



Consultation Response

Improving victims' experiences of the justice system: Consultation

The Scottish Commission for
People with Learning Disabilities
August 2022



Introduction

The Scottish Commission for People with Learning Disabilities (SCLD) welcomes the opportunity to respond to this consultation. Our response has been developed in consultation with the Scottish Government Woman and Girls with Learning Disabilities Gender-Based Violence Steering Group (referred to as the steering group throughout).

SCLD aims to make a significant contribution to creating an environment in Scotland in which systems and culture are changed to ensure people with learning disabilities are empowered to live the life they want in line with existing human rights conventions. At SCLD, we base everything we do on what people with learning disabilities tell us their priorities are - their hopes and dreams for the future, their fears, and their experience of discrimination.

In responding to this consultation, SCLD has:

- Outlined the existing evidence base regarding women with learning disabilities experiences of accessing justice.
- Listed recommendations to improve women with learning disabilities experiences of accessing justice in Scotland.

In listing our recommendations to improve women with learning disabilities experiences of accessing justice in Scotland, we will respond to the following proposals:

- A Victims' Commissioner for Scotland
- Options to underpin trauma-informed practice and person-centred approaches
- Special measures in civil cases
- Anonymity for complainers in sexual offence cases
- Legal representation for complainers in sexual offence cases

- Specialist court for sexual offences
- Impact Assessments.

Existing Evidence on Women with Learning Disabilities’ Experiences of Accessing Justice

Article 13 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) explicitly references the right of disabled people to access justice¹. Specifically, the UNCRPD incorporates the rights of “*equality before the law*,” such as the importance of eliminating stereotypes of persons with disabilities and instead promoting accessibility and equal recognition before the law. This is a significant issue for people with learning disabilities, who are often denied access to fair and equal treatment due to the multiple barriers they continue to face².

While research is clear that the intersectional experience of women with learning disabilities places them at significantly greater risk of Gender-Based Violence³, they continue to experience considerable challenges in accessing support and justice⁴ with, at times, life-threatening consequences^{5/6}. Historically their cases have been handled poorly by the police, with the women reporting a lack of action from authorities⁷ and not being believed⁸. Even after cases are reported to the police,

¹ [UNCRPD \(2006\)](#)

² [Ortoleva \(2010\)](#)

³ [McCarthy \(2017\)](#)

⁴ [ENGENDER \(2018\)](#)

⁵ [Social Work Services Inspectorate \(2004\)](#)

⁶ [North Lanarkshire \(2016\)](#)

⁷ [McCarthy et al \(2018\)](#)

⁸ [Wiseman \(2021\)](#)

they seldom reach prosecution and rarely result in convictions. When convictions occur, the victims' parenting abilities are frequently questioned⁹.

Women who have experienced Gender-Based Violence also have difficulty navigating the criminal justice system for various reasons. This includes court waiting times which are commonly very long for women who have experienced domestic abuse. Throughout the entire legal process, many women suffer high levels of trauma and anxiety, often with very little done to alleviate this. In summary, the *".. justice process remains, for many, stressful, unsafe and disappointing. Often, abuse continues throughout the process"*¹⁰.

Therefore, barriers must be removed so that all people with learning disabilities are treated fairly and equitably in the administration of justice itself. If they are denied clear communication or access to understandable information, they may not be able to exercise their rights as a victim¹¹.

Critical to this is ensuring appropriate data collection on the lived experience of women with learning disabilities. Poor data collection also leaves people with learning disabilities invisible and can enable exclusion, which can lead to failure to safeguard¹². Despite our awareness of the issues facing women with learning disabilities, we do not have a robust data set on women with learning disabilities experiences of accessing justice in Scotland. SCLD has previously raised this issue regarding sexual crime data as part of the '*consultation on how official statistics present information on recorded crime and related topics*'¹³.

⁹ [Walter-Brice et al \(2012\)](#)

¹⁰ [Forbes \(2019\)](#)

¹¹ [Ortoleva \(2010\)](#)

¹² [Inverclyde Council \(2020\)](#)

¹³ [SCLD \(2019\)](#)

This lack of data on the experience of people with learning disabilities has been an ongoing issue. In Scotland, we are still to see disaggregated data produced on the experience of people with learning disabilities in health and across social, economic, and political life. In terms of intersectional impacts, the data is even poorer¹⁴. The Fraser of Allander Institute best expressed the critical nature of better data:

"Without better data to underpin policy-making, Scottish Government ambitions to improve the lives of adults with learning disabilities are unlikely to be realised"¹⁵.

Recommendations to Improve Women with Learning Disabilities Experiences of Accessing Justice in Scotland

Chapter One: A Victims' Commissioner for Scotland

Based on our consultation with the steering group, SCLD supports the introduction of a Victims' Commissioner for Scotland.

