

## **CALL FOR EVIDENCE ON THE GOVERNMENT'S REVIEW OF THE BALANCE OF COMPETENCES BETWEEN THE UNITED KINGDOM AND THE EUROPEAN UNION**

### **Police and Criminal Justice**

Open from: 01 May 2014

Closing date: 24 July 2014

**Evidence is provided from the British Dyslexia Association under Chapter 4, sections 2 and 3, namely**

- ✓ The rights of individuals in criminal procedure
- ✓ The rights of victims of crime

### **Extract from the Call for evidence document**

#### **"CHAPTER 4: MINIMUM STANDARDS IN CRIMINAL LAW AND PROCEDURE**

##### **Overview**

EU competence to take action in this area is provided for under Articles 82 and 83 TFEU. The EU can adopt Directives which set minimum standards in criminal procedure or which establish minimum rules regarding the definition of criminal offences and penalties. Importantly, the EU's competence to take action in this area is limited by an "emergency brake" whereby any Member State can block a proposal which it considers would "affect fundamental aspects of its criminal justice system".

##### ***Criminal Procedure***

EU action related to procedural rights is covered in Article 82(2) TFEU, which provides that the EU can act "to the extent necessary to facilitate mutual recognition" and "by means of Directives" to establish common minimum rules related to criminal procedure law. The minimum rules can apply in the following areas:

- ☐ \_Mutual admissibility of evidence between Member States
- ☐ \_The rights of individuals in criminal procedure
- ☐ \_The rights of victims of crime

#### **The Criminal Procedural Law Roadmap**

The "Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings" was agreed by a Council Resolution in 2009 and set out the priority areas for action, which were later confirmed in the Stockholm Programme.

The Roadmap set out measures which aim to facilitate protection of suspected and accused persons in criminal proceedings and the application of the principle of mutual recognition of judicial decisions. The Council resolved to take action in six areas:

- ☐ \_Translation and Interpretation
- ☐ \_Information on Rights and Information about the Charge
- ☐ \_Legal Advice and Legal Aid
- ☐ \_Communication with Relatives, Employers and Consular Authorities.
- ☐ \_Special Safeguards for Suspected or Accused Persons who are Vulnerable
- ☐ \_Pre-Trial Detention

The Roadmap was incorporated into the EU's JHA work programme (The Stockholm Programme) in 2009. The Stockholm Programme also gave priority to the protection and rights of victims of crime, with a specific focus on vulnerable groups such as children, victims of domestic violence and victims of female genital mutilation.

## **Executive summary**

The British Dyslexia association/Sp-LD Trust has been a major force in supporting initiatives for young people in the criminal justice system since 2004. Following the recommendations of the Criminal Procedural Law Roadmap and the Stockholm Programme, the British Dyslexia association strongly urge the EU to create a new category of vulnerable group, namely suspected or accused persons in criminal proceedings, and victims of crime with a diagnosis of dyslexia/SpLD. Evidence suggests that dyslexic adults are over-represented in the criminal justice system. There is strong and convincing evidence that dyslexic adults are particularly vulnerable in these circumstances, based on problems in access to written language, slowness of thought, and difficulty in understanding the complexities and implications of legal jargon. In the interests of justice, these potential limitations should be recognized across Europe. These difficulties are compounded by recent changes in the UK justice system. Implications for training within the Justice system to ameliorate these difficulties are provided.

## **Background**

The incidence of dyslexia at around 10% in the general population is the highest learning disability identified across Europe and beyond. At least 60-70% of children with dyslexia have continued difficulties in adulthood (Kirby et al, 2012). The symptoms of dyslexia in childhood are well-known, difficulties with reading, writing and spelling which impact on learning. In adulthood, these problems may persist and for many adults with dyslexia the International Adult Literacy Survey has revealed ongoing problems in dealing with documents in everyday life, such as timetables and instructions for taking medication (Fawcett, 2003). Even more debilitating for adults are the memory problems that have been strongly associated with dyslexia, and associated cognitive lapses, identified even in university students (Smith Spark et al, 2004) and the fully employed (Leather et al, 2011). These mean that dyslexic adults may have difficulty in correctly recalling events from the past, or correctly following and interpreting a complex line of questioning. These difficulties are exacerbated by stress, which research indicates is raised in dyslexia, notably because of the mismatch between their efforts and their achievements.

‘Adults with dyslexia report that being stereotyped as being stupid, mentally incapacitated, cheating, and lazy extols a greater emotional burden on their lives than do their language-based difficulties’ Nalavany and Canavan 2012.

Unfortunately, many young adults with dyslexia who reach the justice system lack an effective system of family support to mediate their problems. It seems plausible to suggest that this combination of difficulties can impact adversely on the outcomes for dyslexic adults within the justice system. In addition, a high incidence of dyslexia and other learning disabilities have been identified within the justice system.

