

Dyslexia in the workplace

A TUC guide

Third edition

About the author.

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Introduction.

I originally wrote this guide in 2005, principally for trade union members and their representatives. It was revised in 2008 in light of the Disability Discrimination Act 2005, new case law and personal experience of good practice.

Much has changed since that revision including:

 the introduction of the Equality Act 2010 (EA) which replaced previous antidiscrimination laws with a single Act;

 a sharpening focus on dyslexia at work by major organisations including trade unions and employers, educationalists, government agencies, and dyslexia charities including the British Dyslexia Association (BDA) and Dyslexia Action (DA);

• the continuing development of good practice in workplace assessment, consultancy and training in my own practice and that of colleagues. Accordingly, whilst this edition continues to help foster a fuller understanding of dyslexia and its effects on employees, it also introduces a framework for adopting a more proactive approach through negotiating policy guidelines to promote more dyslexia-friendly workplaces; it does this alongside a recognition that in the more difficult labour market conditions we face, this may not always be possible; this guide also provides updated and detailed guidance on the hard business of supporting dyslexic members in practical and pragmatic ways.

Part A. Section One. The role of the union.

Union representatives need to be aware of the full range of workplace problems and solutions related to dyslexia, and be able to empathise with their dyslexic members. They should focus on communicating to colleagues and employers:

1. That 'reasonable adjustments' (RAs) can frequently turn round apparently unsatisfactory performance, and that government funding under the Access to Work Scheme (www.gov.uk/access-towork/overview) is usually available to fund adjustments.

2. That the very real psychological and social reasons behind some dyslexic employees' apparently 'difficult' behaviour are frequently the result of many years of harsh criticism and discrimination. For many dyslexic employees the recognition that they are dyslexic is the first step on the road to reclaiming their lives. In this guide we explain:

• the legal framework for protecting dyslexic members from unfair and discriminatory treatment, if consensus and negotiations fail;

• what kind of working environment and practices will be difficult for someone with dyslexia;

• what kind of adjustments should be negotiated with the employer to put this right.

Part A. Section Two. Dyslexia in the workplace: the issues.

The British Dyslexia Association (BDA) estimates that between four and ten per cent of the population is dyslexic, with four per cent of the population seriously affected and six per cent experiencing less serious difficulties – a figure supported by the government's own research. This means that up to 2.9 million workers may be affected.

All employers with the exception of the Armed Forces are covered by the provisions of the Equality Act.

Over the last ten years many trade unions and employers have developed a more satisfactory understanding of dyslexia – one that goes beyond earlier perceptions of it being restricted to general literacy problems. Dyslexic difficulties frequently extend beyond literacy difficulties to include weaknesses in short-term memory, information processing and perceptual, spatial and motor skills.

These difficulties can singly, or in combination, cause problems with performance, organisation and time management, which in turn can cause or exacerbate mental health difficulties; this latter link remains largely, and worryingly unaddressed in the workplace. In addition, whilst a professionally conducted 'workplace needs assessment' and recommended reasonable adjustments can mitigate many of these difficulties, large numbers of dyslexic employees remain undiagnosed. Even with a diagnosis, many employees are understandably reluctant to disclose their disability and its impact in harsh labour market conditions, or whilst employed in an organisation which they fear will be unsympathetic to their difficulties.

An overview of the major issues that adversely affect dyslexic employees.

The British Dyslexia Association, the TUC and many leading dyslexic practitioners have reported that:

- Many dyslexic employees experience disciplinary and misconduct-led approaches for problems which are disability-related.
- High levels of bullying, stress and mental health problems arise from misunderstanding and poor management of dyslexia and dyspraxia at work.

• There is limited understanding of reasonable adjustments, and what does and doesn't work, in workplace negotiations to resolve these issues.

• Whilst 80 per cent of employees asked in a recent TUC national survey were aware that some colleagues might be dyslexic, unions typically find out about related problems via disciplinaries and grievances.

• Individuals report fear of disclosure because of victimisation by the employer or bullying by workmates.

Strategic approaches to resolving these problems include the development of approaches that enable unions and their members to argue for a 'wholeorganisation' approach to dyslexia.

These should include jointly developed policies and processes around:

- assessment;
- introducing reasonable adjustments;

• recognising the difference between dyslexia-related problems – which can be addressed through RAs – and lack of capability to perform a given job – which may also be addressed but in different ways.

Two telling points emerge from the Workplace Employment Relations Study (2011 WERS: pp34–35):

• Britain's workforce is increasingly diverse and legislation has sought to help achieve equal opportunity at work. While workplace policies have changed to reflect this situation, practice on the ground has changed little since 2004. • The WERS study sought to determine whether the increasing policy focus on equality and diversity translated into practice, by asking managers what they did in terms of monitoring recruitment, selection and promotion according to different employee characteristics; and reviewing recruitment, selection and promotion procedures to identify indirect discrimination. The vast majority of workplaces took none of these actions.

Part A. Section Three. Disclosure in the workplace: a mentoring role for representatives.

Another major difficulty for representatives is the fact that many employees are anxious about revealing their dyslexia, and this frequently means it is misunderstood as lack of capacity, commitment or carelessness, and managed punitively as a capacity or misconduct issue.

Addressing the challenge of reconciling their members' legitimate fears of disclosure, whilst ensuring they benefit from the protection of the Equality Act (EA) and the benefits of RAs, remains a major challenge.

These developments should enable representatives to provide a safe space for members to discuss disclose, and make informed decisions. Discussion needs to balance the need to control and manage the process of obtaining RAs, and the other protections afforded by the EA, with many dyslexic employees' understandable reluctance to disclose their dyslexia.

Realistically, the process must be confidential to the representative and member, with no commitment to disclose. They should discuss whether there are dyslexia-related performance problems and if so what is management's position on these. Where the member is coping well, and receiving positive feedback and appraisal from managers, then disclosure is much less necessary than if they are already receiving criticism about their performance. Whilst ignoring dyslexia-related performance problems is understandable, it can also be dangerous. Without the specialist support provided by reasonable adjustments, difficulties will persist; indeed the stress caused by criticism will make them worse. This (all too frequent) scenario frequently culminates in disciplinary processes where positions have become entrenched, and a belated disclosure of dyslexia is seen by many managers as an excuse for poor performance, rather than a legitimate request for RAs.

