



## Consultation Response

# Widening the scope of the current Victim Statement Scheme

The Scottish Commission for  
Learning Disability  
November 2019



The Scottish Commission for People with Learning Disabilities (SCLD) welcomes the opportunity to respond to this consultation on widening the scope of the current victim statement scheme. SCLD is an independent charitable organisation and a partner to Scottish Government in the delivery of Scotland's learning disability strategy, *The Keys to life* (2013)<sup>1</sup> and *The Keys to life* Implementation Framework (2019-2021)<sup>2</sup>. The implementation framework defines a learning disability as follows:

*"A learning disability is significant and lifelong. It starts before adulthood and affects a person's development. This means that a person with a learning disability will be likely to need help to understand information, learn skills and live a fulfilling life. Some people with learning disabilities will also have healthcare needs and require support to communicate."*

*(The Keys to life, 2019-2021, p.9)*

SCLD are committed to ensuring the rights of people with learning disabilities are respected, protected and fulfilled. To do this we seek to create an environment in which systems and culture are changed and in which people with learning disabilities have opportunities and are empowered to improve their own lives. SCLD 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.

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<sup>1</sup> [The Keys to life \(2013\)](#)

<sup>2</sup> [The Keys to life \(2019\)](#)

In responding to this consultation SCLD has drawn on existing evidence in the field of learning disability and from what people with learning disabilities have told us about their experiences. We have chosen to focus our response on Questions: 1, 3, 5, 6 and 8. With a focus on:

- Extending the eligibility to make a victim statement
- Ensuring accessibility of making a victim statement
- Amending the definition of who is eligible to make a victim statement
- Ensuring a focus on rights within impact assessments.

SCLD believes it is important that understanding is developed in relation to people with learning disabilities experiences crime both those covered by the existing victim statement scheme under and those offences not currently covered.

### [People with learning disabilities experience of crime currently covered by the victim statement scheme](#)

#### [Murder and Homicide](#)

People with learning disabilities can be at increased risk of some of the most serious criminal offences, as a result of systemic discrimination, social exclusion, isolation and perceived vulnerability on the part of the perpetrator. The starkest cases of crimes committed against people with learning disabilities were highlighted in a report from The Equality and Human Rights Commission<sup>3</sup> (EHRC) in which ten cases from across the UK that involved a disabled person either being killed or seriously injured were examined. [Of the ten cases discussed, 7 involved a person with a learning disability.](#)

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<sup>3</sup> [The Equality and Human Rights Commission \(2011\)](#)

## Rape and Sexual Assault

SCLD recognises there is a significant data and research gap in a Scottish context with regard to learning disability, gender and the experience of rape and sexual assault.

However, existing research does suggest that people with learning disabilities may be experience higher rates of sexual abuse (Soley & Doe, 1991<sup>4</sup>, cited in Lund, 2011<sup>5</sup>).

Enable's (2009) resource '*Sexual abuse and learning disabilities*<sup>6</sup>' suggested that people with learning disabilities may be at increased risk of sexual abuse due to learned compliance and that some people with learning disabilities may feel dependent and powerless and therefore unable to report sexual abuse.

## Child Sexual Exploitation

For children and young people with learning disabilities, there is a particular risk of sexual exploitation, highlighted in the report '*Over-protected, Under-protected*<sup>7</sup>'. This report highlighted that there was a number of reasons why children and young people with learning disabilities may be at increased risk of experiencing child sexual exploitation. This included but was not limited to: challenges in being able to recognise exploitation or risk, the overprotection and disempowerment of children and young people with learning disabilities and limited awareness of the sexual exploitation of young people with learning disabilities among professionals, family members and the community. SCLD's own report '*Safe and Healthy Relationships*' (2018)<sup>8</sup> describes some of the barriers faced by people with learning disabilities in relation to developing healthy romantic and sexual relationships. These barriers include the lack of good

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<sup>4</sup> [Soley & Doe \(1991\)](#)

<sup>5</sup> [Lund \(2011\)](#)

<sup>6</sup> [Enable \(2009\)](#)

<sup>7</sup> [Franklin, Raws & Smeaton \(2015\)](#)

<sup>8</sup> [SCLD \(2018\)](#)

quality relationship, sexual health and parenting education. This gap in education can be viewed as a contributing factor which leaves children and young people open to sexual exploitation and abuse as they are unclear about what is acceptable and what is not, this uncertainty can follow them into adulthood.

