

COPING WITH COURTS & TRIBUNALS

**A GUIDE FOR PEOPLE WITH
SPECIFIC LEARNING & PROCESSING
DIFFERENCES [SPLDs]**



Melanie Jameson
Justice Adviser to DANDA

www.danda.org.uk

DEDICATION

This Guide is dedicated to Mary Colley,
Founder and Co-ordinator of DANDA,
in recognition of her tireless
commitment to adults with
Specific Processing & Learning Differences

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There is a different publication for professionals working in the justice system: *The Good Practice Guide for Justice Professionals: Guidelines for supporting users of the Justice System who have Dyslexia and other SPLDs*. Printed copies can be ordered from DANDA and the British Dyslexia Association (£10).

See also: *Autism - A Guide for Criminal Justice Professionals*.



DANDA

Developmental Adult Neuro-Diversity Association

DANDA is an organisation run by and for neuro-diverse people, such as those with Dyspraxia, Attention Deficit (Hyperactivity) Disorder, Asperger Syndrome, Autism and Dyslexia.

We run support groups; produce leaflets and books as well as organising conferences and workshops for people with Neuro-Diversity / Specific Processing & Learning Differences and the professionals who support them.

Please contact us for further information, training, consultancy and advice.

Email: info@danda.org.uk Website: www.danda.org.uk

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Having worked with Mary Colley from before the founding of DANDA, we know how important this subject was to her. We are grateful Melanie has been able to complete this Guide to help people who are often vulnerable when involved with the law.

We are proud to sponsor this important publication in tribute to Mary.

Jo Todd – Chief Executive

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Tel 020 7820 1970 / 020 7582 6117 Email: info@workingwithdyslexia.com
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CONTENTS

Introduction.....	1
1. Police Custody.....	3
2. Useful Legislation.....	7
3. Reasonable Adjustments.....	11
4. Clueing up the Professionals.....	13
5. Legal Advice and Legal Aid.....	15
6. Preparing for a Court Hearing.....	19
7. Sources of Support in Court.....	22
8. Coping in Court Hearings.....	27
9. The Tribunal Process.....	30
10. Mediation.....	34
11. Parole Board Hearings.....	36
12. Jury Service.....	38
REFERENCE SECTION.....	39
A Resources and Networks.....	40
B Reasonable Adjustments in Courts & Tribunals.....	43
C Glossary of Terms.....	47
SUMMARY OF KEY POINTS.....	49

Introducing the Guide

People **without** Specific Processing & Learning Differences find dealings with court or tribunal processes very stressful. It is no wonder, then, that the additional experience of living with one or more SPLDs (such as Dyspraxia, Dyslexia, Attention Deficit Disorder, or Dyscalculia) makes the situation even more difficult to cope with. Difficulties on the autistic spectrum, such as Asperger Syndrome, present particular challenges.

The skills that appear to be required in hearings are just those that people with SPLDs often lack, namely

- good information processing skills, i.e. absorbing, considering and responding to spoken information 'on the spot'
- a reliable memory
- sustained concentration
- well-developed listening skills
- the ability to respond appropriately to questions and speak clearly
- the ability to digest documentation and fill out complex forms

People with SPLDs need to know how to access support in legal processes, what their entitlements are and how disability legislation can help accommodate their difficulties. However this information is not always easy to come by, hence the need for this publication.

This Guide is designed to help you in two main areas:

- 1. describing what help you are entitled to**
- 2. outlining how to obtain this support**

The Guide does not deal with children's issues (see below for SEN Tribunals).

There will inevitably be repetition in this Guide, as some issues arise in more than one situation. We begin with the first stage of the criminal justice process – police custody – and end with another aspect of criminal cases - being a juror. Much of the remainder of the Guide applies equally to civil, family and tribunal hearings. There is also a chapter on Parole Board hearings. Some sections are directly quoted from official guidance.

From April 2011 Courts and Tribunals will be merged into one service; this will doubtless lead to changes. A review of the legal aid system and the court closure programme will also bring about new ways of operating, including (hopefully) greater use of mediation. The website www.direct.gov.uk is the best source of up-to-date information.

Apologies to those who do not use the internet for the frequent references to websites. Increasingly this is how official information is provided and updated. Telephone numbers have been included where possible.



For information on **Special Needs Tribunals**, consult the websites listed below; www.sendist.gov.uk section on *What to expect at an SEN Tribunal* www.direct.gov.uk *Special Educational Needs and Disability Tribunal*

Or phone the helpline of the British Dyslexia Association on 0845 251 9002

Introducing DANDA

DANDA is the leading national organisation for adults with overlapping Specific Processing & Learning Differences (a common occurrence in our experience).



To find out about DANDA, see our website: www.danda.org.uk and the information at the front of the Guide.

This Guide has been produced on behalf of DANDA's members and all those who approach the organisation for help and advice.

Terminology has changed over the years. There is now a move away from the established term *Specific Learning Difficulties* to seeing these conditions as a *Difference*. The inclusion of *Processing* highlights the way in which the processing of information is a key area of difference. The integration of the various sensory functions may also be problematic. The most useful term is therefore Specific Processing & Learning Differences with the abbreviation SPLD.

Author's note on DANDA's *Access to Justice* initiative

This Guide is the next milestone in DANDA's *Access to Justice* work. For a number of years I have been working on behalf of DANDA to persuade justice professionals of the prevalence of Specific Processing & Learning Differences and the impact of these conditions in justice settings - such as police custody, legal interviews, courts & tribunals.

Expert witness work has shown me that many aspects of SPLDs can create barriers to the attainment of justice. I have learned that, in order to minimise misunderstandings and self-incrimination during hearings, documentation should be submitted to the courts in order to flag up the Specific Processing & Learning Difference/s, in line with disability legislation. This submission may have to be followed up with persistence.

My experience is that justice professionals - be they solicitors, barristers, court staff, police or the judiciary - have no knowledge of SPLDs and how they affect people. This has led DANDA to launch the *Access to Justice* initiative in the House of Commons, followed up by a meeting with the (then) Equalities Minister. An important milestone was the inclusion of a section on Specific Learning Difficulties in a revision of the judicial *Equal Treatment Bench Book*. DANDA also updated the disability glossary in the Bench Book to include the range of SPLDs. (See the Judicial Studies Board website: www.judiciary.gov.uk for the entire *Equal Treatment Bench Book* or www.dyslexia-malvern.co.uk for the relevant sections).

DANDA followed up with training for judges, for court staff, for regional law groupings and part of the Crown Prosecution Service, together with workshops at conferences of the Parole Board, Nacro and Youth Justice Board. The next stage of *Access to Justice* was the publication of a Guide on SPLDs for justice professionals, followed by information on Reasonable Adjustments for court-users with SPLDs (see Reference Section part B). Both of these are available on my website, www.dyslexia-malvern.co.uk

However, what was still lacking was **information for court users** to guide them through the maze of the justice system. I hope you will find this Guide helpful.

Please contact me at mj@dyslexia-malvern.co.uk to add to or modify this information.

Melanie Jameson, Justice Adviser to DANDA

January 2011

This chapter looks at the process of being arrested, together with your rights and available support systems. It also covers victims and witnesses.

If you find yourself in police custody you may well be in a stressed state, which could affect your ability to communicate or to think clearly. It is important to try to calm down and take account of what is happening around you.

Rights in custody as a suspect

Police procedure is bound by codes of practice. For example, they must inform you of the suspected offence and why it is necessary to arrest you.

Everybody who is arrested has three basic rights:

1. the right to free legal advice from a solicitor and to have a solicitor present every time you are interviewed.
2. the right to have someone informed that you are in custody, together with the location.
3. the right to see the codes of practice laid out in the Police and Criminal Evidence Act (PACE).

You should receive a written notice of the **Rights** (above) and a notice of your **Entitlements**. Entitlements include regular breaks for food and to access to a toilet.

The custody officer has to go through a computerised Risk Assessment document. These vary somewhat from police force to police force but they are unlikely to pick up SPLDs. However there is usually a question relating to problems with reading and writing, and a question asking if you are on medication (this could flag up medication for e.g. Attention Deficit Hyperactivity Disorder). This is the opportunity to mention that you have an SPLD. Since this term is not generally known, it is advisable to refer to the condition by name e.g. *Dyspraxia*, *Dyslexia* etc. It is helpful if you can state briefly how you are affected.

Some people with Autistic Spectrum Condition (ASC) may have a special Attention Card (also known as an Alert Card) which confirms that they have been diagnosed with ASC or Asperger Syndrome. This is the right time to produce this card.

You must let the police know if you are unable to read through your statement in order to check it (even if you might find this embarrassing). If someone offers to read it aloud to you, ask them to leave short pauses between sentences. If you can, follow on a printed copy.

If your reading is impaired by Visual Stress you should explain how you are affected and what adjustments you usually make to written materials. Once the statement has been signed it becomes a vital document in your case.



See www.dyslexia-malvern.co.uk/visualstress for checklists and further information on Visual Stress.

Rights in custody as a suspect - cont.

People under 17 have an automatic right to support from a family member or guardian who must be present during police interviews. Adults regarded as **vulnerable** are also entitled to support, dependent on the opinion of the custody officer. His/her request may lead to the involvement of a Force Medical Examiner or Appropriate Healthcare Professional. These terms refer to doctors or nurses working with the police to decide whether someone in custody is suffering from a medical or mental health condition, a learning disability or some communication or social impairment which calls for certain interventions. It may be decided that the services of an Appropriate Adult are necessary to assist with communication during police interviews.

Appropriate Adults

An Appropriate Adult can be a family member, friend, trained volunteer or social/health care professional. Their role is to support the young person or vulnerable adult in police custody by facilitating communication between them and the police. Unlike the duty solicitor, they do not give legal advice. The National Appropriate Adult Network provides training on SPLDs but you cannot assume that all their volunteers will be fully informed.

Coping with Questioning

Whether or not you are provided with an Appropriate Adult, it is generally advisable to ask for a solicitor. Since people with SPLDs often have an unreliable short-term memory, poor listening skills, a short attention span and susceptibility to stress, it is quite possible that you will present a misleading impression, whether or not you are guilty of the offence. An inability to give immediate, appropriate and consistent answers may aggravate the situation and suggest to the investigating officer that you are not being co-operative.

The best policy is to inform the investigating officer of your condition and how you are affected in calm fashion, rather than insisting that account be taken of your difficulties. A possible form of words, which you can adapt as necessary, might be:
"I have (dyspraxia), this is a disability and means that I have difficulty recalling details accurately and remaining focused".

It is most helpful if you have confirmation of your difficulty, such as the Attention/Alert Card for people with autism / Asperger Syndrome.

The National Policing Improvement Agency has produced reference materials on various disabilities, including brief information on SPLDs.

Please note: not all police staff are aware of these resources or are able to access them. DANDA is following up this issue with lead Mental Health & Disability Managers.

