Text written by Brian Hagan for the TUC, summer 2004, and updated and revised in spring 2008.

The information in Section 5 is from Dr Sylvia Moody's article ‘Dyslexia in the Dock’, published in ‘Dyslexia Review’: Vol. 13, No.1.

The contribution of Dr Sylvia Moody and Mary Colley is gratefully acknowledged.
Section 1

Introduction

We originally wrote this guide in 2005, principally for trade union members and their representatives. The text has been revised in the light of the Disability Discrimination Act 2005, new case law and personal experience of good practice in both the public and private sectors. In it we aim to help foster a fuller understanding of dyslexia and its effects on employees as a basis for:

- Promoting the rights of employees with dyslexia; and

**Encouraging the effective working practices that result from putting this understanding into practice in the workplace.**

More specifically we provide advice on how to:

- Gain a working knowledge of dyslexia and its major effects;
- Identify whether an employee’s workplace difficulties might result from their dyslexia;
- Confirm whether or not they have dyslexia;
- Confirm whether they are protected by the DDA, which requires employers to make ‘reasonable adjustments’ to ensure dyslexic employees are treated no less favourably than their colleagues;
- Negotiate with employers on the basis of good practice and case law where appropriate.

In Section 5 we consider dyspraxia, a recognised medical condition that shares some of the features of dyslexia and many of the same solutions.
What is dyslexia?

The British Dyslexia Association (BDA) estimates that between four and ten per cent of the population is dyslexic, a figure supported by the Government’s own research. This means that up to 2.9 million workers may be affected.

The extension of the DDA in October 2004 to cover all employers, regardless of size, means that most dyslexic employees are now protected by law.

However, we have only recently acquired a satisfactory understanding of dyslexia.

Considerable numbers of dyslexic employees are undiagnosed, with all the practical and emotional difficulties this causes them both inside the workplace and out.

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, information processing, 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.”

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.

But many dyslexic employees have strengths in other areas including:
Creativity;
- Lateral thinking;
- Problem solving;
- Visual and spatial thinking; and
- The determination and ability for the hard work necessary to overcome many of their difficulties.

An assessment of dyslexia, and the self awareness this brings, coupled with the implementation of reasonable adjustments at work, can reveal latent strengths and abilities in dyslexic employees. In turn, employers can be helped to see dyslexic employees as competent workers with different patterns of strengths and weaknesses, rather than as problems.

It is important to recognise that most dyslexic employees are not ‘stuck’ as a result of the difficulties mentioned above.

These problems can be effectively resolved through a combination of:

- Recognition that they have dyslexia;
- Appreciating the full range of potential difficulties this entails;
- Reasonable workplace adjustments; and
- Specialist information technology and relevant training.

Most dyslexic employees are entitled to ‘reasonable workplace adjustments’ under the DDA, and may receive assistance through the Government’s Access to Work Scheme to help implement them.

**The role of the union.**

Union representatives need to be aware of dyslexia issues and be able to empathise with their members. They should focus on communicating to colleagues and employers:

1. The very real psychological and social reasons behind apparently ‘difficult’ or withdrawn behaviour.
2. That these difficulties 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:

- What kind of working environment will be difficult for someone with dyslexia;
- What kind of adjustments to negotiate with the employer to put this right; and
- How to call upon the law to protect dyslexic members from unfair treatment if consensus and negotiations fail.

Discrimination suffered by dyslexic employees can be even worse if they are from an ethnic minority. Union representatives will need to be particularly careful to identify and challenge racial stereotyping.
Section 2

Dyslexia in the workplace

Many people with dyslexia are unaware of their condition and as a result may experience anxiety, frustration and low self-esteem at work. This is particularly likely when they have not received adequate advice on how to manage their job and their best efforts are still seen as unsatisfactory by peers and supervisors.

Case study 1 below shows the potential for unions to achieve satisfactory outcomes through negotiating from an informed position.

Case study 1

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 a disciplinary and capacity issue. Even when Francis was identified as dyslexic, and Access to Work support secured, managers chose to ignore expert advice and dismiss him for incapacity.

However, specialist assessment had identified Francis’s dyslexia as a disability under the terms of the Disability Discrimination Act (DDA). Correspondence between the union and employer showed that managers could have, but failed, to make reasonable adjustments.

