

Scottish & Community Activist Legal Project Guide for Disabled Activists

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Introduction

THE NOT SO BRIEF BRIEFING FOR ACTIVISTS BASED IN SCOTLAND WHO ARE DISABLED

Disability here is understood as being due to society. It is not someone's condition which disables them, but it is the physical, attitudinal, cultural, social, structural barriers in society which disable a person.

There are around 13.3 million disabled people in the UK (almost one in five of the population) ¹ Only 17% of disabled people were born with their disabilities. The majority of disabled people acquire their disability later in life.²

“None of the freedoms and rights we (disabled people) have in this country have been given. They’ve all been fought for and won.” (Nicki, disabled activist.)

“With years of austerity, many disabled people have found themselves reliant on the welfare system, and engaged in exhausting battles in which many people have had benefits or vital care services severely cut back or removed altogether. With the Covid-19 pandemic we even find ourselves arguing for the right to life. (1) With this backdrop,

¹ [Family Resources Survey](#) 2015/2016

² [The Papworth Trust](#), 2018

protest is a privilege, which many find themselves unable to participate in. For those who feel able to, it's enabling if resources are readily available, so that disabled people can be as informed as possible, to know what they may need to deal with, and to be supported appropriately where needed. Without us continuing to exercise our right to protest, it will get harder to exercise that right. Disabled people are disproportionately worse affected by many issues such as the impacts of climate change. We can feel just as motivated, compelled, driven and committed to take action as any activist - we just may have to go about it in different ways."

"Our experiences of protest, direct action, the police, custody, prison and the criminal justice system are distinctly separate from that of non-disabled people."
(Female, disabled, climate justice activist.)

"We police behaviour in general if it deviates from the normal – if it deviates from the norm of that particular society. This feeds into fear of interacting with the other. If you break the norms or customs and values, then you are perceived as a threat to the cohesive culture by the dominant group" (Emily Obree, disabled activist who has Tourettes and Autism)

"We want acceptance, not just tolerance"

If you have specific questions, or if you experience anything that is completely different to what is written in this Guide, please help us to keep it accurate by getting in touch:

activists_legal@protonmail.com

If asking a question keep it hypothetical and you can anonymise your experience if you are telling us about specific interactions with the police or courts.

Instead of writing 'I did / I'm planning this - what will the police do?', try writing, 'If somebody were to do this, what might the consequences be?'

Notes

Many thanks to all those who have contributed to this briefing, giving their input, advice and inspiration, and thanks to all those involved in activism - disabled and non-disabled alike. This document is just a starting point. It is intended to evolve, and be added to and improved as people give their contributions. Please get in touch with SCALP if you're

disabled and would like to contribute – we’d really appreciate your input to make this guide as representative and useful as possible.

Please note that the views expressed are that particular individual’s own experiences and observations, and the contributions to this briefing are not representative of all people with disabilities who have experience of activism and the police and criminal legal system – but it does cover people with a diversity of disabilities and experience in activism.

Standard Operating Procedures (SOPs)

In terms of how people are looked after in custody, we refer to Police Scotland’s SOPs. On each SOP there is the note that the SOP “should not be utilised as guidance or instruction by any police officer or employee as it may have been redacted due to legal exemptions.” The documents do however, provide a good indication of the standards and practice that police are expected to adhere to.

Table of contents

Introduction	1
Notes	3
Standard Operating Procedures (SOPs)	3
Medication	5
Your Right to Medical Treatment	5
Medication – in prison	8
Appropriate Adult	9
Terminology: ‘mental disorder’	10
Access for people with learning disabilities	13
Equality and Human Rights Commission: Experiences of people with a learning disability in the Scottish Criminal Justice System 2017	14
The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD 2006)	15
People who are Deaf, Hearing-impaired, or have Speech Difficulties	16
Access and disabling barriers	16
Equality Act 2010	18

Definition of Disability under the Equality Act 2010	18
Reasonable adjustments	19
Discrimination arising from disability	20
Accessible information	21
Adjustments	24
Call button	24
Transportation	25
Reasonable accommodation and meals	26
Toilets	28
Department of Work and Pensions	29
Removal of items such as mobility equipment, clothing or spectacles	31
Legal position of PA's/carers/enablers when assisting a disabled person on a protest	33
When Human Rights are breached	34
Security firms	35
Human Rights Act	36
Disabled people and equal right to protest	37
Use of handcuffs	43
Power to search	45
Neurodiversity, social acceptance and interactions with the police	46
Mental Health (Care and Treatment) Scotland Act 2003 (updated 2015)	47
Section 297 Removal from a public place – up to 24 hours	47
Section 36 Emergency Detention - up to 72 hours	49
Section 44 - Short-Term Detention Certificate – up to 28 days	49
Mental Health Directorate update on Coronavirus Act 2020	49
Other useful info	51

The Equality Advisory and Support Service

52

Footnotes

52

Medication

(from the collective experience of activists who are disabled)

If you're going on an action, and if you take prescription medication, ensure that you have with you the packaging of all your medication, with the prescription labels on them (your full name and dosage etc). Medication is a relevant and important issue to many activists, including those who are disabled, and those who may not identify as disabled but have chronic illness. Being denied medication can be very disabling. Those who normally would take their medication as and when they need it to control their condition independently, find themselves in the position where others have the power to control when they get their next dose. This can be incredibly disempowering.

We have found delays in giving the first dose of medication following arrest to be a recurring issue brought up by activists who have been arrested. Some activists have said they were so anxious and focused on getting their medication on time, that they forgot all the other difficulties with being detained.

Due to these delays, it's advisable to take a dose of your medication as near to when you are just about to be arrested as possible – that's if this works out with your prescription. This will then allow you to have as long as possible to sort out being given the next dose at the police station, before it is due.

Your Right to Medical Treatment

If the police keep you in a cell, you have the right to get a medical examination by a healthcare worker. A healthcare worker can be a nurse or a paramedic. In some cases, it may be a police surgeon (such as a Forensic Medical Examiner.)³ Also, "You have the right to medical help if you are ill or injured."⁴

³ [The UK Rules](#) Disability Rights, United Kingdom

⁴ [Letter of rights for people in police custody in Scotland](#) Published 24/01/2018

If you're taken to hospital for medical treatment, the length of time that you are in hospital is not counted towards the length of time you've been held in custody, unless the police interview you at the hospital or when travelling to or from the hospital.⁵

You can refuse to be examined by the healthcare worker that the police provide. Instead, you can choose your own general practitioner (if they are available). However, there is likely to be a significant charge for this service, and the police will note down any payment made.⁶

When arrested, be clear to let the police know straight away that you take medication, and let them know if it is urgent or not (when the next dose is due). The police may insist that you see a nurse or doctor at the police station before giving you a dose of the medication, or they may check the medication with a medical professional over the phone. Be clear with them about how urgent the medication is, and the effect upon you if you do not get it on time.

It may help to have a support person or friend/PA/carer/buddy available to phone the police station to check that the police have given your medication on time, and to explain the urgency and importance of this being administered on time. The police may be very busy, but having someone phone about it can highlight that others are concerned, and the importance of this.

“My medication kind of gave me a privilege, in that once they saw all the different drugs that I needed to take, they decided not to put me in a cell, but to get me out of there as quickly as possible”. (Female activist, wheelchair user, who has a chronic condition)

One Greenpeace activist advised taking a copy of your prescription, but medication with the standard prescription labels (as long as these are still readable) should be sufficient

SCALP had a report from an activist who is disabled and who was arrested at an Extinction Rebellion action in Edinburgh. Although she was treated well by police, there was an issue with her medication. She was given the choice of either being processed and released as quickly as possible, and then taking her medication upon release, or waiting for her solicitor to make contact, and then being given the medication. She needed the pain relief desperately, and so had to go without her right to legal advice before being charged, and just get charged and released as quickly as possible

⁵ Citizens Advice Scotland, [If you are arrested and held in custody by the police in Scotland](#), 2019

⁶ [The UK Rules](#) Disability Rights, United Kingdom

The police Scotland's Operating Procedure explains that "The management of all medication given to an individual whilst in police custody is the responsibility of the Healthcare Professional. Police officers or Police Community Support Officers (PCSO's) may assist in the administration of medication to individuals whilst in police custody, only when the Healthcare professional is satisfied that it is appropriate for them to exercise this function." ⁷

The police might want a healthcare professional to check on you anyway, to help ensure you are looked after properly while at the police station. If you think you need to see a doctor or a nurse, tell the police as soon as possible.

The police will ask you questions about your health and wellbeing (from the Letter of Rights). This is mainly to determine whether you will be at risk while in custody, and if so, what level of risk. Questions will include whether you have any mental health issues and whether you have a history of self-harm, or any thoughts about suicide. If you do answer yes to having mental health issues or a history of self-harm, or if you give a "no comment" reply to these questions, then it's fairly likely that police will want to check you regularly during the time you are locked in the cell. Unfortunately, the disruption of being checked up on regularly can also be very stressful, and reduces the chances of being able to sleep.

"I was taken to see the station nurse. I felt it was a very generic weak suicide questioning. Incredibly unsophisticated." (Douglas, activist who is disabled.)

The Letter of Rights states that "It is important that you tell the police if you have a medical condition that may affect you while you are at the police station." Similarly, one activist with bipolar felt it's in your interest to say if you have any mental health issues,

"If something happens, and they don't know about it, then it's your responsibility. They have a duty of care to you while you are in the cells. If you haven't said, and then you do start feeling unwell, let them know as soon as you can." (Activist with mental health issues)

However, it's up to you as an individual to do what you feel is the best option for yourself, so that you can manage your time in the cells safely.

Medication – in prison

In prison, medication doses have to fit in with what the prison provides. Typically 'medi' will be given morning, lunch and evening often alongside methadone. Getting used to a whole

⁷ Police Scotland, [Care and Welfare of Persons in Police Custody, SOP](#). Published 20/12/2019 18.3.1

new time schedule of medication can cause havoc especially when the change is so sudden. Many prisoners find this hard to adjust to, especially when at the same time you are adjusting to being inside. You will need to always show your tongue, to show that you are not saving the medi, but have swallowed it.

One activist said she collapsed from her wheelchair due to the amount of pain she was in and exhaustion, but also because she was used to having pills 4 times a day and had to adjust to 3 times. She collapsed on the floor and the paramedics were called who immediately gave her the medication she needed, and from then on she was permitted this. She was not badly injured, but was given the option of being checked out in hospital. She declined as she was too exhausted to manage leaving her cell.