Research has suggested that the incidence of dyslexia and other specific learning difficulties in offenders ranges from 25%-50%, depending on the criteria used for identification (see Samuelsson et al, 2000 for a lower incidence implicating environmental factors). In addition, research has highlighted a high level of co-morbidity between different developmental disorders, such that many of those with dyslexia will also show associated problems in attention, with overlap up to 50%. A key characteristic for many young adults with ADHD is impulsivity, which means that they show a predisposition for acting without fully weighing up the consequences. This represents a vulnerability for offending and for reoffending.

Scottish Young offenders (2001 Kirk and Reid 50%

Bradford Young Offenders (2004): BDA Project 31%

Prison Population, (2005) Dyslexia Action. 52% and 20% ADHD.

Young offenders (2007) Chitsabesan et al 51%  
 Young offenders (Kirby, 2014) 30% Prisoners 22%

In the figure below, prevalence rates for a range of neurodevelopmental disorders are presented, drawn from Source: p23. "Nobody made the connection: The prevalence of neurodisability in young people who offend " by the Children's Commissioners Office (2012).

Neurodevelopmental disorder	Reported prevalence rates amongst young people in the general population	Reported prevalence rates amongst young people in custody
Learning disabilities <sup>3</sup>	2 - 4% <sup>4</sup>	23 - 32% <sup>5</sup>
Dyslexia	10% <sup>6</sup>	43 - 57% <sup>7</sup>
Communication disorders	5 - 7% <sup>8</sup>	60 - 90% <sup>9</sup>
Attention deficit hyperactive disorder	1.7 - 9% <sup>10</sup>	12% <sup>11</sup>
Autistic spectrum disorder	0.6 - 1.2% <sup>12</sup>	15% <sup>13</sup>
Traumatic brain injury	24 - 31.6% <sup>14</sup>	65.1 - 72.1% <sup>15</sup>
Epilepsy	0.45 - 1% <sup>16</sup>	0.7 - 0.8% <sup>17</sup>
Foetal alcohol syndrome	0.1 - 5% <sup>18</sup>	10.9 - 11.7% <sup>19</sup>

Figure 1. Prevalence of disorders in the general population and young offenders (reprinted from Kirby, 2014).

What impact do dyslexia and other SpLDs have on processing information? In the table below, taken from the Youth Offending team handbook (2013) produced by the Dyslexia-SpLD trust, the following common issues are identified. In the sections that follow, we shall establish how difficulties of this type may impact on performance and outcome within the judicial system.

#### Some common characteristics of SpLDs

- Memory difficulties
- Organisational difficulties
- Writing difficulties
- Visual processing difficulties
- Reading difficulties
- Auditory processing difficulties
- Time management difficulties
- Maintaining concentration and focus
- Sensory distraction: an inability to screen out extraneous visual or auditory stimuli
- Sensory overload: a heightened sensitivity to visual stimuli and sound; an inability to cope with busy environments (Dyslexia-SpLD Trust, 2013)

A recent literature review on improving services for offenders with learning disabilities (NOMS, 2013) highlighted discrimination 'personally, systemically and routinely (Talbot, 2008) within the justice system, and the need for services to be in place to identify and support those with disabilities. The Bradley review (2009) noted that defendants are routinely asked to participate in several hearings where the language and procedures used

may be alien and stressful for them, with the potential for miscarriages of justice.

These issues will be addressed in full in response to the questions below.

### **Questions on minimum standards in criminal law and procedure**

17. What are the advantages and disadvantages to the UK of EU action in the field of minimum standards in criminal law and procedure? You may wish to refer to specific examples