Use of Intermediaries

This section applies principally to victims / witnesses, but may also relate to suspects.

If you are judged as having communication problems, the police may request an Intermediary – a trained communications specialist – to assess your difficulties and provide assistance with questioning. Full details of how the Intermediary system operates at the police and court level are given in chapter 7.

The role of the Intermediary is to advise the police on the best way to conduct interviews in the light of communication difficulties; they must **not** undertake any questioning themselves. The Intermediary will intervene as necessary to assist communication, and may be able to help you focus on the key issues. In addition, s/he will advise on the need for breaks and any other factors.

The Intermediary's report is sent to the police officer, the Crown Prosecution Service and the court (including the defence). It records your needs and gives a summary of any reports on you, together with recommendations about the best way for you to give evidence at trial.

Police Procedures

Under normal circumstances you cannot be held for more than 24 hours without being charged with a crime; this can be extended to 36 hours for serious offences and to 96 hours on the authority of the courts.

If the police have sufficient evidence they may charge you with a crime, thus formally and legally accusing you of an offence. A charge sheet will be presented containing the details. This will lead to a hearing in a Magistrates' Court.

Generally you will be released on bail until the hearing, unless the offence is very serious or there are special circumstances such as a possibility that further crimes will be committed or a belief that you should be held for your own protection. There may be conditions attached to the granting of bail, and if these are broken (breached) you will probably be re-arrested.

You may be required to attend a committal proceeding at a Magistrates court. This takes place if the case is to be tried in the Crown Court, and enables the magistrates to check that there is sufficient Crown Prosecution Service evidence to proceed to a full trial. No defence evidence is heard on this occasion.

Parental Concerns

DANDA is often contacted by parents of young people **over** 17 who have been arrested (either mistakenly or with good cause). The parents are concerned that their son or daughter will further incriminate themselves due to their SPLD and are desperate to provide information on their child's condition. Sometimes it is possible to supply this. However they will often find themselves effectively excluded from the judicial process as the young person is considered to be an independent adult.

Parental Concerns - cont.

Support is dependent on their son or daughter being regarded as 'vulnerable', in which case a responsible person or Appropriate Adult can be called in. The best way forward is to ensure that any solicitor who becomes involved is willing to be informed about SPLDs and their implications in this particular case.

The *Guide for Justice Professionals* is helpful in such cases (hard copies are obtainable from the British Dyslexia Association or DANDA).

Note on 17 year olds

Appropriate Adults are available for children **under 17** (up to a later age only if they are regarded as *vulnerable*). However Youth Courts deal with children **under 18** leading to an anomaly for 17 year olds. There are calls for Appropriate Adults to be available for all children under 18 but this has funding implications.

Interviewing Victims or Witnesses

If you are questioned as the witness to a crime or victim of a crime, you are advised to mention your Specific Processing & Learning Difference by name, explaining how you are affected. You can ask to have someone familiar to support you. Support is also available through the Witness Service / Victim Support, see chapter 7 and the link at the end of this chapter.

Officers from the local Public Protection Unit are trained to work with vulnerable witnesses and may be called in if a communication difficulty arises.

It is important to tell the police if you believe you have been the victim of a **disability hate crime**. A hate crime is defined as *any criminal offence committed against a person or property that is motivated by an offender's prejudice or hatred of someone because of their differences*. Disability hate crime is known to be significantly underreported to the police.

You can expect the matter to be investigated fully and the necessary support provided.



FURTHER INFORMATION

www.direct.gov.uk Go to section on **Police Custody**

www.theappropriateadultservice.org.uk

www.victimsupport.org.uk

www.autismwestmidlands.org.uk/content/675163/community_services/criminal_justice/

(relates to Asperger Syndrome)

We need to be aware of disability legislation and the implications for SPLDs. Changes from the autumn of 2010 mean that the Disability Discrimination Act is no longer applicable but many of its provisions have been retained.

Changes in legislation

There are a number of useful pieces of legislation for people with Specific Processing & Learning Differences who become involved in the justice system. Most of the provisions relating to disability equality have now been absorbed into the Equality Act (from October 2010).

Formerly, the Disability Discrimination Act was the principal legislation in this area, providing a definition of disability and establishing what constituted discrimination in the fields of employment, service provision and education & training. The focus of the new legislation is to promote equality for groups that can experience discrimination by removing the barriers that they face.

Circumstances arising before October 2010 continue to be dealt with under the Disability Discrimination Act.

Definition of disability

The definition of *a person with a disability* established by the Disability Discrimination Act (1995 onwards) has been carried over into the Equality Act. It runs as follows: *'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.'*

The key words are that the disability has to have a *substantial, long term adverse effect* on the person's ability to carry out *normal day to day* activities, not only in a work situation. The implications are that those with very minor problems cannot expect to be covered under the definition of disability. At DANDA, we tend to find that people who come to us for help (because they have experienced discrimination or are concerned about their ability to cope in the courts) do fall within the disability provisions. The debilitating effect of stress is often a factor.

The Equality Act, 2010

Under the Equality Act, disability is one of nine 'protected characteristics'; these include Race, Age, Religion and Sexual orientation.

Discrimination arises where a disabled person is **unjustifiably** treated unfavourably. There is a duty to make *reasonable adjustments* to remove barriers for disabled people; this applies in situations where a disabled person would otherwise be placed at a substantial disadvantage compared with people who are not disabled.

The Equality Act, 2010 - cont.

The duty is broken down into three requirements:

The first requirement is changing the way things are done (the law refers to changing a *provision, criterion or practice*).

Organisations are challenged to consider whether they have rules, whether written or unwritten, that present barriers to disabled people and put them at a disadvantage when accessing their services. It might be *reasonable* for them to stop the practice completely, or to change it so that it no longer acts as a barrier.

Relevance to SPLDs

Courts are 'service providers' and some of their practices cause disability-related difficulties to people with SPLDs, for example:

- a person with a short attention span being expected to remain 'on task' during sessions of several hours
- someone with a poor working memory being expected to cope with complicated questioning.

The second requirement relates to making changes to overcome barriers created by the physical features of premises which are open to the public or a section of the public.

Reasonable steps must be taken if disabled people using a service are put at a substantial disadvantage; these are listed as: removing the feature or altering it so that it no longer has that effect; providing a reasonable means of avoiding the feature; providing a reasonable alternative method of making the service available to disabled people.

Relevance to SPLDs

Some people with SPLDs are hyper-sensitive to bright or fluorescent lighting. Some may need to sit rather than stand. However, on the whole, SPLD requirements will relate more to **how** the hearing is conducted than to physical factors.

The third requirement involves providing extra aids or equipment and providing additional or alternative services. The law refers to these as *auxiliary aids* or *auxiliary services* and stipulates that *reasonable steps* must be taken to provide them if they would enable (or make it easier for) disabled people to make use of the services of the organisation.

Relevance to SPLDs

Equality & Human Rights Commission guidance comments that 'sometimes a person offering assistance will be what is needed'. Possible *auxiliary services* are assistance in completing court (but not legal) documentation and help in locating where your hearing is being held within a large court complex.

The Equality Act, 2010 - cont.

Failure to comply with the duty to make *reasonable adjustments* can be regarded as discrimination on the part of the authorities.

It is also worth noting that an important aspect of Part IV of the Disability Discrimination Act has become embedded in the Equality Act, namely that the duties are *anticipatory*. Organisations are advised that they should not wait until a disabled person wants to use their services, but consider in advance what disabled people with a range of impairments might reasonably need. These measures should then be taken in advance. Guidance to the Act gives examples of people with visual, hearing or mobility impairments or a learning disability. As often happens, specific learning difficulties are not mentioned.

To summarise the disability provisions of the Equality Act: public bodies and organisations have a *positive* and proactive duty to take steps to remove or prevent obstacles that hinder people with disabilities when using their services.

Please note that Court and Tribunal **judgements** are excluded from the obligation to make reasonable adjustments.

Further pieces of legislation which can be relevant to adults with SPLDs

Police and Criminal Evidence Act, 1984

This allows for the provision of Appropriate Adults for suspects in police custody who are deemed *vulnerable*. Further information is given in the previous chapter. The Codes of Practice for this Act are updated from time to time; an internet search will provide the latest information.

The Human Rights Act 1998

The Human Rights Act brought a number of rights laid down in the European Convention on Human Rights into UK law. Several of these are particularly relevant:

- the right to a fair trial
- the right not to be punished for something that wasn't a crime when you did it
- the right to non-discrimination

Article 14, Prohibition on Discrimination, relates to infringement of rights referred to in the Convention due to a personal characteristic such as disability, age, sexual orientation. This law established the right to a fair trial and flagged up that *special arrangements* may have to be made for some parties. Some legal specialists argue that accommodating disabilities is a human right rather than an equality issue and that more challenges need to be made which will 'flesh out' this legislation.

The Youth Justice & Criminal Evidence Act 1999

This Act initially allowed for *special measures* to be provided for *eligible witnesses*. These measures include giving evidence through a video link, giving evidence from behind a screen and the use of an Intermediary, who is appointed by the court to facilitate communication.

The Youth Justice & Criminal Evidence Act 1999 - cont.

The eligibility criteria relate to those under 17 and those who suffer from a mental disorder or who have a *significant impairment of intelligence or social functioning*. This would seem to cover conditions that come within Mental Health such as Attention Deficit Hyperactivity Disorder and Asperger Syndrome. A case would have to be made for other SPLDs but it is worth knowing that guidance on the Act has now established that it is not necessary that the witness is diagnosed as suffering from a particular condition. *Communication* should be given a wide interpretation.

A number of cases in the last few years have led to an extension of the use of Intermediaries for vulnerable **defendants** as well as witnesses.

The Public Sector Equality Duty 2011

Previously, the Disability Equality Duty (2006) required all public bodies to incorporate disability equality into all decisions and activities. This was embodied in Disability Equality Schemes and reviewed under regular Equality Impact Assessments. The primary aim of this Duty was to identify any anti-discriminatory practices and promote a positive ethos towards people with disabilities.

On several occasions I have taken part in consultations on updating Disability Equality Schemes (DES). Looking through the documentation it soon became clear that this process was focused on physical disabilities and mental illness, neglecting the needs of the large population with SPLDs. The focus also tended to be on staff working for the organisation rather than clients using the service. The Duty then changed so that public sector organisations were required to produce a Single Equality Scheme, incorporating all the strands of diversity, equality and disability.

From April 2011, the Public Sector Equality Duty will come into force, part of the 2010 Equality Act. At the time of writing, it has been suggested that the coalition government is seeking to make this Duty less onerous by requiring organisations to simply make equality data available

Conclusions

In the course of training delivered to solicitors, court staff, Crown Prosecution Staff and judges, I have found that none of these groups knows much about disability legislation unless they have chosen to specialise in it (such as Special Educational Needs Tribunal Judges). It appears to be up to the court-user or advocate to suggest that certain aspects of legislation could be appropriate where there is a disability issue.



