

Experiences of disabled defendants and accused at the pre-trial stage: survey for criminal justice professionals

1. Confidentiality and consent

Background

We want to understand about the experiences of people in the pre-trial stage of the criminal justice system. We are interested in the experiences of those with a cognitive impairment, mental health condition or neuro-diverse condition who have been accused and charged with a crime.

We are interested to hear from criminal justice professionals on their experiences at each stage of this journey. We are particularly interested in people's experiences from 1st January 2017 onwards including, where applicable, the impact of new technology.

Your survey responses will form part of the Equality and Human Rights Commission's inquiry into whether the criminal justice system treats disabled people fairly. The responses will be collated by Justice Studio (a UK-based independent research company) and used to present findings and recommendations to the UK government.

If you are a member of the judiciary, please do not respond to this survey. There will be a judiciary specific version of the survey available in the near future.

Confidentiality and consent

All answers to this survey are anonymous and will not be used to identify you, you do not need to provide us with your name or any other personal details, and SmartSurvey will not record your IP address or any other identifying features of your computer. Because there is no way of identifying respondents to this survey, once you begin answering questions it is not possible to withdraw your responses. Please consider this before beginning the survey.

This survey will not collect any sensitive information about you. Information collected through this survey will be stored online via SmartSurvey, a UK-based company that is fully compliant with GDPR

legislation and European Privacy Laws (see their privacy policy). Once the survey period has closed, the raw data will be downloaded from SmartSurvey and stored on Justice Studio's systems which are password protected and only accessible by Justice Studio staff. The data will also be shared with the Equality and Human Rights Commission's Inquiry team where it will be used only for the purpose of this inquiry and stored in line with their privacy notice. The data will not be provided to anyone else unless we are legally obliged, for example in the event of a court order.

Per GDPR requirements, Justice Studio will only store the data for as long as is necessary for the purposes of the Inquiry. Once the data is no longer required for the Inquiry, the online data will be deleted from SmartSurvey and the raw data will be deleted from Justice Studio's systems. The data will be stored by EHRC in line with their retention schedule.

Please note, not every question in this survey may be relevant to your profession or role. Where a question is not applicable please select the 'not applicable' option. Please allow up to 15 minutes to complete this survey.

If you have any questions about this research please contact
criminaljusticesysteminquiry@equalityhumanrights.com

1. Do you understand the above data collection and privacy statement? *

I understand

2. Do you consent to taking part in this survey with the understanding that your answers will be anonymous and therefore you cannot request for responses to be removed? *

Yes

3. Where do you work? *

England and Wales
Scotland
Neither

3. CJS Professionals (Scotland)

4. What job title best describes you: *

Solicitor
Advocate
Solicitor advocate
Crown Officer and Procurator Fiscal Service
Member of the Judiciary
Court officer

Interpreter
 Appropriate Adult
 Prison officer
 Prison manager
 Criminal justice social worker
 Other health practitioner
Other (please specify):

The Criminal Law Committee and the Mental Health and Disability Committee are responding to this survey on behalf of the Law Society of Scotland in relation to Scotland. We are the professional body for over 11,000 Scottish solicitors.

Background to the Society:

With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

A number of the questions in the survey are designed for responses to be made on behalf of individuals. As this is an organisational response, it is not appropriate for us to respond to these questions. However, we refer to our response to Question 33 which makes a number of points generally in relation to the subject matter of the survey.

4. Identification of need (Scotland)

Please be aware that throughout this survey we will refer to accused persons with **impairments**. This term is intended to capture cognitive impairments, mental health conditions or neuro-diverse conditions. These could include:

- Learning and intellectual disabilities;
- Acquired or Traumatic Brain Injury (TBI);
- Foetal Alcohol Syndrome Disorders (FASD);
- Dementia;
- Autistic Spectrum Disorders (ASD);
- Attention Deficient Hyperactivity Disorder (ADHD);
- Epilepsy;
- Conditions such as anxiety, bipolar disorder, depression, obsessive compulsive disorder (OCD), personality disorders, post-traumatic stress disorder (PTSD), and schizophrenia;
- Other communication disorders with speech, language and hearing that significantly affect an individual's intellectual ability or day-to-day social interactions;

- Cognitive impairments such as problems with a person's thinking, communication, understanding or memory.

