



Consultation Response

Youth Justice Standards

The Scottish Commission for
Learning Disability
January 2020



Youth Justice Standards SCLD Response

The Scottish Commission for People with Learning Disabilities (SCLD) welcomes the opportunity to respond to the Scottish Government's consultation on Youth Justice Standards. SCLD is an independent charitable organisation and partner to the Scottish Government in the delivery of Scotland's learning disability strategy, *The keys to life* (2013)¹ and *The keys to life* Implementation Framework (2019-2021)². 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 is committed to creating an environment in Scotland in which systems and culture are changed to ensure people with learning disabilities have opportunities and are empowered to live the life they want in line with existing human rights conventions. SCLD believes that the discrimination and barriers faced by people with learning disabilities and other disabled people are not inevitable. These barriers stop people with learning disabilities and other disabled people being included in society and participating on an equal basis.

¹ [The keys to life \(2013\)](#)

² [The keys to life \(2019-2021\)](#)

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.

In responding to this consultation, we have focused our response on areas of potential development and improvement to ensure the guidelines meet the needs of children and young people with learning disabilities and those with additional support needs. We have focused on both questions 3 and 4 regarding how the strategy could better support services for children and young people with learning disabilities involved in youth justice processes. We have also provided commentary relating to data collection in response to question 4.

Before responding to the consultation's key questions, it is necessary to establish an understanding of the prevalence of young offending among children and young people with learning disabilities and additional support needs.

Young offending and children and young people with learning disabilities

Research has suggested that young people with a learning disability may be at a higher risk of youth offending than their peers who do not have a learning disability³. While much research has been undertaken to understand the link between offending behavior and learning disability, it has been argued by some that no clear connection has ever been truly established⁴. SCLD believes that learning disability and offending behavior

³ [Hall \(2014\)](#)

⁴ [Simpson and Hogg \(2001\)](#) Cited in [Fryson and Yates \(2010\)](#)

are not directly linked. Instead, we believe this kind of dialogue is based on a pathologising of people with learning disabilities in line with historic negative ideas around disability as *'deviance'*⁵.

SCLD believes people with learning disabilities, including children and young people, are at times over-represented in the criminal justice system as a result of their systematic exclusion from society. This is supported by Hayes (2002) who suggested that this link is likely due to people with learning disabilities socio-economic exclusion as opposed to "*...the manifestation of any inherent predisposition to anti-social or criminal activities*" (Hayes, 2002 cited in Fryson and Yates, 2010, p.110)⁶

Fryson and Yates (2010) suggest that for children and young people with learning disabilities their risk of offending aligned with the whole population, and was more likely linked to socio-economic exclusion, experiences of bullying and abuse. They were clear however, that no direct correlation could be drawn and that offending behavior involved a complex interplay of a number of personal experiences and social factors.

At present no clear figures exist detailing the number of children and young people with learning disabilities who have committed offences. The *'Thematic Report on the Prosecution of Young People'*⁷ published in 2018 stated that: of all children and young people, between 2017 and 2018, 3,060 children were referred to the Reporter regarding an offence and between 2015 and 2016, 2,203 young people were prosecuted in Scotland's courts. Furthermore, between 2016 and 2017, 51 under 18-year-olds were detained in custody.

⁵ [Wolfenberger \(1972\)](#)

⁶ [Hayes \(2002\) Cited in Fryson and Yates \(2010\)](#)

⁷ [Scottish Government \(2018\)](#)

Data from Scotland's 2011 Census⁸ suggests that 5,234 children have learning disabilities. However, according to the Scottish Government's Pupil Census 2018⁹, 13,665 (1.97%) pupils were identified as having Additional Support Needs (ASN) associated with a learning disability.

Given these figures, it is not unlikely to assume that children and young people with learning disabilities and those with additional support needs will be represented in the youth criminal justice system. It is therefore critical that we ensure the Youth Justice Standards are written through a lens of human rights and equality. This will ensure compliance with The United Nations Convention on the Rights of the Child (1989)¹⁰, The United Nations Convention on Persons with Disabilities (2006)¹¹ and should demonstrate a commitment to equity of access for those with protected characteristics including disability. How this can be best achieved is discussed in our response to questions 3, 4 and 5 below.

Ensuring a commitment to Human Rights and Equality in the Youth Justice Core Principles

Question 3 what aspects stood out as being the most helpful?

Question 4 what aspects stood out as being the least helpful?