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 were solvable if the employer had
followed good practice. He is now thriving, having moved to, and been promoted within, a more dyslexia-aware employer.
Reasonable adjustments for dyslexic workers.

What is reasonable?

The requirements for reasonable adjustments will differ from case to case. In deciding what is reasonable, trade union representatives, managers and dyslexia consultants will need to consider:

- the size of the organisation
- the nature of the job
- the individual’s needs

And whether the adjustments:

- Are practical;
- Are excessively expensive – bearing in mind the size of the organisation, the resources it can access and the nature of its work. This is unlikely to be the case where Access to Work assistance is provided;
- Will significantly reduce the disadvantage faced by the dyslexic employee;
- Could cause serious disruption to other colleagues.

This needs to be balanced with the findings in Archibald v Fife Council (2004) IRLR 651 in which 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. This necessarily entails a measure of positive discrimination.

When obtaining advice on workplace adjustments in respect of dyslexia trade union representatives should ensure that it covers:

1. The nature of the individual’s dyslexia; this should be obtained from their diagnostic assessment and will normally outline the general features of dyslexia and an individual’s particular pattern of strengths and weaknesses.
2. The requirements of the job and its related task and competence requirements, as well as the requirements of any associated training and assessment.

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 advice should then explore potential adjustments with the dyslexic individual, their manager, and a trade union representative to determine:

- The organisation’s and individual’s priorities, in relation to dyslexia and job performance.
- The organisation’s and individual’s impressions, understanding and objectives in relation to these priorities.

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 usually co-ordinated by a human resources manager, who ensures that the dyslexic employee and individuals supervising them are supported across agreed timescales with the agreed resources.

**A typical programme of recommended adjustments.**

Typically, a recommended programme of adjustments will comprise:

- **Specialist one-to-one dyslexia skills training.** This training is designed to help the dyslexic employee work more effectively and overcome common dyslexic problems such as work planning and time management, effective reading, literacy skills including writing and spelling strategies, and short-term memory problems. Such programmes
normally last six months and are effective in promoting the skills development necessary to underpin the acquisition of more specific job-related skills.

- **Training in assistive technology and technological aids, their functions and purpose.** Training in this area will assist the dyslexic employee gain proficiency in specialist hardware and software, and subsequently use specific applications to improve performance in areas including:

  a) Speed and accuracy in reading and writing;
  
  b) Planning and presenting written documents;
  
  c) Recording and recalling discussions and decisions;
  
  d) Organisation, planning and monitoring of work.

The hardware and software recommendations would normally include items appropriate to the trainee’s needs from a range comprising:

- Texthelp advanced read back and text proofing software.
- A digital recorder or dictaphone 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.
- Dragon Gold dictation software, which allows the dyslexic employee to dictate directly to MS Word and other packages, significantly increasing speed and accuracy.
- A Personal Digital Assistant (PDA), like a Blackberry, which offers many laptop functions, but is fully portable. Functions include time management and note taking tools, and the PDA can be used to set alarmed reminders for appointments, create to-do lists, and read and edit documents.
- Software packages, such as Mindgenius or Inspiration, which facilitate the creation, planning and production of reports and presentations.
Other workplace adjustments.

Besides specific adjustments, there are other ways an organisation and colleagues can plan, allocate, monitor and evaluate work and performance in dyslexia supportive ways. They generally involve dyslexia-awareness training for those involved in managing and training the dyslexic individual in ways that address their strengths and weaknesses, and identifying simple changes to forms, systems and procedures that can help them work more effectively. The resources on page 20, allied to external professional advice, can assist in the customising of adjustments to individual work circumstances.

Reasonable adjustments and recruitment selection.

Recruitment and selection procedures must not discriminate against potential dyslexic employees by using methods which treat them less favourably than non-dyslexic candidates.

In general terms they should:

- Assess only the knowledge, skills and experience required for the effective performance of the job;
- Do so in ways which are as close to the circumstances of that job and its performance as possible;
- Ensure that the panel has an understanding of dyslexia based on the information in this booklet, and understand how dyslexia might affect a candidate’s interview performance.

For example, it would be reasonable for an employer to waive written tests if writing were not a significant part of the job applied for. Dyslexic candidates could be allowed more time to complete such tests.

