

PLANNING TO QUESTION SOMEONE WITH 'HIDDEN' DISABILITIES: specific language impairment, dyslexia, dyspraxia, dyscalculia and attention deficit disorder

Toolkit 5

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This toolkit brings together policy, research and guidance relating to:

1. [Definitions](#)
2. [Areas of difficulty affecting communication at court](#)
3. [Case management](#)
4. [Framing your questions](#)

The 'hidden' disabilities described here cover a wide spectrum of conditions. Information about the individual's capabilities is essential and if not supplied, must be requested. This toolkit contains general guidance and is not a replacement for a Registered Intermediary's assessment which will provide advice specific to the individual. This should be considered (a) if the person is unlikely to be able to recognise when they do not understand something, or tell the questioner that they have not understood, or has some other communication difficulty; (b) even if no intermediary was used at the investigative interview. The intermediary's report will advise about the most effective means of communication tailored to the individual's needs and the vocabulary required by the case.

KEY POINTS ABOUT QUESTIONING

Tailor questions to the individual's needs and abilities (2.1). Ask short, simple questions, one idea at a time (4.4). Use common words (4.2), unambiguous language and avoid figures of speech (4.5). Speak slowly and allow the person enough thinking time to give a full answer, at least six seconds (2.4, 4.1). Repeat names, places and objects often (4.3). Follow a logical, chronological order (4.6). Signpost the subject and explain when the subject is about to be changed (4.8). Check directly on understanding, using simple words (4.9).

Some question types carry a high risk of being misunderstood or producing unreliable answers. Such problematic question types should be discussed at a ground rules hearing (4.10). These include questions:

- with 'tag' endings (ie a statement followed by an invitation to confirm its truth)*
- in the form of a statement asserting that something is a fact, which may not be recognised as a question*
- asking 'Do you remember...?' particularly where the question concerns what the witness told someone else*
- with forced choices, or containing one or more negatives (4.11) or that are repeated (4.12)*
- suggesting the witness is lying or confused (4.13). If a challenge is developmentally appropriate, it should be addressed separately, in simple words, at the end of cross-examination.*

1. DEFINITIONS

1.1 'Specific learning difficulties' (SpLDs) This is an umbrella term for certain life-long conditions They:

- involve weaknesses in information processing, communication skills and memory;
- occur independently of intelligence. However, they can be experienced by people with learning disabilities (see Toolkit 4) and autism spectrum disorders (see Toolkit 3);

- consist of a family of related conditions. It is common for someone with a specific learning difficulty to have more than one, and/ or other conditions;
- are neurological rather than psychological, and can be hereditary;
- are recognised disabilities under disability legislation.

1.2 **SpLDs include specific language impairment, dyslexia, dyspraxia, dyscalculia and attention deficit disorders** Together, SpLDs are believed to affect at least 15% of the population and constitute the most common disability to be encountered in the CJS.

1.3 **Specific language impairment** refers to difficulties with comprehension and/ or expression (use) of spoken language. Areas of difficulty are generally grouped as follows:

- speech apparatus (mouth, tongue, nose, breathing etc.);
- phonology (the sounds that make up spoken language);
- syntax (the way that words combine in phrases and sentences);
- semantics (the meaning of words and phrases);
- pragmatics (knowing how to communicate in different situations);
- intonation and stress (the rhythm of speech).

1.4 **Specific language impairment includes** children's developmental language delay (when language develops in the usual order, but slowly) and developmental language disorder¹ (in which it is not only severely delayed but is also abnormal and uneven, with considerable variety in pattern and severity).

1.5 **Specific language impairment is often a 'hidden difficulty'** because what may be apparent instead is problematic behaviour and social isolation. The person's communication needs may be misinterpreted, misdiagnosed or missed altogether.

1.6 **Specific language impairment may also be acquired** eg through brain injury or stroke.

1.7 **Dyslexia** Contrary to popular misconception, dyslexia is not confined to literacy, although weaknesses in reading and writing are often the most visible signs. Dyslexia affects the way information is processed, stored and retrieved, with problems of memory, processing, organisation and sequencing, and getting dates, numbers and events in the right order.