At prison reception you will be asked the same questions about mental health and self-harm and any other health issues. This will then be followed by a strip search. You'll also be asked to give a urine sample, but you'll be able to have a quick shower following this. This can be more difficult for people who are disabled, if for instance reasonable adjustments have not been made and the cubicles for the search are too small for wheelchair access etc, or if you rely on personal care for showering. More prisons now do seem to have floor level access showers with rails for support, within the reception area.

You will be taken to see the prison doctor the next time they are available, which may not be until the following day. They will need to make a new prescription for your medication, and again, they may ask you questions about your physical and mental health.

“Activism doesn’t stop when someone goes to prison.”

(Sam, one of the founding members of Disabled People Against Cuts, past active member of Disabled Action Network, and ex-Faslane Peace camp resident.)

It's important to go easy on yourself at this time. Adjusting to a different routine for your medication if that is necessary, can be challenging, sometimes involving side effects if the gaps between doses are longer than you are used to. If you do not feel well enough to leave your cell, apart from at meal time, then let prison officers know this, as they may allow you to stay in your cell. Try to eat something at each mealtime and drink as much as possible.

“Remember why you are there, and that it won’t be long until you are out again.”

(Vegan prisoners rights)

Appropriate Adult

Appropriate Adults provide communication support to vulnerable victims, witnesses, suspects and accused persons, aged 16 and over, during police investigations. The first Appropriate Adult service in Scotland was established in 1991. Services operated on a non-statutory basis across Scotland. The primary legislation is the Criminal Justice (Scotland) Act 2016. Section 42 of this Act places a duty on the police to facilitate support for vulnerable persons in police custody. This section came into force on 10th Jan 2020.⁸

Section 42(1) applies where:

a person is in police custody,

a police officer believes that the person is aged 16 or over,

the police officer believes the person has what the Act defines as a ‘mental disorder’

.....and in the opinion of the police officer, the person appears to be:-

unable to understand sufficiently what is happening,

or unable to communicate effectively with the police

Terminology: ‘mental disorder’

The definition of “mental disorder” used in this Act is taken from Section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003, and includes “any mental illness, personality disorder, learning disability however caused or manifested.” So it is very wide ranging what is included in their use of the definition. Like others, the authors reject the use of the term mental disorder. We also reject the use of the word impairment in relation to someone’s autism. Instead we recognise that there are minority and majority neurological variants, with no one kind of brain being desirable. We recognise that in societal and environmental settings that are designed primarily with the needs of the majority in mind and not neurodivergence (2), neurodivergent people understandably can struggle.

⁸ Scottish Government, Publication Advice and Guidance, [Appropriate Adults: guidance for local authorities](#) and The Criminal Justice (Scotland) Act 2016 (Commencement No. 6 and Transitional Provision) Order 2019, Scottish Statutory Instruments 2019 No. 363 (C. 18) [Article 3](#)

‘Mental disorder’ also is used in the Act to include those with acquired brain injury (including alcohol related brain damage), Autistic Spectrum Disorder, which includes Asperger Syndrome, and people of all ages affected by dementia. Although the Mental Health(Care and Treatment) (Scotland) Act 2003 does not specifically mention Activity Deficit Hyperactivity Disorder (ADHD), the Police operating procedure states that if the person’s ADHD is such that it can be legitimately argued that it may impact upon their ability to cope with, or to communicate during the police process, then the procedures advise that services of an Appropriate Adult must be considered. ⁹

It is recognised that not everyone who requires Appropriate Adult support will have a formal diagnosis, nor may they be able or willing to share any diagnosis with the police.

The Appropriate Adult is a person who has “undertaken specialist training for the role and has prior experience of working with adults who have a mental health issue, learning disability, autistic spectrum disorder, dementia and/or acquired brain injury in relation to overcoming communication issues.” ¹⁰

Appropriate Adults should not:

Have a conflict of interest. That is, they should not have a current or ongoing professional or personal relationship with the individual (3.15). They also should not be left alone with the person or their friends and family members without police being present (3.30)

In circumstances where the police are not able to confirm that you have a diagnosis but they feel it is clear that you cannot understand procedures or communicate effectively with the police (and that the cause of this difficulty is not solely due to substance use/intoxication), then the police are advised that they should request an Appropriate Adult – even though you may not ask for one. ¹¹

Local authorities have a **duty** to provide Appropriate Adult services to the police when required for people in custody or when requested at any stage during a police investigation for victims, witnesses and those suspected or accused of committing an offence.

⁹ Police Scotland, [Appropriate Adults SOP](#), published 01/10/2020

¹⁰ Police Scotland, [Appropriate Adults SOP](#), published 01/10/2020

¹¹ Scottish Government, Publication Advice and Guidance, [Appropriate Adults: guidance for local authorities](#)

Section 33(2)(c) of the 2016 Act provides that a person in custody who is entitled to Appropriate Adult support cannot consent to being interviewed without having a solicitor present.

“At a recent action [in England] the nurse came to my cell at 5pm and said “these will tide you over”. I didn’t get taken up to see the nurse until 11.30pm when they then took blood pressure and all that. I was taken up for interview, with a solicitor from Bindmans there. The solicitor said they’ve asked that you should have an appropriate adult here. The nurse had decided that I needed one without talking to me about it at all and without mentioning it to me. The police talked to the lawyer and he told the police I didn’t need one. I did a No Comment interview without an appropriate adult present.”

(Male, peace and climate change activist, diagnosed with bipolar.)

Appropriate Adults are not professionally qualified to provide a formal assessment of an individual’s health or communication abilities. If the police believe that such an assessment is required then they should consult with a relevant specialist. If an Appropriate Adult feels that someone requires more support to understand what is happening than they can provide, or feels unable to facilitate effective communication between the person and police, they should inform the police of this so that steps can be taken by the police to secure the right type of assistance.

“I was asked at a previous action about whether I had mental health issues. I didn’t say anything at the time. Then having seen my medication and details on my record they then said “You’ll need an appropriate adult before I can let you out. They were arranging one as I couldn’t ask anyone. So I was put back in the cell for another 2hours. Eventually a social worker arrived. We both looked at each other, said this is stupid isn’t it. I had no say in it. Everyone else had been released. They had already done all my fingerprinting without the appropriate adult being there. There was no interview.”

(Activist in England who lives with mental health issues)

The police have the power to go ahead with an interview without an appropriate adult present. An example is if a delay would result in harm to other people, to property, or to evidence.¹²

The Police Scotland Operating Procedures recognise that the decision to request an Appropriate Adult must be taken on the circumstances presented at the time, but

¹² [The UK Rules](#) Disability Rights, United Kingdom

continuously reviewed during their interactions with the investigating officer. It is recognised that some mental health conditions can be fluctuating, and so there may be occasions when a person does not need the services of an Appropriate Adult even if they had one previously, or they may require one for the first time, even if they have not had the services of one before. Should the person's condition/engagement/presentation appear to deteriorate at any time, the need for an appropriate adult should be re-considered.¹³

Access for people with learning disabilities

“Concerns have been raised that people with learning disabilities are not getting the support of an Appropriate Adult when they need it and that there is a lack of understanding and under-utilisation of the scheme. This has been attributed to police officers failing to recognise when someone has a learning disability. Police officers have indicated that they tend to rely on their own experience to make a subjective assessment about whether someone has a learning disability. There is also an over-reliance on healthcare professionals when assessing whether an Appropriate Adult is required. Other problems include a lack of awareness of issues concerning people with learning disabilities and a need for training within Police Scotland.” (This is taken from The Equality and Human Rights Commission (EHRC) and the Scottish Human Rights Commission (SHRC) report on “Disability rights in Scotland: Supplementary submission to inform the CRPD List of issues on the UK”.)¹⁴

A research briefing published by EHRC (2017) recommends that: The Scottish Government should:

- ensure members of the Crown Office Procurator Fiscal Service have knowledge and experience of learning disability
- adopt an agreed police custody model to identify learning disability
- make training on learning disability mandatory for police officers and staff working in police custody arrangement

Equality and Human Rights Commission: Experiences of people with a learning disability in the Scottish Criminal Justice System 2017

Criminal justice agencies have no consistent way to identify individuals who have learning disabilities throughout the criminal justice system. Most agencies rely on frontline staff's observations and experience to identify individuals with learning disabilities. Police

¹³ [Police Scotland, Appropriate Adults SOP](#), published 01/10/2020

¹⁴ Disability Rights in Scotland, [Supplementary submission to inform the CRPD List of Issues on the UK](#), Equality and Human Rights Commission, Scottish Human Rights Commission. Published 2017

Scotland are seen by many as having a key role in identifying learning disabilities at the point of arrest and charging, and for this information to be shared as an individual progresses through the system. However, they have no routine screening at present and will rely on individual officers to identify people who are having difficulty understanding.

As a result, there is significant potential for learning disabilities to remain unidentified, and for individuals to progress through the system unsupported. Some people with learning disabilities will volunteer information about their disability during their first contact with police, and other people think that the police and others are already aware. Some fear they will be treated differently including the range of sentencing options that could be used: "I didn't want to draw attention to myself, because people like us do not get treated fairly."¹⁵

The research also found, amongst other things:

- sentence plans in both the community and custody failing to take account of offenders' disabilities, making it difficult for them to comply with their sentence
- a lack of specially prepared, accessible and/or easy read information, for example on prison procedures and internal prison forms
- difficulties in complying with community based orders, which increases the likelihood of custody
- 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

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD 2006)

The UNCRPD is an international human rights treaty adopted in 2006. The UK agreed to follow it in 2009. By following CRPD, the UK agrees to protect and promote the human rights of disabled people, including eliminating disability discrimination.¹⁶

¹⁵ [Experiences of People with a Learning Disability in the Scottish Criminal Justice System](#), Equality and Human Rights Commission, Scotland. Published, 2017

¹⁶ [UN Convention on the Rights of Persons with Disabilities](#) (CRPD), Equality and Human Rights Commission, 2020

The purpose of the convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity

Article 12 - Equal recognition before the law,

Article 13 - Access to Justice

Article 14 - Liberty and Security of the person

These Articles together should ensure that people with learning and other disabilities are:

- supported to exercise legal capacity
- are able to access age-appropriate accommodation as both direct and indirect participants in legal proceedings
- are not deprived of liberty on the basis of disability.”¹⁷

Article 5 – Equality and non-discrimination

Article 21 – Freedom of expression and opinion, and access to information

Under Article 33 of the UN Convention on the Rights of Persons with Disabilities (CRPD), the Equality and Human Rights Commission (EHRC) and Scottish Human Rights Commission (SHRC) are tasked to jointly promote, protect and monitor implementation of CRPD in Scotland, as they are both part of the UK Independent Mechanism - along with the Equality Commission for Northern Ireland, and Northern Ireland Human Rights Commission.