As Margaret Malpas, Chair of the BDA puts it, "There is a potential role for union officers to act as the local expert on specific learning difficulties, and as advocate and mediator. This can produce outstanding outcomes for both the individual and the organisation, reducing conflict and substantially increasing productivity and team working".

The BDA has provided accredited training for many learning representatives, so that they can help resolve issues of performance for those with dyslexia.

In addition, new statutory safeguards protect employees who disclose dyslexia. As the Acas Guide for Employers on the Equality Act 2010:6 advises:

"The Act includes a new protection from discrimination arising from disability. This states that it is discrimination to treat a disabled person unfavourably because of something connected with their disability (e.g. a tendency to make spelling mistakes arising from dyslexia)."

This type of discrimination is unlawful where the employer or other person acting for the employer knows, or could reasonably be expected to know, that the person has a disability. Previous differences in determining whether or not this duty applies appear to have been definitively resolved by DWP v Alam (UKEAT/0242/09/LA), and Wilcox v Birmingham Cab Services (UKEAT/0293/10/DM) to the effect that:

"A party such as an employer will not be subject to the duty to make reasonable adjustments unless it either knows or ought to have known both (a) that the relevant disabled person is disabled and also (b) that that disabled person was likely in the relevant circumstances to be put at a substantial disadvantage by that disability" (adapted from Lexis/ Nexis News, 29 June 2011, accessed 12/04/13).

We believe that these developments argue for a more proactive role in supporting dyslexic members to enable representatives to:

• promote and protect the rights of all members with dyslexia, including those who have not previously felt able to disclose their disability;

- encourage effective assessment, training and working practices to remove the substantial disadvantages that many dyslexic employees face in the workplace;
- defend members subject to conduct or capacity proceedings arising from dyslexia; and
- support members who are subject to workplace harassment and bullying arising from their dyslexia.

In addition, Section 60 of the Equality Act 2010 outlines areas where an employer may reasonably require information about a disability – either at a job application or promotion interview; it may well be problematic for an employee who withholds this information if asked, but subsequently seeks to rely on the Act's other positive provisions. Representatives therefore have a vital role in helping dyslexic employees to make disclosure decisions in a supported way, and with a full knowledge of the pros and cons of each choice.

We will now consider how union representatives can assist dyslexic employees to:

• confirm whether or not they have dyslexia, and, if so;

• identify whether workplace difficulties might result from dyslexia;

• understand and use the provisions of the EA in relation to recruitment and selection; everyday working practices; performance assessment and promotion; capacity and disciplinary hearings, and the management of internal appeals and employment tribunals.

Part B. Section Four. Gaining a working knowledge of dyslexia and its major effects.

From the outset we should note that the term 'dyslexia' covers a broader range of difficulties than simply poor literacy skills. Leading expert Dr Sylvia Moody writes:

"Dyslexia is often regarded simply as a difficulty with reading and writing, but in fact literacy difficulties are no more than surface symptoms of weaknesses in short-term memory and information processing, and in perceptual, spatial and motor skills. The literacy (and numeracy) difficulties associated with these may be severe and obvious, or they may be more subtle, manifesting themselves in general slowness rather than inaccuracy in tasks involving written English. Other surface symptoms include difficulties in managing, organising and recalling information, and personal organisation and timekeeping. These difficulties are made worse when dyslexic employees are put under pressure."

These dyslexic difficulties, if left unaddressed, can lead to a wide variety of inefficiencies in the workplace. The problems most often reported by dyslexic employees include:

- formulating one's own thoughts rapidly enough to take part in discussions;
- planning, writing and structuring memos, letters and reports;
- scheduling work and meeting deadlines;
- concentrating over prolonged periods (one hour or more);
- following written and spoken instructions when under pressure of time;
- remembering and recording the content of meetings, messages and telephone numbers;
- creating, indexing and storing electronic and hard copy folders and files, and accessing the information efficiently;
- dealing with maps, charts and tables;
- finding one's way in strange (and even familiar) surroundings; and
- presenting written work or figures.

Usually these difficulties can be addressed through reasonable adjustments, and dyslexic employees will normally be entitled to such adjustments under the EA 2010. In addition, they will normally attract funding through the government's Access to Work scheme.

However, dyslexia also carries the risk of psychological and emotional injury – by the time a dyslexic person reaches adulthood they will probably have been struggling for many years with difficulties that may never have been recognised or understood. The original difficulties are likely to be bound up with many unpleasant emotions, including anger, confusion, embarrassment, anxiety and depression. Confidence and self-esteem may also be low, and research shows links between that and poor mental health, including increased levels of stress, anxiety and depression.

It is therefore vital that representatives explore issues around the possible mental health effects of dyslexia sensitively and in line with guidance in 'Representing and Supporting Members with Mental Health Problems at Work' (TUC, 2008 – see appendix), since any programme of RAs that recommends solutions for the skillsrelated aspects of a member's dyslexia, without addressing interrelated mental health issues such as depression and stress, is unlikely to be successful. These problems, though significant, are not insurmountable. Most dyslexic employees are not 'stuck', and many workplace difficulties can be overcome or reduced significantly through a combination of:

1. A diagnosis of dyslexia that outlines the employee's strengths and difficulties.

2. A workplace needs assessment (WNA) with recommendations for reasonable workplace adjustments.

3. Discussions with managers that recognise that despite their difficulties, dyslexic employees have varying patterns of strengths in important skills areas including creativity; lateral thinking; problem solving; visual and spatial thinking; and the determination and ability for the hard work necessary to overcome their difficulties.

Part B. Section Five. Identifying whether an employee is dyslexic.

Conflict between undiagnosed dyslexic employees and managers often arises over apparent poor performance or conduct that is subsequently found to be attributable to dyslexia.

