

Briefing for the Public Petitions Committee

Petition Number: [PE01787](#)

Main Petitioner: Sandra Docherty

Subject: The use of Makaton sign language in the legal system

Calls on the Parliament to urge the Scottish Government to ensure that all parts of the legal system use Makaton sign language.

Introduction

This petition focuses on the use of Makaton to assist people in the legal system. Makaton is a language used by people with communication difficulties and learning disabilities.

Research and guidance in this area suggests that more work is required to support people with communication difficulties and learning disabilities when they interact with the legal system. Makaton is one of a range of tools that can be used to do this.

What is Makaton?

Makaton is a language programme that uses symbols, signs and speech to enable people to communicate. It supports the development of essential communication skills such as attention and listening, comprehension, memory, recall and organisation of language and expression.

Useful information is available at Makaton.org. The website states that over 100,000 children and adults use Makaton symbols and signs in the UK, either as their main method of communication, or to support speech. It is also used by teachers, health professionals, and public sector bodies.

People with communication needs

A [literature review on Communication Support Needs](#) (CSN) published back in 2007 found evidence that healthcare, education, criminal justice, financial and social services fail to meet the specific needs of people with CSN. It found that, by comparison with the general population, people with CSN are more likely:

- to be unemployed or employed at an inappropriately low level

- to experience negative social interactions/communication within education, health care, criminal justice system, etc.
- to be misjudged in terms of cognitive and educational level
- to be victims of crime
- to be convicted of crime
- to have difficulty accessing information required in order to utilise services
- to live in socially deprived areas.

People with a learning disability in the Scottish criminal justice system

The Equality and Human Rights Commission Scotland (2017) conducted research into the [Experiences of people with a learning disability in the Scottish criminal justice system](#). It referred to existing research which highlights:

- the lack of a routine procedure for identifying individuals with a learning disability
- the lack of an Appropriate Adult during police interviews
- the accused not understanding what was happening during their trial and court decisions, including bail and sentence decisions
- difficulties in complying with community-based orders, which increases the likelihood of custody
- a lack of specially prepared, accessible and/or easy read information, for example on prison procedures and internal prison forms
- people with learning disabilities being at a greater risk of reoffending because their specific needs are not recognised and addressed, and therefore do not have access to relevant support services.

The EHRC said that the findings of the research reflect “existing evidence and confirms that there has been little improvement in recent years in addressing the challenges and disadvantages faced by accused/convicted persons with learning disabilities within the criminal justice system.”

While the report said that some criminal justice agencies are making improvements, this needs to be more comprehensive and consistent. It called for greater leadership, both within criminal justice agencies and from the Scottish Government.

Criminal Justice System guidance

The following guides provide a range of information on how to support people with communication needs/learning disabilities in the criminal justice system. None of them make specific reference to Makaton.

The [Practice Guide for Support Staff – People with Communication Support Needs in the Criminal Justice System](#) (Supporting Offenders with Learning Disabilities (SOLD) Feb 2019)

This is an updated guide (original 2017) and produced by SOLD in consultation with partners in Police Scotland, Scottish Courts and Tribunals Service, Crown Office and Procurator Fiscal Service, Scottish Prison Service, NHS, Law Society of Scotland, Scottish Legal Aid Board, Social Work, Independent Advocacy and the voluntary sector¹.

The guide aims to help support staff working with a person with communication support needs who find themselves in the criminal justice system. It is informed by the Scottish Government's [community justice strategy](#). The new edition reflects changes brought in by the Criminal Justice (Scotland) Act 2016, with a foreword by Humza Yousaf MSP, Cabinet Secretary for Justice.

[Guide to Youth Justice in Scotland: policy, practice and legislation. Section 9: Speech, Language and Communication Needs in Youth Justice](#) (Centre for Youth and Criminal Justice, Royal College of Speech and Language Therapists, Autism Network Scotland 2018)

This guidance focuses on the communication support needs for young people in the criminal justice system. The guide states that speech, language and communication needs are found with a very high frequency in the Youth Justice Population.

[People with learning disabilities in the criminal justice system](#) (Scottish Government 2011)

This guide is aimed at:

- people with a learning disability
- families and carers of people with a learning disability
- advocacy workers
- professionals working in services for people with a learning disability
- professionals working in the criminal justice system.

¹ SOLD 2019 News release: Practice Guide for support staff: people with communication support needs in the Scottish criminal justice system: Available at: <https://soldnetwork.org.uk/news/practice-guide-for-support-staff-people-with-communication-support-needs-in-the-scottish-criminal-justice-system/>

It includes guidance for different parts of the criminal justice system to communicate well with people with a learning disability. For example, it suggests:

- Listening to advice from family members, carers or professionals about giving support
- A range of practical support, including the use of visual aids such as drawings or photos.

Scottish Government Action

The [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 Scottish Government [launched](#) (July 2018) an ‘easy read’ version of the Victims’ Code for Scotland to help victims with communication difficulties understand their rights and improve their experience of the justice system.

It also announced funding of £50,000 to the Royal College of Speech and Language Therapists (RCSLT) to develop a speech, language and communication screening tool for use by Appropriate Adults, who help vulnerable individuals with communication difficulties when they are in contact with the police.

No search results could be found for ‘Makaton’ on the Scottish Government’s website.

Equality Act 2010

If a criminal or civil justice organisation provides any goods, facilities or services to the public or a section of the public, it must comply with the Equality Act 2010².

Where a disabled person is at a substantial disadvantage compared with people who are not disabled, there is a duty to take reasonable steps to remove that disadvantage by:

- changing provisions, criteria or practices
- changing or removing a physical feature or providing a reasonable alternative way to avoid that feature

² EHRC (2015) Your rights to equality from the criminal and civil justice systems and national security. Available at: <https://www.equalityhumanrights.com/sites/default/files/equalityguidance-criminal-civiljustice-2015-final.pdf>

- providing auxiliary aids

The duty is anticipatory and applies to disabled people generally.

One of the examples in the [Explanatory Notes to the Act](#) states:

“A police officer is carrying out a public function when interviewing a witness who is deaf. Arranging a British Sign Language / English interpreter for the interview might be a reasonable adjustment to make.”

What is reasonable depends on a range of factors, such as how effective the adjustment would be, whether it can be done, the costs, and the organisation’s size and resources.

Failure to comply with the duty is disability discrimination.

Scottish Parliament Action

Mark McDonald MSP has previously asked Parliamentary Questions on the use of Makaton in education and the health service (lodged 13/12/2013):

- [S4W-18885](#) – on the use of Makaton in the NHS
 - Answer – “No formal guidance on the use of the Makaton communication system has been issued by Scottish Government to NHS boards, however in 2012 we published ‘[A Right to Speak: Supporting Individuals who use Augmentative and Alternative Communication](#)’.”
- [S4W-18883](#) – on the use of Makaton by local authorities, specifically teachers and early years practitioners
 - Answer – “The use of Makaton is a matter for those working with children and young people and is informed by the individual needs of the child or young person, therefore no guidance has been issued to local authorities on this matter.”
- [S4W-18882](#) – on how the Scottish Government supports the use of Makaton by teachers and health professionals.
 - Answer – “Makaton is one of a range of communication tools used to help children and young people with communication difficulties. The choice of communication system by speech and language therapists will be dependent upon clinical reasoning and professional judgement. When it is appropriate to use Makaton speech and language therapists who are Makaton trainers will train parents, education, social care and health professionals in the use of Makaton and update on a regular basis.”

There is a [Cross party group on learning disability](#).

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