1.8 **Dyspraxia** impairs movement and coordination but can also involve problems with language, perception, thought and personal organisation. Speech clarity can be affected and coordination of fine and/ or gross motor activity. People with dyspraxia can appear anxious in unfamiliar situations (due to sensory overload), be easily distracted and have difficulty judging how to behave in company. This condition is more common in males.

1.9 **Dyscalculia** causes an inability to understand simple number concepts and to learn basic number skills. Likely difficulties concern telling the time, time-keeping and understanding quantity, prices and money.

¹ These do not include children who do not develop language because of intellectual or physical disability, hearing loss, emotional problems or environmental deprivation.

- 1.10 **Attention Deficit (Hyperactivity) Disorder** has often been described as essentially a behaviour disorder but is now recognised as a neuro-developmental disorder affecting the cognitive management system of the brain. It is typified by poor listening skills, distractibility and disorganisation. Behaviour can be unpredictable and impulsive, leading to the blurting out of inappropriate comments or excessive interrupting. As people with ADHD have difficulties with remembering information, they may easily become frustrated and distressed, and some come across as unintentionally aggressive. If no ‘hyperactivity’ is present, the term *Attention Deficit Disorder* (ADD) is used. AD(H)D affects young people and can continue into adulthood. It may be treated with medication.
- 1.11 **The definition of a vulnerable witness** ([Youth Justice and Criminal Evidence Act 1999](#)) includes those whose quality of evidence is likely to be diminished because they have a significant impairment of intelligence *and social functioning* (section 16(2)(a)(ii) emphasis added). When determining whether quality of evidence is likely to be diminished, the court must consider its likely completeness, coherence and accuracy (section 16(5)).
- 1.12 **Courts are expected to make reasonable adjustments to remove barriers for people with disabilities, including SpLDs** (section 6.2, Judicial College [Fairness in Courts and Tribunals](#) 2012, giving effect to the [Equality Act 2010](#)). Someone with one of these conditions may have an unusual mixture of ability in some areas of functioning and unexpected difficulties in others. Some are unaware that it amounts to a disability. Others choose not to disclose their difficulty, eg providing a written statement to the police when they cannot read. It is therefore important to be open to the possibility of these conditions.

2. AREAS OF DIFFICULTY AFFECTING COMMUNICATION AT COURT

- 2.1 **The most significant factor** in effective communication with someone who has a SpLD is the advocate’s ability to tailor questions to the individual’s needs and abilities, enabling the person to understand your questions and give answers that (s)he believes to be correct. This may require advice from a Registered Intermediary² who has assessed the person and will help ensure that questions are understood.
- 2.2 **Someone with ‘hidden’ SpLDs may be overlooked** At first glance they do not appear as vulnerable as someone with generalised learning disabilities. One or more problem areas may nevertheless be experienced, depending on the nature and extent of the individual’s SpLD and whether they have more than one SpLD and other conditions.
- 2.3 **Heightened sensitivity to stress** Many people with an SpLD have low confidence and self-esteem, rendering them prone to stress reactions where their coping strategies break down and their impairments become even more pronounced. Frustration and stress are heightened by poor communication; not knowing what is going to happen; people and buildings seen as intimidating; and delay. Responses may include feelings of panic and

² Section 29, YJCEA 1999, restricts intermediary appointments to prosecution and defence witnesses. For information about Registered Intermediaries for witnesses, contact the National Crime Agency at 0845 0005463, and by e-mail at soc@nca.pnn.police.uk (by pnn users) or soc@nca.x.gsi.gov.uk (by others). Members of the judiciary may use their inherent jurisdiction to appoint a non-registered intermediary for a vulnerable defendant. Section 104, Coroners and Justice Act 2009, will (if implemented) enable the court to appoint an intermediary to assist certain vulnerable defendants but only when giving oral evidence at trial.

mental overload, leading to total shutdown or the urge to provide any answer to bring questioning to an end.

2.4 **Information Processing** The person may have difficulty with taking in information: delay between hearing something and understanding it and in working out how to respond.