The Commissioner should be established in law with responsibility for monitoring, data collection, and accountability to ensure that access to justice is fair and equitable for women with learning disabilities.

Additionally, the proposed Commissioner should represent victims collectively and raise awareness for widespread matters. SCLD also believes that the scope of their

¹⁴ [Scottish Government \(2017\)](#)

¹⁵ [Fraser of Allander \(2021\)](#)

role should include investigation of complaints and enforcement to address failures where victims are not treated fairly or consistently across Scotland. The work, and the funding of any Victims' Commissioner, should also be complimentary to the work of specialist services for women with learning disabilities.

Chapter Two: Options to underpin trauma-informed practice and person-centred approaches

The Gender-Based Violence and Learning Disability Steering Group fully supports the introduction of person-centred trauma-informed practice into legislation. Justice systems and organisations should be fully accessible and responsive to the needs of women with learning disabilities. They should treat all victims equally and with respect so as not to cause additional trauma at any time. People with learning disabilities should also be offered ongoing support throughout their journey (before, during, and after trial) to minimise further trauma and delays in court. To support person-centred, trauma-informed practice, the group suggested there should be:

- A right for victims of Gender-Based Violence to pre-record their evidence being introduced into legislation.
- A new approach to the scheduling of trials that avoids floating trial diets should be developed as part of the new specialist sexual offence court, which is being proposed.
- Women with learning disabilities must be well informed throughout justice processes and have access to information and communication support in line with the Equality Act (2010).
- All organisations in the justice system should have access to adequate training and resources, including learning disability awareness training.

Chapter Three: Special measures in civil cases

The steering group supports introducing special measures across the board for women with learning disabilities who have experienced Gender-Based Violence, including a range of alternative options to attending court.

Alternatives should include virtual trials, ground rules hearings and having a supporter in court with them. Justice organisations should also routinely ask women with learning disabilities what support they need throughout their justice journey and seek specialist support and advice where necessary.

Current protections for witnesses deemed at risk in the criminal system should also be extended to civil proceedings, with legislation introduced to prohibit defendants from representing themselves or cross-examining survivors in civil proceedings, as is the case in the criminal system. Victims of sexual offences who are deemed at risk should not have to give evidence to prove that they require these protections.

Chapter Five: Anonymity for complainers in sexual offence cases

The steering group strongly supports introducing a legal, lifelong right to anonymity for complainers in sexual violence cases. This should begin when a survivor discloses; this should not have to be to a police officer.

Anonymity should not be set aside by the court to secure defence evidence, nor should it be set aside if the survivor withdraws from proceedings or there is a not guilty/ proven verdict. The court should be hesitant about removing anonymity even in the rare cases of offences of perverting the course of justice as they may involve women deemed to be at risk in any event.

Chapter Six: Introduction of independent legal representation for complainers in sexual offence cases

The steering group supports the automatic right to non-means tested, state-funded independent legal representation for complainers where any attempt is made to introduce their sexual history or character.

The right to legal advice and representation should be extended in sexual offence cases to enable complainers to access legal advice at any point in the process.

Chapter Seven: Specialist court for sexual offences

The steering group strongly supports the creation of a specialist court for sexual offences to improve the experiences of victims accessing the justice system.

The group also supports the key elements of the specialist court outlined in Lady Dorrian's Review, including:

- Pre-recording of the evidence of all complainers
- Judicial case management, including ground rules hearings for any evidence to be taken from a complainer, either on commission or in court
- Specialist trauma-informed training for all personnel.

In addition, we believe that the court should feature:

- Dedicated advocacy and court support
- Separate entrances and waiting areas for survivors and their families
- A protected area where survivors and their families can observe proceedings.

Chapter Nine: Impact Assessments

Based on the evidence discussed throughout our response, the steering group strongly recommends that impact assessments identify and act upon issues affecting women with learning disabilities accessing the justice system in Scotland. This is essential to ensuring equitable access to justice, in line with the human rights conventions and legislation discussed in our conclusion. Impact assessments should also take account of the production of disaggregated data on people with learning disabilities experiences of justice.

Conclusion

From consulting the steering group and reviewing relevant evidence, SCLD is clear that the changes outlined in this document are required to ensure women with learning disabilities have equitable access to justice in line with several human rights conventions, in particular the Convention on the Elimination of Discrimination Against Women (CEDAW), the UNCRPD.

While the steering group welcomes the proposals on this consultation, they also stressed the importance of preventative work, including education about relationships, sexual health, and safety, which should also be considered to avoid the risk of repeat abuse and trauma.

SCLD welcomes this consultation and the Scottish Government for the opportunity to respond.



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