FURTHER INFORMATION

The Equality & Human Rights Commission

This organisation brings together the former single issue commissions (such as the Disability Rights Commission) and is the first port of call regarding information on disability discrimination.

Website: www.equalityhumanrights.com **Tel:** 0845 9046610

This section explores the need for Reasonable Adjustments in court and tribunal hearings and how to go about obtaining them.

What are Reasonable Adjustments?

The core of equality legislation (relating to disabilities) is the duty to remove barriers for people with disabilities, insofar as this is reasonable. Hence the term, **reasonable adjustments**.

The previous chapter refers to the three requirements of the duty that apply in situations where a disabled person would otherwise be placed at a substantial disadvantage compared with people who are not disabled. These can be summarised as **changing the way things are done; making changes to overcome barriers created by the physical features of premises** and **providing extra aids and services**.

The duty is *anticipatory* so organisations are required to consider in advance what they might do to make their services more accessible to people with a range of impairments.

The most relevant aspect of this duty and the ensuing reasonable adjustments are the sections on the **provision of services to a section of the public**, and **carrying out a public function**. Both can be linked to the operation of the courts and tribunal services, which will be amalgamated into Her Majesty's Courts and Tribunals Service from April 2011.

It is worth noting that people with SPLDs who attend a court or tribunal seldom require accommodations or adjustments that have cost implications, the exception being a request for breaks (due to the costs relating to court time). However this cost does not compare with expenses arising from the accessibility needs of other disability groups such as the installation of ramps or hearing loops.

What is likely to be most helpful to court users with SPLDs?

First and foremost, it would be helpful if lawyers and magistrates had some awareness of the difficulties associated with SPLDs. In the court context, problem areas usually include the following:

- poor / inaccurate recall of details of recall of times, places and events
- slow processing of information, misunderstandings and partial answers
- a limited attention span leading to mental overload
- inability to respond immediately to any new documentation
- increased susceptibility to stress

Proposed reasonable adjustments might consist of:

- rest breaks to restore concentration (at least ten minutes for every fifty minutes of the proceedings)
- assistance in locating and digesting documentation
- support from an advocate or McKenzie Friend, as appropriate (see chapter 7)
- encouragement to take time in answering questions in order to provide a thoughtful response
- the use of a video link (this is a **special measure** which has to be applied for)

Part B of the Reference Section of this Guide is a document that could be used in order to inform justice professionals and to consider a range of problem areas and reasonable adjustments in order to formulate your request. A hyperlink to a similar version is given below.

Requesting Reasonable Adjustments for court hearings

Having determined which reasonable adjustments might be helpful, it is necessary for you (or your representative) to contact Customer Service at the court where your case is being dealt with. Inform them what your disability is and what reasonable adjustments you may require. Be aware that Her Majesty's Courts Service (HMCS) has a stated commitment to ensure *fair and equal access to their services* and have a procedure for dealing with reasonable adjustments which has been disseminated to staff.

Contact details for all courts are given on the website www.direct.gov.uk

Tribunals and Reasonable Adjustments

Since May 2010, the Tribunal Services have been implementing the same internal guidance on reasonable adjustments as the Courts Service. People with SPLDs are advised to contact the Customer Service Manager (or the appropriate member of staff) at the Tribunals Hearing Centre, in order to establish their needs, such as breaks.

These needs should then be identified on the tribunals appeal form, along with details of any reasonable adjustments.

In Conclusion

It is helpful to have a stand-alone summary of your SPLD difficulties and how these might be accommodated in the courts. This can then be circulated to all parties prior to the hearing. The concept is that these accommodations should enable you to '*fully access the tribunal process*'.



FURTHER INFORMATION

For those supporting court-users with SPLDs
HMCS website: HMCSReasonableAdjustmentsGuidance.pdf
www.dyslexia-malvern.co.uk/docs/justice/SplD_Hearings.doc

Despite a greater emphasis on Equality and Diversity, most justice professionals still lack awareness of SPLDs. It is therefore up to you to provide information on your Specific Processing & Learning Difference/s which should be concise and in a useful format.

Providing useful information

There are a number of ways of doing this:

a) Have an assessment

If you have not had an formal written assessment of your strengths and difficulties as an adult, you will find it helpful to do so. This involves going to a specialist for an interview and tests, resulting in a written report describing your strengths and weaknesses. There may be ways of compensating for a problem area that you have not considered; conversely, you may not be drawing on all your strengths.

DANDA can provide guidance on how best to get an assessment or you can contact the local branch of the British Dyslexia Association or Patoss; there is also information on the website www.dyslexia-malvern.co.uk. Another option is Dyslexia Assessment & Consultancy, which has a network of psychologists and tutors trained in adult assessments. This organisation also has expertise in court and tribunal work, see their website www.workingwithdyslexia.com.

An assessment report can be very long with appendices and considerable detail. The most useful section is often the summary; locate this and make a few extra copies for your representative to circulate. Ideally it should be self-explanatory and able to be used as a stand-alone document.

b) List your likely difficulties with regard to appearing at a court or tribunal

It is best to do this with a friend or support worker: talk through those areas which will be challenging (e.g. staying focused, expressing what you mean to say, understanding the question, remembering details). A list can then be drawn up which can be discussed with your solicitor or helper. It may be a matter of requesting *reasonable adjustments* (see chapter 3) or having your solicitor apply for a consideration of *special measures* (see chapter 2). In both cases, documentation must be forwarded to the court and circulated to the other parties in the case.

Part B of the Reference Section of this Guide on *Reasonable Adjustments / Accommodations* has been designed to assist with this process. The 4 page summary uses a checklist approach to identify possible problem areas and how they could be accommodated in court or tribunal hearings. It is advisable to ask an SPLD or legal professional to draw up a document, incorporating this information. There should be evidence that such provisions are justified.

The Justice Guide (see the following section) includes an example of this approach in Section 4.3 *Example of Reasonable Adjustments documentation*.

Providing useful information - cont.

c) Obtain the Guide for Justice Professionals

This resource was written with the aim of informing professionals about the impact of SPLDs. Entitled *The Good Practice Guide for Justice Professionals: Guidelines for supporting users of the Justice System who have Dyslexia and other Specific Learning Difficulties*, it is described as follows:

The Guide presents the challenges arising out of Specific Learning Difficulties in justice settings and outlines good practice in accommodating them. There is an emphasis on interview situations such as court, tribunal or parole hearings and police custody.

Full details are given in the Part A of the Reference Section; the Guide can also be downloaded or forwarded from the website www.dyslexia-malvern.co.uk. The hard copy is obtainable from the British Dyslexia Association or from DANDA.

d) Flag up the *Equal Treatment Bench Book*

This is the official guidance for the judiciary (i.e. judges, magistrates and chairs of tribunals) on equality and diversity issues. Until recently, this important publication had no content relating to SPLDs. After lobbying and committee work a section on 'Specific Learning Difficulties' was finally included in 2008 and the disability glossary was updated to include information on individual SPLDs in the context of the courts.

However I would expect the majority of the judiciary to be unaware of this resource amidst the vast amount of guidelines and directives they need to take into account, unless they have recently taken part in diversity training. It is produced by the Judicial Studies Board, and it is available on their website: www.judiciary.gov.uk. There are links to the two relevant sections (5.5 & 5.6) on www.dyslexia-malvern.co.uk/goodpractice

e) Ensure that a request for Reasonable Adjustments has been made via the Courts Customer Service Department

Information is given towards the end of chapter 3.

f) Accessibility needs

Inform your solicitor (and other appropriate justice professionals) if you need adaptations to written communications such as larger font size, off-white paper or if you prefer communications to be received electronically, enabling you to use voice recognition on your computer.

If you experience Visual Stress, advice is available from the British Dyslexia Association and via the hyperlink: www.dyslexia-malvern.co.uk/visualstress

In this section we look at routes to legal advice and ways of coping if you are not represented by a solicitor.

Where and how can you get good legal advice?

This is the most vital consideration for people facing a court or tribunal hearing. There is little point enquiring with firms of solicitors as to whether they know about dyspraxia, dyslexia etc. I have found that those (very few) lawyers who claim to have some knowledge of SPLDs, lack awareness of the basic fact that the effects of SPLDs vary widely. They tend to assume that everyone behaves in a similar way, based on whoever they previously had dealings with.

It is better to find out if a lawyer is prepared to learn about the relevant condition(s). A good solicitor will be prepared to take these factors on board and be directed by you as to where your particular problems lie. S/he should be ready to investigate which disability provisions are appropriate to your situation.

The Law Society website has a 'find a solicitor' facility by following the link: www.lawsociety.org.uk/choosingandusing/findasolicitor.law.

Contact Law also provides this service via their Freephone numbers 0800 1577 557 and 0800 1577 557; callers are linked to a trained adviser who then locates a solicitor who has been recommended.



For further information see their website: www.contactlaw.co.uk.

A few support groups and disability organisations have links with solicitors (an example is Autism West Midlands). It is worth checking whether your local or regional organisation has similar links.

If you are unable to pay for representation by a lawyer, you have two choices:

1. applying for legal aid. Legal aid is means-tested, so this will involve a financial declaration on your part.
2. representing yourself - hopefully with some support. If you are conducting your own civil case, this is known as being a **litigant in person**. The general term for a court user without a solicitor is **un-represented**. (See the final section of this chapter.)

One further option: some insurance deals include legal representation; this is particularly relevant in cases relating to driving.

Where and how can you get good legal advice? - cont.

Sources of legal advice in civil cases

Community Legal Advice is a good place to start. This is a free, confidential advice service paid for by legal aid, which offers advice on areas such as debt, housing, employment, education, benefits and tax credits in a variety of ways:

- via a helpline: Tel 0845 345 4345. They will conduct a quick financial assessment to check whether you qualify for free legal help.
- via their website www.communitylegaladvice.org.uk. This contains interactive tools to find out if you could get legal aid and how to locate legal advisers near you.
- via their network of Community Legal Advice centres: these offer independent, confidential legal advice and representation services.
- via digital interactive television: this enables you to search for a legal adviser, order free advice leaflets, and obtain information.

Citizen's Advice Bureau (CAB)

Contact your local CAB to enquire about what legal advice is available. You will have to make an appointment. When you are absorbed by your case, it can be difficult for you to explain the issues clearly so, before meeting with an Adviser, make some notes about the basic facts of the matter, providing a copy for the Adviser. During the meeting, try to avoid getting into complicated detail straight away. Check that you have correctly grasped the advice you have been given.

Trade Unions

If you are a member of a Trade Union, you should be able to get advice from their legal department. This is worth checking out because they may be able to offer you support during a hearing. Take account of the suggestions in the previous paragraph.