## People with learning disabilities' experiences of crimes not currently covered by the victim statement scheme

### Hate crime: offences aggravated by prejudice relating to a disability

The EHRC report <sup>9</sup> cited a Capability Scotland survey<sup>10</sup>, which found that of 129 people with disabilities surveyed, 47% had experienced hate crime. Further, a report from Lemos and Cranes (2012)<sup>11</sup> has highlighted the exploitation and manipulation experienced by people with learning disabilities.

### Domestic Abuse (Gender Based Violence)

For women with learning disabilities, there is an increased risk of experiencing Gender-Based Violence or Domestic Abuse. This has been highlighted by McCarthy (1998)<sup>12</sup> who discussed the multiple disadvantages which are experienced by women with learning disabilities and how this can lead to increased risk in both institutional and community settings. With regard to gender-based violence, a 2015 report by Wise Women identified that, of the 62 disabled women surveyed, 73% had experienced gender-based violence<sup>13</sup>. The gender-based violence of women with disabilities experience was also reflected in Engenders report *'Disabled Women: Our Bodies Our Rights'*<sup>14</sup>.

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<sup>9</sup> [The Equality and Human Rights Commission \(2011\)](#)

<sup>10</sup> [Capability Scotland](#)

<sup>11</sup> [Lemos and Crane \(2012\)](#)

<sup>12</sup> [McCarthy \(1998\)](#)

<sup>13</sup> [Wise Women \(2015\)](#)

<sup>14</sup> [Engender \(2018\)](#)

## Forced Marriage

Research from the Ann Craft Trust (2010)<sup>15</sup> stated that figures from the Home Office/ Foreign and Commonwealth Office Forced Marriage Unit indicated that 53 of 1,700 forced marriages reported to them in 2010 involved people with learning disabilities. The Ann Craft Trust suggested that this figure could be the *'tip of the iceberg'*. Research from the trust's survey of 287 professionals suggested that forced marriage involving people with learning disabilities occurred often because the families of people with learning disabilities felt this was the right thing to do (half of the respondents stated this. Further the report stated,

*"16% thought families saw it as the only option, citing reasons such as no-one else will look after him, no alternative to marriage, no-one to care for their child when they (parents) have gone (died)"*

(Ann Craft Trust, 2010, p.16)<sup>16</sup>

## Extending the eligibility to make a victims statement

In response to question 1, based on our understanding of people with learning disabilities experiences of crime in Scotland today, SCLD believes that where possible individuals should have the option to provide a victim statement. **SCLD believes it is critical that all victims of crime have an opportunity to make their voices heard in terms of the impact a crime has had on them.** SCLD believes this will be of particular importance to people with learning disabilities who have been historically excluded. To best ensure the courts hear and understand the impact a crime has had on a person with a learning disability, SCLD preferred choice is option C, which would extend the eligibility of the victim's statement to all solemn proceedings and a list of summary

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<sup>15</sup> [Ann Craft Trust \(2010\)](#)

<sup>16</sup> [Ann Craft Trust \(2010\)](#)

proceedings for offences including domestic abuse. SCLD recognises that of all the options, option C will require the most resource. However, SCLD believes this will be necessary given the negative and long term impact crimes may have on a person with a learning disability and the need for the courts to understand the felt impact when determining charges (Please refer to recommendation 1).