Please see our comments at Question 33 regarding the definition. We appreciate that the purpose of the survey is designed to consider a section of the public but in dealing with the vulnerable accused person, we would tend to refer to them as vulnerable rather than accused person with impairments.

Experiences of disabled defendants and accused at the pre-trial stage: survey for criminal justice professionals

5. Identification of need (Scotland)

5. Is it part of your role to recognise and/or identify whether an accused has any impairments?

Yes

No

It is for our members, but this is an organisational response. Please see response to Question 33.

6. Have you received any specialist training on how to recognise accused persons with impairments?

Not applicable

No

Yes (please specify what training you have received and when you received it):

The Law Society of Scotland provides training on a range of topics in relation to criminal law for the purposes of Continuing Professional Development. These will include dealing with persons with vulnerabilities.

If no, is there any specialist training you should have been offered or attended to help you do your job? Please specify:

Solicitors who are practising members of the Law Society of Scotland require to undertake 20 hours of Continuing Professional Development in each year. They are free to select such training as they chose to attend. They can attend other professional training run by different organisations.

Solicitors may be dual qualified so membership requirements from other jurisdictions may apply. They are also required as part of their ongoing professional work to keep up to date with the law as it changes and current case law.

Specifically, there is a training course developed by the Society under the EU SUPRALAT scheme for criminal solicitors who attend police station interviews. This includes the handling of issues specifically in relation to vulnerable accused persons who may be subject to police procedures and processes at the police station.

<https://www.lawscot.org.uk/members/cpd-training/events/police-station-interview-training-supralat-inspired/>

7. In your experience, how likely/unlikely is an accused person's impairment to be identified at each of the following stages?

This question requires an individual response so we would observe anecdotally that a vulnerability may be identified at any of these stages. Please see our response to Question 33 about the need for identification at the earliest opportunity.

	Likely	Neither likely nor unlikely	Not likely	Do not know	Not applicable
Prior to charge					
At charge					
In police custody					
At first hearing					
At intermediate or preliminary hearings					
When remanded in custody					
During consultation with their defence team					

	Likely	Neither likely nor unlikely	Not likely	Do not know	Not applicable
At trial					
At sentencing					
Other stage (please specify stage in comment box)					

8. In your experience, how likely/unlikely are the following roles to identify that an accused person has an impairment?

There are difficulties with identification as we highlight in our response to Question 33.

	Likely	Neither likely nor unlikely	Not likely	Do not know	Not applicable
Police officer					
The accused person's solicitor					
The Procurator Fiscal					
The Judge/Sheriff/Justice of the Peace					
Court officer					
Interpreter					
Prison officer					
Criminal justice social worker					
Accused self-identifies condition (please specify in comment box when and to whom)					
Other role (please specify role in comment box)					

9. In your experience, how often is it missed that an accused person has an impairment?

Always

Sometimes

Rarely

Never

Do not know

Not applicable

If impairments are missed, what do you think are the reasons for this?

Please see response to Question 33. We would suggest the failure to identify is the main reason which leads to an absence of consistency of practice across Scotland. Where the vulnerability is not identified, that may lead if unchallenged ultimately to miscarriages of justice.

10.

Once identified, how often is information about an impairment shared with other relevant professionals working with the accused person?

Always

Sometimes

Rarely

Never

Do not know

Not applicable

If it is not shared, please explain why:

This is a problem across the Scottish criminal justice sector. Please see our response to Question 33 and recommendations in the Report referred to there.

6. Adjustments for accused persons with impairments (Scotland)

11. How certain/uncertain are you that you have received sufficient guidance related to working with people with impairments in the criminal justice system?

I am certain

I am neither certain nor uncertain

I am uncertain

Do not know

Not applicable

Please list and further explain the guidance you have found helpful:

This question requires an individual response. We are aware of information that will be available on various third sector organisations' websites which could be termed as guidance. Otherwise we are unsure exactly what guidance is specifically envisaged. Please see our response to Question 33.

There, we refer to the United Nations Convention on the Rights of the Convention on the Rights of Persons with Disabilities (UN CRPD) and the Optional Protocol to CRPD ("the Protocol") (<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>) and those arising from the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR") and relevant legislation (including, notably, the Equality Act 2010 and the Adults with Incapacity (Scotland) Act 2000

12. How sure are you of your understanding of your profession's statutory duties regarding adjustments for accused persons with impairments?

