Experiences of people with a learning disability in the Scottish criminal justice system
Introduction

The Equality and Human Rights Commission appointed Wellside Research and KSO Research to conduct research to gain a better understanding of the main issues and challenges people with learning disabilities face when they are accused or convicted of crimes in Scotland.

The views of 38 individuals were collected through in-depth interviews. People with learning disabilities¹, criminal justice agencies and professionals and support agencies all participated. A further 8 written contributions were received from organisations unable to take part in the interviews. It should be noted that the views expressed are individual’s own experiences and observations, and the sample is not representative of all people with learning disabilities who have experience of the criminal justice system. This research project also does not review the legislative and legal context, and in particular does not consider any forthcoming changes in the law.

Existing evidence highlights:

- the lack of a routine procedure for identifying individuals with a learning disability
- the lack of an Appropriate Adult² during police interviews
- the accused not understanding what was happening during their trial and court decisions, including bail and sentence decisions

¹ For this research, there was a need to adopt a clear definition of ‘learning disabilities’. The terms ‘learning disabilities’ and ‘learning difficulties’ are often used interchangeably, and could impact differently on the scope of this research. The available literature, along with information and terminology used by a wide range of support organisations were reviewed. From this a suitable definition was developed to provide the scope and boundaries for this research. To ensure sufficient numbers of accused/convicted persons were available to participate in this research, the scope for inclusion was widened to include some learning difficulties, such as those on the autistic spectrum and those with multiple Specific Learning Difficulties (SpLDs).

² Appropriate Adults have been provided on a non-statutory basis for a number of years by local authorities and other organisations/bodies to facilitate communication during police interviews and procedures where the person being interviewed may have difficulty with communication or understanding. For more information see: http://scottishappropriateadultnetwork.co.uk/
• difficulties in complying with community based orders, which increases the likelihood of custody
• sentence plans in both the community and custody failing to take account of offenders’ disabilities making it difficult for them to comply with their sentence
• a lack of specially prepared, accessible and/or easy read information, for example on prison procedures and internal prison forms
• a lack of consistent and systematic processes for sharing information between agencies, resulting in people not receiving the support they require
• people with learning disabilities being at a greater risk of reoffending because their specific needs are not recognised and addressed, and therefore do not have access to relevant support services.
Little progress

Interviews conducted for this research highlight that little progress has been made in recent years to address the challenges that accused/convicted people with learning disabilities may face. The current system appears to be stacked against people with learning disabilities from the outset, with challenges and disadvantage prevalent throughout the system.

Arrest and charge

Identification

Criminal justice agencies have no consistent way to identify individuals who have learning disabilities throughout the criminal justice system. Most agencies rely on frontline staff’s observations and experience to identify individuals with learning disabilities. Police Scotland are seen by many as having a key role in identifying learning disabilities at the point of arrest and charge, and for this information to be shared as an individual progresses through the system, however they have no routine screening at present and will rely on individual officers to identify people who are having difficulty understanding. As a result, there is significant potential for learning disabilities to remain unidentified, and for individuals to progress through the system unsupported.

Some people with learning disabilities will volunteer information about their disability during their first contact with police and others think that the police and other agencies are already aware. Some fear they will be treated differently including the range of sentencing options that could be used:

“I didn’t want to draw attention to myself, because people like us do not get treated fairly.” (Individual/Supporter).

“I think people expect very little [of adults with learning disabilities] and there’s a slightly patronising, over-protective attitude. People under-estimate the variety of learning disabilities that exist.” (Support Agency).
Training needs

Despite the reliance on frontline staff to identify people with learning disabilities, there is a lack of awareness and practical training on this issue throughout the criminal justice system.

**Recommendation:** Training and screening tools on identifying a learning disability and specific support needs should be developed, delivered and rolled out in a consistent manner.