Instructions for manual tests could be clearly read aloud to the candidate or audibly-recorded to avoid dyslexic candidates being penalised due to problems with short-term memory.
The importance of effective induction training for dyslexic employees.

As a general principle 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/or skills, and the supervised/assessed practice of that knowledge and/or skills in real or simulated situations, to enable refinement of that practice through rehearsal and/or structured feedback from a competent trainer/supervisor.

If a dyslexic trainee experiences barriers to acquiring knowledge and/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/ 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 pp103-108) 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.

My own practice confirms this process. I have 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.

Case study 2

Anne’s experiences illustrate how a lack of awareness by an employer can lead to mistaken perceptions of an employee’s performance. We show how expert assessment and intervention can prevent discrimination. We also identify practical measures to help the organisation and the individual.

The impact of poorly organised work processes.

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 IQ, 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.

The guidance notes to the DDA make the point that some dyslexic employees have ‘coping strategies’, which 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.

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.

Set out below are some examples of workplace adjustments which might be made for dyslexic employees:

- Allocating some ‘dyslexia-difficult’ duties to another person in exchange for tasks they are more proficient at;
- Providing appropriate training or supervision;
- Modifying instructions or reference manuals to make them easier to read or follow;
- Audibly recording important instructions;
- Offering help with prioritising and organising workloads, e.g. providing diagrams and flow charts rather than written procedures;
- Providing or modifying equipment and printed materials to make work easier (e.g. photocopying written material onto pastel coloured paper);
- Providing text-to-speech software and voice dictation systems; and
- Providing a quieter workspace for tasks requiring prolonged concentration.

**General performance difficulties and reasonable adjustments.**
By law, employers must act reasonably when responding to performance difficulties that may result from a disability. If, for example, an otherwise hardworking employee showed untypical ‘carelessness’ or other dyslexic behaviours such as those outlined above, it may be unreasonable for the employer to fail to investigate the underlying causes of such behaviour.

After a diagnostic assessment, and before reasonable adjustments have been made, discriminatory supervision like that experienced by Anne is unlikely to be considered reasonable, and is likely to conflict with the requirements of the DDA.

However, if an organisation and the affected employee are unaware of the existence or implications of dyslexia, many issues that should be subject to discussions around reasonable adjustments are likely to be perceived as misconduct or lack of capacity.

Dyslexic difficulties can lead to a wide variety of inefficiencies in the workplace. The problems most often reported by dyslexic employees include:

- Following written and spoken instructions;
- Remembering and recording telephone numbers, messages and the content of meetings;
- Filing and looking up entries in directories;
- Dealing with maps, charts and tables;
- Finding one’s way in strange (and even familiar) surroundings;
- Writing memos, letters and reports;
- Presenting written work or figures;
- Keying on a word processor or calculator;
- Formulating one’s own thoughts rapidly enough to take part in discussions;
- Keeping track of appointments and meetings;
- Scheduling work and meeting deadlines;
- Concentrating over prolonged periods (one hour or more).

Many of these difficulties can be addressed through reasonable adjustments.
Most dyslexic employees are entitled to such adjustments under the DDA, and may also receive assistance through the Government’s Access to Work Scheme.

**Negotiating solutions in the workplace.**

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

An informal ‘plan of action’ based on a new understanding between the manager and dyslexic employee, negotiated and monitored with the assistance of the union and the personnel department, may help to restore acceptable relations.

Provided clear objectives and timescales are agreed, such an approach is likely to improve performance.

The objectives of such a plan should include:

- Dyslexia awareness training for all stakeholders, particularly those with direct line management responsibility for dyslexic employees;
- Clear job responsibilities and task procedures to be drawn up by management in conjunction with trade union representatives and the dyslexic employee;
- Workflows to be organised to ensure there are no non-urgent interruptions for those engaged in detailed work;
- Specialist one-to-one training for the dyslexic employee in:
  - Effective reading and writing strategies;
  - Concentration and memory improvement techniques;
  - Planning, time management and organisational skills; and
- The use of specialist dyslexia support software.

