

Accommodating Specific Learning Difficulties in Hearings

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BACKGROUND

People with disabilities – including many with Specific Learning Difficulties (such as Dyslexia, Dyspraxia, Attention Deficit Disorder) - are entitled to have their needs considered and their difficulties accommodated, insofar as this is 'reasonable'.

This approach is enshrined in key pieces of legislation:

- The Human Rights Act (1998)
- The Equality Act (2010) which extends the provisions of the Disability Discrimination Act.

When someone with Specific Learning Difficulties comes before a court or tribunal hearing these obligations can be met by the provision of a document following this template which

- a) summarises any previous assessments, highlighting the particular difficulties recorded in professional reports**
- b) describes the impact of these difficulties during or court or tribunal processes**
- c) outlines appropriate Accommodations or *Reasonable Adjustments*.**

An example of this approach is included in the Equal Treatment Bench Book, section 5.5.5, available via the Judicial College website. www.judiciary.gov.uk

The individual's difficulties often amount to **a disability** according to the legal definition: *'a person has a disability if he has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day to day activities.'*

(Disability Discrimination Act 1995, carried over to the Equality Act 2010).

It should be noted that is highly inadvisable for people with Specific Learning Difficulties to be **unrepresented** (the *Equal Treatment Bench Book* also makes this point).

The difficulties inherent in their condition(s), together with inexperience and ignorance of legal proceedings, combine to place them at an overwhelming disadvantage.

This document highlights difficulties faced by court- and tribunal-users with Specific Learning Difficulties at all stages of the process not just during the hearing itself.

THE IMPACT OF SPECIFIC LEARNING DIFFICULTIES IN HMCTS PROCESSES

[HMCTS = Her Majesty's Courts and Tribunal Services]

Difficulties arising from Dyslexia, Dyspraxia and AD(H)D vary considerably from person to person, but the areas of difficulty listed below are typical and will impact on the individual's ability to participate fully in their court or tribunal hearing.

Information Processing

- Difficulties taking in information efficiently (this could be written or auditory)
- Slow speed of information processing, such as a 'penny dropping' delay between hearing something and understanding and responding to it

Memory

- Poor short-term memory for facts, events, times, dates (giving the impression of unreliability)
- Problems with remembering names (this could apply to people, places or items such as drugs or medication) and mistakes with routine information
- Inability to hold on to information without referring to notes

Communication Skills

- Lack of verbal fluency, lack of precision in speech (giving the impression of evasiveness)
- Inability to work out what to say quickly enough, word-finding problems
- Misunderstandings or misinterpretations during oral exchanges
- Difficulty in judging or modulating tone of delivery, often either too loud or too quiet
- Sometimes mispronunciations or a speech impediment may be evident
- Sudden verbal abuse can be the panic reaction of someone with Asperger Syndrome

Literacy

- Erratic spelling and/or awkward or illegible handwriting
- Even if reading skills are adequate, 'digesting' written material, skimming through documentation or easily locating a piece of information in a court bundle is very challenging
- Particular difficulty with unfamiliar types of language such as legal terminology, acronyms
- Difficulty with reading because of visual stress: symptoms include a 'glare' from white paper, difficulty in keeping the place on the page, apparent print distortions and eye strain
Visual stress can be exacerbated by fluorescent lighting, cramped text or white paper .

Sequencing, Organisation and Time Management

- Difficulty presenting a sequence of events in a logical, structured way
- Incorrect sequencing of number and letter strings
- Tendency to misplace items, disorganisation, muddling dates or times
- Poor time management and particular difficulties in estimating the passage of time

Orientation

- Difficulty with finding the way to places or navigating the way round an unfamiliar building

Concentration

- Weak listening skills, a limited attention span, inability to remain focused
- A tendency to be easily distracted
- Sensations of mental overload / 'switching off'

Sensory Sensitivity

- A heightened sensitivity to noise and visual stimuli
- Impaired ability to screen out background noise or movement

Lack of awareness

- Failure to realise the consequence of their speech or actions
- Failure to take account of body language
- Missing the implication of what they are told or interpreting it over-literally

The effects of stress

People with Specific Learning Difficulties are usually debilitated by stressful situations (such as a court or tribunal appearance) because stress further exacerbates areas of difficulty and undermines coping strategies.