An assessment of dyslexia, and the self-awareness this brings, coupled with the implementation of reasonable adjustments, can frequently solve performance problems, and help employers recognise dyslexic employees as competent workers with different patterns of strengths and weaknesses.

An adult diagnostic assessment, and a workplace needs assessment (WNA) are vital steps in this process. An action plan based on the WNA should provide the basis for a new understanding between the manager and dyslexic employee, negotiated and monitored with the assistance of the union and the HR department. Provided clear objectives and timescales are agreed, and project-managed into place, it is likely to improve performance, and foster the understanding and trust necessary for the dyslexic employee to develop more effective coping mechanisms.

The objectives of such a plan should include:

• specialist one-to-one training for the dyslexic employee in skills gaps identified through the diagnostic assessment;

• the use of specialist dyslexia support software;

• dyslexia awareness training for all stakeholders, particularly those with direct line management responsibility for dyslexic employees;

• clear and jointly produced dyslexia aware task procedures.

See sections 11 and 12 for more detail on good practice on agreeing and implementing the reasonable adjustments.

Part B. Section Six. Obtaining a diagnostic assessment.

If you suspect that dyslexia is behind a member's workplace difficulties, you should consider guiding them using the simple screening tests for dyslexia, available at www.bdadyslexia.org.uk. These can give a preliminary indication of whether or not an employee might be dyslexic. The results of screening tests are only indicative and are not a substitute for a full assessment. Since a full dyslexia assessment may be stressful (and expensive), it makes sense to do some preliminary research before asking the employer to set one up. The employer is likely to have responsibility for arranging and paying for the diagnostic assessment report, and if they don't they may be in breach of their duty to make reasonable adjustments.

If, after screening and discussion, it seems that the employee may be dyslexic, you should agree with them to raise the issue with the employer at the earliest opportunity by: • telling the employer if a screening suggests dyslexia;

• explaining its significance in terms of the EA; and

• arranging a diagnostic assessment as soon as possible.

In discussions with employers, representatives need to agree:

• Who has responsibility for arranging and paying for assessments?

• What will happen where a dispute over the need for such an assessment occurs?

• What happens in the workplace while assessments are pending?

And ensure that assessments are specified to include conclusions and recommendations that:

• give a definitive diagnosis of whether the individual is dyslexic and the nature, scope and implications of their dyslexia;

• state whether the person's dyslexia is likely to be a disability for the purposes of the EA;

• provide preliminary guidance on reasonable adjustments and related specialist training for the individual;

• address how assessments are to be used and interpreted; and

• confirm who ultimately gets to see and keep them – assessments should be treated as confidential documents, akin to medical reports. They should only be available to the employee and their representative, a senior line manager and a designated HR liaison officer, to be agreed on a case-by-case basis.

Information on ensuring the member receives an assessment by a dyslexia specialist is set out below – see the appendix for resources for contacting qualified assessors and trainers.

What to expect in a diagnostic assessment.

Members may feel nervous about having an assessment, perhaps worrying that it will reveal something dreadful. Reps should reassure them that the most likely outcome is that the difficulties they have been struggling with for a long time will be recognised and explained in a written report, and that they and their employer will be given advice on how to manage them.

If the diagnostic assessment indicates dyslexia (or another and/or related disability), this needs to be followed with a workplace needs assessment; this will look specifically at the employee's job, their dyslexia related difficulties, and detailed ways of supporting the employee through reasonable adjustments.

Part B. Section Seven. What is a workplace needs assessment (WNA)?

A WNA should:

- analyse the employee's diagnostic assessment(s);
- analyse the employee's job description/ role profile;

• identify areas in the job description likely to be affected by the difficulties identified in the diagnostic assessment through discussion with the client and their line manager;

• identify and prioritise performance problems and consider the role dyslexia and/or associated difficulties might play in causing these;

• recommend reasonable adjustments to mitigate the employee's difficulties and improve overall work performance;

• recommend specific skills training and assistive technology training programmes, and make specific recommendations for trainers who are experienced in working with people with dyslexia and associated difficulties;

 recommend other equipment and different ways of working that will have a positive impact; • provide assistance with planning and implementing the adjustments, e.g. phasing in skills training in a way which takes account of operational priorities;

• provide detailed information on resources about dyslexia and associated difficulties in the workplace, including specific HR advice;

• provide detailed information on how to make a workplace dyslexia-friendly, e.g. on ways in which training courses can be delivered in a manner appropriate to the learning styles of employees with dyslexic and associated difficulties; and

• discuss the applicability of the Equality Act 2010.

This process enables those involved to identify job and/or training requirements that are likely to place the dyslexic individual at a substantial disadvantage in relation to their peers (e.g. the requirement to read large quantities of material to tight deadlines) and to consider adjustments that will mitigate the effects of this aspect of the employee's dyslexia (e.g. specialist skills training coupled with text reading software). The assessor should then explore potential adjustments with the dyslexic employee, their manager, and a trade union representative to determine:

• the organisation's and individual's priorities, in relation to dyslexia and job performance; and

• the organisation's and individual's impressions, understanding and objectives in relation to these priorities.

Part B. Section Eight. Arranging a workplace needs assessment (WNA).

There are two ways to arrange a WNA, each of which has advantages and disadvantages.

The first way is through the government's Access to Work (A2W) scheme. The advantage of this route is that A2W will pay for the assessment. However:

• The assessment may be carried out by someone who is not a dyslexia expert.

• Even if the assessment is carried out by such an expert, it may be limited in scope to reporting only on those issues within the A2W funding regime.

• The assessor may not visit the workplace to discuss possible adjustments with relevant managers.

• The assessor may not be able to provide on-going consultancy including assistance with planning, implementing and monitoring the recommended training programme. The second way is to arrange the WNA with a private organisation or consultant who specialises in dyslexiarelated workplace needs assessments, writing comprehensive reports in a form acceptable to Access to Work, and offering long-term expert support to employees and employers. If you arrange such a WNA privately, you can still apply to Access to Work for the funding for the training or equipment that is recommended.

If you do approach A2W or a private organisation or practitioner to get a WNA, it is essential to check that they are qualified to offer this service, and that they offer the comprehensive assessment detailed above.