Royal Courts of Justice Advice Bureau

The Royal Courts of Justice runs a telephone advice line on 0844 856 3534 with a number of automated options relating to different types of legal advice, in addition to the option of making an appointment with a solicitor. This helpline costs 5p per minute; be aware that you may experience delays, frustration and expense while awaiting a reply.

Sources of advice are listed in Reference Section A, Resources & Networks

Legal Aid

Legal aid is available for many types of civil legal problems and for criminal cases concerning 'imprisonable offences'. If a criminal case concerns a 'non-imprisonable offence' it may still be possible to obtain legal aid if the individual involved can be shown to have an impairment which means they cannot represent themselves.

Legal Aid - cont.

The legal services website www.legalservices.gov.uk outlines three core issues that are considered when awarding legal aid.

These are:

1. the type of legal problem
2. your income (earnings and benefits) and how much capital you have (money, property, belongings) – this is known as the ‘means test’
3. whether there is a reasonable chance of winning your case and whether it is worth the time and money needed to win it - this is known as the ‘merits’ test and only applies to civil cases.

In order to work out whether you are eligible financially you could use the online legal aid calculator on the website www.communitylegaladvice.org.uk or phone 0800 085 6643 for further information. The website also links to a directory of solicitors who take on legal aid work.

A legal adviser or solicitor will be able to tell you which level of service you need and whether they can assess your legal aid application for you. You will need to bring evidence of your income. Documentation should include:

- (if on benefits) your national insurance number or a letter confirming your benefits
- (if employed) your last three pay slips or last three bank statements
- (if self-employed) the latest full self-assessment tax return form or latest set of accounts.

Applications are (currently) made to a Legal Services Commission regional office. Legal Aid is awarded on a sliding scale. You may receive full legal aid, or some contribution but still have to pay some of the costs; this depends on your financial situation and your case. The legal aid funding goes directly to your solicitor or adviser.

Legal Aid in criminal cases

The Criminal Defence Service (CDS) works with people under police investigation or facing criminal charges to provide legal advice and representation.

Services comprise:

1. Free legal advice for all from a solicitor at the police station before and during questioning.
2. A duty solicitor to provide free legal advice and representation at a magistrates’ court on your first appearance.
3. The cost of a solicitor preparing a case and initial representation for certain proceedings at a magistrates’ or Crown Court.
4. Full legal representation for defence in criminal cases at all court levels.

Legal Aid in criminal cases - cont.

Assistance in case preparation (3), and full legal representation (4), are dependent on a means test, as with legal aid for civil matters. However, sometimes the Court may decide that no contribution is needed in your case.

Please note:

Legal aid is not available for certain types of tribunal cases; currently this includes Employment Tribunals. However it is advisable to check, since (at the time of writing) we are in a period of transition.

Unrepresented Parties and Litigants-in-Person

These terms apply to someone who, for a variety of reasons, is not represented by a solicitor or barrister. They are therefore obliged to conduct their case personally, a tremendous challenge for an individual with SPLDs. Not only will they need to inform themselves concerning the legal ramifications of their case, but produce and digest large amounts of documentation and follow complicated procedures. Added to this will be the demands of the hearing itself.

The *Equal Treatment Bench Book* provides guidance for the judiciary. The section on Unrepresented Parties is quoted below:

Representing oneself is highly inadvisable for people with *Specific Learning Difficulties*. The difficulties of doing so should be made clear, and information on legal advice provided. If the individual still decides to go ahead, clear written guidelines should be provided on court procedures and terminology. The presence of a *McKenzie Friend* in civil or family proceedings should be encouraged in order to help locate information, prompt as necessary during the questioning of witnesses, and provide the opportunity for brief discussion of issues as they arise. Witness Intermediaries may also work with people with *Specific Learning Difficulties* and it may not be necessary to restrict this to criminal cases [end of section 5.5.4].

If, for any reason, you cannot get representation or choose not use a solicitor, you are strongly advised to investigate sources of support, including McKenzie Friends, see chapter 7.



FURTHER INFORMATION

Information for 'Litigants in person' www.litigant-in-person.com

Go to www.legalservices.gov.uk and find the page: "[A Step-by-step Guide to Legal Aid](#)" Other guides available on this website include: *A Practical Guide to Criminal Defence Services* and *Criminal Defence Services at the Police Station and in Court*.

Please note:

In this period of rapid change, it is worth looking the **date** on all the above guides and checking whether the information they provide is still current.

This chapter will deal with Official guidance, Pre-trial visits, Legal appointments and Case Management issues. The following topics are dealt with elsewhere: *Organising Reasonable Adjustments* (chapter 3); *Legal Representation* (chapter 5); *Human Support* (chapter 7).

Official guidance

The official website www.direct.gov.uk contains a section entitled: ***Going to court if you have a hidden impairment*** in which dyslexia is mentioned:

Hidden impairments are described as follows:

‘Hidden impairments include disabilities that may not be obvious to other people – like a slight mobility impairment, diabetes, epilepsy, cancer or dyslexia.’

The heading that follows: ***Things to think about*** contains some helpful advice.

You are advised to speak to the court's Customer Service Officer or the person on the reception desk ‘*if you have any concerns*’ or ‘*if you may need help*’.

It is possible to arrange a guided visit to the court before your hearing and here you can take the opportunity to clarify various issues. This can be done through the Customer Service Officer at the court you are due to attend.

The guidance continues:

‘If your impairment or medical condition is likely to affect you during a hearing, tell the usher/court clerk before the hearing begins. Examples of assistance to ask for include:

- having questions read out to you so that a form can be completed
- if you have impaired speech, having someone to speak for you
- being able to eat or drink at regular intervals during the hearing because you are diabetic
- having regular breaks, for example to take medication’

You are urged to bring any *hidden impairment* problems to the attention of the court as soon as possible.

Pre-trial visits

If your hearing involves issues that need to be sorted out in advance, such as the use of an Intermediary or other special measures, this will necessitate a visit to the court which will enable you to familiarise yourself with the building at the same time. Check in which room your hearing is likely to take place and what facilities there are.

Pre-trial visits - cont.

Google-maps is one way to locate the court building (via the post-code). The website www.direct.gov.uk also has links to every courthouse under **Find a court** which should then provide directions. If you are not on the internet, phone the court (the number should be on your correspondence) and ask for a map and written directions. If you have difficulties with map reading, explain that you have dyspraxia / dyslexia (as appropriate) and that this is a disability affecting orientation. You might find it helpful to enquire about landmarks. It is also useful to request the contact name and phone number of a member of staff who can meet you.

You may be obliged to attend the court prior to the hearing, due to case management factors. If not, you are within your rights to request a visit, on the grounds of disability or a hidden impairment. I would advise you to take advantage of this opportunity.

Legal appointments (also known as legal conferences)

If you have legal representation it will be up to you to provide clear information, ideally backed up by professional documentation such as a report (which could be paid for by legal aid). Chapter 4 is about *Clueing up the professionals*. It is vital that your problem areas are discussed as early as possible in the proceedings and that you are specific about how the hearing is likely to impact on your disability. Using the term *disability* may be against your principles, but it is on the grounds of disability that you are entitled to extra support and reasonable adjustments.

The legal meetings during which the case is prepared are your opportunity to educate your lawyer about the effects of your particular difficulties, and explore how these can best be accommodated in order for you to provide best evidence. If you know that you often misinterpret a question, miss the point or have great trouble getting your points across, now is the time to say this and for the lawyer to understand that you have genuine and consistent difficulties in these areas. If s/he decides to make a statement about your condition on your behalf, make sure you have had a chance to study it first. Ideally you should work on it together.

All these issues are also relevant for meetings with McKenzie Friends and other support personnel (chapter 7).

Case Management issues

One of the issues that should come up in case management meetings and directions hearings is the matter of reasonable adjustments. This is up to your legal representative but do not assume that, because you have asked for something, it will happen. Despite the encouraging reference to dyslexia on the direct.gov website you are likely to be faced with ignorance and even bewilderment. It is best to be very clear about what is needed and to keep it as simple as possible, using the format suggested in chapter 3.

Case Management issues - cont.

An example of a useful approach is a statement such as:

'I have a very short attention span, this has been documented in my report.

I therefore need a short break every 40 minutes to restore my concentration.

This is a disability issue. Please can you confirm that I will be allowed breaks?'

The *Equal Treatment Bench Book* has this to say about trial management and the aims of a pre-trial directions hearing:

Trial management aims to recognise and accommodate any aspects of disability that could cause difficulty in court and place the affected individual at an unfair disadvantage.

A directions hearing is the best stage at which to consider requirements arising out of special needs and discuss how to implement special arrangements.

The aims of these pre-trial directions are threefold:

- to identify difficulties that are likely to arise in court hearings and procedures
- to clarify the individual's needs
- to arrive at a proportionate response.

Rather than making assumptions based on generic information on Specific Learning Difficulties or prior knowledge of previous cases, decisions concerning trial management should be based on the individuals concerned, and their particular needs in so far as these are reasonable; ideally this should be backed up by documentation from appropriate experts. People with *Specific Learning Difficulties* are generally able to give a coherent account of their problem areas and how they cope with these, so it is essential to consult them.

It is useful to enquire about concentration and expected attention span so that breaks can be scheduled in if necessary. It is also likely that help will be needed to locate information in the 'court bundle'. In some cases lighting and temperature will be an issue. Some people will also encounter Visual Stress and be unable to read easily (if at all) from black text on a white background. (The court bundle is the set of papers about your case which is distributed to all members of the court and is referred to during the trial.)

Despite the important role of this Bench Book in setting out the issues surrounding equality matters (including disabilities) in the context of the courts, the majority of the judiciary (both judges and magistrates) are not familiar with its content. It may well be up to you to look through the provisions and recommendations in order to identify relevant and useful sections.



The Bench Book chapter on Specific Learning Difficulties is available from DANDA, via the website www.dyslexia-malvern.co.uk/goodpractice or, for the entire Equal Treatment Bench Book, see the Judicial Studies Board website www.judiciary.gov.uk .

This section deals with the various types of human support that are available in different circumstances and via different routes. (*Legal Aid and Legal Advice* are discussed in chapter 5).

Since provisions seem to be changing ever more frequently, you are strongly advised to check with the relevant websites and helplines.

Appropriate Adults

See chapter 1 for how they can provide support in police custody.

The Witness Service

The Witness Service operates through a network of local branches. Their website, www.victimsupport.org.uk, provides the following information about its services:

‘Your local Witness Service can give you help and support if you are going to court as a witness, or if you know someone who is. We’ll support you on the day you come to court if you want us to; but if you get in touch with us earlier we can do even more to help - for example, organising a visit to the courtroom before the trial so you know what to expect. Alternatively, our national Victim Supportline can give you information and emotional support, anonymously and in confidence, Tel: 0845 30 30 9000.

If you are feeling intimidated or threatened because you have witnessed a crime, or because you have agreed to go to court to give evidence, you should speak to the police or the Crown Prosecution Service immediately and ask for protection.’