A specific instance that the British Dyslexia association would wish to challenge is the UK 2013 decision not to accept the EU directive under Article 6 of the statute of the Convention on European Human rights that i) a defendant is innocent until proved guilty and ii) is entitled to a lawyer. We understand from the Call for Evidence that this may be a disadvantage because it may compromise some existing UK laws and is difficult to enforce with the removal of rights to legal aid. Nevertheless, in view of potential miscarriages of justice, we would argue that dyslexic adults and those with SpLD, if not others, should be entitled to this consideration to offset any potential problems in dealing with the procedure of arrest and attendant court appearances and the consequent impact of stress on their processing abilities. In the case of Joint enterprise Law, where an individual who is charged with aiding abetting or procuring an offence even when they are not physically present, it seems that communication difficulties may have a deleterious impact on the outcome for those with dyslexia (CPS, 2012). Figures from the Bureau of Investigative journalism report, 2012, for example, indicate that 17.7% of all homicides now involve more than 4 defendants, and reveal that 37 out of 43 lawyers expressed concern about this law. Nevertheless, 1853 prosecutions have been made under this law since 2005, leading to 22% of the Court of Appeal rulings involving Joint Enterprise law in 2013. This has been coupled with an increase in sentence for knife crime from 15 to 25 years. A number of young men are currently held under this law serving up to 18 years, despite the fact that they were not actually at the murder scene, only associated with the guilty group. We have no way of establishing how many of these defendants were dyslexic or had other specific learning difficulties, but the potential is high in view of the figures identified in research (25-52%). This issue is particularly germane for young adults with SpLD who may have been alienated from the system by their failure to succeed in school. There is strong evidence for higher levels of depression and mental health issues in dyslexia and these can lead inexorably into a spiral of decline. A recent review article of over 100 published articles ranging from childhood to young adult showed specific predictive risk for higher levels of internalizing factors in dyslexia/SpLD linked with lowered self-esteem and feelings of failure (Mugniani et al, 2009), and that additive factors such as ADHD can predispose towards externalizing or delinquent behaviours. A higher proportion of adolescents with dyslexia/SpLD react negatively to school failure by truanting than those in the general population. In these conditions, many young people will seek out a group of their peers with whom they feel comfortable and no longer a lone outsider. Their difficulties may be exacerbated by drug use, which is elevated in this group. There is a potential risk for young dyslexic adults who may become caught up with a gang, without any personal intent to cause harm, and with a lack of awareness of undercurrents of violence. Consideration of these issues and support for these defendants is crucial. We return to this point in the section on information and training below.

18. To what extent is EU action in this area effective in raising standards, or enhancing cooperation? And to what extent is it necessary? And to what extent is the EU the most appropriate level for action in the field of minimum standards in criminal law and

procedure?

In our view EU action has been largely effective in raising standards and enhancing co-operation. It remains not only necessary but also imperative that standards are both raised enhanced and maintained and a joint EU initiative is the most effective way to achieve this. The EU is the most appropriate level for action in the field of minimum standards in criminal law and procedure. Nevertheless, there are a range of further initiatives which could be developed at the EU level which are outlined below.

There is a precedent across Europe in EU funded projects to support offenders with SpLD within the criminal justice system. Evidence from Jameson (2014) demonstrates the existence of the PriMedia (2012) involving the Life Long Learning Programme, with 15 partners from prisons, justice ministries, educational centres and ICT companies in 11 European countries. Activities centre around the use of IT and multimedia and include an International conference annually, an online journal and a series of workshops within prisons. A project in the Netherlands Learn for Life addressed self concepts and won the Dutch Adult Education European project, leading to a further workshop in 2014. The Free from Learning difficulties in Finland reached 311 under 30's and focused on attention and memory. Finally, a multi-national project involving prison education departments, prison staff vocational academies, senior prison management and international organisations / NGOs concerned with prison reform and education. The project is co-ordinated from Vienna ([www.dieberater.com](http://www.dieberater.com)) with partners in Bordeaux ([www.insup.org](http://www.insup.org)), Göttingen ([www.bupnet.de](http://www.bupnet.de)) and Sofia ([www.pfi.org](http://www.pfi.org)). The results of evaluation and feedback from the pilot will contribute to the final design and publication of a Good Practice Guide, to enhance communication between prison staff and offenders.

It may be seen from the above that the European Union has a sound record in addressing issues related to literacy within the prison system (see Jameson, 2014 for full information). It is less clear whether or not these considerations are employed during the process of arrest, trial and conviction. These issues are addressed fully in the recommendations for training and information provided above.

19. Could the EU use its existing competence in this area in a different way which would deliver more in the UK national interest?

Ideally, in terms of offenders (and victims) with dyslexia/SpLD the EU would institute a common approach to ongoing understanding and support within the judicial system. Nevertheless, it would be in the UK national interest to implement the recommendations from the recent Dyslexia-SpLD Trust Publication, 2013, Youth Offending Teams – Guidelines for supporting young offenders with dyslexia and specific learning difficulties, which are outlined below.

What are the specific tasks that may prove difficult for defendants with dyslexia ?  
Kirby (2014) notes the following

The tasks

Lack of facility with reading and writing when completing forms

Difficulty in reading out information

Difficulties in understanding and responding to questions

The method

Responding to multiple questions which impact on memory

Dealing with information which is too fast to process under stress leading to incorrect responses

The environment

Unfamiliar people and agendas

Unknown sets of rules and procedures

Failure to understand the gravity of the situation leading to inappropriate responses.

