

Learning difficulties

The term 'learning difficulties' is an umbrella term used to describe a wide variety of learning disorders which are diagnosed with reference to the level of mastery attained in a given academic area by most children of the same age.

Learning difficulties affect the ways in which a person takes in, remembers, understands, and expresses information. The problem may exist in any of these steps in the process of learning.

It is important to note that children with learning difficulties often have average or above average intelligence. Rather than being a deficiency of the brain itself, a learning difficulty is a problem in the brain's connections affecting the way a child communicates.

It is not within the scope of CWS to provide expert advice on learning difficulties and this fact sheet is not an exhaustive list of all learning difficulties that exist. In order to fully understand how a child's learning difficulty may effect the manner in which he/she gives evidence, a more detailed report on the specific difficulties faced should be sought. Often specialised reports have already been provided to the family or school.

Learning difficulties often co-exist with other disorders such as autism or mental health problems. Please view this fact sheet in conjunction with the other relevant CWS fact sheets.

People with learning difficulties are more likely to want to please a person asking him/her questions, and as a result are prone to suggestibility and/or acquiescence.

Below is a list of learning difficulties that children giving evidence may exhibit, along with some implications for court.

Dyslexia

Dyslexia is a language-based disorder affecting the way information is processed, stored and retrieved. Children with dyslexia can have trouble with reading and writing and may have problems with memory, processing, organisation, and sequencing.

Some implications for children giving evidence:

- They should not be expected to be able to read transcripts or written evidence (eg. Facebook entries, text messages, etc).
- They may be unable to correctly recall the chronology of numbers, dates, or events.

Dyspraxia

'Dyspraxia impairs movement and coordination but can also involve problems with language, perception, thought and personal organisation'¹. Children with dyspraxia may have very limited concentration and poor listening skills. They may use language very literally and are prone to becoming easily distressed.

Some implications for children giving evidence:

- Words and phrases will be interpreted literally and in the non-legal sense – eg. 'court' may be interpreted as meaning tennis court, or 'swear' in reference to the oath might be interpreted as using rude language. Common figures of speech such as 'pulling your leg', metaphors, jokes, or sarcasm may also be interpreted literally.
- Repetitive questioning may cause distress.

Discalculia

Discalculia is an impairment of the learning of basic numeracy skills and the ability to understand simple number concepts.

Some implications for children giving evidence:

- They will not be able to reliably answer questions relating to telling the time, quantities or money.
- They will also be unable to accurately estimate time elapsed, distances, measurements etc.

Dysphasia / Aphasia

This is another language-based disorder involving the ability to understand and/or produce spoken language. This disorder is usually caused by brain injury and symptoms may include a wide variety of problems with language such as an inability to form words, name objects, and poor enunciation.

Some implications for children giving evidence:

- There may be specific words a child has difficulty understanding/using. It will assist the court to have an understanding from prosecution ahead of time of what these words might be through asking the family or obtaining a professional report.

Auditory Processing Disorder (APD)

This is a disorder in which the way the brain processes auditory information is compromised. A child with APD may also have language difficulties such as impaired vocabulary development.

Some implications for children giving evidence:

- They will have trouble paying attention to and remembering information presented to them orally.
- They may be assisted by visual aids when giving evidence such as diagrams, photos, or transcripts.

Visual Processing Disorder

This disorder involves problems in visual perception, which can affect gross and fine motor skills, reading comprehension, and mathematics.

Some implications for children giving evidence:

- Estimating time, distance, and other measurements may be a problem.
- The provision of visual information such as transcripts, maps, or other written material may not be suitable. Instead, auditory material can be provided eg. When asking questions about sections of the VARE it will be more helpful to play the auditory part of the VARE in question (to enable the child to listen to what was said) rather than providing the VARE transcript and directing the child to certain questions and answers.

AD/HD (Attention Deficit/Hyperactivity Disorder)

AD/HD is a commonly diagnosed childhood disorder where a child's level of inattention, hyperactivity, and/or impulsivity goes beyond what would reasonably be expected, and interferes with their capacity to process information and adapt their behaviour to different contexts. Whilst this is not considered a learning difficulty, it can disrupt learning and has an impact on how a child interacts with people in court.

Some implications for children giving evidence:

- Children with AD/HD may be easily distracted, poorly organised and have poor listening skills.
- They will require frequent breaks when giving evidence and should be allowed to commence their evidence at the optimum time of day for them (usually the morning), especially if on medication.

Other suggestions that may assist in the questioning of children with learning difficulties, and vulnerable witnesses in general:

- Questions should follow a chronological order rather than jumping around in time.
- Signpost a change of topic and set the scene for a new topic.
- Questions should be short and simple and should contain only one idea at a time.
- The questioner should regularly check a child's understanding of more complex words, phrases, and concepts by asking him/her to explain them to the court.
- Aim to have regular, planned breaks. They should be short unless the witness is becoming distressed at which point a longer break may be required.
- Use of a loud voice and negative tone/facial expressions during questioning may cause distress.
- Tag questions 'make a statement and then add a short question which invites corroboration of its truth.'ⁱⁱ Eg. 'It isn't raining, is it?' These questions will cause confusion and should be avoided.
- Puttage will not be understood and will lead to confusion.

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ⁱⁱ Anne Graffam Walker, *Handbook on Questioning Children: A Linguistic Perspective*, American Bar Association, Washington DC, 1999, p. 48