2.5 **Communication** Some will have difficulties due to:

- lack of verbal fluency and precision in speech and problems in word-finding;
- knowing the meaning of the word but inability to work out how it is being used on a specific occasion;
- inability to cope with long and/ or complex questions;
- misunderstandings, sometimes due to over-literal interpretation;
- difficulty in modulating speech that can be over-loud (which may seem aggressive) or too quiet, or with 'reading' body language.

2.6 **Concentration** The person may have weak listening skills and a limited attention span.

2.7 **Someone with a poor working memory** will have difficulty remembering all of a multi-part question and may have a poor short-term memory for facts, events, times and dates.

2.8 **Sequencing, organisation and time management** The person may have difficulty with:

- presenting a sequence of events in a logical, structured way;
- sequencing numbers and letters;
- time management;
- estimating the passage of time.

2.9 **Literacy** Some people with dyslexia are functionally illiterate but may not acknowledge their difficulties. Even where mastered, residual problems may include erratic spelling, difficulty or slowness in reading and processing text, finding the place as directed in documentation or in reading aloud. Unfamiliar court terminology poses particular difficulty. Some experience visual stress when reading; text can appear distorted or blurred. Tinted paper is preferable with well-spaced plain print in font size 12 or above, non-justified.

2.10 **Direction and navigation** The person may have difficulty with finding the way to places or navigating the way round an unfamiliar building.

2.11 **Heightened sensitivity to noise and visual stimuli** The person may have impaired ability to screen out background noise or movement.

3. **CASE MANAGEMENT** (see also *Toolkit 1 Case management*)

3.1 **Assessment by an intermediary** will help ensure that the most effective means of communication is developed, tailored to the individual's needs and the vocabulary required by the case.³

3.2 **There should be a presumption in favour of a supporter as a special measure** There are potential benefits to recall and stress reduction if a neutral, trusted supporter

³ Matters of capacity to consent, competence and credibility are all beyond the intermediary remit.

accompanies the person while they give evidence. The person's wishes must be taken into account (part C3, [Application for a special measures direction](#), section 102, [Coroners and Justice Act 2009](#)).

3.3 **Familiarisation** Explanations about the purpose of a trial and their role are crucial, eg that the person does not need to agree with suggestions put to them in cross-examination unless they are true.

3.4 **Special measures** It is vital that the person practises on the live link ahead of time, and sees screens in place, so that they can express an informed view about how to give evidence. Depending on the nature and extent of the SpLD, the person may find it difficult to understand/ be understood over the live link. If the person nevertheless wants to give evidence this way, an intermediary can facilitate best evidence and also alert the court to early signs of distress or confusion.

3.5 **Written statement** Intermediaries have identified some witnesses where the police have taken a written statement but the witness could not understand the vocabulary used or had difficulty reading the statement for the purpose of memory refreshing. In this situation, **good practice examples** have involved the Registered Intermediary:

- slowly reading through the statement in the presence of the police officer, with breaks to check whether the witness understood;
- assisting in the reading of a re-printed statement, double-spaced in larger font;
- recommending that the witness be re-interviewed on DVD.

3.6 **Helping to keep a witness with ADHD focused** Ensure that the person's evidence begins at the optimum time of day, especially if on medication for the condition. The witness, teacher or carer (if any) may have evolved helpful strategies. The intermediary may suggest the use of quiet 'fiddle toys' to keep fidgety hands busy.

3.7 **Anticipate when a break is needed** Someone with an SpLD may easily lose concentration (eg a witness who becomes frustrated by their speech difficulty or a witness with ADHD who becomes very restless and stressed) but fail to ask for a break themselves. Early signs of loss of concentration or distress may not be apparent over the live link. The intermediary (or if none, the supporter) should be asked to alert the court.

4. FRAMING YOUR QUESTIONS (See also *Toolkit 2(a), General principles from research*)

4.1 **Speak slowly. Allow the person enough thinking time to give a full answer (at least six seconds)** Be patient. **Good practice example:** allowing time for someone with dyslexia to locate which part of written evidence was being referred to. **Poor practice example:** asking supplementary questions while the witness was still trying to understand the first ones, and turning to a colleague instead of waiting while the witness formulated a reply.

4.2 **Use simple, common words** Avoid redundant words and phrases (eg 'To your knowledge...', 'I put it to you ...'), jargon and complex vocabulary.