Table 1. Implications of SpLD within the criminal justice system (Jameson, 2014)

<b>Poor reading skills</b>
Unable to cope with official letters and form filling.
Does not check submissions / documents.
Does not heed notices and written advice.
Great difficulty locating info during the session.
Avoids education & training opportunities.
Reading aggravated by 'visual stress' i.e. print seems to become distorted during reading
<b>Weak / erratic spelling</b>
May not respond to written communications.
Anxious about form-filling.
Appears uneducated (this may not be the case).
Awkward handwriting
<b>Poor short term and working memory</b>
Forgets information conveyed orally.
Unable to hold on to information while considering a response
<b>Poor listening skills</b>
Misunderstands all or part of the picture, leading to possible disciplinary action
Will need thinking time before responding.
Frustration all round!
<b>Difficulty expressing meaning clearly &amp; concisely – may use street jargon</b>
Unable to put their point of view over.
May appear evasive, uncooperative.
<b>Poor sequencing skills</b>
Gets things in the wrong order (procedures or when relating a series of events)
Incoherent.
Mistakes with number / letter strings.
<b>Left / right confusion and disorientation</b>
Trouble locating venues, easily becomes lost.
Makes mistakes referring to L & R in interviews.
<b>Misinterpreting situations / instructions / body language</b>
Mis-reads situations. Gets into trouble easily.
Exacerbates awkward situations.
Fails to take account of unspoken rules.
<b>Short attention span</b>
Cannot sustain attention.
Becomes overloaded and 'switches off'.
High levels of distractibility
Distracted by sounds, thoughts.
Probably distracts and annoys others.

May also be restless and fidgety.
<b>Poor time management</b>
Misses appointments. Compliance issues.
Incapable of prioritisation and estimating how long things take.
<b>Poor organisation</b>
Fails to turn up at the right place, at the right time with the right papers on the right day
Loses documentation. Compliance issues.
<b>Poor spatial skills</b>
Cannot 'read' maps, charts, timetables.
<b>Clumsiness</b>
Told off for knocking things over or bumping into others. Antagonises people.
<b>Lack of numeracy</b>
Cannot organise financial affairs. Gets into debt without realising. Trouble managing fines.
<b>Stress and anxiety</b>
Difficulty functioning. Coping skills undermined.
May appear angry and/or incompetent.
<b>Low self esteem and lack of confidence</b>
Inability to acquire new skills and benefit from new opportunities
Easily influenced, likely to be bullying target.

Naturally, most young offenders will not suffer from all of these debilitating problems. Nonetheless, a combination of several of these impairments will inevitably impact adversely on the outcome for these young adults with dyslexia/SpLD.

Since March 2013 the BDA through a DfE funded Youth Offending Team project has been offering training in these areas to all 143 YOTs. We have delivered training to 29 YOT's so far and developed specific resources such as a Handbook and powerpoint presentation which can be downloaded from the BDA website.

What are the specific aspects of dyslexia/SpLD that are problematic for victims?

Many of these difficulties and failures will impact adversely on victims within the criminal justice system. Without specific support, victims will remain confused, anxious apprehensive and vulnerable to further attack.

Kirby (2014) has provided an in-depth analysis of skills and background factors implicated in offending in a comparison between 995 male offenders and 115 young offenders, based on a combination of screening and questionnaires. The report identifies a number of factors associated with offending and contrasts incidence within the two groups. 46% of the prisoners were excluded from school, compared with 90% of the young offenders, but interestingly this may be because 75% of the prisoners were consistent truants, compared with 21% in the young offenders group. 21% of the prisoners had a diagnosis of dyslexia/SpLD, compared with 30% of the young offenders. In addition, 22% of the prisoners had mental health problems compared with 28% of the young offenders. In comparison with a normally developing group and other adults with SpLD, the prisoners showed higher levels of attention deficit and impulsivity, shortness of temper, time management and organisation. This study provides confirmation of many risk factors identified by Jameson, 2014

What can be done within EU recommendations to rectify this situation?

## **The need for information and training**

'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'. Jameson, 2011 p10

The difficulties experienced by those with dyslexia/SpLD can be identified from arrest to arrival in police custody, where an Appropriate Adult may be provided for support for those aged 17 and under. One of the key aspects here is that the provisions for training Appropriate adults currently have no specific content related to dealing with SpLD.

'The project found that there were particular 'hot spots' in the system at which knowledge of a young person's dyslexia was critical to the best action being taken. These included the support given by an Appropriate Adult, Pre-sentence Reports and the use of ASSET'

BDA 2004 p3

These critical areas include the pre-sentence and stand down report that can be used to speed up the process, plus the ASSET assessment report. Despite very positive attitudes within the youth offending teams, there had been little awareness of Dyslexia and the associated implications within the judicial system. ASSET is being superseded by ASSET plus and the BDA have been working with the YJB to ensure that there is sufficient signposting for those flagged up with dyslexic type difficulties.