Useful sections on the Victim Support website include:

How we can help you and *A Guide to the Courts*.

Intermediaries (see also chapter 1)

If you are likely to have difficulties understanding and communicating in court, the court can sometimes appoint an Intermediary. Intermediaries are one of the ‘special measures’ created by the Youth Justice and Criminal Evidence Act, 1999. The law allows for their use with prosecution or defence **witnesses** but the courts have the authority to order the use of an Intermediary for a **defendant**. Formerly referred to as **Witness Intermediaries**, the name has now changed to **Intermediaries**, which reflects the fact that it is sometimes possible for them to work with a defendant.

Their role is to facilitate communication by assisting a witness or defendant to understand questions put to them and, where necessary, communicating their reply.

Intermediaries therefore need to be communication specialists; many are speech and language therapists, with additional special training enabling them to become **registered Intermediaries**. Their duty is to the court not to the individual they are assisting.

Intermediaries - cont.

Non-registered Intermediaries can be used where the witness's communication needs are such that only someone who knows or has treated them can provide the necessary communication, but this would be unlikely to relate to SPLDs.

It is worth noting that we are told that the term *communication* should be interpreted widely and that the person in court does not need to be suffering from a particular listed condition.

Two types of vulnerable court users (known as 'section 16' witnesses) are outlined in the Youth and Criminal Evidence Act:

1. 'Children under the age of 17 at the time of the hearing. The *Achieving Best Evidence* report (which relates to children) recommends that an Intermediary may be used 'to help improve the quality of evidence of any child who is unable to detect and cope with misunderstanding, recognise a problematic question or tell the questioner that they have not understood'. (This would also seem to be relevant to some people with SPLDs, especially when under stress.)
2. 'Anyone whose quality of evidence is likely to be diminished by reason of the fact that they suffer from a mental disorder within the meaning of the Mental Health Act 1983, or otherwise have a significant impairment of intelligence and social function, or have a physical disability or is suffering from a physical disorder'.

The Mental Health Act should cover those with Attention Deficit (Hyperactivity) Disorder, any form of Autism, depression and anxiety disorders (if diagnosed). It does not include those without any of the above conditions but who still experience considerable difficulties with aspects of communication as part of their specific difficulties profile.

In order to make the case for the use of an Intermediary with a court-user who has SPLDs, I would expect the communication problem to be considerable and backed up by professional documentation.

It is often the addition of stress that undermines a person's ability to communicate. Where this fact needs to be established, it must be shown that the debilitating effects of stress go beyond the nervousness of someone without a disability who comes before the courts.

If professional reports are required, they can sometimes be paid for from the legal aid fund.

Asperger Syndrome is not always immediately apparent or diagnosed, but this is a condition where a communication specialist with expert knowledge of Asperger Syndrome and ideally of the individual involved, should always be provided. If you support someone with Asperger Syndrome who gets into trouble with the law or has to appear as a witness, it is advisable to contact the National Autistic Society straight away for advice.

Intermediaries: the process

Intermediaries work in both the Crown and the Magistrates' courts and are appointed by the courts, not the solicitor. Their use will necessitate a pre-trial hearing to sort out exactly what help should be given. However communication needs should have been noted earlier in the process, at the police stage (see chapter 1) leading to an *'early special measures meeting'* between the police officer involved and the Crown Prosecution Service.

If necessary, a referral is made to the Office for Criminal Justice Reform which manages the national register of Intermediaries. A meeting is then set up between an Intermediary and the person coming before the courts (if consent has been given) so that their communication needs can be assessed.

As a result of the assessment, the Intermediary is able to ascertain the following:

- whether the witness can give evidence at all
- whether the witness can give evidence with the assistance of an intermediary
- whether the witness needs the assistance of an intermediary
- whether this intermediary has the necessary skills to help this witness - if they do not, then the case is handed on to another intermediary
- whether the witness wishes this intermediary to help them.

The ensuing report is circulated to the investigating (police) officer, the Crown Prosecution Service and the court (including the defence). It records both the court user's needs and a summary of any suggestions as to how s/he can give best evidence at trial. In this way it serves a similar purpose to a document outlining the need for Reasonable Adjustments and recommending what adjustments are appropriate.

Although it is ideal to have an Intermediary involved at the stage of police questioning, s/he may be brought in much later if concerns are raised by the Crown Prosecution Service, the Witness Service, or the judge at the pre-trial stage or even during the course of the trial itself.

McKenzie Friends

This section refers to support for people litigating in the civil or family courts who are not represented by a solicitor. The focus of this section is the support role of the McKenzie Friend and how to go about obtaining one.

See also **Litigants in Person** and **Legal Aid** issues (chapter 5).

If you are not being represented by a solicitor or barrister, you have the right to reasonable assistance from a layperson, usually referred to as a McKenzie Friend.

McKenzie Friends - cont.

If you wish to exercise this right you should inform the judge at the start of the hearing and state who the McKenzie Friend will be. The McKenzie Friend may be requested to submit a short statement setting out relevant experience, confirming that he or she has no interest in the case and understands the McKenzie Friend's role, together with the duty of confidentiality.

This role of the McKenzie Friend is clearly laid out in guidance documentation.

They may:

1. provide moral support for litigants
2. take notes
3. help with case papers
4. quietly give advice on any aspect of the conduct of the case.

They may not:

1. act as the litigant's agent in relation to the proceedings
2. manage litigants' cases outside court, for example by signing court documents
3. make oral submissions, examine witnesses or address the court (except in very unusual circumstances).

Examples of exceptional circumstances in which the McKenzie friend might be granted a right of audience by the court are as follows (the litigant would be expected to be present):

- the McKenzie Friend is a close relative of the litigant
- health problems prevent the litigant from addressing the court and conducting the litigation, and the litigant cannot afford to pay for a qualified legal representative
- the litigant is relatively inarticulate so it is preferable for the McKenzie Friend to speak the litigant's words than to have to prompt and encourage him, thus prolonging the proceedings unnecessarily.

Please note:

It is also possible for McKenzie Friends to be used in criminal cases.

Lay representative

Official guidance makes provision for Lay Representatives. Their role is defined as someone who has no advocacy rights but is granted right of audience. This may be on behalf of a litigant with poor health who is unable to get a solicitor. Application to use a Lay Representative must be made at the onset of a hearing, but it is worth considering whether this provision is appropriate at the earliest opportunity.

Support Worker

There are examples of the court allowing an individual with SPLDs to be assisted by a Support Worker. If this person is an SPLD specialist, working with the solicitor, the help provided can be invaluable. In a particular child custody case, the support for Client X included:

- Providing recommendations to the participants in the court case, such as pausing between sentences when reading information aloud (to enable X to take it in more easily); repeating back what X had said; allowing her time to formulate her responses
- Intervening if it became clear that a question had not been understood
- Passing notes, dictated by X, to her counsel
- Indicating when a break was necessary
- Identifying and (quietly) reading relevant text to X when she was asked to refer to her statement
- Accompanying X to a quiet space out of the courtroom, when she was required to read and digest new documentation.

This type of help is the ideal support for a person with SPLDs in a court, tribunal or parole board hearing. Another useful service is that of a note-taker who is allowed to type up a verbatim script for the court user with SPLDs.

Personal Support Units

This charitable organisation offers a variety of help that could be invaluable to court-users with SPLDs who are 'unrepresented' (i.e. without a lawyer), for example:

- providing information about courts and court procedures
- assisting with paperwork
- taking notes during a hearing
- supporting someone during the hearing (finding necessary documents, helping with understanding etc)

They are not allowed to help with form-filling or give legal advice.

At the time of writing this Guide, these units are only available in some of the bigger cities (London, Manchester, and Cardiff) but it is intended to extend their distribution to assist people in both courts and tribunals. The headquarters of the Personal Support Unit is located at the Royal Courts of Justice and can be contacted on 020 7947 7701/77031 or via the enquiry desk. Website: www.thepsu.co.uk.



FURTHER INFORMATION

Families Need Fathers www.fnf.org.uk Tel 0300 0300 363, 6-10 p.m. weekdays (This website gives useful information on several aspects of law, means of support and recent developments).

Focusing on the hearing itself, we look at ways of getting the best outcome from a situation that contains innate challenges for people with SPLDs.

Dealing with Stress

On the day itself, stress will be the biggest problem. Any techniques you have for reducing stress, such as deep breathing exercise or visualisation, will be helpful.

Hopefully a directions hearing or pre-trial meeting has sorted out issues such as Reasonable Adjustments and you have formed a good relationship with your solicitor, barrister or representative.

Inevitably there will be a lot of waiting around so plan for this. If you spend this time cramming your notes you will simply come into court already mentally exhausted. It might be advisable for your representative to enquire whether the case can be listed so that waiting time is minimised (on the grounds of disability).

Some of you will be attending court in less fortunate circumstances with no provisions in place and, if you have representation, your representative may not have grasped the essentials of SPLDs. If this is your situation, you will have to stand up for yourself.

Coping with questioning

A number of people who have contacted DANDA over the years have said that their case took place 'over their head'; leaving them with very little idea of what transpired or even what had been agreed (especially in complex child custody cases). There is a temptation to want to get it all over with and simply fall in with the lines of questioning, agreeing to whatever is put to you. The way questions are posed makes this an easy trap to fall into. Beware of phrases such as:

- *I put it to you that you had no intention of*
- *Is it not the case that you had already decided to.....?*
- *Mr/s X, would you say that you*

As a result of questioning like this, your words, your intentions or particular interpretations of events are set out before you in a way that seems to expect you to agree. It is difficult to challenge or contradict them without seeming awkward and uncooperative.

Nonetheless you must be prepared with an effective answer to this type of questioning.

Alternatively, you could find yourself agreeing to a fairly bland statement only to be hit by a follow-on question which implicates you in some way.

Flagging up your Specific Processing & Learning Difference

It is advisable to tell the presiding magistrate, judge or chair of the tribunal about your needs at the earliest opportunity. Here are some examples, which you can adapt to suit your circumstances:

“I am dyslexic/dyspraxic, I will need more time to:

- think about my response
- consult my notes, since my memory is poor
- work out what this question is getting at”

Or perhaps:

“I have Attention Deficit Disorder; I lose focus very easily, so please can you recap?”

If you are criticised for not keeping to the point, not answering the question etc. you may need to re-state that you have a disability. Name the condition (for example, Attention Deficit Disorder, Dyspraxia) because the terms ‘*Specific Processing & Learning Differences*’ or even ‘*Specific Learning Difficulties*’ will be unfamiliar or ambiguous (there is a danger of confusion with ‘*Learning Difficulties*’ which implies very low intelligence and conditions such as Downs Syndrome).