I am sure

I am neither sure nor unsure

I am unsure

Do not know

Not applicable

We refer to our response to Question 33. Solicitors will be required to be fully up to date with the law and practice as it affects their business and the professional standards of conduct.

What statutory duties are you aware of?

We would suggest that the requirements are to represent the client and act in the best interests of their client. Please see the Code of Conduct for Criminal Work.

<https://www.lawscot.org.uk/members/rules-and-guidance/rules-and-guidance/section-f/division-a/guidance/the-code-of-conduct-for-criminal-work/>

13. In your opinion, how much awareness is there within your profession of the legal frameworks and associated guidance relating to adjustments for accused persons with impairments?

There is very high awareness within the profession

There is some awareness within the profession

There is low awareness within the profession

There is very low awareness within the profession

Do not know

Not applicable

14. In your experience, are the legal frameworks and associated guidance for your profession relating to adjustments sufficiently:

	Yes	No	Do not know	Not applicable
Clear				
Effective				

Please provide any specific ways in which the frameworks or guidance for your profession could be improved:

This question presumably refers to the vulnerable accused persons.

We are not very sure exactly what frameworks you mean to include.

There are various legislative measures available for the vulnerable witness as outlined in the Vulnerable Witnesses (Criminal Evidence) Act 2019 and earlier legislation.

The Criminal Justice (Scotland) Act 2016 contains provisions for support by way of the Appropriate Adult to vulnerable accused persons in the police station. This is subject to ongoing policy work by the Scottish Government as to exactly how this system will be rationalised for future.

Otherwise much is governed within the framework of the Criminal Procedure (Scotland) Act 1995 with regard to criminal procedure.

Scotland has no role for advocacy or supporter in court to support the vulnerable accused person in court.

15. When do you think adjustments for accused persons with impairments should be made?

	Always	If reasonable	Where there are no reasons to refuse	Never	Do not know	Not applicable
To ensure they can participate in the pre-trial hearings as well as non-disabled accused	X					
To ensure they can understand the charge and advice on their plea	X					
To ensure they can understand all of the	X					

	Always	If reasonable	Where there are no reasons to refuse	Never	Do not know	Not applicable
evidence and proceedings in court						
To give full and effective instructions	X					
To give effective evidence	X					
To give their best evidence	X					
To minimise aggravation of their condition	The aim should be to standardise the processes so that the vulnerable accused person does not feel that they are signalled out. Please see response to Question 33					
To ensure a fair trial	X This is core to the rule of law and to a fair society.					

16. In your experience, how often are the needs of accused persons with impairments assessed to provide them with adjustments at the pre-trial stage?

Always

Sometimes

Rarely

Never

Not applicable

Don't Know

Please see our response to Question 33.

17. In your experience, what, if any, adjustments for accused persons with impairments are made during lawyer/client consultations?

Please see our response to Question 33.

18. In your experience, to what extent are the following adjustments made available for accused persons with impairments at pre-trial hearings?

	Frequently	Neither frequently nor infrequently	Infrequently	Do not know	Not applicable
Court familiarisation visits				X	
Communication adjustments (speaking slowly, checking they understand)	X				
Taking regular breaks during hearings	X				
Having a 'Named Supporter' with them in court		Not part of Scots Law			
Having an Appropriate Adult with them in court		Not part of Scots Law			
Appearing via video-link		There are remote links available which can be utilised if required.			
Vulnerable Witness Application				X	
Having a friend or family member with them for support				X	
Sitting in the well of the court instead of the dock				X	
None are made					

Are you aware of any other adjustments made at pre-trial court hearings? Please specify:

We are unsure what is meant by the pre-trial hearing. This could mean in Scotland the intermediate Diet (ID) and first diet and preliminary hearing depending whether it is solemn or summary procedures.

We also query how pleading and custody courts fit in as frequently this is where the vulnerable accused person appears for the first time and the vulnerability has not been previously picked up. They may not have legal representation there or indeed if it has been a cited case there may be no legal representation at the ID.

19. If an accused person with an impairment does not receive adjustments, do you think this makes it more or less likely that they:

	More likely	Less likely	Makes no difference	Do not know	Not applicable
Will plead guilty					
Are granted bail					
Have legal representation					
Are listened to by the court					

Are there any other effects/outcomes not listed above? Please specify:

The process is not inherently fair and risks the incidence of miscarriages of justice and the likelihood of wrongful convictions. It adversely affects the rule of law – and affects public confidence in the criminal justice system.