People who are Deaf, Hearing-impaired, or have Speech Difficulties

The police should arrange for an interpreter to be present in the room with you if you are hearing impaired or have trouble communicating clearly. This could be a BSL interpreter or another appropriate professional. There are exceptions to this, when the police can interview you without an interpreter, such as if a delay in interviewing may result in harm to other people, to property, or to evidence.^{18 19}

¹⁷ [Consultation on the Letter of Rights for Scotland](#), Respondent Information Form, Scottish Commission for Learning Disability

¹⁸ [The UK Rules](#), Disability Rights, United Kingdom

¹⁹ [Letter of rights for people in police custody in Scotland](#). Published 24/01/2018

Many people find that it can be hard to follow everything that is happening at the police station. It's important that you ask for help if you are not sure about anything, and ask for help with reading if you need it.

Access and disabling barriers

We found that many disabled activists reported a lack of even basic reasonable adjustments being made in different police stations in Scotland and England. The list includes, but is not limited to:-

- custody desk/bar being too high for anyone in a wheelchair or a different than average height, so that the person is unable to see the officer speaking to them
- non-existence of accessible toilets when in custody,
- lack of accessible sink for brief wash in custody
- the fixed seat used for ID photos being inaccessible
- the fingerprint machine being too high for some people to manage raising arms (so officers have resorted to supporting the persons arm, whilst each individual print was taken),
- the Letter of Rights (Scotland) or Code of Practice (England) not being provided in an accessible format on request.
- the raised part of the cell for the mattress being too low and inaccessible for many disabled persons to use and be able to get up again
- call button in cell not being reachable to those with some disabilities
- the door hatch not being at a height someone in a wheelchair can also see out of. (The hatch can sometimes be left open if someone is feeling claustrophobic at an officers discretion, but someone short, or in a wheelchair cannot benefit as much from this as cannot see out)
- The thin disposable cups used for water are particularly hard for people with some disabilities to hold without spillage
- Fluorescent lighting in some cells being more likely to trigger epileptic seizures
- The mattress being too thin for anyone in any pain to manage
- Transportation vans for prisoners not having any wheelchair accessible/safe spaces

“Finger print machine very uncomfortable for anyone from a seated position to use. For one activist who has a connective tissue disorder it was much more than uncomfortable.”

(Ian, wheelchair user)

“Booking in desk was head high, so I couldn't see eye to eye with the person from the wheelchair.”

“I was told by a police officer that I shouldn't be protesting as they did not have the facilities to hold me in custody.”

(Ed, wheelchair user)

In prison, activists have experienced:

- No accessible cells. In one prison, the accessible sign was on the door of one cell, but it was still not accessible
- Toilets in cell inaccessible – no toilet seat, no handles or rails, no room to get wheelchair into cubicle or up to toilet
- Accessible communal toilet being regularly vandalised and out of use
- Lack of room for wheelchair to manoeuvre in the dining area, (making it easy to bump into people or chairs by mistake, which can in some cases cause tension.)
- Only one accessible shower in a separate building – so not able to take a daily shower
- Having to ask a nurse to assist with shower, yet no medical treatment was required
- Bed too high to transfer onto safely – and easy to fall out of onto hard floor
- Bed too high to safely sleep in – easily fall out onto floor
- Call button and radio being out of reach if on the wrong bunk – have to change beds to be able to reach it
- No turning circle in the cell, so have to wheel backwards to get to the door.
- Fluorescent lights in cell which can be difficult for people with epilepsy
- Often cold in the evenings in the cells
- Thin painful mattress and nothing to make this easier for anyone experiencing pain or bruising from falling out of bed in the inaccessible cell

Equality Act 2010

(with info and advice from the Equality Advisory Support Service EASS.)²⁰

Definition of Disability under the Equality Act 2010

A person is considered under the Act to have a disability if they have:

²⁰ [Equality Advisory and Support Service](#), Advice and Support

“A physical or mental impairment that has a substantial and long term adverse effect on his or her ability to carry out normal day to day activities”.

To be defined as disabled, the person's condition needs to have a long term effect on their normal day to day activities. Long term is defined here as when a condition lasts, or where it is likely to last, 12 months or more. Lastly, the person needs to show that the effect on them is substantial - this is more than minor or trivial.

A person has to fit these criteria to have protection under the Equality Act 2010. Ultimately though, it is down to a judge in a court of law to decide if someone can be defined as disabled under the terms of this particular Act.

Similarly, as defined under the Equality Act 2010, a mental health condition will be considered a disability if it has a long-term effect on a person's normal day-to-day activity.²¹ The definition of 'long term' effect is when the condition lasts, or is expected to last, for a period of at least 12 months.

The definition of 'normal day-to-day activity' is something that people do in a normal day and on a regular basis. So, it would include daily activities such as using a personal computer, working for a set number of hours, and interacting with other people.

Reasonable adjustments

Under the Equality Act 2010, employers, service providers, education providers etc, have an anticipatory duty to make reasonable adjustments for disabled people accessing their services, who are placed at a substantial disadvantage due to their disability. If reasonable adjustments apply, but have not been made, then the provider may be acting unlawfully.

The duty can be triggered if :

- a provision, criterion or practice (PCP),
- a physical feature,
- or the lack of the provision of an auxiliary aid or service,

places a disabled individual at a substantial disadvantage when compared to a non-disabled individual. (An auxiliary service includes services such as a sign language interpreter or a support worker.)

²¹ [The UK Rules](#) Disability Rights, United Kingdom

In deciding what constitutes a reasonable adjustment, service providers are able to consider various things such as the costs and practicalities of bringing in the changes and the extent of disruption.

If a person who's disabled feels they have been at a substantial disadvantage when in custody compared to non-disabled people, and they feel the police cannot justify not putting an adjustment in place, then this may amount to a failure to make reasonable adjustment, which is unlawful under the Equality Act 2010. This could be things like not being given access to an accessible toilet when arrested and held in a cell, or having a wheelchair taken away from you if you transfer onto a cell mattress, or not being able to reach the emergency button in a cell etc

In reasonable adjustment cases, providing a comparison with a non-disabled person in the same, or similar, circumstances, helps establish the fact that it is because of a disability that a disabled person is disadvantaged, and not because of some other reason unrelated to disability.

The key principle of this duty is to provide access to the service as close as it is reasonably possible to get to the standard usually offered to the public.

Throughout this process, the onus is on the disabled person to raise the issue and, if it seems they have a case, and if they wish to proceed with it further, the person with the disability can then choose to take things further. However, for people's needs to be met, this approach depends on the person who is disabled feeling able to take action when services have failed to make reasonable adjustments. For many people, whilst they realise the benefits of doing this, they do not feel in a position to take on a case like this and deal with the additional communications it involves. Some people have had experience though of it being a relatively straightforward process:

James, who is visually impaired, did feel able to raise things with the magistrates court direct when he found his needs not to be met. He found them to be "very accommodating and always honour the need to make reasonable adjustments when asked to do so."

Another activist raised the issue verbally of a ramp being required to a prisoner processing unit and about the duty under the Equality Act. The ramp was then provided for future people held in custody, which also saved the need for four police officers to risk their backs lifting a wheelchair into the unit.

Discrimination arising from disability

As well as failure to make reasonable adjustments being prohibited under the Equality Act 2010, the Act can also protect disabled people from 'indirect discrimination'. Indirect

discrimination is where although policies or practices may be applied equally to disabled and non-disabled people, disabled people may be put at a particular disadvantage.

Prohibited conduct under the act in the form of what is called “discrimination arising from disability” is applicable where an employer, service provider, education provider etc, treats a disabled person unfavourably because of something arising as a consequence of their disability. The unfavourable treatment must not be considered to be “a proportionate means of achieving a legitimate aim.” There has to be a connection between the reason for the treatment and the person’s disability. It counts as ‘unlawful discrimination’ if someone who knows you are disabled, treats you unfavourably because of something that results from your disability. This is provided that treatment can’t be justified.

In cases where the employer or service provider, *can* prove that the way they treated the disabled person was a proportionate means of achieving a legitimate aim, then the discrimination on the basis of disability may be regarded as objectively justified. However, this legitimate aim behind the way they treated the disabled person, needs to be legal, proportionate, non-discriminatory in itself and be considered appropriate and necessary.

For more information on how the Act protects disabled people from direct and indirect discrimination, you might want to contact the [Equality Advisory and Support Service](#).

Accessible information

All people have a right to liberty and security under Article 5 of The Human Rights Act (1998). This includes being given information on arrest and charges in a language that they understand.

UNCRPD - Article 21 - Freedom of expression and opinion, and access to information states that Parties shall take appropriate measures to ensure that all people with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, including through

“Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;

Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means.”²²

Despite this, the reality is that a lack of accessible written information and resources is an issue. Most of the information in prison is delivered verbally, for example during induction, and there appears to be no measures in place to check that this information has been understood.

“I was sharing a prison cell with another woman. She had a learning disability and could get real angry with the officers at times. She was locked up as a result of being misunderstood so she got angry and violent. Turns out she couldn’t read the list to order from the prison shop. She just needed someone to go through it with her and she was fine. She also needed reading glasses, but had lost these in her arrest. No one had realised she couldn’t read or understand anything and this was making her frustrated and angry. She needed info in a format that met her needs and then there wouldn’t have been a problem.” (Activist and full-time wheelchair user.)

Written material is circulated for even basic activities in prison, such as selecting items from the canteen sheet. This can be challenging for those with learning disabilities, and they either select items without knowing what they are, or have to ask other prisoners for help. This can lead to both embarrassment for the individual, and others taking advantage.

Many people can find the court environment very challenging, but this is especially so if you have learning disabilities and have difficulties following what is being said or what is happening. The solicitor is expected to provide all the required support in court. In some individual cases an Appropriate Adult can be provided, or advocates and other supporters may be able to offer some assistance.

Clearer and accessible information on the different type of court processes and sentence options needs to be made available to people with learning disabilities who are involved in the criminal justice system.

Scottish Commission for Learning Disability (SCLD) highlights several terms in the ‘Letter of Rights’ that could cause confusion, and ask that all statements make one point only and be accompanied by a picture. They also ask that consideration is given to producing one

²² [Convention on the Rights of Persons with Disabilities and Optional Protocol](#) Version created 2007

easy read document for all in addition to providing the information in a range of accessible communication methods which should include an accompanying video and braille version. They also suggest using a set of illustrative cards to explain the situation.²³

'Deaf Scotland' also have commented in relation to making the 'Letter of Rights' more accessible, and suggest using film and different film methods. They suggest a more sophisticated approach of film, visuals and graphics would achieve more inclusive results and making the 'Letter of Rights' available in BSL.²⁴

Accessible information is also needed for those with visual impairments.