At times you may have to ask for a question to be repeated or rephrased in a more direct way. If you are being asked compound questions, you may wish to request one question at a time. You may have to ask for more time to assemble your answer. Unfortunately you may have to restate your requests and be prepared to repeat them more than once.

A difficulty arises when you reach mental overload but no breaks have been scheduled. It is for situations like this that it is desirable to have prepared a document, – a brief one on one or two pages – which outlines the difficulties that may affect your performance in court. Omit all other factors. Suggestions as to how these difficulties might be accommodated are not essential.

Even if the court has not officially accepted this document, it should demonstrate that you are not making up excuses as you hit problems; instead you are presenting information about a condition which will have an impact on how you cope in court.



A possible format is that shown in the *Good Practice Guide for Justice Professionals*, pages 23 & 24, hyperlink below;

www.dyslexia-malvern.co.uk/docs/justice/Justice_Guide_SpLD.pdf

Please note that the example is based on a client with complex difficulties.

The shorter this declaration is, the better.

The judge or magistrate is likely to say that this matter should have been resolved before the hearing. This is true, but if it has not been possible, raising the issue now is your best chance of avoiding being disadvantaged. Hesitations, misinterpretations, partial answers, inconsistencies can easily appear to be signs of guilt (in criminal cases) or evasion / unreliability in civil or family cases.

Awareness of the outcome

A common issue is the inability to retain exactly what has been established during the hearing. How can this best be resolved? Occasionally and after great persistence, litigants have been allowed to buy a transcript of the proceedings (at a cost of around £250).

I would suggest that a transcript is not very helpful: the sheer volume of information is overwhelming and ploughing through pages of cross-questioning to locate nuggets of information is a very demanding task.

What you need are notes containing a summary of the main issues and the conclusions of the court. You should ask how this can be provided. If a Personal Support Unit is based at the court or tribunal centre where your hearing takes place, they could undertake this role.



Telephone 020 7947 7701 to check where this service is currently available. (Personal Support Units are described in chapter 7).

If not, there is a strong argument for being allowed to bring in a note-taker. Occasionally this has been allowed as a Reasonable Adjustment and paid for by legal aid.

One possible transcription service in London is: www.takenotetyping.com

The main focus of this section is Employment Tribunals. There is also a section on Social Security tribunals at the end of this chapter.

Up-to-date information is available on the website: www.tribunals.gov.uk

Restructuring the Tribunals service

Following the Tribunals, Courts and Enforcement Act (2007) tribunals have been re-structured into First-tier Tribunals and Upper Tribunals – the latter primarily for hearing appeals relating to decisions of the First-tier Tribunals. At the time of writing, Employment Tribunals and Employment Appeal Tribunals have yet to be incorporated into this re-organisation. Further changes will occur when the Courts and Tribunals services are merged under the Courts and Tribunals Integration Programme, expected April 2011.

Workplace difficulties

Employees with SPLDs have approached DANDA about a range of workplace problems. Some people may be operating in demanding professional roles, compensating well for personal areas of difficulty, but ‘come unstuck’ when required to change their working practices; this can lead to the threat of disciplinary measures and stress-related illness. Others face bullying/harassment in the workplace, a failure to make reasonable adjustments, or discrimination in aspects of the job, such as promotion. Sometimes these disputes can escalate into an Employment Tribunal hearing or the lodging of an appeal at the Employment Appeals Tribunal.

Please note:

We are informed that it is rare for permission to be given to lodge an appeal and, where this is allowed, the outcomes of the original hearing are seldom reversed.

Grievances and disciplinary procedures

Employment disputes break down into two areas:

- grievances (when the employee makes a complaint)
- disciplinary procedures (when the employer is unhappy about some aspect of your work).

In both cases it is best if any concerns are sorted out at the earliest possible stage, before the situation develops into formal proceedings. An Employment Tribunal will look at whether you and your employer have tried to resolve your problem before you made your claim.

This is in line with the Code of Practice on disciplinary and grievance procedures, drawn up by Acas, the Advisory, Conciliation and Arbitration Service.

Grievances and disciplinary procedures - cont.



The direct.gov website contains helpful information on these matters, in particular:

www.direct.gov.uk/en/Employment/ResolvingWorkplaceDisputes/DG_10027991

Useful sections include ***How to resolve a problem at work*** and ***Settling or withdrawing your claim before an Employment Tribunal hearing***.

Acas is another good source of information, and it offers free, confidential and impartial information on all employment rights issues. If, despite having made reasonable efforts to resolve the problem, you feel you are likely to make a claim, you or your employer can ask for an Acas conciliator to speak to you both and try to help you reach an agreement.

This process, referred to as **conciliation**, takes the form of discussions with both sides, either separately or together, with an impartial outsider. It is voluntary.

Acas will be automatically involved later in the process when a claim is sent to an Employment Tribunal. The majority of cases are settled before reaching the tribunal; it is not uncommon for claimants to be offered a cash settlement in exchange for dropping their case - hearings are costly for employers. Of those cases that proceed to the tribunal stage, the employer is more likely to prevail.

At the time of writing there is a vast backlog of cases leading to long delays; this can be very stressful for the employee with SPLDs. It has been recommended that tribunal judges should make greater use of pre-hearing reviews in order to encourage both sides to settle and to identify cases that '*lack merit*'.

Making a claim to an Employment Tribunal

Ideally disputes should be resolved long before they reach the tribunal stage, since a hearing is bound to be stressful and the preparation is very time-consuming.

Before making a claim, it is best to seek specialist advice about the tribunal process and the sort of evidence you would need to present in support of your claim. You should also look at the websites mentioned in this chapter.

In order to make a claim, you currently need to complete form ET1. The Citizens Advice Bureau is a possible source of help with this. Phone your local branch or look at their website: www.adviceguide.org.uk/

Employers' protection against discrimination cases

Some legal firms specialise in advising employers how to avoid being taken to a Tribunal by their employees. Their primary tactic is to oblige new employees to sign a contract which contains a form of words that will make it very difficult to bring a case. It is well to look carefully at anything you sign when starting a new job so you are not caught unawares; likewise, if you are informed that your working conditions have changed, go through the small print in anything you are asked to sign. Ask someone to help you if you need support with this, such as the Citizens Advice Bureau. If you are in employment, Human Resources may be able to assist you by clarifying the situation.

Disciplinary proceedings

If a complaint is made against you the formal process is as follows:

- a letter, laying out the complaint
- a meeting, to which you are allowed to bring a companion – this could be a work colleague or trade union official.

Of course, having an SPLD is not a defence if you have failed to fulfil the requirements of your job. But if the employer has failed to make reasonable adjustments, despite being informed of disability-related difficulties, then you may have a case.

Attending an Employment Tribunal

Many of the issues raised in the previous chapter apply here, such as the importance of support and representation, minimising stress and flagging up your SPLD. However whereas the court process is **adversarial** with a very heavy reliance on efficient language processing skills, the Tribunal process (in theory at least) is designed to be **inquisitorial** and sort out grievances in a less confrontational way. If the employer has an impressive legal team the whole process can seem very intimidating, but the tribunal Chair should take this imbalance into account.

It should be less problematic to arrange Reasonable Adjustments such as requests for breaks, for single (not compound) questions, for time to think about oral responses, for the opportunity to study any new documentation quietly and without pressure, and for help in locating information referred to during the session.

Social Security Tribunals

Withdrawal of benefits may lead to a hearing at the Social Security and Child Support Tribunal. Guidance should be available from the appropriate disability group (such as Mencap for mental illness).

The support of your GP is vital when completing the documentation but they are not likely to be very knowledgeable about SPLDs.

DIAL UK (see further information on page 33) is very helpful.



FURTHER INFORMATION:

Official guidance www.direct.gov.uk/en/Employment

Acas

Tel: 08457 47 47 47 www.acas.org.uk

British Dyslexia Association

Tel :0845 251 9003 www.bdadyslexia.org.uk

RADAR

Tel: 020 7250 3221 Email radar@radar.org.uk www.radar.org.uk

Employers Forum on Disability

Tel: 020 7403 3020 Email disabilitydirections@efd.org.uk www.efd.org.uk

Making an appeal

www.appeals-service.gov.uk SEE *How to Appeal: a step by step guide*.

I found it was helpful to start off with the *Easy Read* version to get a quick overview of how the system operates before going into detail

DIAL UK (the Disability Information and Advice Line) which describes itself as *a national organisation for a network of approximately 120 local disability information and advice services run by and for disabled people*. The website links to the nearest regional centre.

Tel: 01302 310123 Email dialuk@scope.org.uk www.dialuk.info

This term covers Alternative Dispute Resolution (ADR), mediation in the small claims track in the County Court, Restorative Justice initiatives and conciliation in employment disputes. It is particularly appropriate for settling disputes relating to children.

There is a range of ways in which a dispute or difficulty between individuals or 'parties' can be resolved. These include negotiation; mediation, conferencing or restorative justice; arbitration; litigation. They are on a sliding scale from negotiation (most desirable) to litigation (most undesirable).

The main differences between these approaches can be summarised as follows:

- **Negotiation:** the two parties talk to each other directly and work out a way forward.
- **Mediation, Conferencing, Restorative Justice:** an encounter facilitated by a (neutral) third party. The parties themselves reach a decision.
- **Arbitration:** in arbitration the third party arrives at a decision which is binding upon the participants.
- **Litigation:** here the parties are (usually) represented by lawyers, and a judge or magistrate makes the decision.

Conciliation and Arbitration can occur in the realm of employment and are often facilitated by the Arbitration and Conciliation Service (Acas).

Alternative Dispute Resolution

The term Alternative Dispute Resolution or ADR refers to procedures to resolve a dispute without going to trial. A judge may encourage this during trial management, with possible costs sanctions against a party who refuses to participate.

ADR is a good way of resolving commercial disputes, and should be considered in this setting, rather than the far more costly and complicated court case.

The County Courts provide a mediation service which the parties are encouraged to use before proceeding to a small claims hearing.

Restorative Justice

The Restorative Justice Consortium explains the process of Restorative Justice as follows: 'Restorative Justice seeks to balance the concerns of the victim and the community with the need to reintegrate the offender into society. It seeks to assist the recovery of the victim and enable all parties with a stake in the justice process to participate fruitfully in it.'

From an offender's perspective, taking responsibility for one's actions is important. From the victim's point of view, Restorative Justice provides the opportunity to have the harm done to them acknowledged. Some people on the autistic spectrum will be unable to show empathy and find participation in (un-adapted) restorative justice processes impossible.

Restorative Justice - cont.

The restorative justice approach has been used by Young Offenders Teams (YOTs) since the 1990s but it has been slow to transfer to adult contexts, with the exception of Northern Ireland. The Police sometimes use a process called *Restorative Conferencing*, which adheres to a script and is therefore less flexible.

The Conservative LibDem coalition government have made several statements in favour of Restorative Justice, acknowledging that outcomes are generally much more satisfactory for all concerned and that it reduces re-offending. It is therefore to be hoped that this possibility will be more widespread in future.