In response to the judicial Equal Treatment Bench Book (2009) which for the first time included a new section on dyslexia, the BDA (2009) produced The Justice guide for dyslexia This provided practical advice on the impact of Specific Learning Difficulties in police, court and tribunal settings. Their advice has been designed for practitioners and staff working in the Justice System including judges, tribunal benches, magistrates, HM Courts service staff, barristers solicitors, legal executives and legal advisers the Crown Prosecution Service, the police service, Police Force Medical Examiners the Youth Justice Board ,Youth Offending Teams, the Probation Service the Parole Board and N.A.C.R.O. It may be seen that the sheer number of agencies involved make the task of training and awareness on dyslexia even more complex.

The 2013 guidance notes from the Judicial Equal Treatment Book show a very realistic and in depth grasp of the needs of dyslexia offenders.

'The core challenges, however, are the rapid processing of language-based information and Weaknesses in the short-term and working memory. Questions should therefore be asked singly, and thinking time allowed to assimilate the information and produce a considered response. Associated problem areas are organisation, time management, visual perception (see Visual Stress), sequencing ideas, retrieving words efficiently, sustaining attention, and numeracy. By adulthood many dyslexic people have equipped themselves with an array of coping strategies, diverting some of their energy and ability into the operation of these systems, but thereby leaving themselves few extra resources to call upon when they have to deal with situations that fall within their areas of weakness. Inconsistencies and inaccuracies may occur in their evidence and they would benefit from receiving questions in advance. Short breaks would also be justifiable'.

Judicial Equal Treatment Book, 2013, P88



A breakthrough here has been the recognition that there are distinct differences between specific and more generalized learning difficulties, and that the majority of provision has been made for those with lower ability.

#### Key points

- Specific learning difficulties such as dyslexia are a family of related conditions and must not be confused with learning disabilities which affect all areas of daily living and correlate with low intelligence.
- Many people with specific learning difficulties show signs of more than one profile and some develop a mental illness as well (typically depression or anxiety).
- Some of the reasonable adjustments required for people with mental disabilities may also be appropriate for those with specific learning difficulties but other more specific adjustments may be required

Judicial Equal Treatment Book, 2013. P105

In their description of dyslexia, the Judicial Equal treatment book acknowledges that there will be a variable pattern of strengths and weakness, difficulties and competencies within dyslexia, and that only the most severely affected will be covered by the more general provision for learning disabilities in the Equality Act, 2010. Nevertheless, it is particularly relevant that this book notes the need for careful support for dyslexic offenders based on the following limitations. It also notes that coping strategies which dyslexic adults have developed over time may completely break down under stress.

- a. a weak short-term memory;
- b. a poor working memory - this shows itself as the inability to hold on to several pieces of information at the same time;
- c. poor organisation and time management with particular difficulties estimating the passage of time;
- d. inefficient processing of information which could relate to written texts, oral responses or listening skills – there may be a delay between hearing something and understanding it;
- e. difficulty presenting information in a logical sequential way;
- f. word-finding problems, lack of precision in speech, misunderstandings and misinterpretations;
- g. lateness in acquiring reading and writing skills – even though these may become adequate there are residual problems, such as the struggle to extract the sense from written material and an inability to scan or skim through text;
- h. problems retaining sequences of numbers or letters and muddling left and right;
- i. limited awareness of the consequences of their speech or actions – this relates in particular to people with attention deficit (hyperactivity) disorder.

Judicial Equal Treatment Book, 2013. P106

Building on their 2004 research in the Youth Offending teams handbook (2013) the BDA has provided the following useful suggestions on how to conduct an interview with a young person with Dyslexia/SpLD. Full training for Youth offending teams should be provided by the British Dyslexia Association, either in the form of workshops or as an e-learning project. When setting up appointments, the following precautions should be taken.

Table 2 Setting up appointments for young offenders with dyslexia (Young Offending team handbook, 2013)

- |  |
|--|
| <ul style="list-style-type: none"><li>• Plan appointments and visits with the offender</li></ul> |
|--|

- Phone or text the offender to remind of appointments
- Give simple step-by-step directions, including landmarks as visual clues
- Remember that dyslexic people frequently confuse left and right
- Don't rely on verbal memory – back up instructions with written reminders
- Use a mobile phone to set reminders or take pictures to help memory
- Avoid harsh criticism if the offender is late

It may be seen from this evidence that verbal communication may also be impaired for dyslexic young adults, and therefore the following recommendations are provided.