Example:

If CCTV is being used in a cell, it is necessary to make the person aware that they are being recorded, and there is usually a sign to say this. However, with activist James who is visually impaired, he was not able to read the sign and was not told he was being recorded live, which may constitute an invasion of privacy.

James was arrested in England where one of the 3 rights given upon arrest is the right to read the Code of Practice. In Scotland, you are given the Letter of Rights to read and you can ask for an easy-read copy or translation if you need this. James was unable to read the Code of Practice as it was not provided in an accessible format. James requested someone to read the Code of Practice for him, and whilst that was in the end provided, it was only long enough for the person to read James a few pages. The Code of Practice makes it clear that someone who is severely visually impaired should have an appropriate adult, but this also was not provided.

James was asked to sign a form. However, he could not read the form and made it clear that he needed to be able to read what he was signing. When he couldn't read it and consequently didn't sign the form, the police wanted to put him down on their records as not willing to sign (without a proper explanation), which was not the case.

James has concerns that if he does end up being given a prison sentence, then he will not be able to communicate with people outside as he cannot read or write, but can communicate using an Ipad. He will not be able to read a book to occupy his time, but would need reading material in an accessible format.

²³ [Consultation on the Letter of Rights for Scotland](#), Respondent Information Form, Scottish Commission for Learning Disability,

²⁴ [Consultation on the Letter of Rights for Scotland](#), Respondent Information Form, 'Deaf Scotland,'

Physical Adjustments

Call button

“I was put in a cell, and asked to be lifted from my wheelchair to the mattress as I’d have been in too much pain to stay in my wheelchair. Two officers lifted me carefully and patiently. But then they took my wheelchair out of the cell – I depend on my wheelchair so like to have it within reach of me even if I can’t get into it without help. Being now on the mattress I could not reach the call button, and couldn’t move anywhere either. I felt very vulnerable. I could not use the call the button when I needed my medication or a drink. The equivalent for a non-disabled person would be having legs restrained so that they cannot move from the mattress.” (Female activist, and wheelchair user)

Police cells have a call button which should always be turned on when the cell is occupied. However, if a prisoner continuously activates the call button, even though the police have tried to address their concerns, then in such circumstances, the Custody Supervisor might decide that the continuous use of the call button is having an adverse effect on the welfare of the other prisoners. They may then take the decision to deactivate the call button. Instead the prisoner concerned is visited at regular intervals, and their prisoner record is updated to record what has happened. This decision has to be regularly reviewed by the police.²⁵

Where a prisoner may have difficulty accessing the call button due to disability, the Custody Supervisor has to account for this within the care plan, and as an alternative, they must consider the use of adapted cells, increased visits, and/or consideration should also be given for the prisoner to be placed under constant observation.

“As I was unable to reach the call button due to being disabled and the fact it wasn’t accessible for me, then they put me in a cell with a CCTV camera, and said I could wave to let them know if I needed anything. This was intimidating though, having a camera in your cell the whole time – but a lot of cells have these now”. (Female activist in Scotland)

Many police cells in Scotland have either in-cell digital CCTV, or glass windows to allow constant observations by police. Where these are not available, and if the Custody Supervisor deems it unacceptable to convey a prisoner to a station with an equipped observation cell due to the distances involved, then the prisoner is to be placed in an

²⁵ Police Scotland, [Care and Welfare of Persons in Police Custody. SOP](#), Published 20/12/2019

ordinary cell. However, consideration is given to placing people under constant observation, depending on what is concluded in the risk assessment.²⁶

However, the Scottish Police's Standard Operating Procedure at 19.4.10 explains that "Medical conditions and head injuries should not be used as a reason for constant observations unless directed by the healthcare professional. If someone is so ill that they need constant observations they should be taken to hospital."²⁷

Transportation

In the standard operating procedures, police are expected to consider the suitability of the transport used to convey people between the place of arrest and the police station. They are meant to consider it's suitability in terms of accessibility, personal safety and the dignity of the individual. If a standard police vehicle is considered unsuitable, then the arresting officer is expected to consider using an alternative vehicle such as a taxi with wheelchair access where necessary.²⁸

The reality is that there can be a long wait for an accessible vehicle, and whilst others in your group may have gone in a van and are now being processed, if you're a wheelchair user, things can take much longer.

"I waited for a pixie van to come along that can transport the wheelchair. When it came I don't think any of the police had experience doing it. I don't think they knew how to use the straps. When travelling, if there had been a hard brake, I would have been in trouble if not able to brace myself." (Douglas, activist who is disabled.)

This was a common theme with other activists, that even when an accessible vehicle arrived, the police did not seem to know how to strap the wheelchair in, which led to the wheelchair feeling particularly unstable when the vehicle was moving. One activist said how the wheelchair would lean to the side when going round a simple corner, and she had to try to stop it going over further by using her arms. One said about having a particularly long taxi ride through the Scottish countryside on the way to prison accompanied by three officers. Another was asked by the police for instructions as to how to fasten the wheelchair in the straps, as the police were aware of how many times she had travelled in the van.

²⁶ Police Scotland, [Care and Welfare of Persons in Police Custody, SOP](#), Published 20/12/2019

²⁷ As above

²⁸ As above

Vans that have cubicles for security of prisoner transportation are also inaccessible if you use a wheelchair. They are also claustrophobic. One wheelchair-user had her wheelchair positioned for the journey in the tiny walkway alongside the cells, but again this lacked any way of securing her wheelchair, so a police officer had to help by holding onto her wheelchair when the vehicle turned a corner.

Reasonable accommodation and meals

“If they offer you a drink, take it” (Ian, disabled Greenpeace activist)

“Water will be provided if you ask for it. You will be offered food if you are at the police station for more than four hours. If you have any dietary or religious needs then tell the police as early as possible.”²⁹

“Three meals are provided for prisoners between 0600 hours and 1900 hours. In addition, no person is to be held for more than four hours between 1100 hours and 2300 hours without being offered a meal. Prisoners, where possible, should be fed before 0700 hours each court day. Different types of meals should be made available for prisoners with different dietary requirements, e.g. halal, vegetarian, gluten-free, etc.”³⁰

Custody staff are meant to ensure that all prisoners receive sufficient water. In the event that someone refuses the meal provided, this is recorded on the National Custody System, with the reason of refusal. If more than two consecutive meals are refused, or someone continually declines fluids, then the police might consult a healthcare professional as to what to do.

Police are expected to make all efforts to provide each person in custody with a meal which is acceptable to their condition/beliefs e.g. medical condition, special dietary requirements, religious or moral beliefs, etc.

People will not be given food provided to police stations by friends or relatives. Meals are served in containers and with sporks or similar safety spoons. Drinking water is supplied on request. Containers and cutlery are accounted for as soon as reasonably practical when you’ve finished your meal, as there is potential for these items to be used as a weapon or to self-harm. Cultural and religious requirements mean that some people are only able to eat and drink at particular times of the day or night. Custody staff should be

²⁹ [Letter of rights for people in police custody in Scotland](#) Published 24/01/2018

³⁰) As above
<https://www.scotland.police.uk/spa-media/0mfjn3pa/care-and-welfare-of-persons-in-police-custody-sop.pdf>

aware of this if you've brought it up with them as soon as possible. You should be provided with meals at times that your culture/religion allows you to eat them.

The Vegan Prisoners Support Group³¹ can help support you in following a vegan diet when in custody or in prison. They provide information for prisons, and work with HM Prison and Probation Service to ensure a varied nutritional vegan diet is provided.

Warmth is another issue, and it's good to try and ask for a blanket as soon as possible, and definitely before the cell door is shut on you. Blankets may seem a minor thing, but the difference they can make to someone physically is significant. Refusing to allow a blanket is a very easy way that those in custody who are disabled or ill, can be put in great discomfort, and for some an increase in pain levels. As well as affecting some people with disabilities, those who would not normally identify as disabled can easily find their needs are not met, making things more inaccessible to them:

“coping with arthritis, fibromyalgia and general less supple old age, is that you are only given one blanket and have to keep asking for another one because you feel the cold. You sometimes have to wait a very long time getting stiffer and stiffer so that it's painful to have to stumble into court.” (Olivia Agate, Trident Ploughshares peace activist.)

Toilets

There is nothing in the 'Letter of Rights' which states you have right of access to a toilet. So SCALP wrote to the Scottish Government, and Ryan Paterson of the Police Powers and Workforce Unit stated that “Any person who is held in police custody, must always have access to a toilet....When multiple occupancy of cells is necessary, any request for private toilet facilities should be granted providing it is safe to do so.”

They also pointed out that under the terms of Police Scotland's Care and Welfare of persons in Police Custody Standard Operating Procedure (SOP), “each and every prisoner must be considered as an individual with specific needs relevant to his or her particular circumstances, health and condition. Reasonable requests, which do not interfere with operational requirements or security, should only be refused when there are justifiable reasons.”

However, that is very vague, and does not amount to the right to an accessible toilet. As stated above though if a person is disabled and is not given access to a toilet, and they

³¹ [Vegan Prisoners Support Group](#)

feel the police cannot justify not putting an adjustment in place, then this may amount to a failure to make reasonable adjustment, which is unlawful under the Equality Act 2010. The lack of an accessible toilet is obviously putting the person at a substantial disadvantage when in custody compared to non-disabled people,

“The police are expected to put arrested people in reasonable accommodation and provide regular meals. Police cells are considered reasonable accommodation.”³²

It seems reasonable to assume a toilet would be part of that ‘reasonable accommodation’. The UN CRPD at Article 2 defines “reasonable accommodation” to be “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.”

If you are desperate to go to the loo, and there is not an accessible toilet in the custody suite, then you may want ask if there is a toilet in the foyer that is accessible. There should be, as it's expected that reasonable adjustments will be carried out to make public buildings accessible under the Equality Act 2010. If there is an accessible loo, ask if the police can take you to that toilet.