Consensual solutions make good sense for business and industrial relations. The time frequently wasted on monitoring a dyslexic employee’s ‘poor’
Case study 3

Paul was a trainee train driver for a major national railway company. Following an assessment that showed him to be dyslexic, the company agreed to consider reasonable adjustments, and engaged a specialist trainer for advice. The trainer drew up a programme in conjunction with Paul and senior and line managers that included:

1. Specialist tuition in effective reading and writing, memory improvement techniques and exam revision;
2. Help to enable Paul to understand his learning style and patterns of strengths and weaknesses, and adapt his approach to work to incorporate these. For example, Paul found he learnt 20 pages of detailed training manual instructions through working with his tutor to break them down into manageable chunks. He then visualised these chunks as the actual activities required, and committed the sequence to memory as a ‘video’ of him doing the tasks as prescribed.
3. Adapting to driver certification processes to allow periods of rest between exercises. The material was also given in formats that Paul found less tiring to read (designed on yellow paper in 12 to 14 point Arial type).

Despite the initial misgivings of one or two managers, managerial support was consistent and sustained. Paul passed the rigorous operational and health and safety requirements first time and is now a successful mainline train driver.
Section 3

Assessing dyslexia.

A person is likely to be dyslexic (and the DDA would be likely to apply), if they are significantly hindered in daily activities such as:

- Keeping track of bills;
- Reading recipes or bus timetables;
- Reading operating and safety instructions on equipment;
- Dealing with money in shops;
- Using ticket or cash machines;
- Conducting enquiries over the telephone; and
- Organising daily life.

Support for such a finding will normally need to come from a formal diagnostic assessment. It should be supplemented by:

1. A detailed assessment of everyday difficulties. (The court takes account of these when deciding if a person should be considered disabled for the purposes of the DDA.)
2. A detailed assessment of workplace difficulties and workplace needs. (The court takes account of these in deciding on the issue of reasonable adjustments.)

Getting an assessment.

If you suspect that dyslexia is behind a member’s workplace difficulties, you should raise the issue with your employer at the earliest opportunity.

Problems may arise where an employer initially refuses to facilitate an assessment.

Jobcentre Plus (visit their website at www.jobcentreplus.gov.uk for local offices) and the Disability Rights Commission (now incorporated within the
Equality and Human Rights Commission) may be able to help you resolve the issue of accessing an assessment.

This is crucial: diagnostic assessment is a vital step in determining whether an employee is dyslexic and whether they are protected by the DDA.

The appendices at the end of this booklet give simple screening tests which can give a preliminary indication of whether or not an employee might be dyslexic.

It is important to note that the results of screening tests are only indicative and are not a substitute for a full assessment. But if an employee has ‘some difficulty’ or ‘great difficulty’ with several items on the list in Appendix 1, they may well be dyslexic and should seek a full diagnostic assessment.

Assessing dyslexia

The DDA states that there is no obligation on employers to make reasonable adjustments where they could not reasonably know of the disability. Therefore it is vital that union representatives:

- Tell the employer if a screening suggests dyslexia;
- Explain its significance in terms of the DDA; and
- Explore all avenues to getting a diagnostic assessment as soon as possible.

Representatives need to ensure that all diagnostic assessments 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 a disability for the purposes of the DDA; and
- Provide guidance on reasonable adjustments and related specialist training for the individual, to enable them to develop strategies and related skills, which may help them compensate for/overcome many of their dyslexic difficulties.
Representatives should cover the following issues in any discussion with employers:

- 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;
- How assessments are used and interpreted; and
- Who ultimately gets to see and keep them.

The Disability Rights Commission (now incorporated within the Equality and Human Rights Commission) has previously advised that the responsibility for obtaining the report should fall on the employer. An employer that refuses to do so might be in breach of their duty to make a reasonable adjustment. It may also be necessary to negotiate arrangements to safeguard the position of the worker while the assessment is pending, as it may take some months.

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.

**Getting guidance on reasonable adjustments.**

The Government’s Access to Work scheme may be able to provide funding for

- A workplace assessment; and
- The implementation of reasonable adjustments.

Information on Access to Work can be obtained from [www.jobcentreplus.gov.uk](http://www.jobcentreplus.gov.uk)
Section 4

Dyslexia and disability law.

In addition to the provisions of the DDA 1995, the DDA 2005 introduced a duty on all public bodies to promote equality of opportunity for disabled people. This means they must take account of the needs of disabled people as an integral part of their policies, practices and procedures, and not as something separate or additional.