4.3 **Repeat names, places and objects often** 'Carol, were you in the kitchen?' not 'Were you there?'. Avoid pronouns, eg 'What did Max say?' not 'What did he say?'. Name objects, eg

'Was the money in the wallet?' not 'Was it inside?'. Use the witness's preferred name at the start of questions (find out what the person wants to be called).

4.4 **Ask short, simple questions, one idea at a time** Someone with an SpLD may have a limited working memory and therefore be unable to remember all of a multi-part question in order to respond accurately.

4.5 **Use unambiguous language (the literal meaning)** Some people with an SpLD will interpret the question literally and be confused by figures of speech or expressions such as 'I'm going to jog your memory' or 'information out of your brain'. 'Are you sure?' or 'Is that true?' are better alternatives than 'Is that right?' because the word 'right' gives undue emphasis to the suggestion. Check your question for alternative meanings, eg

'Were you and Jane close?'

'Do you remember falling out with your boyfriend?'

4.6 **Follow a logical, chronological order** Avoid questions that jump around in time or appear to be unconnected. Avoid referring to more than one event per question: not, eg

*'You remembered he shoved you against the wall, you said there was bruising and you went to the doctor. You did say that in the second video. Why didn't you say that in the first video?'*⁴ (This question is too long and complex, asks 'why' – which is likely to be problematic, and refers to events out of order.)

4.7 **Use a visual time line** or similar device, as advised by an intermediary, if the person is likely to have difficulty in responding to questions about times, dates or separate events or locations. **Good practice example:** where the alleged offence involved several incidents in different locations, the Registered Intermediary prepared prompt cards, each with a photo and symbol to represent each location.

4.8 **Signpost the subject and explain when the subject is about to be changed** This gives the person transition time to focus on the next subject. It can be helpful to schedule breaks at a change of subject.

4.9 **Check directly on understanding, using simple words** It is good practice to ask someone to say when they do not understand a question but do not assume that they will be able to do so. Some people with an SpLD will have difficulty recognising when they do not understand something and, even if they do, are likely to be reluctant to say so.

4.10 **Some question types carry a high risk of being misunderstood or producing unreliable answers** Some question types have an adverse effect on accuracy of responses. Intermediary assessment will indicate whether the person is likely to acquiesce (ie reply 'Yes') to questions suggesting the answer, requiring a yes/ no response, that are repeated or that are not understood. Problematic question types should not be used and this should be discussed at a ground rules hearing (see Toolkit 1(c), section 3). Cross-examination must enable the person to give answers that (s)he believes to be correct. This includes taking account of the individual's ability to refute a suggestion that is inaccurate.

⁴ Examples from trial transcripts are used to illustrate particular points. Some of these example questions contain other problems impeding communication which are not identified here for reasons of space.

4.11 **Problematic question types** (depending on the nature and extent of the individual's SpLD and whether it is combined with other problems) may include:

- 'tag' questions which make a statement then add a short question inviting confirmation. These are powerfully suggestive and linguistically complex (Toolkit 6, sections 5.2-7);
- other forms of assertion, including questions in the form of statements, which may not be understood as questions;
- forced choice questions which create opportunities for error when the correct alternative may be missing;
- 'Do you remember...?' questions requiring complex processing, particularly when the person is asked, not about the event, but about what they told someone else;
- questions containing one or more negatives (actual, such as 'not', or implicit such as 'without') make it harder to decipher the underlying meaning. Questions containing negatives increase complexity and the risk of unreliable responses.

4.12 **Effect of repetition** Questions repeated (consecutively or interspersed with others) by one or more authority figures (advocates and judges) risk reducing the overall accuracy of some people with an SpLD who may conclude that their first answer is wrong or unsatisfactory if someone in authority repeats the question.

4.13 **Questions suggesting the witness is lying or confused** Someone with an SpLD is likely to be prone to heightened anxiety. For these individuals, such questions are likely to have an adverse impact on concentration and accuracy of responses. (For an alternative approach in which a challenge is explained to the jury but not put to the witness, see Toolkit 1(c), Ground Rules section 3.) If a challenge is developmentally appropriate, it should be addressed separately, in simple language, at the end of cross-examination.

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