To this end, an assessor should, at a minimum, hold a nationally recognised qualification in dyslexia at Level 4 or above, and have significant experience of applying this expertise with adults in workplace environments. WNAs need to give clear and expert advice. Reports that state, for example, "these recommendations do not constitute reasonable adjustments", need further explanation and advice on the implications of such a statement. Although it is only a tribunal that can formally determine whether or not an employer's adjustments are reasonable in specific circumstances, the more comprehensive and expert the recommendations in a WNA, the more likely they are to meet the tests tribunals will use to make determinations on reasonableness.

Non-expert reports do not always make recommendations for a comprehensive training programme that takes account of the actual workplace situation; nor do they always advise on the training required – training that can make all the difference between a person keeping or losing a job; and training that can mark the difference between the reasonable adjustment standard being met or missed.

An additional and particular concern is where the employer and employee believe that an incomplete report sets out all available solutions – the employer will usually judge subsequent performance based on this misunderstanding.

Employees can be adversely affected by such misunderstandings. For example John, an engineer, still appeared to be performing unsatisfactorily even after the implementation of what he and his employer believed to be reasonable adjustments. This was highly damaging to his employer's perception of his subsequent performance, and damaged his mental health and employment prospects. Extensive discussions were needed to identify a more appropriate programme of (ultimately successful) adjustments, demonstrating the vital need for union representatives to ensure a WNA is comprehensive.

The subsequent reasonable adjustments report should contain timed and costed recommendations that reflect the input of stakeholders, and provide a phased and integrated delivery plan for the adjustments. This plan must have management agreement and ownership if the recommendations are to succeed. Successful projects are best coordinated by a manager, who ensures that the dyslexic employee and individuals supervising them are supported across agreed timescales with the agreed resources.

Part B. Section Nine. Agreeing a programme of adjustments.

To be effective a programme of adjustments should include:

• specialist one-to-one dyslexia skills training, designed to help the dyslexic employee work more effectively and overcome common dyslexic problems such as organisation, planning, prioritisation and time management, effective reading, literacy and business writing skills, and short-term memory problems;

• skills training programme generally phased over 30 hours, to develop generic competencies, as well as assist the development of job-specific competencies.

Training in assistive technology will assist the dyslexic employee gain proficiency in specialist hardware and software, and subsequently use specific applications to improve performance in areas including:

 speed and accuracy in reading and writing;

• planning and presenting written documents;

 recording and recalling discussions and decisions; and • organisation, planning and monitoring of work.

As Andy Fell, an assistive technology assessor, puts it:

"The use of assistive technology (AT) in the workplace relies on a full assessment of the individual's needs combined with the needs and systems of the organisation they work for. Most importantly for success, the organisation needs to provide the dyslexic employee with sufficient training in AT, and time to embed new working practices and technology into their everyday working practices."

AT consultant David Edwards summarises the most important software and equipment for dyslexic employees as follows:

• Claroread or Texthelp advanced readback and text-proofing software – this offers significant gains in accuracy and language learning and development; • Digital recorder for recording meetings and training programmes to allow the dyslexic employee to focus on grasping concepts rather than note-taking; this can also be used for orally 'jotting down' reminders and ideas as they occur, particularly during on-the-job training, thus reducing the burden on short-term memory. Recordings can be saved to a computer and more easily transcribed using Audio Note Taker software;

• Dragon dictation software, which allows the dyslexic employee to dictate directly to Word and other packages, significantly increasing speed and accuracy;

• Mindmapping software packages, such as Mindgenius or Inspiration, which help dyslexic staff visualize ideas and concepts; turn brainstorming sessions into action plans; run meetings more effectively; and create work-planning structures including Gantt charts and timelines;

• A tablet/iPad that can run much of the software above, and offers portable functionality for time-management, notetaking, reminders for deadlines and appointments and creating to-do lists.

As a former accountant who struggled in dyslexia-unfriendly workplaces, David Edwards uses many of these products to help him successfully manage his business and domestic life.

Part B. Section Ten. Making workplace policies and procedures more dyslexia-friendly.

The union representative can use the dyslexia assessments alongside the provisions of the Equality Act as they apply to dyslexic employees, to inform their work around recruitment, selection and induction; everyday working practices; performance assessment and promotion; capacity and disciplinary hearings, and the conduct of internal appeals and employment tribunals.

Theis section outlines how this might work in relation to a number of key employer policies, systems and working practices.

The importance of effective induction training for dyslexic employees.

As a general principle reasonable adjustments should be made at the earliest possible stage of an individual's employment, and be based on the needs assessment process identified above. This is important for two main reasons: Firstly, the achievement of job competence relies on the acquisition of knowledge and skills, and the supervised or assessed practice of that knowledge and skills in real or simulated situations, to enable refinement of that practice through rehearsal or structured feedback from a competent trainer or supervisor.

If a dyslexic trainee experiences barriers to acquiring knowledge or skills, such as poor reading under time pressure and poor short-term memory, they are likely to fall behind when building the knowledge and skills base necessary to participate fully in task performance and assessed practice. This will usually be because they will not have had the time necessary to read, comprehend and consolidate the information required to fully understand subsequent assessments, training and discussions. This is particularly likely in an intense induction period. It is therefore vital for adjustments to nip this potential area of substantial disadvantage in the bud by providing assistance to the new dyslexic employee to read, comprehend, remember and consolidate induction

information more quickly and securely, through, for example, specialist tuition in reading and memory techniques, and by using searchable text readback software.

Secondly, adjustments should be made at the earliest possible stage of an individual's employment in order to reduce the danger of colleagues making incorrect assumptions about the underlying reasons for perceived inefficiency among dyslexic employees.

Fitzgibbon and O'Connor (2002) pages 103–108, explain this process as one where dyslexic employees who take longer than the expected time to become proficient in remembering or applying newly taught knowledge or skills, come to be seen as incompetent, lazy or poorly motivated, and as a consequence of this attract reprimands or negative feedback. Such circumstances can create a difficult learning environment, where those who would normally be providing support become less understanding and even explicitly critical. They also reduce a dyslexic employee's learning efficiency and confidence.

