



Consultation Response

Establishing a statutory Appropriate Adult service in Scotland

The Scottish Commission for
Learning Disability

June 2018



The Scottish Commission for Learning Disability (SCLD) is an independent charitable organisation and lead strategic partner to the Scottish Government in the delivery of Scotland's learning disability strategy, *The keys to life* (2013). The strategy defines a learning disability as a significant, lifelong, condition that started before adulthood, which affects development and means individuals need help to understand information, learn skills, and cope independently. SCLD is committed to finding new and better ways to improve the lives of people with learning disabilities and is focused on sharing innovation and good practice so that those providing services and interventions can learn from each other. SCLD also aims to be a knowledge hub and to build an evidence base, sharing how policy is being implemented and building on an understanding of what really works. We welcome the opportunity to respond to the Scottish Government's consultation on establishing a statutory Appropriate Adult service in Scotland.

Introduction

The Scottish Government Learning Disability Strategy *'The keys to life'* identifies the Appropriate Adult service as fundamental to ensuring people are fully supported in the criminal justice system¹. However, there has been criticism that people with learning disabilities are not getting the support of an Appropriate Adult when they need it and that there is a lack of understanding and under-utilisation of the scheme.² SCLD believes it is critical that people with learning disabilities are supported to understand and exercise their rights to fair and equal access to justice. We welcome the intention to place the existing Appropriate Adult service on a statutory footing and recognise the potential for it to be a vital safeguard for people with learning disabilities who come into contact with the justice system.

Delivery

- 1. We propose to use the definition of vulnerable person as set out at section 42 of the Criminal Justice (Scotland) Act 2016, but extended to cover victims and witnesses. Do you agree?*

Individuals with learning disabilities may have vulnerabilities that affect their fitness to understand and communicate effectively in the criminal justice system, whether as suspects or as victims and witnesses. However, SCLD is not convinced that the term 'mental disorder' as defined in section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 is a useful way of categorising this vulnerability.

¹ [The keys to life \(2013\)](#)

² [Disability Rights in Scotland, SHRC \(2017\)](#)

In 2016, SCLD undertook a scoping study³, in partnership with the Mental Welfare Commission, to inform the review of the Mental Health (Care and Treatment) (Scotland) Act 2003. There was a broad consensus amongst those who contributed to the study that the term ‘mental disorder’ was inappropriate for people with learning disabilities. The Bonomy report⁴ also questioned whether the term is a useful one and argued that it: *“imposes on a police officer the responsibility of making a diagnosis that he is not qualified to make”*.

Additionally, the Scottish Human Rights Commission (SHRC) report that police officers tend to rely on their own experience to make a subjective assessment about whether someone has a learning disability.⁵ Indeed, research by the Equality and Human Rights Commission (EHRC) in 2017 highlighted there is no consistent method in the criminal justice system for identifying individuals with learning disabilities. Their report identified significant potential for learning disabilities to remain unidentified and found that many people with learning disabilities are interviewed by the police without an Appropriate Adult.⁶

In light of this evidence and the on-going review on learning disability and autism in the Mental Health (Care and Treatment) (Scotland) Act 2003, we believe there is a strong case for removing the term ‘mental disorder’ from the definition of a vulnerable adult in the proposed legislation. As the Bonomy report⁷ suggests the most important consideration should be the inability of the person to understand or communicate at the time rather than the reason for that. This would facilitate an approach in which time and resources were solely focussed on assessing the individual’s communication and comprehension abilities and providing the support to meet their needs.

2. We propose to use the definition of the type of support to be made available as set out at section 42 of the Criminal Justice (Scotland) Act 2016. Do you agree?

³ [Review of learning disability and autism in the Mental Health \(Scotland\) Act 2003, \(2017\)](#)

⁴ [The Post-corroboration Safeguards Review \(2015\)](#)

⁵ [Disability Rights in Scotland, SHRC \(2017\)](#)

⁶ [Experiences of People with a Learning Disability in the Scottish Criminal Justice System, EHRC \(2017\)](#)

⁷ [The Post-corroboration Safeguards Review \(2015\)](#)

The Appropriate Adult's role should be to provide support to ensure that a vulnerable person is not unduly distressed, understands their rights and why they are being interviewed, understands the implication of their answers and is not disadvantaged by their vulnerability.⁸ We believe the purpose of communication support, described as helping the person understand and facilitating effective communication, will accomplish this.