The basic requirement for a public authority when carrying out their functions is to have due regard to do the following:

- Promote equality of opportunity between disabled people and other people;
- Eliminate discrimination that is unlawful under the DDA;
- Eliminate harassment of disabled people that is related to their disability;
- Promote positive attitudes towards disabled people;
- Encourage participation by disabled people in public life;
- Take steps to meet disabled peoples’ needs, even if this requires more favourable treatment.

In its ‘disability scheme’ every authority subject to the specific duties must set out its arrangements for gathering information in relation to recruitment, development and retention of disabled employees; and it must put these arrangements into practice.

This calls for approaches which embed dyslexia-friendly policies and practices in every aspect of an organisation’s policies. TU representatives and managers at all levels need to undertake dyslexia awareness training so that they can effectively support dyslexic employees at all stages of their employment – in particular:

- Recruitment and selection;
- Performance and appraisal; and
Training and development.

In addition, employment tribunals (ETs) and employment appeal tribunals (EATs) continue to clarify the meaning of the terms ‘disability’ and ‘reasonable adjustments’ in relation to the workplace.

For example, in Paterson v Commissioner of Police of the Metropolis (UKEAT/0635/06/LA) the original and restrictive ET ruling that taking promotion exams was not a normal day-to-day activity was overturned.

Specifically, a police officer had been found by the tribunal to be significantly disadvantaged compared with his peers when carrying out examinations for promotion. Nonetheless, the tribunal held that he was not disabled within the meaning of the DDA 1995 because exams are not ‘normal day-to-day activities’.

In so far as he did claim to be suffering substantial adverse effects on his ability to carry out what the tribunal accepted were day-to-day activities, the tribunal was not satisfied that the effects were substantial.

The claimant appealed and the EAT upheld the appeal stating that the tribunal had misdirected itself on the proper approach to determining the meaning of disability.

Additional clarifying points laid out by Elias J included:

1. It is almost inevitable that dyslexia, which is an impairment affecting memory or ability to concentrate, learn or understand (see paragraph 4(1)(g) of Schedule 1 to the DDA 1995), 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’ in section 1(1) of the Act 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 within the meaning of section 1(1).
In a second important case, Owen Brooking (Claimant) v Essex Police Service (Respondent), 2008 Stratford ET, the author provided expert witness evidence.

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

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 the DDA 1995.

The judgement was that Essex Police subjected Mr Brooking to disability-related discrimination and harassment, and failed to make reasonable adjustments.

In finding that Essex Police had failed to make reasonable adjustments and that the claimant had suffered disability-related discrimination the tribunal stated 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. The failure to implement a systematic set of reasonable adjustments from the start of the training 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 judgement quoted Brian Hagan as stating 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.
• In addition, organisations need to be aware of the potential for such misunderstandings and provide awareness training for those involved in training and supervising dyslexic employees.

The judgement went on to state that:

• If the respondent had organised to have an assessment report prepared early in the claimant’s training, or ideally in anticipation of his arrival, they would have had a set of adjustments recommended to them... and been able to implement those along with training of his tutors in how to train and assess dyslexic trainees in order to measure fairly whether they would make good police officers.

This judgement, although not binding, has major implications for employers, setting out important advice and guidance on how they should identify, develop and implement reasonable adjustments in respect of dyslexic employees.

To succeed in a claim under the DDA, an employee must:

• Establish that their dyslexia constitutes a disability within the meaning of the Act;
• Show that they have been less favourably treated for a reason relating to that disability; or
• Show that the employer failed to make reasonable adjustments to the arrangements that place the employee at a substantial disadvantage.

Is dyslexia a disability?

According to the DDA:

A person has a disability for the purposes of this Act if he has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.

The following sections show how the law is being interpreted for each of these criteria.
Physical or mental impairment.

Dyslexia is clearly recognised as a mental impairment under the DDA.

- It is included in the World Health Organisation’s International Classification of Diseases; and
- It is referred to several times in the Government’s Code of Practice on Disability Discrimination issued in 1996.

The adverse effect must be substantial.

The law states that the disability must have a ‘substantial effect’, which is one that is ‘more than minor or trivial’. In determining this, the effect of any special ‘measures... taken to treat or correct’ the impairment should be disregarded.

