

PE1787/C

Scottish Government submission of 8 April 2020

Thank you for your request dated 10 March 2020. Please find below my response to PE1787 on behalf of the Scottish Government. As Policy lead for Victims and Witnesses I have consulted with relevant policy areas within Scottish Government in order to provide a complete response to the petition.

The response covers:

- The importance the Scottish Government attaches to effective communication throughout the justice process;
- The actions that have been taken to improve communication support; and
- Future plans

Communication in the Justice System

The Scottish Government is committed to ensuring a fair and effective justice system that is accessible to all, and recognises that supporting effective communication is needed to achieve this. We recognise that people with learning disabilities may require additional support, and that it is vital to involve them and their representative organisations in work to develop policies relating to this support.

Indeed, Courts are under a duty arising from the Human Rights Act 1988 to ensure that persons engaged in the justice system are able to communicate effectively. In practical terms this includes a requirement to provide sign-language interpreters where possible. In criminal cases, this requirement is re-inforced by The Right to Interpretation and Translation in Criminal Proceedings (Scotland) Regulations (SSI 2014 No 95), which provide that where persons are subject to police or criminal court proceedings, they are to be given such interpretation and translation assistance as is necessary including, where this is appropriate, interpretation into sign language.

In addition, equality law recognises that bringing about equality may mean public services making changes, such as providing extra support or providing information in different formats. This is the duty to make reasonable adjustments. Reasonable adjustments seek to ensure that disabled people have, as far as is reasonable, equal access.

Where people need to communicate in different ways that should, as far as is reasonable, be facilitated.

Scottish Ministers commissioned an independent review of the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003 to see whether this law needs to change for people with learning disability and autism. The work included finding out how well the law is supporting people's human rights. The review reported in December 2019, the recommendations are wide-ranging and will be considered as part of the wider legislative review chaired by John Scott, QC which aims to improve the rights and protections of persons, who may be affected by current mental health and incapacity legislation. This review will produce an interim report in May 2020, which will outline the findings so far, and within the limitations caused by COVID-19, will set out the next steps for the review based on the evidence it has gathered.

Makaton

While Makaton can be used to support an individual's understanding of what is happening, it may not be possible to translate all justice proceedings into Makaton. For this reason, the Scottish Government considers it should not be seen in isolation as a solution – but rather as part of a range of support that should be available to suit the individual.

The Scottish Government is committed to ensuring the most appropriate communication support is available to everyone who needs it, at a level that reflects the needs of the individual, and at the most appropriate point. We have taken, and are working on, a range of measures aimed at achieving this.

Partnership

As the Committee has been made aware, in July 2018 we published an [Easy Read version of the Victims' Code](#); and our learning disability strategy - The Keys to Life – published in March 2019 includes the ambition that:

“The rights of disabled people are fully protected and they receive fair treatment from justice systems at all times.”

The original Keys to Life published in 2013 recognised the need for criminal justice professionals to work in partnership with people with learning disabilities so that practice could be informed by lived experience.

In addition, the Scottish Strategy for Autism, which was initially published in 2011, highlighted the need for autism to be understood across criminal justice professionals.

This led to the Scottish Government Justice Board working in partnership with the Scottish Learners with Disabilities (SOLD) Network.

SOLD is a partnership established and funded by the Scottish Government to identify challenges and promote opportunities to provide support for people with learning disabilities and communication needs in the criminal justice system. Its aim is to prevent and reduce offending and improve support in the justice system in Scotland for people with cognitive and neurological impairment.

SOLD promotes criminal justice guides across professionals to highlight best practice and an awareness of the experiences of people with learning disabilities in the criminal justice system. An example of the work of this Group includes the 'Practice Guide for Support Staff – People with Communication Support Needs in the Scottish Criminal Justice System' published last year.

The Scottish Government has committed to continue working with the SOLD Network on improvements across the criminal justice system.

Mental health support in custody settings

Action 15 within the [Mental Health Strategy](#) outlines our commitment to funding 800 additional mental health workers in key settings, including A&Es, GP practices, police station custody suites, and to our prisons, ensuring that local provision and support is at the heart of our plans. Funding will rise to £35 million in 2021-22.

Appropriate Adults

Appropriate Adults provide an essential service in the criminal justice system, helping to ensure that the rights of all vulnerable individuals are safeguarded during police procedures. Their primary role is to facilitate communication between the police and vulnerable victims, witnesses, suspects and accused during police procedures.

In January 2020, legislation was passed that placed a statutory duty on local authorities in Scotland to provide an Appropriate Adult service, and provide training for Appropriate Adults. Additional funding of £1 million per annum has been provided to enable local authorities to meet these statutory obligations, and [Guidance](#) published on these new duties.

In addition to the creation of this statutory service, we are exploring other ways to improve support for vulnerable people in the Scottish criminal justice system, including the possible use of intermediaries.

Intermediaries

We acknowledge that further work is required to explore how best to provide communication support to vulnerable people in criminal proceedings and for those aged under 16, whether through a registered intermediary scheme or other communication support model, and are considering this as part of wider work to reform the criminal justice system for vulnerable people.

Intermediaries, like Appropriate Adults facilitate communication for vulnerable persons in the justice system but the role is much more specialised than that of an Appropriate Adult. Intermediaries provide expert advice about communication to the police and courts, and also provide support to children as well as vulnerable adults.

Intermediaries do not currently operate in Scotland. At the moment we consider there is no legislative bar if a person was required to assist with advising the court on the communication needs of a witness, but appreciate that a lack of formal structure and guidance in relation to this type of support means that it is not used as often as it could be.

We have carried out work to explore how intermediaries operate in other jurisdictions and have identified some of the key matters we need to address, for example the exact remit and role of the intermediary, the difference between registered and non-registered intermediaries, issues relating to resourcing a national service and if such support would apply to criminal and civil proceedings.

Vulnerable accused

Officials have met with the Law Society's Criminal Law Committee to discuss the recommendations in the Law Society's [vulnerable accused persons roundtable report](#) and we intend to continue engaging with the Committee in respect of the development of policies in this area.

Conclusion

Ministers consider that a fairer Scotland can only be realised when we secure equal rights for everyone, including all those coming into contact with the justice system.

We will continue to work with justice partners and other public services to ensure that, in every case, people are treated as equal citizens within all parts of Scotland's justice system. This should include full access to the physical environment, advocacy and support, information and advice, and additional communication support where this is required.