⁸ [Scotland's Census \(2011\)](#)

⁹ [Pupil Census \(2018\)](#)

¹⁰ [The United Nations Convention on the Rights of the Child \(1989\)](#)

¹¹ [The United Nations Convention on Persons with Disabilities \(2006\)](#)

When examining the core principles of this document, SCLD believes there is a dialogue which can potentially be interpreted as counter to Scotland's vision as a human rights respecting nation in line with Scotland's National Outcomes¹². This stems from the language of *'failure in upbringing'* taken from Kilbrandon's 1964¹³ report. For SCLD this phrasing leans towards demonising parents who are not viewed to meet the moral standards of society. This can and will include parents who have learning disabilities. This is an issue SCLD provided commentary on in an earlier response to the *'Review of the Children and Young Persons (Scotland) Act 1937 and Section 42 of the Sexual Offences (Scotland) Act 2009'*¹⁴. Instead of this, SCLD would welcome an approach which holistically examines why a child or young person may present offending behaviors. As we stated above this is based on a complex interplay of barriers and personal experiences.

Despite the statement taken from The Kilbrandon Report¹⁵, SCLD welcomes the core principles commitment to the United Nations Convention on the Rights of the Child (1989) (UNCRC) and in particular Article 12, the right for children to have their views heard. In particular, we welcome the statement,

"Supporting children with speech and language and communication needs at an early stage is essential to ensure that they are treated fairly, are clear what is expected of them and that they are included in decision making".

(The Scottish Government, 2019, p.3)¹⁶

¹² [Scottish Government](#)

¹³ [The Kilbrandon Report \(1964\)](#)

¹⁴ [SCLD \(2019\)](#)

¹⁵ [The Kilbrandon Report \(1964\)](#)

¹⁶ [Scottish Government \(2019\)](#)

This commitment must sit alongside an earlier stated commitment to Article 12 of the UNCRC and should be supported by an additional commitment to the accessibility of information under Article 9 of the United Nations Convention on Persons with Disabilities (2006) (UNCRPD). We believe that closer links need to be made between this statement and international human rights conventions. In doing this, the standards should outline the duties of those working with young offenders to ensure the views of children and young people with learning disabilities are heard. The standards should be clear that any failure to achieve this could lead to a violation of children and young people's human rights (See recommendation 1).

In addition, SCLD would ask that the core principles are strengthened in relation to existing human rights conventions and legislation. This should extend to making the human rights obligations of duty bearers in relation to children and young people with learning disabilities explicit (see recommendation 2).

Meeting the needs of children and young people with learning disabilities in each of the standards

SCLD welcomes that further consideration will be given to the needs and strengths of children and young people with learning disabilities throughout the proposed 7 standards. Examples of how this can be achieved in relation to standards 1, 2, 3, 4, 5 and 7 are discussed below.

Standard 1: Prevention and Early Intervention

With regard to points 1.6 and 1.7, SCLD believes further attention needs to be given to ensuring data is available for children and young people with protected characteristics, which must include learning disability. The data required needs to address individual children's support outcomes and the number of children who are in receipt of voluntary measures of care or are referred to the children's hearing system and the Crown Office and Procurator Fiscal. Without disaggregated national-level data on the number of children with learning disabilities involved in these processes, it will be challenging to provide appropriate early intervention and preventative supports. This observation supports to our response to question 5.

Standard 2: Children's Hearing System

SCLD is supportive of the use of a child's plan and the proposed risk assessments. However, SCLD believes only conducting a risk assessment may be limited in terms of ensuring a child or young person human rights are being realised and that they have the best possible opportunities moving forward. We would therefore ask that consideration is given to a human rights-based assessment based on the articles of the UNCRC. We believe this would best ensure that the human rights of the child or young person are always central to decision making. Human rights assessments were an option considered recently as part of the [Mental Health Act Review](#) and SCLD believes there may be potential value in considering a similar approach to assure Scotland's commitment to the incorporation of the UNCRC is reflected in the lived experience of children and young people. (See recommendation 3).

Standard 3: Alternatives to Prosecutorial Action / Standard 4 Court

In considering both standards 3 and 4, SCLD would ask that particular attention is paid to how both these processes can best support children and young people with learning disabilities. We would welcome both points 3.3 and 3.4 being more explicit in describing what is expected in terms of local service provision to divert children and young people with learning disabilities away from prosecutorial action. SCLD asks that best practice is drawn on to establish this. Attention should also be given to how children and young people with learning disabilities are provided with information on the outcome of their case. How this information is best provided will necessarily look very different, and for some, it will need to be through the use of an easy read document and supporting conversation. For others more time and creative methods may be required to ensure understanding of the outcome of their case and what is expected from them. Best practice in discussing challenging topics with children and young people should be drawn on, for example, [West Lothian Children's Rights Service](#). (Please see recommendation 4). A similar approach will also be required for points 4.4 and 4.5.