The question then arises: can the ‘coping strategies’ which employees with dyslexia use to mitigate the effects of their condition be regarded as ‘measures’ in this sense?

Should they be disregarded in assessing the level of impairment? Or are coping strategies a form of behaviour that a person might reasonably be expected to adopt so that the impairment ceases to have a substantial adverse effect? In this latter case, the person would not be classified as disabled.

It is important to understand that employers would be wrong to automatically assume that a person who appears to have effective coping strategies will not be considered disabled under the DDA. This is because coping strategies for dyslexia may break down when a person is under stress. Case studies 4 and 5, below, illustrate how this distinction has fared in tribunal.

Long-term effects.

This will not usually be a contentious issue for dyslexia, which is generally present from an early age even if it is not diagnosed until later in life.

Less favourable treatment and ‘reasonable adjustments’.

If an employee is, for a reason related to their disability, treated less favourably than a person to whom that reason does not apply, they have a
claim under the DDA. In other words, a dyslexic employee who is dismissed for being too slow must show that they have been treated less favourably than an employee who is not slow (not another disabled employee who is also slow).

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. Also in the case of Kenny v Hampshire Constabulary (1999) IRLR 76 the EAT stated that the statutory definition of reasonable adjustments directs employers to make adjustments to the way the job is structured and organised so as to accommodate those who cannot fit into existing arrangements.

The adjustments employers might make include:

- Altering physical features of the workplace (e.g. modifying the office layout to provide quiet space for an employee with dyslexia to do work requiring high levels of concentration);
- Offering the employee a different job or changing their duties;
- Assigning another employee to help with certain duties; or
- Offering training or other support.

Justification.

Employers cannot justify failing to make reasonable adjustments. But in some cases employers can still justify less favourable treatment under the terms of the DDA.

However, they have to be able to prove that their reason is ‘substantial’ and that it is based on the circumstances of the particular case. Tribunals then have to balance the reasonable needs of the employer against the effect of the discrimination on the employee.

Knowledge of disability.

A potential problem is that dyslexic difficulties may not be obvious. In some cases even the employee may not be aware of their condition. A dyslexic employee does not have to prove that their employer knew of the disability in order to establish discrimination.
However, an employer has no duty to make reasonable adjustments if they do not know of the disability and could not reasonably be expected to know of it.

**Case Study 4**

**Holmes vs. Bolton Metropolitan Borough Council (December 1998).**

H., who had dyslexia, worked for the council as a residential social worker. He had complained of less favourable treatment. His employers felt that, although H. had dyslexia, he was not disabled within the meaning of the Act, as there was no evidence that his difficulties were affecting his competence at work.

However, the tribunal decided it would be wrong to consider ‘normal day-to-day activities’ only in the context of H.’s job. Many ordinary, day-to-day tasks such as shopping, banking and reading simple instructions require literacy skills. Since H. had a difficulty with such tasks that was more than ‘trivial’, he was considered disabled under the Act.

**Case Study 5**

**Cook vs. Thorne House Services for Autism (February 1999).**

C. was employed as a residential social worker. Her written work was always good but this was due at least in part to the fact that she was very conscientious and often took work home.

The tribunal, in finding that she was disabled, took account of the fact that:

- Her coping mechanisms were likely to break down under stress; and
- Her employers had failed to take account of the fact that she was conscientious and took extra time and care over her work.
Section 5

Dyspraxia.

Dyspraxia, also known as Developmental Co-ordination Disorder, is a recognised medical disorder that impairs the organisation of movement. It is also 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.

Dyspraxia and dyslexia overlap and often co-exist in the same person. The pattern of difficulties experienced by a person with dyspraxia may vary widely, as with dyslexia.

Dyspraxia often overlaps with other neurodevelopmental conditions, such as Asperger’s Syndrome and Attention Deficit/Hyperactivity Disorder (ADHD).

In fact, there are very few ‘pure’ dyspraxic people. Most also have one or more of the above conditions.

Issues at work.

Some adults who have dyspraxia do not experience severe problems in the workplace and have developed their own strategies for working effectively. They are often determined, persistent, hard working and highly motivated. As with dyslexic adults, they are often creative and original thinkers as well as strategic problem solvers. However, many people with dyspraxia find it hard to achieve their true potential and need extra support at work.