### Ensuring accessibility of the victim's statement

In considering question 3, SCLD believes that we must seek new ways for victim's statements to be made to allow for people with learning disabilities to have the best opportunity to make their views and experiences heard by the court. SCLD believes there could be potential to use the options outlined in the consultation document. In particular, victims reading a statement in court, pre-recording a statement on video or audio, or the judge reading the statement out loud to the court.

While SCLD welcomes these proposed methods, we would ask that in addition to these proposed methods that consideration is given to ensuring that people with learning disabilities are best supported to make their views and experiences heard. Many people with learning disabilities may face challenges in written or verbal communication or both. To ensure individuals who experience these challenges are given the opportunity to meaningfully give a victim's statement we would ask that the following be considered:

- The use of a trusted advocate to relay experiences to the court
- The use of augmentative communication tools for individual who use nonverbal communication such as [Eye Gaze](#) and [Talking Mats](#)
- The use of a range of creative facilitation and communication techniques to support individuals in communicating how an experience made them feel. For example in working with children and young people tools like the ['Sometimes I feel..'](#) cards may be useful. In working with adults, the use of the [Blob Tree Communication Tools](#) may be helpful.

Further, SCLD believes it will be helpful for people with learning disabilities to have clear instructions about the types of information a victim's witness statement should include. It could be helpful to provide easy read documents or video communications which detail the types of information that would support a statement. For example, explaining to an individual that it will be important for a court to understand how the experience of the crime made them feel and any long term impacts the crime may have had.

Following this, any statements given using communication tools could then be recorded on video or audio, as the consultation document suggests, or could be recorded visually through photographs or drawings with the person giving their statement.

To best ensure people with learning disabilities have the opportunity to provide a victim statement, SCLD would welcome the opportunity to work with the Scottish Government and other partners to produce an accessible toolkit of resources (please refer to recommendation 2).

With regard to question 5 of the consultation, SCLD would also ask that consideration is given to the victim's witness statements being taken by other organisations other than the police. For example, SCLD would suggest there may be a role in advocacy provision in supporting people with learning disabilities to provide a victim statement. A similar process has been used in relation to hate crime reporting in Scotland through the use of Third Party Reporting Centres. These centres were created in a response to understanding that people do not always feel safe reporting crimes to the police. This resulted in partnership between Police Scotland with various public sector and third sector organisations to provide safe and private spaces for people to report hate crimes<sup>17</sup>.

To make sure that producing a victim's statement is a truly accessible process for people with learning disabilities consideration should be given to similar methods used

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<sup>17</sup> [SCLD \(2017\)](#)



in England and Wales which allow a Victim Personal Statement to be taken by an organisation offering support services. While SCLD agrees with a similar method, SCLD is clear that it should not be direct support providers who are involved in taking a victim's statement but instead trained and highly skilled independent advocacy staff. This is because we have concerns about some support staff being too close to the case and not having appropriate training to deal with taking such statements. Moreover, we are aware of recent high-profile cases in which crimes have been committed against people with learning disabilities by staff from support providers<sup>18</sup> (Please see recommendation 3).

### Amending the definition of who is eligible to make a witness statement

In response to question 6 of the consultation document, SCLD believes that it would be appropriate that amendments are made to Section 14 of the Criminal Justice (Scotland) Act (2003)<sup>19</sup>. In particular, we believe attention will need to be given to amending the presumption that only children over the age of 12 should be able to provide a victim witness statement. We believe this will be necessary given the Scottish Government's commitment to incorporate the United Nations Convention on the Rights of The Child into Scottish Law and the emphasis given in General Comments regarding Article 12 for all children and young people to be heard in any judicial or administrative proceedings affecting them. This includes,

*“...all relevant judicial proceedings affecting the child, without limitation, including, for example, separation of parents, custody, care and adoption, children in conflict with the law, child victims of physical or psychological violence, sexual abuse or other crimes...”*

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<sup>18</sup> [BBC News \(November 2019\)](#)

<sup>19</sup> [Criminal Justice \(Scotland\) Act \(2003\)](#)

Further, the current draft of the Children's (Scotland) Bill<sup>21</sup> commits to children and young people under the age of 12 being heard in matters relating to contact, residence and children's hearings. To ensure legislative consistency, SCLD believes it will be critical that Section 14 of The Criminal Justice (Scotland) Act 2003 is amended to reflect this commitment to advancing children's rights in Scotland.