20.

What are the main barriers to ensuring that accused persons with impairments receive the necessary adjustments in court processes during the pre-trial stage? Please select up to 3 options.

Needs not being identified

Needs not being understood

Incorrect identification of need

Lack of staff

- Insufficient guidance on what is required
- Insufficient training
- Insufficient time
- Lack of available technology
- Poor information sharing between professions/services
- Difficulties with legal aid funding
- There are no barriers
- Do not know
- Not applicable
- Other (please specify):

21. What are the main enablers to ensuring that accused persons with impairments receive the necessary adjustments in court processes during the pre-trial stage? Please select up to 3 options.

Early identification of need

A high level of awareness among criminal justice professionals

Information effectively shared across professions

- Services having sufficient resources (e.g. staff)
- Professionals/practitioners having access to training
- Relevant technology being widely available
- There are no enablers
- Do not know
- Not applicable
- Other (please specify):

22. Are there any adjustments that you think would be beneficial for accused persons with impairments that are not currently in use? Please specify:

How commonly special measures are deployed for the vulnerable accused person is not known such as video links etc. it is likely that they are deployed when required but would only safeguard the giving of evidence. Whether the technology exists to be used throughout the trial is not known.

23. For accused persons with impairments, have you experienced video conferencing technology for remote appearances during the pre-trial stage?

That is, pre-trial hearings which involve some participants communicating by video-link during a hearing physically occurring in court. *

Yes

No

Do not know

24. If an accused person appears by video-link at a pre-trial hearing, how likely/unlikely is it that their impairment will be identified if it had not been identified before this point?

Likely

Neither likely nor unlikely

Not likely

Do not know

Not applicable

25. In your experience, is it more or less likely that an accused person will appear via video-link if they have been assessed as having an impairment?

More likely

Neither more likely nor less likely

Not likely

Do not know

Not applicable

It depends (please explain your answer):

26. From which of the following locations have you seen video-links with accused persons who have impairments? Please select all that apply.

Prison to court

Police custody to court

Court to another court (either another court building or from another room in the same court)

None of the above

Do not know

Not applicable

Other location (please specify):

27. In which of the following locations have you seen accused persons with impairments during video-links? Please select all that apply.

Separate location from their defence agent

With their defence agent in the same room

They were unrepresented so there was no defence agent

None of the above

Do not know

Not applicable

Other location (please specify):

28. In your experience, what impact does appearing by video-link have on the ability of a defendant with impairments to:

	A positive impact	Neither positive nor negative impact	A negative impact	Do not know	Not applicable
Participate in proceedings (e.g. to understand what is happening, to answer questions that are put to them)				X	
Communicate with their lawyer				X	
Communicate with the judge or bench				X	
Communicate with their interpreter/ health professional/ family member				X	

29. How often are any additional adjustments made for accused persons with impairments appearing via video-link?

For example, having somebody explain the technology, talking more slowly, checking whether the accused person understands etc.

Always

Sometimes

Rarely

Never

Do not know

Not applicable

If adjustments are made, please specify which adjustments:

30. What are the main barriers to ensuring that accused persons with impairments receive the necessary adjustments during the pre-trial stage specifically when they appear via video-link? Please select up to 3 options.

Needs not being identified

Needs not being understood

Incorrect identification of need

Lack of staff

Insufficient guidance on what is required

Insufficient training

Insufficient time

Lack of available technology

Poor information sharing between professions/services

Difficulties with legal aid funding

There are no barriers

Do not know

Not applicable

Other (please specify):

31. What are the main enablers to ensuring that accused persons with impairments receive the necessary adjustments during the pre-trial stage specifically when they appear via video-link? Please select up to 3 options.

Early identification of need

A high level of awareness among criminal justice professionals

Information effectively shared across professions

Services having sufficient resources (e.g. staff)

Professionals/practitioners having access to training

Relevant technology being widely available

There are no enablers

Do not know

Not applicable

Other (please specify):

32. If an accused person with an impairment appears via video-link, do you think this makes it more or less likely that they:

	More likely	Less likely	Makes no difference	Do not know	Not applicable
Will plead guilty				X	
Are granted bail				X	
Have legal representation				X	
Are listened to by the court				X	

Are there any other effects/outcomes not listed above? Please specify:

33. This is the final question of the survey. If you do not have anything to add please select 'next page' and you will be taken to the end of the survey.