Heightened susceptibility to the effects of stress is a well-documented feature of Specific Learning Difficulties.

See *Dyslexia and Stress 2nd edition* Edited by TR Miles (2004) Whurr Publishers Ltd

APPROPRIATE ACCOMMODATIONS OR REASONABLE ADJUSTMENTS

General communication issues

- Always aim for clarity and remove all ambiguity in all modes of communication.
- When providing complex information first introduce the topic, then give the details, then summarise if necessary.
- As far as possible, deal with issues in chronological order: do not jump around in time
- Provide a glossary of technical terms.

During oral exchanges

- Allow the individual to ask for questions to be repeated or re-phrased without censure or (implied) criticism. S/he may need to check understanding by re-phrasing questions.
- A helper will be needed to find the place when extracts from particular documents have to be located 'on the spot'.
- When reading information out to someone with Specific Learning Difficulties, insert pauses after each section to allow the information to be absorbed.
- Make allowances for slow processing of information, misunderstandings and partial answers.
- Allow thinking time before prompting a response.
- Check back as necessary to ensure understanding.
- Take account of likely difficulty with recalling / reciting strings of numbers or letters (number plates, addresses etc.)
- Be aware that, in a stressful situation, recall of details such as times, places and names may not be accurate. Comprehension will become increasingly impaired.
- Always be aware of a probable limited attention span and the possibility of mental overload. Rest breaks should be proposed (extra time is needed to accommodate them).

When supplying written information / during written correspondence

- Be aware that most dyslexic people have considerable difficulty 'digesting' written material, despite being able to read adequately. During a hearing they will need to withdraw, ideally with a helper, to study the import of any new documentation.
- If the individual suffers from visual stress, documentation should be adapted according to accessibility guidelines. Bright white paper should be avoided; tinted paper, such as pale blue or grey, is preferable.
- Whole phrases in capital letters should be avoided (these are hard to decipher because the normal shape of the lower case word is lost).

Facilitating reliable evidence

- In many cases, rest breaks will be necessary to restore concentration (at least ten minutes for every fifty minutes of the proceedings). Many people with specific learning difficulties will have reached 'mental overload' long before this time.
- Information on likely topics and the opportunity to consider them in advance is helpful.
- The matter of lighting should be considered in cases of light sensitivity.

The stress and distractions of the court, together with the rapid 'cut and thrust' of questioning, disadvantage people with specific learning difficulties. In some cases 'special measures' will be appropriate, such as the use of a video link and the support of a trained intermediary.

People with Dyslexia, Dyspraxia and Attention Deficit (Hyperactivity) Disorder vary greatly in the difficulties they experience; accommodations therefore need to be adapted to suit each individual. Never make assumptions – individuals should be given the opportunity to explain their needs and preferences. As a result, a customised document can be drawn up.

Accommodations and Reasonable Adjustments should be ascertained and confirmed in pre-hearings.

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RESOURCES

Judicial College (formerly Judicial Studies Board) publications: www.judiciary.gov.uk:

1. *Equal Treatment Bench Book* (sections 5.5 & 5.6)
2. *Fairness in Courts & Tribunals* (summary of the *Equal Treatment Bench Book*)

Good Practice Guide for Justice Professionals: Guidelines for supporting Clients and Users of the Justice System with Dyslexia and related SpLDs

M Jameson and the British Dyslexia Association (2009) British Dyslexia Association

Coping with Courts & Tribunals (2011) M Jameson, available from the author or as pdf

Autism: A Guide for Criminal Justice Professionals (revised 2011) National Autistic Society

The Tipping Points: the impact of Attention Deficit Hyperactivity Disorder P. Anderton (2007)
ADDISS

INFORMATION SHEETS

www.workingwithdyslexia.com

www.danda.org.uk

www.dyslexia-malvern.co.uk

www.autismwestmidlands.org.uk criminal justice section