Table 3. Handling verbal communication with dyslexia (Young Offending team handbook, 2013)

- Give an overview of a subject before going in to details. Summarise where necessary by repeating and paraphrasing key points
- Deal with an issue in chronological order: do not jump around in time
- Use simple direct language and avoid multiple or complex questions
- Allow time for responses: do not prompt or press
- Repeat or rephrase a question where necessary to aid comprehension, without implied criticism
- Avoid acronyms, metaphors or nuances
- When reading information, allow pauses to aid processing and comprehension
- Check back during conversations to ensure understanding
- Avoid criticism of memory weaknesses
- Make allowances for sequencing difficulties, for instance in the recall of numbers or the chronology of events
- Be aware of limited concentration span
- Be aware that the young offender may experience mental overload and 'shut-down' causing them to appear indifferent or disengaged
- Allow regular breaks

It may also be useful to encourage Dyslexic young offenders to carry a Dyslexia Alert Card, a folding credit card size card explaining the difficulties and help required which is produced by the BDA as part of the Dfe funded project for YOTs.

A number of recommendations for interviewing offenders have been provided in Positive practice, Positive outcomes from the Department of Health, 2011. It is particularly important that those interviewing young offenders with dyslexia remain patient and calm, and do not rush the offender into a response before they are ready. They should also be aware that when they repeat a question the offender might incorrectly assume their first

answer was wrong and change it, rather than realising that the interviewer is seeking further clarification. Try to ask questions in a chronological order, using visual aids and making questions concrete where possible. It is recommended that using open rather than closed questions on the need for support can ensure that an answer is provided, rather than a quick denial. It may be useful to provide multi-choice options, or break this down into several closed questions. Try to set up meetings in a familiar environment and make sure information is available in small chunks to avoid overload. It is important to be aware that many dyslexic people prefer to receive files by e-mail, so that they can use an IT based tool for reading beforehand.

### Dyslexia/SPLd in court

A number of modifications have been put in place for defendants who are deemed to be vulnerable, such as the removal of wigs to make the court less intimidating, and even the use of video links for defendants and witnesses. However, it may not be obvious that Dyslexic adults or young offenders are struggling to deal with jargon and the alien procedures of the court. Many of the verbal difficulties and confusions faced by this group can be subtle, and they may not always appear to fit into the category of vulnerable prisons described above. Material that Dyslexics are asked to read should be presented on coloured paper to avoid the potential for visual stress, and an index of readability should be used to ensure it is within the offenders grasp. Dyslexic adults should never be made to read aloud, and there is evidence that their ability to comprehend the material they are reading can be impaired by this practice. It is vital therefore that there is understanding of the complexity of manifestations of difficulties within this condition for all those involved.

### Sentencing and beyond

The Arc Scotland report (2012) on *“Supporting Offenders with Learning Disabilities in Scotland”* highlighted the need to link up information from service to service.

- poor inter-agency working, protocols and information sharing
- lack of availability of suitable services
- lack of awareness at a national and local level
- inconsistencies with diagnosis and eligibility for services

This has implications for not only offenders but also their victims, who may struggle to receive the support they are entitled to, because of poor skills in accessing information on their rights.

It has been suggested (NOMS, 2012) that community service could be a more viable alternative to custody for those with SpLD. However, hidden disabilities may mean that an offender is limited in their ability to complete or fulfill their conviction. It is particularly important therefore that there should be greater awareness of potential limitations for each individual and how these may be overcome. Lack of time management and organizational skills as noted above may impact on the ability to deliver on multiple strands of a court order, including unwittingly infringing an ASBO because they do not fully grasp the implications.

### Probation procedures

The probation system can be key in providing support for young offenders with dyslexia, and specifically those with short sentences or probation as an alternative to prison.

Nevertheless, provision and awareness may be patchy although there are a number of

instances of good practice, and the Probation itself has been moving towards a dyslexia friendly employer status in 2013-2014. In a toolkit, Crossing the Communication divide, (2009) led by Kent Probation service, but involving 8 further probation services, and 13 prisons across the UK. The project set out to be resource neutral and to provide a toolkit that could be used nationally including a questionnaire on levels of experience and understanding within staff. A distinctive feature here are templates for easy reading documents which can be used for those with literacy difficulties amongst the offenders, which include pictures and simple short sentences. The toolkit identifies a number of barriers to communication which probation officers should be aware of, and highlights the added impact of communication difficulties within the offender.

#### Internal barriers

- Poor listening skills
- Poor attitude toward sender or the information
- Lack of interest in the message
- Fatigue
- Fear
- Mistrust
- Past experiences
- Problems at home
- Lack of common experiences
- Negative emotions can create negative thoughts
- External barriers
- Noise
- Distractions
- Bad telephone/mobile phone connections
- Time of day e.g. some people may perform better earlier in the day
- Sender using jargon
- Environment

NOMS (2009) P32

A series of principles for effective and easy communication is provided, including an acknowledgement of the need for creativity in communicating with those with SpLD.