However, we do have concerns that Appropriate Adults are not permitted to work with defence solicitors or have confidential conversations, because they may be called as a witness. The Supporting Offenders with Learning Disabilities (SOLD) User group emphasises that good support requires time to prepare, understanding of communication needs and a level of *trust*. Scotland is also the only country in the UK where defence solicitors do not provide legal advice to a vulnerable individual in person as standard practice. The SOLD network⁹ has argued that the current situation means that people with learning disabilities in Scotland are being interviewed without proper legal support. It is our view that defence solicitors ought to always provide legal advice to a vulnerable individual in person. We would like to see the remit of the Appropriate Adult extended to so that they are able to work alongside defence solicitors and also offer reassurance and advice to the person.

3. We propose to place the duty on local authorities for ensuring that people are available to provide Appropriate Adult support. Do you agree?

We agree with the proposal to place the duty on local authorities for ensuring that people are available to provide Appropriate Adult support. The Bonomy report¹⁰ found that 'provision is patchy, and frequently unsatisfactory' due to services being delivered on informal basis by different organisations with varying levels of funding. In practice this lack of consistency in provision means that some services are reliant on volunteers and cannot guarantee that someone will be available when requested.¹¹ We believe local authorities are well placed to assume responsibility for ensuring adequate provision of persons with appropriate skills or qualifications to provide support for vulnerable persons in custody. This will help to ensure people with learning disabilities, who come into contact with the justice system receive the same level of high quality support across Scotland.

⁸ [Criminal Justice \(Scotland\) Bill – Policy Memorandum](#)

⁹ [Improving support for the accused person with a learning disability in Police Custody. SOLD \(2017\)](#)

¹⁰ [The Post-corroboration Safeguards Review \(2015\)](#)

¹¹ [Improving support for people with learning disabilities from arrest to court \(2016\)](#)

4. We propose to keep details of the statutory duty at a high level but develop more detailed guidance to sit below this and to which those responsible for delivery must have regard. Do you agree with this approach?

Yes, we agree.

Training

5. We propose to place a duty on local authorities to deliver training to Appropriate Adults. Do you agree with this?

Yes. At present Appropriate Adults are expected to follow the Scottish Appropriate Adult Network National Guidance. Placing a duty on local authorities to provide training in tandem with an overarching framework at a national level will help to ensure consistency of quality and content across Scotland. It is important that local authorities are given sufficient flexibility to allow training to be tailored to local needs. A national framework could include:

- the role and responsibilities of an Appropriate Adult
- operational processes to be followed
- relevant tools that the Appropriate Adult may wish to use
- the level of support and supervision to be provided to Appropriate Adults.

Quality Assessment

6. We propose to place a duty on the Care Inspectorate to carry out a quality assessment role in relation to the provision of Appropriate Adult services. Do you agree?

A statutory service, with nationally enforced service-level standards will require an ongoing assessment process to monitor and review the quality of the delivery. We agree the Care Inspectorate's should perform this role given its lead responsibility for providing scrutiny and assurance.

7. How might we best engage with service users to understand their experience?

In developing the statutory service it will be essential to hear the views and experiences of people with learning disabilities who have experience of the criminal justice system. The SOLD Network is supported and guided by a **User group** of people with learning disabilities who have experience of the criminal justice system.

Active engagement with this group can support coproduction of the Appropriate Adult service.

We propose to place a duty of the mental Welfare Commission to have oversight of how Appropriate Adult services are provided across Scotland. Do you agree?

Oversight of the Appropriate Adult role should involve a focus on a user perspective, highlight good practice and actively contribute to, and challenge, policy development. There is scope to provide a comprehensive definition of what Appropriate Adult services should be delivering. The Mental Welfare Commission is well placed to take on this role given its experience in providing information and advice on mental health care and treatment, empowering individuals and their carers, and influencing and challenging service providers and policy makers.



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For information on Scotland's Learning Disability Strategy *The Keys to life*, visit: www.keystolife.info

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