Legal representation

Some interviewees felt that there is a lack of suitable legal representation available for people with learning disabilities within the first police interview. In most instances, the person is advised to speak with a solicitor over the phone in advance of the interview. This is seen to be inappropriate on a number of levels for people with learning disabilities. For example, during this phone call the solicitor has little or no time to assess the intellectual competence of the individual, or to determine whether they understand and are capable of following their advice. In most circumstances, the individual will be advised to answer ‘no comment’ to all police questions. However, individuals with learning disabilities highlighted that they found this difficult or impossible to adhere to:

“Most police interviews happen without a lawyer there. You speak to a lawyer on the phone before the interview whose advice is two minutes of saying “answer everything with ‘no comment’”. But for our clients, nearly all of them were unable, under the pressure of the police interview, were unable to stick to ‘no comment’ answers, which can then potentially incriminate them…So it puts them at an instant disadvantage.” (Support Agency)

The solicitor’s ability to effectively communicate with their client can have serious implications for an individual’s ability to understand their rights, understand the proceedings, and to participate in their case, as well as whether an individual is assessed as fit to plead.
Appropriate Adult

Participants noted that many people with learning disabilities are interviewed by the police without an Appropriate Adult. The decision to call in an Appropriate Adult lies with the police, and relies on their ability to identify whether a person has a learning disability. There are challenges for the police, including the short period of time they have to hold and interview a suspect before they have to charge or release them, and if this person requires an Appropriate Adult but they cannot attend immediately, this reduces the available time:

“Often, when we first meet them [clients] the interview has already taken place and there was no Appropriate Adult in place, and so that is a big, big issue.” (Support Agency).

Numerous other issues were also identified with the Appropriate Adult system, including Appropriate Adults not being able to assist the accused to communicate with a solicitor, not having sufficient time to understand that particular learning disability and to assess the extent of an individual’s communication needs. It was also raised that there appears to be a lack of understanding of the Appropriate Adult role as well as inconsistent operating models existing across the country:

“My understanding was that their role was to make sure that the person [service user] understood what was going on, but that’s not what we’re seeing. They are really just sitting there – observing. They are not testing the person’s understanding.” (Support Agency).

Recommendation: The role of the Appropriate Adult needs to be clarified with advice and guidance provided for criminal justice agencies and people with learning disabilities.

Court and diversion/sentencing

Court experiences

People with learning disabilities can find the court environment very challenging, and often don’t understand what is being said or what is happening. The solicitor is expected to provide all the required support in
court. In some individual cases an Appropriate Adult can be provided, or advocates and other supporters may be able to offer some assistance.

**Diversion and sentencing**

Interviewees expressed concerns over the perceived inconsistency in how cases in the system are diverted or dropped. There are also concerns about the different types of court processes, disposals, and the differing time limits that are contained in these disposals.

“I think I was treated unfairly because… I was judged as unfit for trial and put into a long-stay hospital, and was moved from hospital to hospital, no limit of time, sectioned, this and that.” (Individual/Supporter).

“What can happen is there ends up being a cloud that hangs over many individuals, where they haven’t had their day in court, they haven’t been convicted or anything, but their liberty is restricted for the rest of their lives… because people have been diverted into forensic services.” (Support Agency).

**Recommendation:** Clearer and accessible information on the different type of court processes and sentence options needs to be made available to people with learning disabilities who are involved in the criminal justice system.

**Prison**

**Prison experiences**

People with learning disabilities spoke of the challenges they faced while in prison. Examples included being segregated from others prisoners, being watched constantly by staff, experiences of bullying, as well as being unable to participate in particular courses, programmes and leisure activities due to their specific needs.
It also appears that very little specialist support is available within Scottish prisons for individuals with learning disabilities, for example, learning disability nurses.

**Accessible information**

A lack of accessible written information and resources is an issue. Most of the information in prison is delivered verbally, for example during induction, and there appears to be no measures in place to check that this information has been understood:


Written material is circulated for even basic activities in prison, such as selecting items from the canteen sheet. This can be challenging for those with learning disabilities, and they either select items without knowing what they are, or have to ask other prisoners for help. This can lead to both embarrassment for the individual, and others taking advantage. If a person is not supported to understand and comply with their sentence they are unlikely to address their offending behaviour in prison, which places them at higher risk of reoffending upon release.