Family Justice options

At the time of writing, the coalition government is undertaking a review of the Family Justice system. It is clearly desirable that disputes regarding children should not be battled out in an adversarial setting, in which the parents become increasingly hostile, to the detriment of all concerned – especially the children.

A greater role is foreseen for the National Family Mediation Network which works with parents to enable them to come to decisions about their children, property and other areas of disagreement. Agreements reached through the agency of the National Family Mediation Network are not legally enforceable unless they are subsequently registered in the courts. However experience has shown that the majority of decisions reached in this way 'stick', because the parents have not had decisions imposed upon them but have arrived at them themselves.

Another option is Collaborative Law (transferred to this country in 2003 from the USA and Canada). The 'parties' make an agreement not to go to court, and, using legal representatives, work to sort out the contentious issue(s). A final document is drafted at the end of the process, laying out what has been agreed. Collaborative Law is not cheap since two solicitors are charging for their time. If this approach fails, both sides must find different legal representatives to restart the process in court.

What about SPLDs?

The more informal the process is, the easier it is to participate. However in all these situations, the information processing and communication difficulties associated with SPLDs can be problematic. The mediator should therefore be informed, so that reasonable adjustments can be made.

If you have an SPLD, it is always advisable to explain how you are affected and what would make it easier for you to participate fully.



FURTHER INFORMATION

Law Society www.lawsociety.org.uk/areasoflaw

(on Alternative Dispute Resolution)

Restorative Justice Consortium www.restorativejustice.org.uk

Resolution (solicitors trained in Collaborative Law) www.resolution.org.uk

National Family Mediation Network www.nfm.org.uk

Parole operates in different ways depending on the type of sentence. This section offers advice on coping in Oral Hearings and on submitting useful documentation.

The type of prison sentence will affect the way in which parole operates (including whether it is applicable at all); this is a complicated area with different regulations applying to different situations. Prisoners should be informed when their parole eligibility date (PED) is due and will be advised to apply for parole within the timescale laid down.

The Parole Board meets **either** to determine a prisoner's level of risk on the basis of documentation alone (a 'Paper Hearing'), **or** to consider the dossier alongside the opportunity to ask questions (an 'Oral Hearing'). A Parole Board panel will generally consist of three people: a judge, a psychologist or psychiatrist and a lay member.

They will carefully go through the dossier on the case. In Oral Hearings the prisoner should be represented, witnesses may be called and a victim statement may be read out or presented via video link. Panels usually last half a day but this may be extended to a full day for complex cases.

The main thing that the Parole Board needs to ascertain is whether a prisoner has changed in a positive way, thus lessening the risk of re-offending. How can this change and improvement be evidenced?

There are a number of ways:

- Positive feedback from offending behaviour courses
- Supportive information from Offender Managers, Personal Officers, Probation and other NOMS staff
- Supporting reports from Chaplains or others with whom the prisoner has had dealings
- Changes in the family situation, e.g. restoration of contact
- Indication of empathy towards the victim

The prisoner has a chance to go through all the documentation in advance, with the probable exception of the victim statement. If s/he strongly disagrees with any of the reports it may be possible to arrange a re-assessment via her/his legal representative.

It is usual for the Board to question the prisoner on aspects of the reports, allowing him/her a slot to speak at the end. This may not work so well for people with SPLDs who have become mentally overloaded by the end of a demanding session.

At a recent presentation by the Parole Board we were informed of the initiative of a prisoner who, aware that he would find himself in this situation, wrote to the Board, asking if he could make a statement at the start. This was agreed and did not affect his right to speak at the end.

Cont.

If a prisoner wants to make a statement at the beginning of the hearing, it is important to set out the reasons in a letter to the Board, not to expect to be able to change the expected procedure on the day.

During the process, it is usual for prisoners to make their remarks and responses via their representative, consulting with them as often as is necessary. It is also possible to request breaks as necessary. People with SPLDS are advised to avail themselves of this provision.

The main point to make about Oral Hearings is that they are **inquisitorial** rather than **adversarial** i.e. the situation is examined by questioning rather than the clash of opposing points of view, as in a court hearing.

In preparation for a parole hearing (Paper or Oral), it is essential to have help going through the dossier and preparing your submission, if you feel that your SPLDs are disabling or handicapping you in this task. This assistance should be provided by your solicitor.



FURTHER INFORMATION

The Parole Board

Tel: 0845 251 2220 www.paroleboard.gov.uk

This website has useful links to sections on different types of sentence and procedures.

People with SPLDs are likely to face some difficulty in undertaking jury service, due to information processing demands. Does this mean that you should attempt to get out of this civil duty or can you manage to fulfil your obligations despite the disadvantage of Specific Processing & Learning Difference/s?

Official guidance is provided on the courts service website, in the document: *Jurors with Disabilities or Special Needs*. This guidance (dated 09) states:

'If you are a juror with a disability or a special need, you will be asked by HMCS to provide further information on the 'Reply to Your Summons for Jury Service.' It stresses the need to ensure equal opportunities for people with disabilities. People with visual and hearing impairments have undertaken jury service.

My advice would be to look at the obligations of Jury Service in the light of your individual difficulties (Go to www.direct.gov.uk, type **jury service** into the search box). According to the official view, as laid out in the Juries Act 1974, there is a 'presumption that people with disabilities should undertake jury service unless the judge is of the opinion that they would not be capable of acting effectively as a juror, on account of their disability'. It is stressed that there is no possibility of a carer or helper accompanying the disabled juror in the jury room where the deliberations take place.

Some people with SPLDs are all too aware that this role is beyond them and are obliged to send in a letter explaining why it is not possible – this is something that SPLD organisations have been asked to help with. However do bear in mind that your 'specific difference' includes certain abilities; examples of skills associated with SPLDs include acute perception, lateral thinking skills or being able to look beyond the detail to gain an overview.

As a juror with SPLDs, you will need to evolve a good way of making notes of key bits of information, possibly through a mind map or diagrammatic approach. Make sure to clarify your notes at the end of each session.

A DANDA member reports that her main problem as a juror was remaining focused during long courtroom debates.

Before you are asked to retire and come to your decision, the judge will provide a summary, known as directions. This is increasingly provided in written form, in addition to the oral summary. I would advise that you check in advance that you can receive directions in a written version, so that you do not need to struggle to retain this vital guidance.

When you retire to the jury room for the deliberations process, you may decide to make your fellow jurors aware of ways in which they might support you, such as having a short gap after heated deliberations (which would probably be helpful to everyone).

It is helpful for the image of SPLDS if you are able to play a full part in civic roles, thus educating the general population and professionals who work in these areas.

REFERENCE SECTION

A) Resources & Networks

page 40

This section will be updated as necessary, in the PDF version of the Guide and on the websites: www.danda.org.uk www.dyslexia-malvern.co.uk www.workingwithdyslexia.com

A request to readers of this Guide

Please email information about further resources and contact details of useful organisations to mj@dyslexia-malvern.co.uk. This will enable the reference section to be as helpful and up-to-date as possible.

B) Reasonable Adjustments/Accommodations in Courts & Tribunals

page 43

Under the terms of the Equality Act, reasonable adjustments can be requested if your difficulties amount to a disability.

The document **Reasonable Adjustments/Accommodations in Courts & Tribunals** can be used (as it stands) in order to inform lawyers about appropriate reasonable adjustments and more general accommodations for court-users with SPLDs.

Alternatively, you could use it as a basis for consideration of your individual needs and how they could best be accommodated in a hearing. It is best to go through it with a helper or advocate, highlighting what applies to you. This personalised document can then be used to formulate your request and/or inform anyone who undertakes an assessment of your SPLDs.

The term *Specific Learning Difficulties* has been used throughout, because it is the more usual term and because it is consistent with the language used in official guidance, such as the judicial *Equal Treatment Bench Book*.

To download a version of this document, follow the link:
www.dyslexia-malvern.co.uk/docs/justice/SpLD_Hearings.doc

C) Glossary of Terms

page 47

New terms are cropping up all the time. This page will be updated as necessary, in the PDF version of the Guide and on the websites mentioned at the top of the page.

D) SUMMARY OF KEY POINTS

page 49

Sources of information & legal advice in alphabetical order.

There is concern that some will be affected by the withdrawal of funding.

Advicenow

An independent, not-for-profit website providing accurate, up-to-date information on rights and legal issues.

www.advicenow.org.uk (No Tel or Email)

Advice UK

A UK network of advice-providing organisations. They do not give out advice themselves, but the website has a directory of advice-giving agencies.

Tel: 020 7469 5700 Email mail@adviceuk.org.uk www.adviceuk.org.uk

Citizens Advice Bureau / Adviceguide

This website is the main public information service of the Citizens Advice Bureau.

On the home page there is a heading **Your rights** which contains two useful sections:

- **Discrimination** which includes a quick guide to the 2010 Equality Act
- **The legal system** which includes **Frequently asked questions about legal matters** and **Help with legal costs**

Any local directory should contain the phone number for your local office. No email.

www.adviceguide.org.uk

Community Legal Advice

Community Legal Advice offers free, independent and confidential legal advice in England and Wales.

Tel: 0800 0856 643 www.communitylegaladvice.org.uk

Contact Law

Freephone numbers 0800 1577 557 and 0800 1577 557 links callers to a trained adviser who then locates a solicitor who has been recommended. www.contactlaw.co.uk.

Directgov

Official government information website, covering all public services.

www.direct.gov.uk

Disability Law Service (DLS)

The DLS is a national charity providing information and advice to disabled and Deaf people. It covers a wide range of topics including discrimination, consumer issues, education and employment.

Tel: 020 7791 9800 Email advice@dls.org.uk www.dls.org.uk

EHRC (Equality & Human Rights Commission)

This organisation brings together the former single issue commissions (such as the Disability Rights Commission) and provides information on disability discrimination.

Tel: 0845 9046610 Email info@equalityhumanrights.com www.equalityhumanrights.com

Law Centres Federation

The Law Centres Federation is the national co-ordinating organisation for a network of community-based law centres. Law centres provide free and independent specialist legal advice and representation to people who live or work in their catchment areas.

The Federation does not itself provide legal advice, but can provide details of your nearest law centre.

Tel: 020 7842 0720 Email info@lawcentres.org.uk www.lawcentres.org.uk

Law Society

A range of guides are available on their website www.lawsociety.org.uk, together with a 'find a solicitor' service: www.lawsociety.org.uk/choosingandusing/findasolicitor.law

LawWorks

LawWorks is an organisation which puts people in touch with a solicitor who can provide free legal advice. It only helps people who cannot afford to pay and cannot get legal aid. Application forms are available from your local Citizens Advice Bureau or advice agency who can refer your case.