The author's practice confirms this process. He has consistently found that if a trainer or supervisor explains a task on several occasions, and a dyslexic employee without coping strategies fails to pick it up, the supervisor is left with two apparently plausible explanations: lack of employee motivation, or lack of competence. Instead, the reality is often that the adjustments necessary to enable the trainee to, for example, read more effectively, take notes using a digital recorder, or work on developing coping strategies as part of a programme of dyslexia skills training, have not been made.

To break the potentially vicious cycle of 'perceived inefficiency > reprimand > poorer employee performance and learning' it is therefore vitally important that adjustments are made for dyslexic employees from the start of their employment. This largely depends on the employee having told the employer that they are dyslexic, or on the employer having reason to infer that this is the case.

issues of disclosure have been discussed in more depth above, but the author has consistently found that employees who take the initiative in trying to mitigate their dyslexic difficulties are more likely to perform effectively and avoid misunderstandings around capacity or discipline.

A special word on time management and timekeeping problems.

Nothing seems to attract more management- and peer-irritation in the workplace than the colleague who produces work late, turns up late at the start of the working day, or is late for meetings. The link between these problems and the dyslexic employee's generally poor organisation, time management, concept of time, processing speed and short-term memory is often lost in irritation at an apparent lack of application or care.

Often the employee cannot readily explain why they or their work is late, and the problem is a frequent cause of disciplinary action.

Underlying reasons are more likely to stem from the dyslexic employee:

- accepting work impossible to complete in given timescales, and lacking the assertiveness to renegotiate the timings as a reasonable adjustment;
- becoming so absorbed in a task that all track of time is lost;
- staying several hours past their finish time and taking TOIL but forgetting to communicate this in line with procedures;
- poor organisation, meaning that work or materials taken home to complete may be forgotten, or the employee has to return home to collect them, missing their usual transport.

This is not to say that dyslexic employees should be exempt from their employer's operational requirements on time management and timekeeping. However where time management is a problem, the reasons for the employee's difficulties need to be explored as part of a WNA; if they are linked to dyslexia they can be addressed through dyslexia skills training.

A special word on dyslexia and guidance developed in judicial settings.

Where employers' systems place a dyslexic employee at a substantial disadvantage when compared to nondyslexic peers, the EA requires the employer to make RAs. This duty covers the employer's workplace policies, processes and practices.

The recent development of detailed guidelines on making RAs for people with specific learning difficulties in legal or judicial settings, has been welcomed and adopted by many involved in securing a better understanding of dyslexia, and better legal outcomes for them in ETs and EATs. The guidelines also contain considerable good practice that is transferable to the workplace, particularly where workplace terminology is replaced or substituted by legal terminology.

I have adapted and illustrated some 'Crossover' adjustments and good practice is adapted from the report below. The full report is available at www.dyslexiamalvern.co.uk/goodpractice

A. In relation to capacity and disciplinary processes, and formal assessment and supervision, provision needs to be made to address the difficulties dyslexic adults may have with memory difficulties; communication difficulties; listening and speaking skills; sequencing factors;

literacy issues and attention difficulties; and the adverse effects and impressions these may cause on a panel of managers who are unaware of the link between dyslexia and these difficulties.

B. It is important to ensure that, if the dyslexic employee agrees, formal adjudication panels are supplied with a summary of any previous assessment detailing appropriate RAs. In a formal process these RAs may include:

 help with filling in forms and reading documents, and locating documents from bundles;

- not being asked to read aloud;
- being asked short, single clause questions;
- being encouraged to take time in answering questions to provide a thoughtful response;
- not being pressed with repeated questioning on the same topic;

• being allowed regular breaks during the proceedings;

• being allowed to take notes into the interview or hearing, and having the hearing recorded to mitigate the substantial disadvantage caused by a dyslexic employee's poor memory.

in disciplinary hearings, it may well be appropriate to provide a list of 'cross examination' topics or questions in advance, in order to give a dyslexic employee the opportunity to prepare their responses.

The report also advises that:

"It would be considered discriminatory for a counsel conducting cross-examination to suddenly introduce a subject or line of questioning designed to confuse or entrap a vulnerable witness" and that "There may be situations where the client's lawyer or representative will need to intervene during an examination to protect their client from unreasonable treatment, e.g. when the client is, due to their disability, becoming confused or distressed."

These adjustments have relevance for several formal workplace processes.

Part C. Section Eleven. The Equality Act 2010.

The Equality Act (EA) brings together for the first time all the legal requirements on equality that the private, public and voluntary sectors need to follow, replacing all pre-existing equality law, including the Disability Discrimination Act (1995). Most of the new law related to disability is based on previous legislation that has been streamlined.

The Act says that a person has a disability if they have a physical or mental impairment that has a long-term and substantial adverse effect on their ability to carry out normal day-to-day activities; here, 'long-term' means that the impairment has lasted or is likely to last for at least 12 months, or for the rest of the affected person's life; and 'substantial' means more than minor or trivial.

Dyslexia has consistently been held in case law and in practice to meet these definitions, and the EA confirms that it remains a disability for the purposes of the Act.

The main provisions of the EA took effect from October 2010 and cover:

Who the law protects.

• The message (or purpose) of the Equality Act is that everyone has the right to be treated fairly at work.

• It protects people from discrimination on the basis of certain characteristics; these are known as protected characteristics.

• All employers and service providers have a responsibility to treat their employees (and service users) fairly.

• For employers, the law generally still applies to workers who are temporary, do not have written contracts of employment or are recruited to other positions such as trainees, apprentices or business partners.

• The Equality Act 2010 also requires public authorities to consider equality in all that they do. However, the government has reviewed the public sector equality duty, as part of its response to the 'Red Tape Challenge on Equalities' and it is unclear what further changes to the duty will materialise.

What the law protects against.

John Mackenzie (in Brunswick, 2012, pages 181–82) explains that:

• Treating a person worse than someone else because of a protected characteristic is direct discrimination, e.g. where an employee is sacked because they are dyslexic.