Dyspraxic workers experience many of the same problems at work that dyslexic workers do. They can also have:

- Poor short-term memory;
- Difficulty with concentration;
- Problems with reading and writing; and
- Poor organisational skills.
Over and above this, they have problems with:

- Co-ordination;
- Manual dexterity; and
- Social skills.

People with dyspraxia also tend to be under- or over-sensitive to sound, light, temperature and other stimuli, which can make them very susceptible to distraction.

The particular work problems experienced by dyspraxic workers include the difficulties for dyslexic workers described in Section 3. However, workers with dyspraxia have greater difficulty with:

- Presenting written work or figures;
- Keying on a word-processor or calculator; and
- Inter-personal communication.

In addition, they have difficulty with:

- Handwriting;
- Using office equipment such as photocopiers and staplers; and
- Practical or manual work.

Their lack of social skills can cause workers with dyspraxia severe difficulty.

They have problems with speech, and may speak too loudly or softly, or have difficulty pronouncing some words. They often take things literally, or are too abrupt or direct, which can lead to conflict with work colleagues and bosses.

**Remedies and reasonable adjustments.**

The remedies and reasonable adjustments needed for dyspraxic workers are largely the same as those for dyslexic workers discussed in Section 2. In addition to these, dyspraxic workers might need:

- Help with using and modifying equipment (e.g. ergonomic keyboards, changing or slowing down the mouse);
- Clear, detailed written procedures for operating office machinery such as photocopiers and fax machines;
• Methods to reduce outside distraction, such as having their own room, partitions around their desk, being allowed to wear earphones, or being allowed to come in early or stay late;
• Social skills classes, relaxation exercises and assertiveness training;
• Understanding by colleagues and bosses that their poor social skills and lack of co-ordination are symptoms of dyspraxia.
Section 6

Promoting awareness.

Dyslexia is often described as the ‘hidden disability’, but 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 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 information 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.
Section 7

Further information.

The following organisations can provide advice and information on dyslexia and dyspraxia, including assessment and reasonable adjustments:

**Adult Dyslexia Organisation**
www.adult-dyslexia.org

**Adult Dyslexia Service**
Diagnostic Assessment
Tel: 020 8444 0851
allanb@adultdyslexiaservice.org

**British Dyslexia Association**
Offers advice and information to parents, students, adults, employers and employees.
Helpline 0845 251 9002
www.bdadyslexia.org.uk

**Dyslexia Action**
Tel: 01784 222300
www.dyslexiaaction.org.uk

**Dyslexia Advice and Training Services**
Dyslexia Consultancy, workplace adjustments and training for TU representatives and dyslexic employees.
Tel/Fax: 020 8348 7110
www.dyslexiaworks.co.uk

**Dyslexia Assessment and Consultancy**
39 Cardigan Street, Kennington
London SE11 5PF
Tel: 020 7582 6117
www.workingwithdyslexia.com
Dyslexia Assessment Service
Diagnostic Assessment
22 Wray Crescent, London N4 3LP
Tel: 020 7272 6429

Dyslexia Consultancy
6 Gilbert Road, Malvern, Worcs. WR14 3RQ
Tel: 01684 572 466
dyslexia.mj@dsl.pipex.com

Dyslexia Tuition for Adults
20a Pymmes Rd, London N11 1BY
Tel: 020 8368 3634

Dyslexia Assistive Technology
Specialist consultancy and training in assistive technology/IT for dyslexia support.
Susan Close, 2 Grafton Chambers
Church Way, London NW1 1LN
Tel: 020 7388 3807
susan.close@btopenworld.com

Dyslexia Works
Awareness training and consultancy services for dyslexia and related hidden disabilities in the workplace.
Tel. 0787 6277507
www.dyslexiaworks.co.uk

Key4Learning
The Old Village Stores, Chedworth, Cheltenham, Gloucester GL54 4AA
Tel: 01285 720 964
www.key4learning
Books

Workplace

**Dyslexia in the Workplace.**
Jargon-free guide for dyslexic workers, employers, and dyslexia professionals.

**Dyslexia in Adults: Education and Employment.**
For dyslexia professionals

**Adult Dyslexia: A Guide for the Workplace.**
G. Fitzgibbon, B. O’Connor. 2002 Wiley.
For occupational psychologists, employers and dyslexia professionals.