Address: LawWorks, National Pro Bono Centre, 48 Chancery Lane, London WC2A 1JF

Tel: 020 7092 3940 Email enquiries@lawworks.org.uk www.lawworks.org.uk

Legal Complaints

The Legal Complaints Service has now been replaced by the Legal Ombudsman for all new complaints

Tel: 0300 555 0333 www.legalombudsman.org.uk

Legal Services Commission

The Legal Services Commission (LSC) works in partnership with solicitors and not-for-profit organisations to help over 2 million people each year access legal advice, information and help. Their key partner is Community Legal Advice (above).

This website directs you to your local office. www.legalservices.gov.uk

RADAR (The Royal Association for Disability Rights)

RADAR is a national network of disability organisations and disabled people with a campaigning focus. Members' opinions and concerns are relayed to policy-makers and legislators. Their vision is a just and equal society whose strength is human difference.

Tel: 020 7250 3221 Email radar@radar.org.uk www.radar.org.uk

VOICE UK

This is national charity supporting people with learning disabilities and other vulnerable people who have experienced crime or abuse. Support is available for families, carers and professional workers.

Tel: 080 880 2 8686 Email helpline@voiceuk.org.uk www.voiceuk.org.uk

SPLD Networks

Adult Dyslexia Organisation: (ADO)

Tel: 020 7924 9559 Email dyslexia.hq@dial.pipex.com www.adult-dyslexia.org

Attention Deficit (Hyperactivity) Disorder Information Service: ADDISS

Tel: 020 8952 2800 Email info@addiss.co.uk www.addiss.co.uk

Autism West Midlands

For information relating to criminal justice issues: Tel 0121 224 7843:

www.autismwestmidlands.org.uk/content/675163/community_services/criminal_justice/

British Dyslexia Association: BDA

Services include advice on tribunals, a range of information sheets. Resources for sale include hard copies of the *Good Practice Guide for Justice Professionals*:

Tel: 0845 251 9022 Email helpline@bdadyslexia.org.uk www.bdadyslexia.org.uk

Developmental Adult Neuro Diversity Association: DANDA

(No Tel at time of writing) Email info@danda.org.uk www.danda.org.uk

Dyslexia Adult Access

Tel: 0800 077 8763 Email adahelpline@aol.com www.dyslexia-help.org

Dyslexia Assessment & Consultancy

Services include SpLD assessments, legal reports, support for court users, expert witnesses. Tel: 020 7582 6117

Email info@workingwithdyslexia.com www.workingwithdyslexia.com

National Autistic Society: NAS

Useful publication *Autism: A Guide for Criminal Justice Professionals*

Tel: 020 7833 2299 Email nas@nas.org.uk www.nas.org.uk

Patoss (Professional Association of Teachers of Students with SpLDs)

This is primarily a teaching organisation but could be useful to find an SPLD assessor

Tel: 01386 712650 Email patoss@sworcs.ac.uk www.patoss-dyslexia.org

Materials available via Dyslexia Consultancy Malvern

1. *Equal Treatment Bench Book*: extracts on Specific Learning Difficulties
2. *Good Practice Guide for Justice Professionals: Guidelines for supporting users of the Justice System who have Dyslexia and other Specific Learning Difficulties* (PDF version)
3. *Accommodating Specific Learning Difficulties in Hearings*
4. PDF version of this Guide, *Coping with Courts & Tribunals: A Guide for People with Specific Learning & Processing Differences [SPLDs]*

All available from www.dyslexia-malvern.co.uk

Accommodating Specific Learning Difficulties in Hearings

People with disabilities – including many with Specific Learning Difficulties - 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 Disability Equality Duty incumbent on the courts (2007)
- The Equality Act (2010) which extends provisions of the Disability Discrimination Act.

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

- a) summarises the particular difficulties the individual faces (usually confirmed by a formal assessment)
- b) describes how these will impact on appearances before the hearing
- c) outlines accommodations or reasonable adjustments

An example is included in the *Equal Treatment Bench Book*, section 5.5.5
See *Resources*

The guidance in this document provides information on:

1. How Specific Learning Difficulties can disadvantage people in hearings
 2. Appropriate Reasonable Adjustments / Accommodations by professionals
 3. Further issues
 4. Key resources
-

1. How Specific Learning Difficulties can disadvantage people in court or tribunal hearings

Difficulties arising from Dyslexia, Dyspraxia, Attention Deficit (Hyperactivity) Disorder and Asperger Syndrome vary considerably from person to person, but the areas of difficulty listed below are typical.

Information Processing

- Difficulties with 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 etc.
- 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, 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, chronic 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

Particular susceptibility to the **effects of stress** can further exacerbate areas of difficulty and undermine coping strategies. Special difficulties arise with **Asperger Syndrome**, making any form of cross-questioning very problematic.

2. Appropriate Reasonable Adjustments / Accommodations by Professionals

When delivering spoken information to court users with Specific Learning Difficulties

- 1 When providing complex information (such as explaining a multi-stage procedure) first introduce the topic, then give the details, then summarise if necessary
- 2 Deal with issues in chronological order: do not jump around in time
- 3 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
- 4 When reading information out to someone with Specific Learning Difficulties, insert pauses after each section to allow the information to be absorbed
- 5 Check back to ensure understanding
- 6 Make allowances for slow processing of information, misunderstandings and partial answers
- 7 Allow thinking time before prompting a response
- 8 Be aware of a probable limited attention span and the possibility of mental overload

When delivering / referring to written information

- 1 Be aware that some dyslexic people have considerable difficulty comprehending written material, despite being able to read adequately
- 2 If the individual suffers from visual stress, documentation should be adapted according to accessibility guidelines i.e. well spaced text, font size 12 or over, printed on tinted paper, such as pale blue or grey. Whole phrases in capital letters should be avoided as these are harder to decipher
- 3 Since the effort required to decode text impairs overall comprehension, some people with Specific Learning Difficulties will fare better if text is read to them. They may need a helper to find the place when extracts from particular documents have to be located 'on the spot'

When requesting information

- 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 times, places and events may not be accurate. Comprehension will become increasingly impaired

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
- The stress and distractions of the court, together with the rapid 'cut and thrust' of questioning, greatly disadvantage people with Specific Learning Difficulties.

Most people would cope far better with the following accommodations:

- assistance in locating and digesting documentation
- encouragement to take their time in answering questions so that they could provide a thoughtful response
- access to an intermediary or trained appropriate adult
- the opportunity to consider likely topics in advance
- (in some cases) the use of a video link

3. Further issues

If the individual is unable to retain what has transpired during the hearing, s/he should be supplied with a record of the proceedings.

It is not advisable for people with Specific Learning Difficulties to be unrepresented / Litigants in Person. The difficulties inherent in their condition(s), together with inexperience and ignorance of legal proceedings, combine to place them at an overwhelming disadvantage.

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.

3. Key resources

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*)

Reasonable Adjustments Guidance: For staff working with public and professional court users (based on the *Disability Discrimination Act*) HMCS (2009) Crown Copyright

Autism: A Guide for Criminal Justice Professionals (revised 2008)
National Autistic Society

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

Research

1. *No One Knows: Learning difficulties & learning disabilities in prisons* (2005 onwards) Prison Reform Trust. The project explores the 'prevalence and needs of offenders with learning difficulties and learning disabilities' in custodial, police custody and court settings.
2. *Incidence of Hidden Disabilities in the Prison Population (March 2005)* Learning & Skills Council

CONCLUSION: Just over half (52%) have literacy difficulties.

20% have a hidden disability, affecting learning and employment, such as Attention Deficit Disorder.



Information Sheets

www.workingwithdyslexia.com www.danda.org.uk

This guidance has been developed by Melanie Jameson, Justice Adviser to DANDA
Email mj@dyslexia-malvern.co.uk Tel: 01684 572466 www.dyslexia-malvern.co.uk

C**Glossary of Terms
linked to the Justice System**

Acas	The Arbitration and Conciliation Service
ASSET	Assessment Tool used by Youth Justice System, also ONSET
CAB	Citizens Advice Bureau
CJC	Community Justice Centre
CJS	Criminal Justice System
ET	Employment Tribunal
EAT	Employment Appeal Tribunal
FME	Force Medical Examiner: a doctor working in a police custody setting, nurses doing this work are Appropriate Healthcare Professionals
HMCS	Her Majesty's Court Service
IPP	Indeterminate Sentence for Public Protection
JP	Justice of the Peace (Magistrate)
NOMS	National Offender Management Service (a combination of the Prison and Probation Services)
OASyS	Offender Assessment System
PED	Parole Eligibility Date
PSR	Pre-sentence Report
YOT	Youth Offending Team

Glossary of terms - cont.

Disposal	<p>The official response to an offence, e.g. <i>out-of- court disposal</i> may be a fine or referral for drug detox.</p> <p><i>Youth Justice disposal</i> refers to the range of non-custodial options available to the Youth Courts.</p>
Intermediary	<p>(formerly 'Witness Intermediary') A trained specialist who supports court users and people being questioned by the police, who have communication needs.</p>
Lay Representative	<p>A lay person who has no advocacy rights but is granted right of audience.</p>
Legal Adviser	<p>Provides legal advice to magistrates.</p>
Litigant-in-Person	<p>Someone who brings a case themselves, without using a solicitor.</p>
McKenzie Friend	<p>A lay person who provides support in court in specific ways.</p>
Unrepresented	<p>Someone who appears in a hearing without a solicitor.</p>

SUMMARY of KEY POINTS

The information in this Guide is correct, as far as we can ascertain, at the time of writing, February 2011.

However, this is a period of tremendous change and re-organisation in the justice system. Furthermore, it is likely that some of the sources of advice and support referred to in the Guide will be withdrawn, due to cuts in funding.

You are therefore strongly advised to check current regulations and that you have the latest advice.

POLICE

- Inform the custody sergeant that you have Dyspraxia, Dyslexia, Attention Deficit Disorder, Aspergers (as appropriate) and that this is a disability
- Make sure you understand your Rights & Entitlements
- Use the available support systems
- Tell the police if you believe you are the victim of a Disability Hate Crime
- As far as the police are concerned, people over the age of 16 are regarded as adults

LEGISLATION

- SPLDs are recognised as disabilities under disability legislation
- Find out which provisions apply to your situation
- Consider how you will be disadvantaged by your SPLD in the Hearing
- Someone with a disability is entitled to Reasonable Adjustments to help accommodate their difficulties

PREPARING FOR HEARINGS

- It is crucial to obtain good legal advice
- Have you explored possible sources of support?
- Your SPLDs should ideally be confirmed by a professional assessment
- Lawyers need to be supplied with personalised information on SPLDs
- Check that information on the impact of your SPLDs has been circulated, prior to hearings

EMPLOYMENT TRIBUNALS

- Try to sort out your problems with your employer before the dispute escalates to a tribunal

JURY SERVICE

- Investigate the requirements of jury service in the context of your combination of strengths, weaknesses and compensation strategies.