriate-Adult/appropriateadultnetworks](http://www.scotland.gov.uk/Topics/Justice/law/victims-witnesses/Appropriate-Adult/appropriateadultnetworks)

National Police Improvement Agency (England and Wales mainly but useful general guidance), *Recognising Mental Health and Learning Disabilities*

[http://www.npia.police.uk/en/docs/Briefing\\_Note\\_Recognising\\_Mental\\_Health\\_Learning\\_Disabilities.pdf](http://www.npia.police.uk/en/docs/Briefing_Note_Recognising_Mental_Health_Learning_Disabilities.pdf)

*Guidance on Responding to People with Mental Ill Health or Learning Disabilities*

[http://www.npia.police.uk/en/docs/Mental\\_ill\\_Health.pdf](http://www.npia.police.uk/en/docs/Mental_ill_Health.pdf)

### Resources for the Prison Service:

Prison Reform Trust, *'No One Knows' Prisoners with Learning Disabilities and Learning Difficulties in Scotland*

<http://www.prisonreformtrust.org.uk/Publications/vw/1/ItemID/83>

Prison Reform Trust, *'No One Knows' Prevalence and Needs of Offenders with Learning Disabilities and Learning Difficulties*

<http://www.prisonreformtrust.org.uk/Publications/vw/1/ItemID/85>

National Guidelines for the Transfer of Prisoners to Secure Hospitals

[www.scotland.gov.uk/Publications/2005/09/16121646/16579](http://www.scotland.gov.uk/Publications/2005/09/16121646/16579)

National Offender Management Scheme (publication designed for England and Wales but contains some useful information for Scotland)

[http://www.rcslt.org/about/docs/crossing\\_the\\_communication\\_divide](http://www.rcslt.org/about/docs/crossing_the_communication_divide)

### Resources about Scottish Legislation:

The New Mental Health Act: An Easy Read Guide

[www.scotland.gov.uk/Publications/2007/09/03145057/0](http://www.scotland.gov.uk/Publications/2007/09/03145057/0)

Volume 3 of the Code of Practice for the Mental Health (Care and Treatment) (Scotland) Act 2003. This covers a range of issues relating to mentally disordered offenders.

[www.scotland.gov.uk/Publications/2005/09/16121646/16474](http://www.scotland.gov.uk/Publications/2005/09/16121646/16474)

The Adults with Incapacity (Scotland) Act 2000 - Short Guide to the Act. [www.scotland.gov.uk/Publications/2008/03/25120154/0](http://www.scotland.gov.uk/Publications/2008/03/25120154/0)

Adult Support and Protection (Scotland) Act 2007

[www.opsi.gov.uk/legislation/scotland/acts2007/asp\\_20070010\\_en\\_1](http://www.opsi.gov.uk/legislation/scotland/acts2007/asp_20070010_en_1)

Short comparison of the Adult Support and Protection Act, the Adults with Incapacity (Scotland) Act 2000 and the Mental Health (Care and Treatment)(Scotland) Act 2003

[www.scotland.gov.uk/Publications/2009/02/25110701/0](http://www.scotland.gov.uk/Publications/2009/02/25110701/0)

Resources for criminal justice social work services:

Learning Disabled Offenders Website [www.ldoffenders.co.uk](http://www.ldoffenders.co.uk)

Information on the Care and Treatment of Offenders with a Learning Disability

National Offender Management Scheme (publication designed for England and Wales but contains some useful information for Scotland)

[http://www.rcslt.org/about/docs/crossing\\_the\\_communication\\_divide](http://www.rcslt.org/about/docs/crossing_the_communication_divide)

## **11. Organisations and Services**

### **Organisations you may find useful**

#### **Association of Chief Police Officers in Scotland (ACPOS)**

<http://www.acpos.police.uk/> ACPOS is the professional voice of police leadership in Scotland. It works in partnership with central and local government to set strategic objectives for policing in Scotland and to deliver better integrated services for Scotland's communities.

#### **BILD, British Institute of Learning Disabilities**

[www.bild.org.uk](http://www.bild.org.uk) BILD works to improve the lives of people in the UK with a learning disability. British Institute of Learning Disabilities, Campion House, Green Street, Kidderminster, Worcestershire, DY10 1JL Tel: 01562 723 010

#### **British Psychological Society [www.bps.org.uk](http://www.bps.org.uk)**

The representative body for psychology and psychologists in the UK. The British Psychological Society, St Andrews House, 48 Princess Road East, Leicester LE1 7DR Tel: 0116 254 9568

**ENABLE Scotland [www.enable.org.uk](http://www.enable.org.uk)** campaigns for a better life for children and adults with learning disabilities and supports them and their families to live, work and take part in their communities. ENABLE Scotland National Office Address: 2nd Floor, 146 Argyle Street, Glasgow G2 8BL Tel: 0141 226 4541

#### **Foundation for People with Learning Disabilities**

[www.learningdisabilities.org.uk](http://www.learningdisabilities.org.uk) promote the rights, quality of life and opportunities of people with a learning disability and their families. London Office, 9th Floor, Sea Containers House, 20 Upper Ground, London, SE1 9QB Tel: 020 7803 1100

#### **Law Society of Scotland (LSS)**

<http://www.lawscot.org.uk/> The Law Society of Scotland is the professional governing body for Scottish solicitors. All practising solicitors are members of the Society.