“I didn’t think it was fair on the officers who were having to lift me, and it was painful for me being lifted by them. If they do not have the accessible facilities and a toilet with a hoist, then they should not detain me, or they should de-arrest me” (Sara, disabled activist)

“There’s no loo seat, or rails, or anything to hang onto with the loo in the cell, so they took me each time to the toilet in the public waiting area of the station, and they lifted me across to that. There’s no much privacy, and they waited outside with the door ajar calling at me the whole time to check I was ok. I have slipped to the floor previously when trying to get across by myself, but the police have come in quick as were right outside, and had told me not to lock the door.” (Female, activist and wheelchair user)

Department of Work and Pensions

Early 2019, it was confirmed by Lancashire and Greater Manchester police, that they had passed on information to the Department of Work and Pensions (DWP) about some disabled people taking part in protests.³³ Both the police and the DWP say there is no

³² Citizens Advice Scotland, [If you are arrested and held in custody by the police in Scotland](#), 2021

³³ Disability News Service, [“Call for urgent probe into police passing DWP information about protesters”](#), by John Pringle, 21/2/2019

formal agreement between them. The DWP say that they consider any information which they receive from the police, on its merits. A Lancashire police spokesman said: “The DWP are a partner agency and where we have information to suggest that fraud may be being committed we have a duty to pass that on, including video footage if we have it.”

Attending a protest does not of course mean someone claiming disability benefits is committing fraud. Disabled people have an equal right to protest. However the threat of being flagged up for reassessment or investigation by the DWP can sometimes be enough to put many disabled people off participating in protest. The lengthy process of a DWP reassessment causes much stress and anxiety to disabled people, who have to answer questions on intimate aspects of their lives, and who are left not knowing whether they will continue to receive the same benefits that many are totally dependent on in order to survive. The eligibility criteria for disability benefits covers the whole spectrum of impairments and conditions, many of which do not impact on whether the person can attend a protest.

Quite simply, **if you meet the eligibility criteria for a benefit, then you are entitled to it. If participating in a protest does not have an impact on you meeting the eligibility criteria then you are doing nothing wrong.** Needless to say, you should always inform the benefits if there are any changes in your health and situation. Fluctuating conditions are meant to be taken into account.

Yet in the views of a spokesman for Lancashire police force “Ultimately, if there are people that are found to be claiming benefits down at the site there’s obviously an issue there.” He said that the force had a duty to pass on information to the DWP and that “It’s obviously a case by case basis really, what the benefits are being claimed for in terms of their position down at the site.” “That’s a decision for the DWP anyway. We have passed that information on, they will make a decision, an informed decision on the back of that.”

SCALP spoke to Liz who was involved in anti-fracking protests at Preston New Road, (PNR) Lancashire. She said it was hard to think of anyone who was disabled who hadn’t been reassessed following their involvement at the protests. This included a protestor with a spinal cord injury who uses a wheelchair. Despite the fact that “spinal cord injuries do not repair themselves,” he was called for reassessment of his industrial injuries benefit just two months after he started protesting at PNR.

Liz who has a fluctuating condition was stopped by police when using her Motability vehicle on the way to a protest and was told by the officer that he was “duty bound to tell Motability that she was using her car for illegal purposes.”

Police have been known to make comments to the effect that they do not believe the person is really as disabled as they look or say. For example, Nick Sheldrick is reported in Civic Space Watch as saying that a police officer at the Preston New Road site told him not to be stupid and to stand up when Nick was on the ground. Nick says he was trying to explain that he had a spinal cord injury and his legs don't work, but they didn't listen. Nick had ended up on the ground, when he had made an attempt to block a delivery lorry. The Mirror reported on this with footage that appears to show Nick being pulled to the ground by police officers to prevent him from blocking the vehicle.³⁴

That disabled people should have their integrity questioned and doubts cast as to their eligibility for disability benefits as a result of exercising their right to protest is deeply concerning and needs challenging. A member of the local Town Council to the PNR site, was reported as stating that she believed the targeting of those seen as more vulnerable was a deliberate ploy to undermine the determination and morale of protestors.³⁵

Non-disabled protestors can be made aware during Non-violent Direct Action (NVDA) training of this tendency for targeting, and be ready to shield the person concerned so that they are not vulnerable to being asked by police for their name and other details, which could then be passed on. More prominent and known protestors who are disabled can also be shielded from being shoved, pushed and filmed by the police.

Prominent disabled protestors may want to record in some way their preparations which allow them to take part in their protest and their recovery period afterwards. Then if their activities are reported to the DWP, their involvement can be seen in context of the help, support and preparation that it has taken to enable them to attend. As Liz said in reaction to police evidence being taken of her, "Where are the photos of me falling over, me sleeping for 12 to 16 hours?" Of course, the onus should not be on the disabled person to provide such evidence, as though guilty of something, but it may help if anything does happen.

Removal of items such as mobility equipment, clothing or spectacles

"My glasses were removed even though I explained that I would not be able to see well at all without them. When I asked why, the officer said that I could harm myself with them. I had no intention of harming myself and was shocked they said this. I've been locked up before for taking part in actions

³⁴ ["Paralysed fracking protester falls from his wheelchair as police move him from path of 40-tonne truck,"](#) The Mirror, by Kelly-Ann Mills, 20/7/2017

³⁵ ["United Kingdom: Police forces are repeatedly targeting and assaulting disabled people involved in peaceful anti-fracking protests,"](#) 17/12/2018

and have no record of harming myself. I felt they were doing this as a way to try and wind us up and to make the time in the cells more difficult, as I'm also disabled so it was going to be hard even with glasses!" (Female disabled activist in Scotland)

SCALP has heard people express concern as to whether their mobility aids or equipment may be taken off them when in custody. The authors have heard of the [one person](#) who had her wheelchair taken off her when in the cells. Netpol received an account from one disabled activist who, during Extinction Rebellions actions in London in Oct 2019, was "arrested, handcuffed and left lying on the ground for around half an hour, with his walking stick confiscated as a 'potential weapon.'"³⁶

In this case below, important parts of the wheelchair were temporarily confiscated by police:

"I have a self-propelled wheelchair and my footrests were taken away initially as an officer said they could be used as an offensive weapon. Thankfully I soon got them back when they realised someone had to lift up my feet to move me!"

Certainly, it seems in certain circumstances aids can be taken off someone who is arrested. For example, with prosthetic limbs, as it states below in the Police Standard Operating Procedure "The decision to allow the prisoner to wear the prosthesis in the cell will be taken by the Custody Supervisor."

For those who are held in custody and have prosthetic limbs, the police are advised under the Standard Operating Procedures to search the prosthetic, so as to be sure there is nothing concealed that can be used to hurt the prisoner or others.³⁷ However, it is stressed that this search should be carried out in private and with dignity and respect. The Custody Supervisor must record that the prisoner has a prosthesis and identify which limb is prosthetic. The decision to allow the prisoner to wear the prosthesis in the cell is taken by the Custody Supervisor. Considerations should include; vulnerability, dignity, comfort and mobility of the prisoner, etc. The reason should be recorded on the National Custody System.

³⁶ [Met Police discriminated against Extinction Rebellion protestors, says report](#), by Imogen Benson, 20/11/2019, Greenworld

³⁷ Police Scotland, [Care and Welfare of Persons in Police Custody, SOP](#), Published 20/12/2019

“I was worried they would take my prosthetic leg off me, but it was ok – but be good to know that was always the case”

Even if you have been permitted to keep your spectacles, the police are expected to record why they have allowed you to keep them, as this section of the Operating Procedure makes clear below

“13.1.4 Once a prisoner has been searched, comprehensive recording of his or her property must be detailed on the property section of the National Custody System and proper storage methods adopted. Any items which are being allowed to remain with the prisoner should be recorded as such and the reason why, e.g. glasses.”

The reasons given for removing such items can sometimes be due to reducing the risk of someone hurting themselves or others. When it comes to removal of clothing, the operating procedures state that “No prisoner shall be physically forced into wearing an anti-harm suit unless the circumstances are such that they are actively self-harming or the dangers are such that this action is immediately necessary. If this is necessary, it should be carried out in a cell equipped with CCTV. This decision will be taken by the Custody Supervisor who will utilise the National Decision Making Model. All options should be considered including use of constant observations until the prisoner is sufficiently calm. The full circumstance and rationale should be recorded on the National Custody System.”

38

Items like your belt and shoelaces may be taken from you when you're searched. Any clothing or property will be returned when you're released unless it's kept as evidence.

Legal position of PAs/carers/enablers when assisting a disabled person on a protest

Currently the situation seems to be that if you have a carer with you, enabling you to take part in a protest - and if they are, for instance, pushing your wheelchair or supporting you walk towards a fence that you then damage in a peaceful action - or if they help you to get into the roadway that you then block - they may also be committing an arrestable offence – even if they were unaware beforehand that you planned to do so.

Article 11 of the Human Rights Act 1998 is the right to freedom of assembly and association which everyone is entitled to. The Human Rights Act incorporates into domestic British law, the rights that are set out in the European Convention on Human Rights (ECHR). Courts in the United Kingdom can hear human rights cases. Article 11 of

³⁸ As above, section 19.9.3

the European Convention of Human Rights protects your right to protest by holding meetings and demonstrations with other people. PA's/carers may be needed for some disabled people to be able to exercise this right.

When the police impose conditions on a protest, through using the Public Order Act 1986, Section 14, they can limit the number of people who constitute a public assembly to two or more. This section of the Public Order Act applies to Scotland as well as England and Wales. Disabled people have a right to protest, but they may need someone there to assist them, and to enable them to exercise their right to freedom of expression. For a single disabled person to have the equal right to protest, then it follows that if they need a PA, then this person should not be counted in the number of people assembled.

In London during Extinction Rebellion's October 2019 actions, this was not the case. Section 14 had been imposed and assemblies of 2 or more people were not permitted. SCALP spoke to Douglas who had acted as a PA to a friend, Nicki, who was protesting outside New Scotland Yard calling for the police to "give us back our action kit." The protest was in response to disabled people's equipment being confiscated by the police when they broke into a warehouse. An enormous amount of work had gone into collecting the equipment in order to assist people in exercising their right to peaceful protest. The equipment included spare wheelchairs, ramps, and porta-loos.

Nicki stayed behind on her own at the protest, but then Douglas came back to assist her, as she needed her oxygen turned up and more medication etc. Both Nicki and Douglas use wheelchairs. He was warned that if he returned he would be arrested along with Nicki as the two of them would constitute an assembly and be in breach of the Section 14 conditions which had been imposed. Although Douglas was purely going back to New Scotland Yard with the role of assisting Nicki, and it was obvious to police that his role was that of PA, he was nonetheless also arrested under Section 14. Nicki sat her ground, but was prevented from exercising her human right to protest, in very intimidating circumstances, whilst surrounded and totally outnumbered by police.

In the past, there have been some mass blockades in Scotland where police liaison has taken place and addressed the need for some people who were disabled to have their PA's with them, even to help out when in custody, although this situation is rare.

When Human Rights are breached

If you think your Human Rights have been breached, then it is the Scottish Human Rights Commission who is responsible for promoting and protecting human rights of everyone in Scotland. ³⁹However, it does not have the power to provide advice or guidance to an

³⁹ [Scottish Human Rights Commission](#)

individual who believes that their human rights have been breached or who may wish to take a claim of human rights to court.