• Putting in place a rule or way of doing things that has a worse impact on someone with a protected characteristic than someone without one, when this cannot be objectively justified, is indirect discrimination, e.g. requiring all employees to clear their workload each day before leaving the office.

• Treating a disabled person unfavourably because of something connected with their disability when this cannot be justified is discrimination arising from disability, e.g. sacking a dyslexic employee for reading or writing reports more slowly than their peers.

He summarises actions that 'may give rise to liability', which include:

 dismissing or causing any other detriment;

- failure to promote; and
- failure to appoint to a position.

The EA also requires employers to make reasonable adjustments for disabled people.

What are reasonable adjustments?

Chapter 6 of the Statutory Code of Practice to the EA, Equality and Human Rights Commission (EHRC) (2011) states that the duty to make reasonable adjustments is a cornerstone of the Act and requires employers to take positive steps to ensure that disabled people can access and progress in employment. It explains that this goes beyond simply avoiding treating disabled workers unfavourably, and can mean taking positive action.

The duty to make reasonable adjustments applies to employers of all sizes, and to prospective and ex-employers.

Chapter 6 of the Code of Practice states that:

"Discrimination against a disabled person occurs where an employer fails to comply with a duty to make reasonable adjustments imposed on them in relation to that disabled person."

This duty includes a requirement to take reasonable steps to:

1. "Avoid the substantial disadvantage where a provision, criterion or practice applied by or on behalf of the employer puts a disabled person at a substantial disadvantage compared to those who are not disabled..." 2. "Provide an auxiliary aid ... where a disabled person would, but for the provision of that auxiliary aid, be put at a substantial disadvantage compared to those who are not disabled."

Mackenzie (in Brunswick, 2012, page 183) makes two further points:

3. "If the employee establishes that there have been circumstances which might if unexplained amount to actionable discrimination, then the onus falls on the employer to prove that the circumstances were not actionable discrimination."

4. "There is no cap on the compensation that an employment tribunal may award a claimant under the EA."

This should be balanced against the fact that most tribunal awards are modest; consensual solutions to supporting dyslexic employees make good sense for the employee, the business and industrial relations.

What is reasonable?

The requirements for reasonable adjustments will differ from case to case.

In deciding what is reasonable, trade union representatives, managers and their dyslexia advisors will need to balance whether the RAs have the potential to significantly reduce the disadvantage faced by the dyslexic employee, alongside possibly conflicting factors such as:

- the size of the organisation;
- the nature of the job;
- the impact on health and safety;
- the practicality of the adjustments;

• cost, bearing in mind the size of the organisation, the resources it can access and the nature of its work – this is less likely to be a factor where Access to Work assistance is provided;

• the potential for serious disruption to other colleagues.

Part 2 of the EHRC Code of Practice sets out guidance on avoiding discrimination in recruitment, selection, promotion, disciplinary and other provisions and practices, and this includes useful advice on understanding workers' needs, explaining the need for RAs to colleagues (with the employee' permission) and ensuring "... that when conducting disciplinary and grievance procedures they do not discriminate against a worker because of a protected characteristic."

Part C. Section Twelve.

Case law and good practice in implementing reasonable adjustments (RAs).

We have seen above that RAs need to be identified through an agreed process – a WNA – using external expertise, and that the trade union, employee and company will all benefit from the objective opportunity this provides to address dyslexic difficulties, improve performance and enable the organisation to meet its EA responsibilities.

On this and the following pages we will now explore how dyslexic difficulties have been addressed in a cross-section of jobs and workplaces.

Case study 1. Combatting discrimination against dyslexic employees.

In the case of Francis, managers ignored the fact that perceived problems with his performance were directly attributable to dyslexia. They initially treated his clerical, spelling and filing errors as disciplinary and capacity issues. Even when Francis was identified as dyslexic, and Access to Work support secured, managers chose to ignore expert advice. However, specialist assessment had identified Francis's dyslexia as a disability. Correspondence between the union and employer showed that managers could have, but failed, to make reasonable adjustments, which would have produced performance improvements – instead they dismissed him.

The union supported Francis in taking their discriminatory action to an employment tribunal, and argued strongly that the employer had failed to meet their statutory responsibilities. This led to the company:

- withdrawing their tribunal defence of the dismissal;
- paying significant damages to Francis; and
- providing a satisfactory reference.

Equally importantly, the trade union intervention helped restore a young employee's sense of worth. Francis recognised that he was not to blame, and that many of his workplace problems would have been solved if the employer had followed good practice. He is now thriving, having moved to, and been promoted by, a more dyslexia-aware employer.

Case study 2. Favourable treatment for dyslexic workers.

In Archibald v Fife Council (2004) IRLR 651 the court stated that the duty to make adjustments may require the employer to treat a disabled person more favourably to remove the disadvantage which is attributable to the disability. In relation to disability discrimination, the EA protects disabled people, so it is not discrimination to treat a disabled person more favourably than a non-disabled person.

The Equality Act 2010 Code of Practice (Chapter 12) outlines approaches to positive action to improve equality for people who share a protected characteristic, and explains and outlines the (legally optional) measures to achieve these objectives.

Case study 3. Making workplaces dyslexia-friendly.

Anne worked in the finance section of a multinational company and was managed by an experienced and highly task-oriented supervisor. Her work was frequently criticised by her supervisor, as was her attitude and timekeeping. Before her assessment it had been suggested that she was 'slow' and disciplinary proceedings were underway. (In fact Anne's overall ability, like that of many people with dyslexia, was significantly higher than her written work suggested, and was above average.)

Anne's work required her to understand and follow several sets of detailed procedures. This is precisely the sort of work that will cause difficulties to an unrecognised dyslexic who has not received remedial training, and who is operating in a dyslexia-unaware environment. For example, Anne felt that when she had problems with her work, detailed verbal instructions were not always clear or consistent. The absence of comprehensive written instructions made her difficulties in getting guidance worse.

Avoiding interruptions to the dyslexic employee's work.