A number of initiatives with specialist agencies working with the probation service have attempted to reduce recidivism by providing training in literacy. A good example of this was the PALS project run by Dyslexia action in Northumberland.

#### Reasonable adjustments documentation (BDA,2009)

It is important to note that dyslexia has not been specifically addressed until 2009 in the Judicial Equal Treatment Bench book. The most recent edition (2013) makes the following recommendations for dyslexia.

- a. they may seek clarification at any stage by asking for a question to be repeated or re-phrasing it to check understanding;
- b. they can take their time when considering responses and can inform the judge when they are no longer able to maintain concentration;
- c. misunderstandings on their part will not be treated as evasiveness and inconsistencies will not be regarded as indications of untruthfulness;
- d. they are not expected to rely on their memory alone for details of dates, times locations and sequences of events;

e. they will not be expected to skim through and absorb new documentation or locate specific pieces of information in the court bundle.

55. 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. Once 'mental overload' has been reached the individual is unable to participate in the process and requires an opportunity to recover. In order to cope with these types of problems, advocates and judges must show patience, understanding and flexibility.

56. Written communication should be in plain English and font size should be at least 12 point. Court and tribunal location details should include local landmarks, public transport information and a contact phone number. Electronic communication helps those who rely on speech recognition software.

### Rights within the Prison system

Information should be provided in easily accessible form, for example using pictures, photos, maps and diagrams to allow poor readers to access material. However, information and access to prisoner's rights too often depends on being able to read and complete requisition forms. Some prisoners do not read information because they are reluctant to reveal their literacy difficulties.

### Reading prison information

Everything is written for a very educated person and the words are very long. It's really a humiliation if you have to ask someone.

No-one knows (2008)

One of the key rights which are imperative for dyslexic adults within the prison system is access to education in order to improve their skills. These range from basic literacy skills upwards and a number of these approaches have been successful in reducing the rates of reoffending. Based on the difficulties identified in the Adult Literacy Survey, one of the most important factors has to be ensuring that dyslexic prisoners can successfully complete forms, such as job, housing or benefit applications. Many of these prisoners have become disillusioned with education and may resist support that targets more basic skills. There has been some success with projects which are based on mentoring, such as the Shannon Trust's Toe by Toe support, which is basic structured and cumulative, and uses other prisoners as mentors (Shannon Trust, 2014). In a pioneering teaching and mentoring study, Dyslexia Behind bars, (2012) interviewed 2069 prisoners, identifying 53% with dyslexia. Dyslexic herself, Jackie Hewitt Main developed a mentoring approach (M4U) a non-profit organization which trained prisoners to mentor others in developing their literacy skills. This input has reduced frustration levels within the prison and reduced recidivism. Most strikingly, this input is highly cost-effective, at only £10 per head per annum. Unfortunately, Chelmsford prison have opted to return to a more traditional form of education since the project ended.

"Jackie has shown me things that no one else has ever been able to do before: reading, writing and sums. I have learnt more in 8 weeks that in all 41 years of my life."  
Prisoner J (who had been in and of prison repeatedly, but has not reoffended since)

Dyslexia behind bars, 2014

Perhaps one of the most important aspects of providing support for dyslexic prisoners has to

be a recognition that for many adults, literacy may not be the skill they most value. Recognition that organizations skills, in particular executive function skills such as planning and memory are critical in success for adults with dyslexia (Leather et al 2011), is vital. The BDA has a strong role to play in ensuring that the provision for adult offenders with dyslexia is the most appropriate, allowing them to develop their skill base to the level where they can once again become productive members of society.

By contrast, an additional issue for dyslexic adults within the prison system is their vulnerability to bullying. Given current levels of overcrowding in prison, depression and anxiety associated with failure in both literacy and life, dyslexic offenders may be at risk not only from the more violent sectors of the prison population, but from their own feelings of inadequacy..

Who protected Jake Hardy, a highly vulnerable 17 year-old suffering from ADHD and dyslexia and needing mental health support? Certainly not those prison officers at Hindley Young Offenders Institution who failed to listen to his anguished pleas for help from constant bullying. Certainly not the prison that an inquest jury last week found responsible for 12 critical failures that contributed to Jake hanging himself with a bedsheet. And certainly not a youth justice system that imprisons children in institutions in which bullying, serious self-harm and suicide are worryingly prevalent.

The Independent, 11<sup>th</sup> April, 2014

20. What future challenges do you see in the field of minimum standards in criminal law and procedure and what impact might this have on the national interest?

It is unfortunate that we are experiencing a time of unprecedented cuts which are bound to impact on services; the reorganisation of courts and tribunals into one organisation is likely to cause further upheavals.