If you can show that a public authority has breached any of the rights under the ECHR you can take action. Firstly, you can write to the relevant public authority and point out their legal obligations under the Human Rights Act 1998 and ask them to take action to address the issue. If after contacting them, you do not get a satisfactory response showing they are adequately addressing the issue, You can contact the [Equality Advisory and Support Service](#) who may be able to help further.

You could then go to court who may find the public authority to have acted unlawfully. The public authority would then be prevented from breaching your human right or there would be action to protect your right.

In cases where a law is incompatible with a right under the ECHR, then a court, if it comes to this decision, may make a declaration of incompatibility. Whilst on it's own it does not change the law, it does send a strong signal to Parliament to amend that particular law.

Security firms

SCALP has heard from disabled activists who have had many difficulties when transported between place of arrest and the police station, and police station or prison and court.

We have not as yet heard of people's experiences with GeoAmey, who are the company currently running the Scottish court custody and Prisoner Escorting Service. The Anglo-American company took over the £238 million contract for Scottish sheriff courts prisoner transport in January 2019. ⁴⁰

One report of the difficulties when being transported was from James, who is severely visually impaired. He was involved in an action in London. Serco do all the prisoner transportation in England, so it was Serco who transported James between police custody and court. Firstly, James says that Serco had no idea of how to assist James appropriately. As such, the Serco workers actually walked James into a wall. Whilst being assisted by them, James tripped over a bag, and then over a kerb. As it was not safe for James to be led by them any longer, he sat down and refused to move.

Another activist in Scotland, whose experience was before GeoAmey took over running prisoner transport:

“I was being transported to Edinburgh Sheriff court from another court on a warrant and needed the toilet before leaving. I needed use of an accessible loo and there was one in the lobby of the court on the way in. The 3 security

⁴⁰ [Chaos caused by prisoner transport firm](#), by Court Reporter, 18/11/2019,

officers accompanying me took me there. I managed to go to the loo, but fell from the seat to the floor when transferring across to the wheelchair. The officers were shouting at me through the door. They said they were coming in (I'd not been allowed to lock it), so I shouted that my head was directly behind the door as I had fallen. They pushed against me as they tried to open the door. I eventually slid myself along the floor around the door opening and they dragged me by my clothes into the lobby. I asked them to lift me back into the wheelchair, but none of them would touch me. They said it wasn't in the job description. My trousers were still only halfway up but thankfully I was covered. They said, "Look at the state of you". I asked them to try and lift me as between the 3 of them it wouldn't be too bad, or to get someone who could. There were members of the public witnessing this from the other side of some glass doors. Someone came up to us and asked if she could help. I was very glad of her help. She lifted me up into the wheelchair, and at this point one of the officers did help. They then gave me no time to recover from this at all, and only gave me enough time to straighten myself, and then, after all that, they immediately handcuffed me. I was angry by this point, but pointed out that at no point had I been a danger or violent in any way. I understand they cannot lift me, but their attitude was unhelpful all the way through. They stood there, but did nothing to help." (Female, disabled activist)

Human Rights Act

Article 10 Freedom of Expression

Article 11 Freedom of assembly and association.

Article 14 requires that all of the rights and freedoms set out in the Act must be protected and applied without discrimination

Article 10 - protects your right to hold your own opinions and to express them freely without government interference. This includes the right to express your views aloud (for example through public protest and demonstrations)

Article 11 - protects your right to protest by holding meetings and demonstrations with other people

"Discrimination occurs when you are treated less favourably than another person in a similar situation and this treatment cannot be objectively and reasonably justified."⁴¹

The Human Rights Act protects you from discrimination in the enjoyment of those human rights set out in the ECHR.

⁴¹ Article 14: [Protection from discrimination](#), Equality and Human Rights Commission, 2018

“Article 14 is based on the core principle that all of us, no matter who we are, enjoy the same human rights and should have equal access to them.”

However, you need to show that discrimination has affected your enjoyment of one or more of the other rights in the Act. Although you do not need to prove that this other human right has actually been breached.

Under the UN CRPD -

Article 5 – Equality and non-discrimination

Article 21 – Freedom of expression and opinion, and access to information

Disabled people and equal right to protest

There is a concerning trend that people who are disabled are being discriminated against in not being allowed the same freedoms to protest. Netpol, along with others, have for a number of years, highlighted how police target disabled activists and how disabled people’s rights are not upheld upon arrest. One recent example of this discrimination is of Extinction Rebellion’s October 2019 actions in London. The situation was so bad that on 23rd October 2019 it led to the Metropolitan Police’s own Disability Independent Advisory Group (DIAG) making their first formal complaint to the Metropolitan Police Service in over 20 years, whereby they accused the Met of of “degrading and humiliating” treatment towards protesters with disabilities.⁴²

However as Sam Brackenbury points out (founding member of Disabled People Against Cuts – DPAC – and former member of Disabled People’s DAN – Disability Action Network) this trend is nothing new:

“Police aggression toward disabled people is as old as the disability movement itself – have no illusions that disability precludes you from police aggression.” (Sam, disabled activist)

Sam recalled a DAN action at the Head Office of a nursing home provider, as far back as 1998. The now late Robin Chapman was trying to get a way into the building. The group were demanding something was done about the numbers of young people who were dying in nursing homes. Two officers saw Robin, and grabbed his wheelchair and then pinned Robin and another activist on the ground. They put a knee in the middle of Robin’s back, and touched the pressure points in his neck. Robin had Spina Bifida and a stunt in his

⁴² [Met police accused of 'degrading' treatment of disabled XR activists](#), by Jessica Rawnsley and Damien Gayle, 29/10/2019

neck to drain fluid from his brain. Sam shouted that they were going to kill Robin, and at that point two police also got hold of Sam. Thankfully Robin survived and was ok.

Sam recalls another protest outside the Houses of Parliament.....

“...to do with getting BSL recognised as a first language in schools for children who were hearing impaired, as the Royal National Institute for the Deaf did not let children in their schools use it at the time. Robin (again) managed to sit on top of the rails at the Houses of Parliament. He had one and a half legs and managed to haul himself up. The police couldn't reach, but then Robin went over the side down onto the ground. The officers pinned him to the ground and thumped him. This is less likely now with more cameras being about.” (Sam, disabled activist)

And many other occasions with DAN – please see further footage here, ⁴³.

According to Netpol's thorough report on XR's October rebellion, the police systematically discriminated against disabled protesters by failing to meet their needs. There was a failure to take into consideration information provided to officers about the particular needs of disabled activists during arrest. The accounts of activists highlight the failure to bring in the most basic reasonable adjustments for disabled people in police cells. The number of complaints led the authors of the report to conclude that there was systematic discrimination against disabled protesters, with a number of activists believing they were deliberately and aggressively targeted by the police. ⁴⁴ Baroness Jones expressed outrage at the police's approach to disabled activists, and said “I am shocked in particular by the absolute disregard for the welfare and rights of disabled protestors, as well as those who are elderly and less physically robust.” The Netpol report is focussed on the actions during the October rebellion, but of course the situation with the approach to disabled people has been ongoing – (see section on Access and disabling barriers above, for needs not being met in custody.)

Targeting of a Nukewatch protestor in Scotland – preventing right to peaceful protest:

“Because the police were worried I may try and stop the nuclear warhead convoy by wheeling out into the road, they would tip me backwards onto the back wheels in my wheelchair for the whole time that the convoy approached and went by – which does take a while. I had not committed a crime, and I was on a public street, but they would do this to stop me being able to self-propel or move anywhere in my wheelchair. I was with a friend and her baby, and I explained to the police that I had no intention of going into the road as I was

⁴³ [Disabled People's Direct Action Network](#), (DAN), Part 3, 27/02/2009,

⁴⁴ [Restricting the Rebellion. A Netpol report on the policing of Extinction Rebellion protests in London in October 2019](#), Kevin Blowe and Sam Walton for Netpol, 20/11/2019

helping my friend with her baby – we were the only ones there and went to peacefully protest as the convoy went by, but the police still tipped me backwards which was really humiliating with all the other vehicles going by. They would not have put a non-disabled person in a hold to prevent them from being able to walk, but this is what they did with me, and as though it was acceptable.” (Nukewatch activist who is disabled)

In earlier years there has been the unnecessary use of force against disabled people on anti-fracking protests. For example, the treatment of Nick Sheldrick as mentioned earlier, which The Mirror provides footage of, ⁴⁵where Nick describes the actions of the police as quite brutal.

Liz told SCALP of how she got a broken collarbone due to the actions of the police at the Horse Hill fracking site in Surrey. This is despite Liz being obviously disabled and she was each time having to use a walking stick. An officer then picks her up and drags her over the ground. Again, there is footage of this particular incident, but she reports being pushed or shoved to the ground other times too, and because she is so unstable on her legs, she can lose her balance if pushed and shoved and so she falls.

Liz made clear though that it wasn't that disabled people as a group were being targeted in isolation. It was anyone that was in any way considered 'vulnerable', such as young people, and the elderly too.

This was also the case at Barton Moss Community Protection Camp in 2013 and 2014. Protestors witnessed and experienced minority members of the camp, such as disabled people, older people and young people, being systemically targeted in what was believed to be a tactic used by police to specifically to try and get a violent reaction from the protestors. Nevertheless, the PCC Independent Panel report concluded that no police brutality could be substantiated. However, the report had failed to include referring to the Tactical Aid Unit (TAU). Their deployment was not considered, by protestors, to be proportional to the size and nature of the protest, and whose presence was not regarded as facilitating peaceful protest, ⁴⁶

In the past, as with now, the police's approach to disabled activists was very different from those of non-disabled, plus there was an awareness that the police could very easily make life very difficult for disabled activists if they chose to:

⁴⁵ [“Paralysed fracking protester falls from his wheelchair as police move him from path of 40-tonne truck.”](#) The Mirror, by Kelly-Ann Mills, 20/7/2017

⁴⁶ [Keep Moving! Report on the Policing of the Barton Moss Community Protection Camp](#), November 2013-April 2014, by Gilmore, Jackson and Monk, 10/03/2016,

“We were on a mass blockade with a lock-on under the seat of the wheelchair. The MoD were experienced in getting on with safely cutting us out. But this was not the usual cutting team dealing with us. They tried to persuade us to unlock - we refused. They lifted me out of the wheelchair and threatened to cut up my wheelchair. I said that they knew they did not need to do this. Lifting the cushion showed the screws, that would unscrew the seat and this would allow them to reach the lock-on tube. They refused to take notice of this, and instead, cut right through the seat of my wheelchair. They had a replacement chair that was not self-propelled. When out of custody, I was not permitted to borrow this wheelchair. A friend managed to get a large heavy wheelchair from a charity shop to get me home.”