Further attention must also be given to 4.6 in relation to the use of cells and handcuffs with a focus on using the least restrictive options for children and young people with learning disabilities. This will be critical in ensuring that circumstances similar to the case of Olaseni Lewis, who died after he was restrained by 11 police officers, does not occur in Scotland (Please see recommendation 5)¹⁷.

¹⁷ [BBC \(2018\)](#)

Standards 5 Secure care and young offending institutions/ Standard 7 transitions

Alongside the examples given, attention must be given to the needs of children and young people with learning disabilities with regard to transitions (discussed in both standards 5 and 7). We would ask that further detail is given in points 5.5 & 5.7 and 7.1 regarding what best practice looks like in supporting children and young people with learning disabilities transitioning back into the community (please see recommendation 6). This will be of critical importance given the national level discussion surrounding transitions and disability taking place currently in relation to the proposed [Disabled Children and Young People \(Transitions\)\(Scotland\) Bill](#).

Data collection to ensure robust planning and delivery of services for children and young people with learning disabilities

Question 5: With reference to the core principles and data sets, will the proposed Youth Justice Standards allow for a reliable local and national evaluation of service?

From our observations, data from Criminal Justice Social Work (2017-18)¹⁸ and Criminal Proceedings in Scotland (2017-2018)¹⁹ do not provide details of the number of children and young people with disabilities, including learning disabilities, who have committed offences. This lack of available data creates a challenge for the evaluation of local and national services. Without this data, local areas may not prioritise services which work with young offenders on issues such as transitioning back into the community. SCLD therefore asks that as we move forward to incorporation of the UNCRC in Scotland, we examine how disaggregated data can be better collected,

¹⁸ [Scottish Government \(2017-2018\)](#)

¹⁹ [Scottish Government \(2017-2018\)](#)

monitored and presented (see recommendation 6). This is also supported by Article 31 of the UNCRPD which outlines, state parties responsibility for collecting and publishing disaggregated data which highlights people with disabilities experience of barriers²⁰.

Summary

SCLD is clear that learning disability and offending behaviours are not inextricably linked. Instead, we believe that children and young people with learning disabilities may be represented in the criminal justice system, due to their experience of exclusion. While no data exists in Scotland regarding children and young people with learning disabilities, we are clear that the youth justice standards should demonstrate a commitment to human rights and equality which will include meeting the needs of children and young people with learning disabilities. To best achieve this SCLD suggests:

- Collecting and presenting disaggregated data on protected characteristics including learning disability and rates of offending among children and young people
- Exploring the potential of human rights assessments, alongside risk assessments in relation to Children's Hearings System
- Drawing on best practice in supporting children and young people with learning disabilities
- Explicitly outlining the need for the use of the least restrictive measures when it comes to restraint.

²⁰ [The United Nations Convention on Persons with Disabilities \(2006\)](#)

By ensuring these key issues are addressed, SCLD believes the youth justice standards will support Scotland in the ongoing incorporation of the UNCRC and more broadly as a human rights respecting nation.

Recommendations

1. Demonstrating a closer link between human rights conventions and legislation and the statements regarding the need to support children and young people who face challenges in communication
2. Strengthening the core principles in relation to human rights conventions and legislation and making obligations of duty bearers in relation to ensuring the human rights of children and young people with learning disabilities explicit
3. Exploring the potential of human rights assessments for children and young people who have committed offences and are going through criminal justice processes
4. Drawing on existing best practice and giving detailed guidance on what is expected from local services in relation to diverting children and young people with learning disabilities away from prosecution and how accessible information is provided on the outcome of a case
5. Ensuring point 4.6 is clear about using the least restrictive measures possible in terms of restraint for all children and young people, including children and young people with learning disabilities
6. Giving further detail to what best practice in supporting transitions back into the community looks like for children and young people with learning disabilities.

SCLD thanks the Scottish Government for the opportunity to respond to this important consultation and would welcome the opportunity to discuss further

how the youth justice standards can meet the needs of children and young people with learning disabilities.

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