BDA, 2014

Recent changes in the provision of probation which has shifted support from the government to the private sector has implications for the delivery of probation and the need for training for large numbers of staff with no previous experience.

The Government's transforming rehabilitation programme is due to come into effect by October 2014. One of the newly formed private companies , the London Rehabilitation company reports positively on this development. The Government's transformation programme is based on the following rationale for under 12 months prisoners:

- Need to reduce reoffending rates
- Investment and new ways of working required to fund a rehabilitation requirement for all those sentenced to under 12 months custody
- Greater flexibility to do what works
- More diversity of providers
- Market forces drive right behaviours if rewards are based on successful outcomes.

- A new statutory rehabilitation requirement will be extended to all offenders sentenced to less than 12 months in custody. This is due to take effect in 2015.
- A 'through the prison gate' resettlement service will be provided, so that most

offenders are given continuous support by one provider from custody into the community.

- Most prisoners will be held in a local prison for at least three months before their release to assist with resettlement.

London Rehabilitation Company, 2014

By contrast, there has been considerable concern over the implications of this move, given the importance of the probation service in combating recidivism. Low and medium risk offenders, around 160,000 will be moved onto a payment by results scheme. A series of risk analyses have identified problems in the transition, in the effectiveness of the proposed scheme, and impact for the reputation of the UK justice system overall. There is unrest within the probation service, given that a number of probation officers will be redeployed to the community rehabilitation companies, with those remaining working with more serious offences under a new public body, the National probation service. Unfortunately this means a loss of expertise within the newly constructed service, with 553 probation offices challenging their transfer, and 119 of these successful (BBC News, Feb, 2014). The scheme has been based on pilot schemes in Peterborough that have identified a drop in re-offending, based on this payment by results approach. The Offender Rehabilitation Bill, 2014 means that for the first time all short-term offenders will be monitored for a period of 12 months following their discharge from prison. The rapid introduction of the scheme has meant no more than 2 months overlap between the existing and the new scheme, and difficulties have been predicted. Coupled with cuts in the number of police, pressure on an all ready over-crowded prison system, and cuts to local courts, the UK Justice system appears to be in a state of turmoil during this process of change.

There are major concerns here for offenders with dyslexia/SpLD, given the dilution of any existing levels of expertise within the newly constituted private system. A system based on rewards for productivity loses the traditional person orientated approach which has been a major strength of the UK probation system in the past. The danger becomes that in their haste to achieve their targets, the individual differences which characterize dyslexia/SpLD will be lost sight of, in a draconian approach similar to that used in the privatised employment industry.

The outlook for the UK over the next 20 years suggests a deepening and broadening of the issues of inequality that are paramount in the system today, with increasing inequality and low growth in the UK and elsewhere (Guardian, 8/7/2014). One of the key issues here is the impact of continuing unemployment, marginalization and disadvantage on young people and on associated escalating levels of offending. Consequently it is even more imperative that action should be taken to train all those involved within the justice system to support young offenders with dyslexia/SpLD. Key factors in recidivism have been identified as extraordinarily high in offenders serving terms of less than 1 year – ranging from 26.7 to 76.6% depending on the prison involved (data from the Ministry of Justice 2010). Enhanced vulnerability towards reoffending is found in those with unsettled home backgrounds or accommodation, lack of employment and skills to obtain that employment, with 74% reoffending within one year, compared to 34% of those without problems (NIACRO, 2014) <http://www.niacro.co.uk/briefing-notes>). Unfortunately, it is not easy for young offenders to either access employment or accommodation because of prejudice within society, and the impact of recession on the non-skilled jobs they would traditionally perform. The added impact of the current 'no books in prison' scheme and cuts in prison education will ensure

that offenders' skills remain low. Introduction of benefit cuts and delays, in conjunction with escalating rents within the private sector and the bedroom tax mean increased vulnerability within lower SES groups overall. The impact on the most vulnerable in society will be highest of all.

In summary, there is an escalating need to provide awareness and training on dyslexia/SpLD in the UK Justice system, given changes within the system which impact heavily on those whose vulnerability may well be hidden. Coupled with ongoing social and environmental issues that militate against achieving employment or secure accommodation, the prospect for dyslexic/SpLD offenders could be dire. Using the model of training given to YOTs, the BDA could provide training to facilitate understanding and support within the newly evolving system to ensure that the worst outcomes are not forthcoming.

In providing evidence for the Government's review of competence between the United Kingdom and the European Union, a consensus has emerged between government reports, reports from the criminal justice system and reports from the agencies and charities advocating support for dyslexia and other SpLD. We urge the government to act in implementing these recommendations.

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