**Recommendations:** Information that is provided throughout the criminal justice system, whether verbal or written, needs to be communicated in an accessible or easy-read format. Work needs to be carried out to help support people with learning disabilities accused of a crime to engage and comply with their sentence in order to reduce the likelihood of reoffending.
Geographical variations

Criminal justice agencies operate differently across Scotland - they have different partnering and training opportunities, and different access to different support agencies, projects, and programmes. Diversion schemes are used with varying frequency across the country, and there was concern over the availability of diversion schemes which are specifically tailored for those with learning disabilities. Support services can have different eligibility criteria depending upon local needs and priorities. There is no consistency in the types and levels of service provision that is available across the country and the experiences and outcomes that accused/convicted persons have may differ as a result.

Recommendation: Examples of best practice and ways of working should be shared across different agencies and professionals engaging with the criminal justice system.

Positive experiences

Provision of support

Individuals already receiving support from either local authority or third sector organisations before they were accused or convicted of crime are more likely to say that had a positive experience in relation to both their treatment within the criminal justice system, and the support they were provided with to understand and participate in the process. This can be attributed to a combination of factors, including criminal justice agencies understanding and addressing the individual’s specific needs through the development of bespoke one-to-one support programmes, arranging appropriate support and advocating on their behalf:

“I got a solicitor through [a support agency]… and they had experience of working with vulnerable adults and people with learning disabilities, and she was brilliant, I couldn’t fault her… She spoke to me in an accessible way, she
explained things quite clearly, and she was clearly supportive of me.” (Individual/Supporter).

Some professionals are very aware of learning disabilities, and are proficient at facilitating accused/convicted persons to fully engage in the process. This included police officers, Appropriate Adults, solicitors, and criminal justice social workers:

“I was lucky because, apart from the police questioning, X [support worker has been there all the way…and it’s made such a difference. Someone that you can relate to, but the also the same person because you establish that relationship.” (Individual/Supporter).

“I do still get support from the police. There’s a sergeant that knows me and will support me. If I speak to him and there’s an ongoing incident or something he’ll say to stay away from this area because of it, trying to help me avoid trouble.” (Individual/Supporter)

Developing training and understanding

Most criminal justice agencies have an awareness of the issues and challenges faced by accused/convicted persons with learning disabilities in the system and have a genuine interest in trying to address these. Some agencies have begun to provide dedicated training, either internally or with other public and/or third sector partners, and others have started to revise and update existing training to take account of learning disability issues. While these are positive steps, this training and screening tools have yet to be developed or delivered in a consistent and widespread way:

“There’s a national conversation needed here about how this is done and when it’s done, including the police, including the court service, including the prisons, and the Scottish Government to look at a joined up strategy.” (Criminal Justice Agency/Professional).
**Recommendations**

In addition to the specific recommendations outlined above, the following recommendations are made as a direct result of this work. They are aimed largely at the criminal justice agencies and the Scottish Government, and outline general changes required across the system rather than within specific agencies:

- Ensure consistent and routine identification of adults with a learning disability who become involved in the criminal justice system, and develop information sharing systems between the various criminal justice agencies so that, once an individual’s communication and other support needs are identified, all subsequent agencies are made aware of this.

- Clearly identify the roles and responsibilities for different criminal justice agencies in relation to identifying and supporting those with learning disabilities, for example by developing an enhanced learning disability pathway.

- Criminal justice agencies should have a clear policy setting out their legal responsibilities, protocols and specialist support agencies they can refer people with learning disabilities to.
Conclusion

This research reflects the findings from existing evidence and confirms that there has been little improvement in recent years in addressing the challenges and disadvantage faced by accused/convicted persons with learning disabilities within the criminal justice system.

It is evident that there is a need to develop consistent and complementary approaches to how criminal justice agencies deal with accused/convicted persons with a learning disability. Encouragingly, criminal justice agencies appear to be alert to the need for improvement, and are interested and willing to address the challenges. Some have already taken early steps to increase awareness among staff, improve training, address identification issues, and create partnering opportunities. However, this needs to be more comprehensive and consistent both within and between agencies.

Greater leadership is also required, both within criminal justice agencies and from Scottish Government to provide strategic leadership and practical assistance to champion and encourage different agencies to work together to develop consistent strategies.