It's important to be aware that sometimes there is a danger of not being recognised as disabled:

“I had passed out in the cell and the paramedics had been called. I came round to one of them holding me under my arms and trying to move me to get me to stand up, and shouting my name and for me to “Stand Up!” Unbelievably, they had not been told that I used a wheelchair and it had been left outside the cell.” (Female disabled activist in Scotland)

“The police did not recognise me from their photos at first and after trying to lock-on, me and my friend had another futile attempt, even though there was little chance of us managing to lock-on. Very quickly, this resulted in me being spread eagle with arms put behind my back in a lock, having fallen from my wheelchair when I got dizzy when the police had tried to pull my wheelchair away from my friend. They did not seem to realise that I was in a lot of pain, until another officer rushed up to say I was ‘known’ to them. A friend took photos of this happening as police wouldn’t let her near to help.” (Female disabled activist in Scotland)

Then there's the danger of being too easily recognised, if you visually appear different from others:

“We were at a demonstration outside the Scottish Parliament. The FIT officers (Forward Intelligence Team) would not leave me alone. I was easily singled out as I use a wheelchair. They had the camera filming me. It was totally harassing. The others could see what was happening, and one kept asking the officer to leave me alone. The officers carried on, so then someone got people together to form a circle around me so that no more footage could be taken of me. It was enormous relief and I felt supported rather than isolated. This is one way we can look out for each other. Be aware when they do try to single people out, and be there to support each other when this happens.”

At Extinction Rebellion actions in October 2019, the police went as far as to confiscate equipment after raiding a storage facility just before the protest began. Much of this equipment was facilities and access and disability kits to be used to enable peaceful protest by disabled people (things like wheelchairs, portaloos, ramps, etc.)

They then prevented Mobiloos, which are excellent accessible vehicles that provide disabled toilets with a hoist and changing facility, being driven onto site. (Over 250,000 disabled people in the UK do not find standard accessible loos meet their needs.) There had been some level of prior discussion in order to get some approval for the Mobiloos to go onto site and they had approached the senior police officer at the cordon. A police motorcyclist stopped them entering site and the situation resulted in all 4 drivers being arrested. Two of the drivers were to take the Mobiloo as far as the edge of the site, and two people from XR who were to drive the vehicle onto site. The Mobiloos were confiscated. It took a lot of effort to locate where the Mobiloos had been taken, and in the end they were held for 3 weeks, resulting in losses for the company.

In Scotland, the use of force in policing peaceful protest, has been also applied at times to disabled people and has involved things such as in the following examples:

“I’m disabled and have a neurological illness and use a wheelchair. The police have nevertheless still used pressure points twice on me. They have also a few times used pressure points on the person I’m locked onto. Meaning my arm jolts and is suddenly pulled further up into the already tight lock-on pipe when the person I’m locked onto gets the full force of the pressure point. This is painful and obviously painful for the person receiving the pressure point. They didn’t usually resort to this – but it’s used enough to be normalised, when I don’t think they should ever resort to this.” (Female disabled activist in Scotland)

After being assisted to the ground from his wheelchair, Sam says, “I dragged myself under a bus which was stationary and waiting to enter Faslane base. The others managed to lock-on underneath, but I was dragged out by my legs. My legs went into spasm, but sometimes this can be an advantage [as it can make it slower to remove you].” (NB: The driver of the bus had been made very aware that people were about to go underneath the vehicle. Sam, has cerebral palsy and is a full-time wheelchair user.)

Positive experiences

The above accounts are just some examples that show how disabled people are not in reality given the same right to protest, as non-disabled people. Amongst these accounts, there are also accounts of how some people with disabilities have found the police to treat them equal to others and in a non-discriminatory way when in custody. The positive accounts include these below:

James found that the police who dealt with him at the station once he was arrested, were “mostly really good” with him

Talking about being held in custody, Ian who has bipolar said:

“Generally on the whole it has been fine. Don’t expect or want any special treatment.”

Ian, like many other disabled activists, accepts many of the difficulties experienced with the police “as all part and parcel of doing an action.”

Improvement’s are found when the police dealing with the activists have some disability awareness training and training in assisting disabled people as in the case of the HMNB Faslane MoD Cutting Team:

“Some years back the Faslane cutting team were active in cutting out lock-ons. They never cut me when cutting through, even when the lock-on was close fitting – but obviously, rather than cutting us out, they should have left us each time, as we were trying to block the base for Trident which is illegal under International Laws. The MoD also got training in lifting disabled people at the time. Before that they didn’t have much clue what to do, but still nevertheless arrested me and it was more painful being lifted from the wheelchair.” (Disabled activist, wheelchair user.)

“Police had to lift me to the toilet. Although they did this without fuss and with as much dignity as was manageable in the circumstances, I was nonetheless without privacy and I was still the person detained. To hold me and others there for so many hours, when none of our actions were violent, yet the police were able to hold me without the very basic facilities that I and other disabled people need. I was also aware that in not providing reasonable adjustments, they themselves could be acting unlawfully.”

When speaking with other disabled activists it was significant how low expectations were, when what was considered to be a more positive experience included such things as to be physically assisted well enough so as not to end up on the ground, and to have access to a basic toilet and prescribed medication

Use of handcuffs

In transportation: “Officers are encouraged to consider the use of handcuffs whenever it may be necessary to ensure their own safety, the safety of others or the safety of the prisoner. The application of handcuffs is the use of physical force and as such it must be justified, refer to the Use of Force SOP for further guidance.”⁴⁷ However, the Use of Force SOP states that applying handcuffs isn’t to be considered a use of force unless the person is resisting.⁴⁸

⁴⁷ Police Scotland, [Care and Welfare of Persons in Police Custody, SOP](#), Published 20/12/2019

⁴⁸ Police Scotland, [Use of Force SOP](#), published 30/11/2016

From the Standard Operating Procedure: “For force to be reasonable it must be proportionate, legal, accountable, necessary and ethical in the circumstances.”⁴⁹

Article 2 of the European Court of Human Rights imposes an obligation to safeguard life. This includes a requirement of strict proportionality between the objective and the force used to achieve it.

Article 8 ECHR entails a positive obligation on the part of the state to protect the physical integrity of persons within their jurisdiction.

Article 8 therefore requires that action that interferes with physical integrity should be in accordance with established law and guidelines, that it should be for a legitimate purpose, and that it should be necessary for, and proportionate to, that purpose. For a physical intervention to be considered proportionate, it must be the least intrusive measure possible in the circumstances. Proportionality, therefore, requires both any form of restraint should be a last resort only; and where there must be recourse to restraint it is the minimum necessary, and applied for the shortest time necessary, to ensure safety.

There are many examples where this isn't the case. For instance, the Netpol Report 2019, describes: “One disabled campaigner who was sitting in a chair because he was unable to sit on the floor was arrested, handcuffed and left lying on the ground at Whitehall for around half an hour. His walking stick was taken from him as a “potential weapon”. Other able bodied people sat on the ground were not handcuffed. When officers moved him, his trousers came down, he could not sit up and he said “they left me there, in my underpants in the street”. In his statement, he said the officer clearly knew he was disabled “and no threat to him”, but that “this was deliberate brutalisation because I would not speak to him”. Although there was no flight risk, handcuffs were not removed until the protesters arrived at the police station.”⁵⁰

“Putting me in handcuffs, has greater impact than on someone who is not disabled, especially, if like me you use a self-propelled wheelchair. So it restricts more movement, not just that of my arms and hands. I've nevertheless been put in handcuffs more than once, despite being non-violent

⁴⁹ Police Scotland, [Use of Force SOP](#), published 30/11/2016

⁵⁰ [Restricting the Rebellion. A Netpol report on the policing of Extinction Rebellion protests in London in October 2019](#), Kevin Blowe and Sam Walton for Netpol, 20/11/2019

and not aggressive. Not sure what the intention is, but guess the most obvious is it's a way to show they have more power – but we have power in other ways.”

“I was once put in solid cuffs. I needed to take my medication being in a lot of pain and knew it would be ages for processing before getting any. So I kept trying when the officers could not see to get my meds out my pocket. Took a while but I managed it, with help from my friend who was also in cuffs, sitting next to me, and then managed to get a pill to my mouth. Just then the plain clothes officer spotted me. He called me by a derogatory name and said that it could have been arsenic! I pointed out that I could have an epileptic fit without the medication being on time. He repeated what he'd said before.” (Female disabled activist in Scotland)

Power to search

Police have the power to search you when you're in custody. This must be carried out by an officer of the same gender. If you identify as transgender, then let the police know as soon as you can. Police only have the power to carry out a strip search if you've been arrested under a warrant. Strip searches can also be carried out when going through the reception process when entering prison. Only a nurse or doctor are permitted to carry out an invasive search, and the police do not have the power to permit this to go ahead unless they have a special warrant.⁵¹

“I decided not to comply with the strip search at prison reception. So it took ages just getting my boots and socks off.”

Neurodiversity, social acceptance and interactions with the police

[Neurodiversity](#) refers to the range of neurocognitive functioning within the population. Autism, Aspergers Syndrome, ADHD, dyslexia, bipolarity are just some of the variants included in this diversity. See Footnote 2 for more info.

SCALP spoke with Emily Obree, from XR Glasgow, who's disabled and has Tourettes Syndrome and Autism. She spoke of the difficulties that people with various forms of neurodiversity might experience when on actions and coming into contact with the police. She highlighted how easy it is for some people with neurodiversity to be arrested and how this concern hangs over her whenever she goes to a protest, as she fears her behaviour could be wrongly interpreted. It is especially concerning that the decision as to whether a

⁵¹ Citizens Advice Scotland, [If you are arrested and held in custody by the police in Scotland](#), 2019

person needs to be removed to a place of safety, rests with individual police officers who are likely to have little or no experience of neurodiversity.

Emily, like others, is fearful that some people with neurodiversity could be wrongly sectioned under Section 136 Mental Health Act (England and Wales) or the equivalent Provision 293 of the Mental Health (Care and Treatment) Scotland Act 2003 – and how this fear also hangs over her. She knows of people who have been sectioned under the Mental Health Act for having “autistic meltdown”, rather than being given the support and space and time that they need. She also spoke of how friends of hers have been arrested for a Breach of the Peace, following behaviour which is due to their Tourettes. They have then been put in the position of having to prove they have Tourettes in order to explain their position. In this case, the risk of arrest depends on how socially acceptable a persons behaviour is deemed to be. In Tourettes, some less common characteristics that can be considered socially inappropriate include Corpopraxia which can include inappropriate movements and spitting in someone’s face. Corprolalia can be another characteristic, and is the repetitive use of obscene language.

