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The reference to the Equal Treatment Bench Book is updated to reflect the latest guidance

A Hidden Vulnerability

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I experienced total disorientation I could hear things going on but nothing seemed to register or make sense. Important questions were garbled and distorted or didn't even register. I was asked to recall events of several years ago in detail. The order of how I recalled the events was vital to my case. However, I was unable to access my memories of the events clearly and what I did manage to remember I was unable to express in a chronological order or with any clarity.

Defendant with Dyslexia

One explanation of why apparently capable individuals cope so badly in court is Specific Learning Difficulties (SpLDs). These are a family of conditions comprising Dyspraxia, Dyslexia, Attention Deficit (Hyperactivity) Disorder (ADHD) and Dyscalculia. Asperger Syndrome is sometimes included (although it is part of the autistic spectrum) because the associated difficulties are specific, in contrast to the pervasive learning difficulties often associated with autism.

The impact of these conditions and the prevalence of SpLDs are what makes this an important issue for people who work in the CJS. Government-funded research in 2005 established that almost 20% of offenders are affected by one or more SpLD¹.

It is surprising, therefore, that so little guidance is available on SpLDs – unlike Learning Disabilities/Difficulties which affect far fewer people. Defendants with an SpLD are rarely seen as vulnerable or disabled, although their combination of difficulties often amounts to a disability as defined by the Equality Act.

The phrasing of the Practice Direction on Treatment of Vulnerable Offenders, for example, refers to those *with a mental disorder or other significant impairments of intelligence or social function* – this may cover people with Asperger Syndrome but not those with SpLDs who present as having mental capacity but who struggle with aspects of information processing. The situation is confused by the current trend of referring to LDD - *Learning Disabilities/Difficulties*. I find it unhelpful to conflate those with impaired intelligence who often lack mental capacity together with those whose problem areas are *specific*.

Until 2008, SpLDs were not covered in the *Equal Treatment Bench Book*, an omission that I was given the chance to rectify. The latest guidance is dated February 2018, amended March 2020 <https://www.judiciary.uk/wp-content/uploads/2018/02/ETBB-February-2018-amended-March-2020.pdf>

Unfortunately, an important amendment from an earlier update appears to have been dropped: *assessments of dyslexia are generally made by appropriately qualified tutors or psychologists, not by doctors*. The other two remain: *Court-users with SpLDs who normally rely heavily on technology are very disabled when they are not allowed to use it AND (others) experience mental overload and are unable to recall what has transpired or the outcome of the hearing so they may need, yet cannot always obtain or afford, a transcript*.

¹ *The Incidence of Hidden Disabilities in the Prison Population* (March 2005) Learning & Skills Council and Dyslexia Action

TYPICAL IMPACTS OF SPECIFIC LEARNING DIFFICULTIES

- Slow speed of information processing, 'penny-dropping' delay
- Poor short-term memory for facts, events, times, dates, names (giving the impression of unreliability)
- Lack of verbal fluency, misunderstandings or misinterpretations (giving the impression of evasiveness)
- Difficulty presenting a sequence of events in a logical, structured way
- Missing the implications of what is said or interpreting it over-literally
- Even if reading skills are adequate, 'digesting' written material and skimming through documentation to locate information is challenging
- A heightened sensitivity to noise and visual stimuli together with impaired ability to screen them out
- Weak listening skills, a limited attention span, inability to remain focused
- Sensations of mental overload or 'switching off'

Experience in court

After his hearing, Mr S commented:

"I went completely to pot there. I have no idea what happened."

With a combination of ADHD and dyslexia, he would have benefited from Reasonable Adjustments such as regular breaks. A further difficulty is encountered by those with SpLDs who rely heavily on technology, as in the following case:

I work for an IT company and rely absolutely on my technologies - for example have 3 reminder systems to keep me organised. But when I was in court I could not cope at all. I am used to keeping all the information I need in my organiser but in court I had no way of accessing the details they wanted since I could not accurately recall what happened when. If I could have had the questions written down or seen them on a screen I would have managed better but apparently I kept answering the last part only and ignoring the rest.

Particular susceptibility to the effects of stress can further exacerbate areas of difficulty and completely undermine coping strategies.

To conclude, SpLDs do not present in an obvious manner and can lead to wrong assumptions. I therefore urge magistrates to familiarise themselves with the relevant sections of the Equal Treatment Bench Book and be on the look out for these widespread but little understood conditions.



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Information is also available in the *Good Practice Guide for Justice Professionals* [www.dyslexia-malvern.co.uk/docs/justice/Justice guide to SpLDs.pdf](http://www.dyslexia-malvern.co.uk/docs/justice/Justice%20guide%20to%20SpLDs.pdf) This draws on my informal expert witness work, where I have had occasion to observe the impact of SpLDs at first hand.