Is there anything else you would like to add regarding accused persons with impairments and their pre-trial experience in the criminal justice system? Please specify:

Please see response below.

The topic of the disabled defendants and accused at the pre-trial stage: survey for criminal justice professionals forms part of our ongoing work following the roundtable event on the vulnerable accused person which we held in late 2018. That event included representatives of the Commission who were in attendance as well as practitioners, representatives from the Scottish criminal justice organisations, third sector groups involved with vulnerable accused persons and Scottish Government policy officials.

The roundtable considered the topic of the vulnerable persons across the Scottish criminal justice system, but focused on accused persons, an area which we considered had received

less policy development attention than vulnerable witnesses. Following our event, we published a report in April 2019. (<https://www.lawscot.org.uk/media/362501/vulnerable-accused-persons-report-final.pdf>)

We agree that vulnerable accused persons within the criminal justice in Scotland need to be treated consistently and fairly. That includes the group targeted by this survey. We recognise that there needs to be improvement as how all vulnerable accused persons are identified and progress through the Scottish criminal justice system. Your survey is welcomed in the information both statistical and factual which would be anticipated to be made available and to support these views.

We refer to our Report which tends to cover many of the survey questions. We consider that as far as Scotland is concerned, exactly what is meant by the focus on pre-trial processes required to be defined to ensure a common understanding of exactly what areas and processes/procedures the survey was designed to include. Pretrial could mean for instance:

- from the police station to and including the Intermediate Diet and First or Preliminary Diet or
- post decision to prosecute by the Crown Office and Procurator Fiscal Service to the Intermediate Diet and First or Preliminary Diet

Prosecution decisions taken by COPFS may be influenced by information relating to vulnerability that are assessed on a case by case basis. That depends on communication of that information regarding the nature and scope of the vulnerability having been obtained usually by the police at an earlier stage. What happens then in the court pretrial procedures depends too on the effective identification and communication of that information through to the court system. That is why our roundtable event considered that the Scottish criminal justice process should be viewed in its entirety. We considered the vulnerable accused person's journey from first involvement in the system to conclusion, be it by conviction, acquittal or discontinuation of the prosecution process against them.

Our Report includes five practical steps to ensure the human rights of vulnerable people accused of criminal offences are respected and considered. These include clearer and more consistent definitions of vulnerability, the creation of a central knowledge hub and a review of how new technology can improve information sharing.

The recommendations included:

1. Development of a framework of understanding to be shared across the Scottish criminal justice system following a multi-agency review of definitions and interpretations of vulnerability
2. A review of existing legislation, measures and practices, including ongoing consultations, in relation to vulnerable persons leading to the development of a central portal of knowledge and information
3. A review of groups for whom there is limited support and representation within the Scottish criminal justice system
4. A review of the prevalence of individuals with vulnerabilities in the Scottish criminal justice system and the types of vulnerabilities most commonly encountered
5. A review of how the use of existing and innovative technology can better support information sharing and data protection.

All these recommendations seem pertinent to the survey.

Feedback from the event and the Report appear to have confirmed that this is an area of concern for more than just Scotland (representatives from the Law Society of England and Wales and the Law Society of Ireland attended the roundtable. We have since presented to European colleagues.)

It is a topic to which the Society can contribute as solutions need not necessarily be legislative but could include, as we discuss, better awareness raising, understanding and experience and the introduction of practical measures to assist. Our work from the roundtable continues to focus on “Ensuring fairness: A review of the existing legislation, measures and practices concerning vulnerable persons accused of criminal offences in Scotland.” We expect that the conclusion to that work should identify where the gaps may arise.

We would also make the following points in relation to the survey:

1. The definition of vulnerability and the need for training

Question 4 focuses on the definition being used for the survey. We have tended to refer to vulnerability in our responses as that is the terminology used for our Report.

We understand why that definition was provided for the survey, but we would consider that question of vulnerability within the criminal justice system needs to be viewed on a much wider basis than that. It is difficult in what is asking solicitors for their recollections as to

exactly what the nature of the vulnerability was rather than there was a vulnerability which they identified, and which caused them to take some action. Sometimes it will be clear but given that professionals themselves may refer to a range of disorders such as autism or ADHD as labeling spanning a vast array of conditions, this seems not to be the best way to identify the individual. This is in effect singling them out. They have individual needs which require to be handled as such.

