Accommodating Neurodivergence in Hearings

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BACKGROUND

This guidance only refers to people with Dyslexia, Dyspraxia, Attention Deficit Hyperactivity Disorder (ADHD) and high functioning autism. When they come before a court or tribunal the impact of their difficulties may amount to a disability, which would entitle them to have their needs considered and their difficulties accommodated, insofar as this is 'reasonable'.

This approach is enshrined in key pieces of legislation:

- The Human Rights Act (1998)
- The Equality Act (2010)

Someone with a disability is defined in the Equality Act 2010 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.'

There is then an obligation to accommodate their difficulties through 'Reasonable 'Adjustments'. The first step could be the provision of a document following this template which breaks down into three parts:

A) a summary of any previous assessments, highlighting the particular difficulties recorded in professional reports and guided interviews carried out by professionals

B) an inventory of the impact of these difficulties during or court or tribunal processes

C) an outline of appropriate Accommodations or *Reasonable Adjustments.*

It should be noted that is highly inadvisable for people in this situation to be **unrepresented** (a point also made by the *Equal Treatment Bench Book*). The difficulties inherent in their condition(s), together with inexperience and ignorance of legal proceedings, combine to place them at an overwhelming disadvantage.

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

THE IMPACT OF DISABILITY-RELATED DIFFICULTIES IN HMCTS PROCESSES

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

Difficulties arising from Dyslexia, Dyspraxia, ADHD, Dyscalculia and Autism vary considerably from person to person. The comprehensive list of areas of difficulty (below) must be customised to refer to the individual's ability to participate fully in their court or tribunal hearing.

Information Processing

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

Memory

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

Communication Skills

- Lack of verbal fluency, lack of precision in speech (giving the impression of evasiveness)
- Inability to work out what to say quickly enough, word-finding problems
- Misunderstandings or misinterpretations during oral exchanges

Literacy

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

Sequencing, Organisation and Time Management

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

Orientation

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

Concentration

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

Sensory Sensitivity

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

The effects of stress

People with these conditions are often debilitated by stressful situations (such as a court or tribunal appearance) because stress further exacerbates areas of difficulty and undermines coping strategies.
Heightened susceptibility to the effects of stress is a well-documented feature of Dyslexia See *Dyslexia and Stress 2nd edition* Ed. TR Miles (2004) Whurr Publishers Ltd

Special difficulties arise with Autism, making cross-questioning very problematic. They tend to take things literally, be unable to see another's point of view and may have a panic reaction when overloaded. Unexpected change is challenging.

Assistive Technology

Some people rely heavily on various items of technology to function effectively. Denying the use of these in Hearings is depriving them of their disability aids leaving them struggling to recall details / provide facts.

C) APPROPRIATE ACCOMMODATIONS OR *REASONABLE ADJUSTMENTS*

General communication issues

- Always aim for clarity and remove all ambiguity in all modes of communication.
- When providing complex information first introduce the topic, then give the details, then summarise if necessary.
- As far as possible, deal with issues in chronological order.
- Provide a glossary of technical terms.

During oral exchanges

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

When supplying written information / during written correspondence

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

Facilitating reliable evidence

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

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

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

Accommodations and Reasonable Adjustments should be ascertained and confirmed in Case Management sessions.

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RESOURCES

Guidance for the judiciary www.judiciary.gov.uk *Equal Treatment Bench Book* (2025)
https://www.judiciary.uk/wp-content/uploads/2025/05/ETBB-July-2024-May-2025-update.pdf
Three sections are relevant:
Chapter 3. *Physical Disability* which contains very useful extracts on disability in general
Chapter 4 *Mental Disability* which includes a reference to 'developmental conditions'
The most useful part is **Appendix B, the Disability Glossary** in which the conditions mentioned in this document, including Visual Stress, are listed alphabetically, along with 'reasonable adjustments.

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