Anne's department had an 'open door' policy. Any internal client could ask for work in person at any time, whether this interrupted ongoing work or not. Such an approach is a major problem for staff with dyslexia. Where work requires sustained concentration over a significant period, it is important that employers provide an environment that allows dyslexic employees to focus and concentrate without interruption.

The impact of avoidable workplace stress.

If an organisation is dyslexia-unaware, problems between a task-oriented manager and member of staff making errors may be seen as a conduct or capacity issue. Certainly Anne's performance deteriorated after her move from a section where she had worked more effectively with a more informed and empathic supervisor.

Some dyslexic employees have 'coping strategies', that may cease to work in certain circumstances. It is usual for a dyslexic employee's work to deteriorate if, like Anne, they are placed under undue stress or frequently given work with tight deadlines.

It is important to remember that the effects of dyslexia may be evident on some occasions but not on others. Stress levels, task demands and fatigue can all affect dyslexic employees' performance more significantly than they would other employees. The stress present in difficult relations between a task-oriented supervisor and a dyslexic employee is likely to make performance problems worse. This was certainly the case with Anne. The more stressed she became as a result of her supervisor's unsympathetic attitude, the more her work deteriorated - and the more her supervisor engaged in stress-inducing disciplinary responses.

Anne's experiences illustrate how a lack of awareness by an employer can lead to mistaken perceptions of an employee's performance. Expert assessment and intervention can prevent discrimination and inappropriate disciplinary action. Consensual solutions make good sense for business and industrial relations.

The time frequently wasted on monitoring a dyslexic employee's 'poor' performance, when redirected, can bring excellent results for all involved, and Anne's experience demonstrates this.

Case study 4. Tailoring adjustments for the individual employment tribunal.

In Owen Brooking (claimant) v Essex Police Service (respondent), 2008 at Stratford, the judgement, although not binding, contains important advice for employers and representatives on how they should identify, develop and implement reasonable adjustments for dyslexic employees.

The claimant's complaints were that during the time he was a probationary police officer with Essex Police they:

1. discriminated against him on the grounds of his disability.

2. subjected him to disability-related discrimination and harassment.

3. failed to make reasonable adjustments under DDA 1995.

The tribunal found that Essex Police had subjected Mr Brooking to disabilityrelated discrimination and harassment, and failed to make reasonable adjustments. It confirmed that: 1. The respondents failed to appreciate their duty to take the lead in making reasonable adjustments, what those adjustments might involve, and that they needed to be tailored to the specific difficulties which the claimant faced – based on an individual assessment, not a generalised assumption of what dyslexia is and is not.

2. This failure meant that the claimant found himself having to defend his performance, that there was little understanding of his difficulties and that this set up a negative dynamic between him and his tutors that severely impeded his learning and performance.

3. The reasons why the few adjustments the employer had made were inadequate was because they did not deal with the substantial disadvantages suffered by the claimant throughout his training.

The tribunal drew on advice given by Brian Hagan (author of this guide) that "in order to break the potentially vicious circle of perceived inefficiency – of reprimand, poorer employee performance and learning – it is important that dyslexic employees receive adjustments from the start of their employment."

Case study 5.

Salford NHS Primary Care Trust (appellant); Mrs A F Smith (respondent). Appeal No. UKEAT/0507/10/JOJ. This case confirms that reasonable adjustments are primarily concerned with enabling the disabled person to remain in or return to work with the employer, and suggests that RAs must be based on the identification of the substantial disadvantage faced by the employee and how the recommended adjustments will mitigate it. (www.bailii.org accessed 14.04.2013)

In some cases, proposed adjustments may not be RAs at all, or may be insufficient to mitigate the subsantial disadvantage faced by the employee. "Just because an employer has made some reasonable adjustments, this does not mean that they are exempted from making further reasonable adjustments." Law at Work (LRD 2011: 156)

It follows that an expert diagnostic assessment and WNA minimises the risk of failing to identify disabilityrelated needs, and the adjustements necessary to address them.

Even where RAs have been properly identified, some employers do not engage fully with the process of implementing them.

I summarise a number of cases below, where WNAs have been produced but not implemented effectively, and outline the main reasons why. This summary of good practice, should assist representatives work with empoyers to avoid these pitfalls.

Problems in ensuring effective WNA implementation.

• Organisations frequently do not take ownership of implementing the recommended adjustments, e.g. no project manager is appointed.

• Workplace skills training is provided, but insufficient time is allowed for the dyslexic employee to develop new ways of working. The training may then be stopped as it does not produce the almost immediate results many employers seem to expect.

• While specialist training is taking place, many employers continue to treat dyslexic difficulties as subject to capacity processes.

• In addition to being legally questionable, the additional close monitoring and assessment this often involves, will place unnecessary stress on the employee.

• Managers are reluctant to make changes to a job, even though this might tap into the dyslexic employee's strengths and experience. This approach may serve as a significant reasonable adjustment, but is frequently ignored or resisted by managers.

• Dyslexia awareness training for an employee's team is not provided.

• Existing computers may not be powerful enough to run the recommended assistive software, and the technical and financial problems in fixing this remain unresolved. Redeployment as an RA is frequently overlooked or resisted without clear reasons. Ultimately placing an employee on a redeployment register – even if redeployment is only a possibility – may be a reasonable adjustment where it offers a real prospect of removing a disadvantage (See Leeds Teaching Hospital NHS Trust appellant; Mr P Foster respondent. Appeal No. UKEAT/0552/10/JO).

Case study 6. Adjustments to enable the taking of professional exams.

In Paterson v Commissioner of Police of the Metropolis (UKEAT/0635/06/LA) the EAT overturned the original and restrictive ET ruling that taking exams, in order to gain job promotion, was not a normal day-to-day activity clarifying:

1. It is almost inevitable that dyslexia, which is an impairment affecting memory or ability to concentrate, learn or understand, has an adverse effect on the ability to carry out normal day-to-day activities.

2. Completing an assessment or examination, and the act of reading and comprehension, are properly described as normal day-to-day activities.

3. Accordingly, since 'day-to-day activities' included activities relevant to participation in professional life, and, since the effect of the claimant's disability adversely affected his promotion prospects, it hindered his participation in professional life.