Our Report highlights the need for a better understanding of what vulnerability comprises. We have referred in our responses to various statutory definitions, for instance, in the Vulnerable Witnesses (Criminal Evidence) Act 2019 and the Criminal Justice (Scotland) Act 2016. But again, these may be somewhat limited, and we recognize that there is other legislation. It would seem to us that the question should be- exactly what protections are needed to ensure that each vulnerable accused person can be treated fairly within the criminal justice system? Though there are circumstances which when drawn to the attention of a court, justice is served. There will be relevant circumstances that are not drawn to the attention of a court, particularly where a person at risk of danger or a disadvantage is unable, or not enabled, to alert the court, or to tell anyone else who then informs the court.

We also query too if the various terms referred to in Question 4 such as “cognitive impairments”, “mental health conditions”, and “neuro-diverse conditions are commonly understood certainly within the legal profession.

The purpose of providing background information is to ensure that justice is done and seen to be done consistently and should not be constrained by any lack of the assistance which can be made available in the ways outlined in the survey.

There may be an assumption being implied in the survey that the only way to make delivery of justice fairer for “adult defendants/accused with cognitive impairments, mental health conditions and/or neuro-diverse conditions” is by “procedural and practical adjustments.” We would query to what extent being seen to be in receipt of special adjustments may cause them to feel that they are at a disadvantage. It may cause anyone to make judgements about credibility and reliability to be influenced adversely, particularly if they are not in receipt of training.

The concept of “universal design” is outlined in the United Nations Convention on the Rights of the Convention on the Rights of Persons with Disabilities (UN CRPD) and the Optional Protocol to CRPD (“the Protocol”)

(<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with->

[disabilities.html](#)) (ratified by the UK Government in 2009). The UN CRPD should always take precedence over “reasonable accommodation.”

Article 13 of CRPD states:

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.”

As Article 13.2 refers the need for provision of training for all involved in the criminal justice system which is an aspect that needs to be considered in looking at making changes.

2. Information

We refer for Scotland too to the Criminal Justice Disability Report set up by the Justice Board to promote and enable accessibility of service across the criminal justice sector in Scotland for people with disabilities that was published on 31st July 2018. It contains a wealth of useful information and valuable recommendations.

https://www.copfs.gov.uk/images/Documents/Equality_Diversity/Criminal%20Justice%20Disability%20Projects%20-%20Final%20Reports%20June%202018/2018%2006%2018%20CJDP%20Report%20FINAL%20Large%20print.pdf

3. Conclusion

We are keen to engage with the Commission when the results of the survey are available regarding Scotland. There are areas of overlapping interests between Scotland and England and Wales which are the focus of this survey from which we can usefully benefit.

Anecdotally, our experience tends to suggest that people with learning disabilities having experience of appearances in court is that they feel that they are being rushed which is unhelpful. They feel that they are not given time to understand and think about questions

that they are asked, and to answer them fully. Lack of understanding contributes to this as well as literal interpretation of comments such as:

“if we can just clear this up quickly, you will be able to go home.”

Fairness requires time but the criminal justice system is busy and is not able to take the time to do exactly so that the ideal solution is for the person to have time to understand what is being asked, and to give full responses not limited to the explicit questions, but covering whatever further information is required in order to be understood fairly.

We wondered specifically to what extent are the existing practices and procedures are unhelpful and unfair to the group targeted by the survey. Can they be adjusted universally and inclusively to make practices and procedures fairer and more effective for everyone? That would include those within the survey group but also those who (for whatever reasons, long-term or temporary, and general or specific) may to benefit from them, though not necessary falling within that definition. The question is of universal application.

Where it is not possible to improve the system reasonably, can we consider what procedural and practical adjustments are (i) required and (ii) how can they be made most effectively, to reduce the inherently discriminatory consequences of singling out special treatment?

Gillian Mawdsley

Secretary

Criminal Law Committee

The Law Society of Scotland Atria one 144 Morrison Street Edinburgh EH3 8EX

DD: 0131 476 8206

gillianmawdsley@lawscot.org.uk