**Mencap** [www.mencap.org.uk](http://www.mencap.org.uk) Learning disability charity working with people with a learning disability and their families and carers. Mencap, 123 Golden Lane, London EC1Y 0RT Tel: 020 7454 0454

**Mental Welfare Commission (MWC)** [www.mwcscot.org.uk](http://www.mwcscot.org.uk)  
An independent organisation set up by Parliament with the responsibility of protecting the welfare of people with mental disorder (including learning disabilities and dementia) in Scotland. The Commission has a duty to anyone with a mental disorder whether they are in hospital, in local authority, voluntary run or private accommodation or in their own homes.

**National Autistic Society** [www.nas.org.uk](http://www.nas.org.uk) champions the rights and interests of all people with autism to ensure that they and their families receive quality services appropriate to their needs. The National Autistic Society, Head Office, 393 City Road, London EC1V 1NG Tel: 020 7833 2299

**Prison Reform Trust** [www.prisonreformtrust.org.uk](http://www.prisonreformtrust.org.uk) PRT aims to create a just, humane and effective penal system. 15 Northburgh Street, London, EC1V 0JR Tel: 020 7251 5070

**Royal College of Nursing** [www.rcn.org.uk](http://www.rcn.org.uk) RCN represents nurses and nursing, promotes excellence in practice and shapes health policies. Royal College of Nursing, 20 Cavendish Square, London, W1G 0RN Tel: 020 7409 3333

**Royal College of Speech and Language Therapists** [www.rcslt.org](http://www.rcslt.org) The professional body for speech and language therapists and support workers. Royal College of Speech and Language Therapists, 2 White Hart Yard, London, SE1 1NX Tel: 020 7378 3012

**Scottish Consortium for Learning Disability (SCLD)** [www.sclld.org.uk](http://www.sclld.org.uk) A charity that is made up of 12 partner organisations who have joined together with funding from the Scottish Government to encourage best practice in the support of people with a learning disability through training, information, consultancy, research and public education. SCLD, The Adelphi Centre, Room 16, 12 Commercial Road, Glasgow, G5 0PQ Tel.: 0141 418 5420

### **Scottish Appropriate Adult Network (SAAN)**

[www.scotland.gov.uk/Topics/Justice/law/victims-witnesses/Appropriate-Adult/appropriateadultnetworks](http://www.scotland.gov.uk/Topics/Justice/law/victims-witnesses/Appropriate-Adult/appropriateadultnetworks) A

coordination and development group for all appropriate adult services in Scotland.

### **Scottish Children's Reporter Administration (SCRA)**

<http://www.scra.gov.uk/home/index.cfm>

The Scottish Children's Reporter Administration (SCRA), along with other agencies, has a responsibility for how the Children's Hearings System operates. SCRA's vision is to transform the life chances of vulnerable children and young people in Scotland.

### **Scottish Court Service (SCS)**

<http://www.scotcourts.gov.uk/>

This service manages the courts in Scotland. SCS helps people get access to justice by providing the people, buildings and technology to support the operation of the courts and the Office of the Public Guardian.

### **Scottish Prison Service [www.sps.gov.uk/default.aspx](http://www.sps.gov.uk/default.aspx)**

This service manages the prisons and young offenders' institutions in Scotland. The SPS are at the forefront of providing quality prisoner programmes geared to reducing re offending.

**The Royal College of Psychiatrists [www.rcpsych.ac.uk](http://www.rcpsych.ac.uk)** The professional and educational body for psychiatrists in the United Kingdom and the Republic of Ireland. National Headquarters, 17 Belgrave Square, London SW1X 8PG Tel: 020 7235 2351

### **The Scottish Independent Advocacy Alliance**

[www.siaa.org.uk](http://www.siaa.org.uk) promotes, supports and defends the principles and practice of independent advocacy across Scotland. Scottish Independent Advocacy Alliance, Melrose House, 69A George Street, Edinburgh EH2 2JG Tel: 0131 260 5380

**Voice UK [www.voiceuk.org.uk](http://www.voiceuk.org.uk)** National charity supporting people with a learning disability and other vulnerable people who have experienced crime or abuse. We also support their families, carers

and professional workers. Voice UK, Wyvern House, Railway Terrace, Derby DE1 2RU Tel: Helpline 0845 122 8695 General enquiries 01332 295775



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