SCLD does however not believe the amendments to section 14 of the 2003 act should be limited to ensuring children under the age of 12 are able to make a victim statement. Additional provisions will need to be made to ensure that children and young people and adults with learning disabilities are effectively supported in providing victim statements. Particular consideration will need to be given to those adults who may face barriers in terms of communication or who may communicate non-verbally. At present, SCLD believes section 14 requires strengthening to ensure a closer alignment to Article 13 of The United Nations Convention on the Rights of Persons with Disabilities with regard to people with learning disabilities access to justice and ensuring their,

*"...role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages"*

(UNCRPD, Article 13, 2006)<sup>22</sup>

(Please refer to recommendation 4).

For children, young people and adults with learning disabilities who are victims of crime to have their views heard and have access to justice at the highest possible standard, SCLD suggests the provision of guidance attached to section 14 of the 2003 act. This should clearly outline how victim's statements should be taken from children,

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<sup>20</sup> [UNCRC, General Comment Number 12 \(2009\)](#)

<sup>21</sup> [Children \(Scotland\) Bill Call for Views \(2019\)](#)

<sup>22</sup> [UNCRPD \(2006\)](#)

young people and adults with learning disabilities. This guidance could draw from existing good practice examples of work in ensuring the voice of children and young people are heard. This could include the court contact service working with children and young people in [West Lothian](#). The guidance should be supported by national funding to ensure services which support children, young people and adults with learning disabilities to make their voices heard. (Please refer to Recommendation 5 and 6)

### [Ensuring a focus on human rights in Impact Assessments](#)

In response to Question 8, SCLD believes that without suitable attention being given to amending section 14 of the Criminal Justice (Scotland) Act 2003<sup>23</sup> and ensuring a range of accessible communication processes there will be considerable issues in regard to ensuring equality of access to individuals with learning disabilities. In developing the Equality Impact Assessment. SCLD asks that the Scottish Government take into account the human rights of people with learning disabilities. We would, therefore, ask an Equality Impact Assessment which fully addresses human rights commitments is conducted. SCLD would welcome particular attention being given to ensure any new legislation is compliant with The United Nations Convention on the Rights of Persons with Disabilities and in particular Article 13, in relation to access to justice. This should reflect the commitments made in '*A Fairer Scotland for Disabled People*<sup>24</sup> which committed to protect the rights of disabled people in the justice system and to ensure fair treatment, alongside the *Keys to life* implementation framework<sup>25</sup> which promotes a whole system approach to ensuring the rights of people with learning disabilities in Scotland. (Please refer to recommendation 7)

In addition to the Equality and Human Rights Impact Assessment, SCLD believes there will be a role for conducting a Childs Rights and Wellbeing Impact Assessments. This should be done to ensure any amendments to legislation are compliant with the UNCRC and meet children and

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<sup>23</sup> [Criminal Justice \(Scotland\) Act \(2003\)](#)

<sup>24</sup> [A Fairer Scotland for Disabled People \(2016\)](#)

<sup>25</sup> [The Keys to life \(2019\)](#)

young people with learning disabilities' right to justice. Particular attention should be paid to both Article 12 and 23 of the convention. (Please refer to recommendation 8).

## Summary

Evidence suggests that people with learning disabilities experience and are at risk of becoming victims, of the most serious criminal offences. This includes murder, rape, child sexual exploitation, hate crime and gender-based violence. In understanding the extent to which people with learning disabilities experience crime, SCLD believes that any further extension of the victim's statement scheme must pay attention to the particular needs of this hidden population.