4. This meant that there was a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities, with the result that he was disabled.

This finding has opened up further cases where failure to make RAs for staff taking vocational exams has been found to be discriminatory (see case study 7).

Case study 7.

Adjustments to enable the taking of professional exams (2).

Dhurpa Bid was employed by KPMG from September 2008 as a trainee accountant.

As part of her training contract, she was required to pass the examinations for admission to the Institute of Chartered Accountants in England and Wales (ICAEW). She attempted two Professional Stage Knowledge examinations for the second time in November 2008, and when she failed these, she was dismissed from her employment. Previously Bid had passed paper format exams comfortably; she was shocked to find her marks dropping to 40 per cent when taken on computer.

She argued that as she was disabled she should have been allowed to take the exam again with reasonable adjustments, e.g. a paper-based exam and an extension on time. The tribunal found that her claim for unlawful discrimination on the grounds of disability – based on the respondent's failure to make reasonable adjustments – was well founded. KPMG was ordered to pay just over £45,400 including awards for injury to feelings and compensation for loss of earnings.

Source: www.accountancyage.com

Part D. Section Thirteen. Dyspraxia.

Dyspraxia, also known as Developmental Co-ordination Disorder, is a disability that impairs the organisation of movement and is associated with problems of language, perception and thought. It affects about 10 per cent of the population – two to four per cent of them seriously.

Dyspraxic and dyslexic workers experience many similar problems and the conditions often co-exist in the same person. The dyspraxic worker may also have problems with:

- co-ordination;
- manual dexterity;
- social skills;

• sensitivity to sound, light, temperature and other stimuli, which can make them very susceptible to distraction;

- presenting written work or figures;
- keyboard/data entry skills;
- inter-personal communication;
- handwriting;
- using office equipment such as photocopiers; and
- practical or manual work.

For a fuller discussion of dyspraxic difficulties and reasonable adjustments, please consult: www.dyspraxiafoundation.org.uk/ downloads/dynamo_project/Employer_ guide_to_dyspraxia_1.0.pdf

Part D. Section Fourteen. Conclusion: promoting awareness.

Though dyslexia is often described as a 'hidden disability', the reality is it affects up to 2.9 million workers in the UK today.

Managers who do not appreciate the link between dyslexia and commonly related performance problems can judge dyslexic employees adversely and unfairly. Far from being incapacity or wilful misconduct, apparent problems in performance are all too often the consequence of a dyslexia-unfriendly supervisory style in a dyslexia-unfriendly work environment.

This guide promotes a greater understanding of dyslexia issues and discrimination law, and shows how individuals can be helped to manage their dyslexia through: • reasonable adjustments to work policies and practices;

• reasonable adjustments in management and supervisory styles and methods; and

• specialist training and assistive technology.

It will help union reps and their members to:

• resolve issues before they become problems;

• negotiate with employers on an informed basis; and

• stand up to discriminatory treatment where it occurs – enabling dyslexic employees to release their potential as successful and valued members of the workforce.

Appendix.

References and other published dyslexia resources.

Adult Dyslexia – A guide for the workplace (2002), Barry Fitzgibbon and Brian O'Connor.

Dyslexia in the Workplace: An introductory guide, second edition (2010), Diana Bartlett and Sylvia Moody with Katherine Kindersley.

Dyslexia: How to survive and succeed at work (2006), Sylvia Moody.

Dyslexia and Employment: A guide for assessors, trainers and managers (2009), edited by Sylvia Moody (with chapters on reasonable adjustments and human resources perspectives by Brian Hagan).

Law at Work (2011 and 2012), Labour Research Department.

Living with Dyspraxia: A guide for adults with developmental dyspraxia, revised edition (2006), Mary Colley.

Supporting Dyslexic Adults in Higher Education and the Workplace (2012), edited by Nicola Brunswick.

Individuals and organisations providing services, advice and information on dyslexia and dyspraxia.

Andy Fell

Assistive technology trainer and consultant Email: andy@renardassociates.co.uk

Being Dyslexic

Community forum for dyslexic issues and advice www.beingdyslexic.co.uk/forums

Brian Hagan

Advice and Training Services Tel: 020 8348 7110 Email: bhdyslexia@yahoo.co.uk www.dyslexiacareers.co.uk

British Dyslexia Association

Helpline: 0845 251 9002 www.bdadyslexia.org.uk

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Dyspraxia Foundation Tel: 01462 455016 www.dyspraxiafoundation.org.uk

Katherine Kindersley Assessment and Consultancy Tel: 020 7582 6117 www.workingwithdyslexia.com

Melanie Jameson Dyslexia Consultancy Malvern Tel: 01684 572466 www.dyslexia-malvern.co.uk

Useful TUC advice.

Michelle Valentine, Representing and supporting members with mental health problems at work, TUC, 2008.

TUC, Beating Bullying at Work, 2001.

TUC, Disability and Work, third edition, 2011.

TUC, Your Rights at Work, 2012.

All TUC publications can be ordered from the TUC website at www.tuc.org.uk

Other sources of information.

British and Irish Legal Information Institute Dyslexia and disability case law www.bailii.org/form/search_advanced.html

Equality Advisory Support Service (EASS)

Information and advice about discrimination and human rights issues Helpline: 0808 800 0082 www.equalityadvisoryservice.com/app/ask

Equality Act guidance

www.equalityhumanrights.com/adviceand-guidance/new-equality-act-guidance/ glossary-of-terms

Transport Salaried Staffs Association (TSSA) neurodiversity project

Neurodiversity refers to a group of hidden disabilities: dyslexia, dyscalculia, dyspraxia, attention deficit disorders (ADD/ADHD), autistic spectrum (autism/ Asperger's syndrome). The TSSA offers training courses and resources for employees and employers. For more information contact:

Sarah Hughes Tel: 07590 183 727 Email: hughess@tssa.org.uk

Susannah Gill Tel: 07590 224 268 Email: gills@tssa.org.uk

Results of workplace research carried out by Herriot Watt University are available at: www.tssa.org.uk/en/Equalities/dyslexia/ resources-and-links.cfm

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