Emily is aware of people being beaten up because their behaviour is not understood and accepted by members of the public, as being part of being neurodiverse. This happened locally to a friend of hers. Thankfully she has found her local community policing to be “ok” and understanding. However, Emily has to be very aware, and also try to be clear that her behaviour at times is not to be misconstrued as “inciting a riot” or anything like this.

“When people look at me they get uncomfortable. I defy what the expectation is of normal behaviour.”

Emily prefers to take a pre-emptive strategy, and chooses to go to police liaison, to explain that she has Tourettes and must not be arrested for behaviour that is connected to that – this relies on the police liaison doing their job of passing on the information. Emily also takes cards with her, that communicate simply and clearly to anyone what her needs are without her needing to try to find words to do this. She is also prepared with headphones and shades to reduce input overload.

Mental Health (Care and Treatment) Scotland Act 2003 (updated 2015)

Like Emily, some activists may be concerned about how powers in the Mental Health Act could potentially be used inappropriately. Although we are not aware of this having happened recently, those at the PNR anti-fracking site say there had been threats made about using the Mental Health Act. Activists who are having difficulties with mental health issues may also feel vulnerable that the Mental Health Act may be used in their case, especially where the environment of a protest site can make things feel more intense. With

this in mind, we're including information on relevant sections of the Mental Health Act here:-

Some main points of the Mental Health Act in summary:

- A police constable can remove you to a “place of safety” for up to 24 hours if they suspect you have a mental health issue, and are in need of care or treatment, and that it would be in the interests of your or other’s safety (see Section 297.)
- If a doctor recommends it, and where possible a mental health officer also agrees to it, you can be detained for up to 72 hours to protect you or other people. This is called an Emergency Detention Certificate
- If a psychiatrist and a specialist social worker (Mental Health Officer) recommend it, you can be detained for up to 28 days to protect you or other people. This is called a Short Term Detention Order
- You can be detained by the Mental Health Tribunal for up to six months to protect you or other people. This may be either in hospital or in the community. This is called a Compulsory Treatment Order
- A registered mental health or learning disability nurse has the power to detain you if you are in hospital and receiving medical treatment. They can detain you for up to 3 hours if they think you have a “mental disorder”, and if they think it is necessary for you or another person’s safety that you be detained in order to be examined by a doctor

Section 297 Removal from a public place – up to 24 hours

(similar to Section 136 Eng and Wales)

A police officer may remove someone to a place of safety if they suspect that someone who is in a public place has a “mental disorder” (this is the term used by the Act. The Mental Health (Care and Treatment) (Scotland) Act 2003, uses the term to include acquired brain injury, including alcohol related brain damage, Autistic Spectrum Disorder, which includes Asperger Syndrome, and people of all ages affected by dementia.) The person also needs to be considered to be in immediate need of care or treatment. Also, the officer needs to think it would be in the best interests of the person, or necessary for the protection of any other person to remove them to a place of safety

A 'place of safety' means a hospital, a care home or any other suitable place. If there is no place of safety available, then you might be taken to a police station, although this should only be done as a last resort. ⁵²

⁵² [Mental Health Act - emergency and short-term powers: guide](#). 4 Police power to remove a person to a place of safety, 21/08/2008,

Although being taken to a place of safety does not mean you have done anything wrong, you do not have the same rights as when arrested. However, you do have a right.....

- to independent advocacy
- to make an advance statement, setting out how you do or do not want to be treated
- to appoint a Named Person, who can act on your behalf
- you or your Named Person can appeal to the Mental Health Tribunal against a Short Term Detention Order
- you or your Named Person can appeal to the Mental Health Tribunal against a Compulsory Treatment Order

The purpose of this provision is meant to be for arrangements to be made for a medical practitioner to carry out a medical examination of the person; and for then making whatever arrangements the medical practitioner considers necessary for the person's care or treatment.⁵³ If deemed necessary, the medical practitioner might decide to grant an Emergency Detention Certificate or a Short-Term Detention Certificate.

The detention after being Removed from a public space, can last for up to 24 hours after the time at which the person was removed by the police officer.

Section 36 Emergency Detention - up to 72 hours

A doctor who has examined you may grant an Emergency Detention Certificate where they believe that you have a "mental disorder" and they consider your ability to make decisions about medical treatment is significantly impaired as a result of your mental health. Therefore, as a matter of urgency it's necessary to detain you in hospital to help decide what medical treatment you need. The doctor needs to believe that if you were not detained in hospital, there would be a significant risk to you, or to other people, and that making arrangements with a view to granting a short-term detention certificate would involve undesirable delay. The doctor must consult a mental health officer and get their agreement, unless it is not possible for this consultation to take place.

Once you have been admitted to hospital, you can be kept there under the Emergency Detention Certificate for a further 72 hours (3 days) from the time you are admitted. The purpose of an emergency detention certificate is to allow you to be assessed in hospital with a view to deciding if you need medical treatment for your "mental disorder." During that time, you should not be given treatment without your consent unless you are being treated under a different law

⁵³ [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#),

Section 44 - Short-Term Detention Certificate – up to 28 days

Very similar reasons given for granting this, as in the case of Emergency Detention above. However, with Short-Term Detention, once you have been admitted to hospital, you can be kept there under the certificate for up to a further 28 days from the day you are admitted. Before granting the certificate, the doctor must consult and get the agreement of a mental health officer. You can be given some treatment, including medication, without your consent. However, your views and wishes about treatment should be taken into account, including where these are expressed in an advance statement.⁵⁴

Mental Health Directorate update on Coronavirus Act 2020

“This note is to clarify that at present there is no change to the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003. The temporary modifications in relation to Scottish mental health legislation which are laid out in the Coronavirus Act 2020 are not yet in force and will not come into force until Scottish Ministers decide – on the basis of data and advice - to commence the provisions.”

Mental Health Act 1983 – England and Wales

Section 136 - The police can take you to a place of safety, or keep you somewhere, if you are already in a safe place.

Section 135 - Allows the police to enter your home and take you to (or keep you at) a place of safety. The police must have a warrant allowing them to enter your home. A place of safety could be your home, your friend’s or relative’s home, a hospital, or a police station. A police station must only be used if your behaviour poses an imminent risk of serious injury or death to yourself or another person.⁵⁵ You should get a mental health assessment whilst on this section, and can be kept for up to 24 hours. This can sometimes be extended for 12 hours. The decision will be taken to either discharge you, or you may stay in hospital under a different section of the Mental Health Act. There are strict rules which the police have to apply if a police station is being used as the place of safety.

From the Letter of Rights

1. You have the right to know why the police are keeping you at the police station.
2. You have the right to know what the police think you have done.

⁵⁴ [Mental Health Act - emergency and short-term powers: guide](#). 8 Short-term detention certificate, 21/08/2008,

⁵⁵ [Police and Mental Health](#), 2020,

3. You have the right to remain silent. You do not have to answer any questions the police ask you. But you do have to give your name, address, date of birth, where you were born and your nationality.
4. You have the right to have someone else told you are at the police station. If you are under 16, this must be a parent or guardian. If you are 16 or over, this might be a family member, a carer or a friend.
5. You have the right to have a lawyer told that you are at the police station. This is free.
6. You have the right to speak to a lawyer in private at any time. This is free.
7. You have the right to have a lawyer present if the police interview you. This is free.
8. If you are under 16, a lawyer must be present when the police interview you unless there are exceptional circumstances. If you are 16 or 17 and subject to a compulsory supervision order, a lawyer must be present when the police interview you unless there are exceptional circumstances.
9. If you are under 16 you have the right to be visited by your parent or guardian at the police station.
10. If you are 16 or 17 and subject to a compulsory supervision order you have the right to be visited by your parent or guardian at the police station.
11. You have the right to medical help if you are ill or injured

Other useful info

For more general information, see [SCALP's Guide to Activism, Scottish Law and the Police](#).

The police can normally keep you for up to 12 hours without charging you with an offence.

There are different rules if you are being kept for a breach of bail conditions.

The police can extend this up to a maximum of 24 hours, but only if a Police Inspector agrees to this (if you are under 18, this has to be agreed by a Chief Inspector).

The Equality Advisory and Support Service

Help “explain options for informal resolution and help people to pursue them.” They can also “help people who need or want to seek a legal solution by helping to establish eligibility for legal aid and, if they are not eligible, to find an accessible legal service or to prepare and lodge a claim themselves.”⁵⁶ They cannot advise on the strength of a case or the evidence needed to prove a case.

⁵⁶ Equality and Human Rights Commission. [Equality Advisory and Support Service](#)

For further info, please contact the EASS

Phone: 0808 800 0082

Textphone: 0808 800 0084 or email via their website at:

<http://www.equalityadvisoryservice.com>

Footnotes

(1) In March 2020 the National Institute for Health and Care Excellence issued new guidance for the NHS in England and Wales on how intensive care was to be allocated if there are shortages of resources during the Covid pandemic. The guidance stated that adults should be assessed using a crude CFS frailty scoring system and that co-morbidities and underlying health conditions should be taken into account. The guideline suggested that even those 'mildly frail' who need help with daily tasks and some personal care, may not be considered appropriate for critical care. Following outrage, NICE produced updated guidelines, but the amendments did not go far enough to reassure disabled people. The guidelines still divide disabled people according to age and personal care needs to crudely determine who should get critical care. The British Medical Association also issued guidelines to ration treatment if the NHS was overwhelmed, whereby those with underlying illness may not get treatment that could save them as healthier patients would take priority. The UN states "Everyone, without exception, has the right to life-saving interventions and this responsibility lies with the government. The scarcity of resources or the use of public or private insurance schemes should never be a justification to discriminate against certain groups of patients." The situation in the UK is due to drastic cuts in the NHS. We need to demand more resources. Guidelines must not discriminate against disabled people and their equal right to life, through making crude value judgements over who should live or die.

<https://www.theguardian.com/commentisfree/2020/apr/09/nice-guidelines-coronavirus-pandemic-disabled>

<https://www.disabilitynewsservice.com/coronavirus-anger-over-terrifying-and-discriminating-intensive-care-guidance/>

(2) Neurodiversity refers to the range of neurocognitive functioning within the population. Autism, Aspergers Syndrome, ADHD, dyslexia, bipolarity are just some of the variants included in this diversity. Neurodiversity challenges the dominant view that neurodivergence is intrinsically pathological. Instead people are seen as disabled mainly by social, environmental and physical barriers which do not accommodate this neurodiversity