To do this, the Scottish Government must work with relevant bodies to ensure that victim's statements can be taken using a range of accessible communication techniques, including but not limited to:

- Support from an advocate in giving and producing a victim statement
- The use of accessible and augmentative communication tools such as Eye Gaze and Talking Mats
- The use of creative tools to support individuals in expressing their feelings.

To best achieve this SCLD suggests that there may be a role for ourselves and other learning disability organisations supporting the development of an accessible victim statement resource kit. For SCLD, ensuring accessibility goes beyond the provision of accessible tools. We therefore also suggest that the Scottish Government and Police Scotland looks at the role of advocacy providers in taking victims statements.

Children, young people and adults with learning disabilities have and can realise their indivisible human rights which include a right to justice (Article 13, UNCRPD) and their right to be heard (UNCRC, Article 12). We believe that section 14 of The Criminal Justice Scotland Act (2003) should be amended. This amendment should mean that children under the age of 12 can make victim statements, and should strengthen commitments that allow **all** people with learning disabilities, have the opportunity to

provide victim's statements. This will require additional guidance and national funding to support children, young people and adults in this process.

The issues outlined above should be addressed through a robust Equality Impact Assessment which is fully cognisant of human rights as well as a Child's Rights and Wellbeing Impact Assessment. SCLD believes that by ensuring these measures are taken forward children and young people with learning disabilities will be supported to enact their Article 12 UNCRC right and all people with learning disabilities will be supported to realise their Article 13 UNCRPD right. As Scotland moves forward as a rights respecting nation we believe these developments will be critical.

SCLD thanks the Scottish Government for the opportunity to respond to this important consultation.

## Recommendations

- 1.** Extend the eligibility of the victim witness statement to all solemn cases and summary cases in line with option C in the consultation document
- 2.** The Scottish Government works with SCLD and other relevant partners to produce an accessible resource toolkit to support individuals with learning disabilities in giving a victim statement
- 3.** The Scottish Government considers the role of independent advocacy in supporting people with learning disabilities to produce victims' statements
- 4.** Amendments are made to Section 14 of The Criminal Justice (Scotland) Act 2003 to ensure legislative alignment with the incorporation of the UNCRC into Scottish law and the proposed Children (Scotland) Bill. Amendments should also deliver clearer and stronger commitments to ensuring the voice of people with learning disabilities is heard

5. Supporting guidance to Section 14 of The Criminal Justice (Scotland) Act 2003 outlining good practice in supporting children, young people and adults with learning disabilities should be developed
6. National fund for services to ensure the voices of children, young people and adults with learning disabilities victims of crime are heard in both solemn and summary proceedings
7. An Equality Impact Assessment which focuses on human rights and in particular Article 13 of the UNCRPD, should be conducted
8. A Child's Rights and Wellbeing Impact Assessment should be conducted with a particular focus on the strengths and needs of children and young people with learning disabilities. This assessment should pay particular attention to both Article 12 and 23 of the UNCRC convention.



Oonagh Brown  
Policy and Implementation Officer  
[Oonagh.b@sclد.co.uk](mailto:Oonagh.b@sclد.co.uk)

## Contact us

Website: [www.sclld.org.uk](http://www.sclld.org.uk)

Twitter: [@SCLDNews](https://twitter.com/SCLDNews)

Facebook: [@ScotCommission](https://www.facebook.com/ScotCommission)

Instagram: [@sclldnews](https://www.instagram.com/sclldnews)

For information on Scotland's Learning Disability Strategy *The Keys to life*, visit: [www.keystolife.info](http://www.keystolife.info)

The Scottish Commission for Learning Disability  
Suite 5.2  
Stock Exchange Court  
77 Nelson Mandela Place  
Glasgow  
G2 1QY