**Dyslexia: How to Survive and Succeed at Work.**
Practical self-help manual for dyslexic workers, and guidance for employers.

**BDA Code of Practice for Employers (Sep 2007).**
Good practice guidelines for supporting dyslexic employees in the workplace

Legal

**The Expert Witness.** Jean Graham Hall.

General interest

**The Dyslexic Adult in a Non-dyslexic World.**

**The Adult Dyslexic: Interventions and Outcomes**
David McLoughlin, Carol Leather, Patricia Stringer. 2002 John Wiley.
**Dyslexia and Stress**
Ed. Tim Miles. 2004 John Wiley.

**That’s the way I think: dyslexia and dyspraxia explained**
David Grant. 2005 David Fulton.

**Dyspraxia**

**Living with dyspraxia**
Mary Colley. 2006 Jessica Kingsley.
Appendices

Appendix 1 is a checklist of everyday activities. Appendix 2 is a workplace dyslexia checklist which complements the everyday activities list. These Appendices are included to help members and their representatives begin the process of determining whether or not they are dyslexic.

A screening test of this type does not provide conclusive evidence of dyslexia. However, it is an important first step in determining whether a member may be dyslexic, and whether difficulties in workplace performance are wholly or partially caused by dyslexia.

The tests can be completed by an individual member before discussion with their representative. They can also be completed together, before being considered alongside any apparently related workplace performance issues.

Anyone ticking several items in column 1 (great difficulty) and column 2 (some difficulty) may well be dyslexic. Follow this up with preliminary discussions with one of the organisations specialising in assessment mentioned in Section 4.

Members ticking mostly column 3 (little or no difficulty) in Appendix 1 are less likely to be dyslexic, but dyslexia should not be ruled out if several items in Appendix 2 cause difficulty.

If there is ambiguity, but several of the activities in Appendices 1 and 2 seem to cause difficulty, raise the possibility of dyslexia being behind a member’s performance difficulties with line managers and/or your human resources department. In this way, the matter can be explored before a disciplinary or capacity-based approach to performance is initiated.
Appendix 1: Everyday activities checklist.

Please indicate on the scale provided whether the following activities cause you:

**Great difficulty (2)**

**Some difficulty (1)**

**Little/no difficulty (0)**

Reading letters ..............................................2 .................1 ...... 0 .
Reading a newspaper ....................................2 .................1 ...... 0 .
Reading official documents .............................2 .................1 ...... 0 .
Reading recipes ..............................................2 .................1 ...... 0 .
Reading bus or train timetables .......................2 .................1 ...... 0 .
Using ticket or cash machines .........................2 .................1 ...... 0 .

Understanding operating or safety instructions on household gadgets .........................2 .................1 ...... 0 .

Writing letters ..............................................2 .................1 ...... 0 .
Writing a cheque ..............................................2 .................1 ...... 0 .
Filling in forms ...........................2 .................1 ......0
Making shopping lists ..................2 .................1 ......0
Dealing with money in shops ...........2 ..................1 ......0
Checking bank statements .............2 ..................1 ......0
Keeping track of outstanding bills ....2 ..................1 ......0
Explaining things clearly to others ...2 ..................1 ......0
Placing orders over the telephone ....2 ..................1 ......0
Conducting enquiries over the telephone ...2 ..................1 ......0
Following spoken instructions ........2 ..................1 ......0
Remembering telephone numbers correctly ...2 ..................1 ......0
Remembering messages ................2 ..................1 ......0
Remembering appointments ............2 ..................1 ......0
Remembering where things have been put ...2 ..................1 ......0
Concentrating for longer than an hour ...2 ..................1 ......0
Looking up telephone numbers in directories . . . 2 ................. 1 ....... 0 . .

Organising daily life . . . . . . . . . . . . . . . . . . . . . . . 2 . . . . . . . . . . . . . . . . 1 ....... 0 . .

Reading maps . . . . . . . . . . . . . . . . . . . . . . . . . . 2 . . . . . . . . . . . . . . . . 1 ....... 0 . .

Following left-right instructions . . . . . . . . . . . . . . 2 . . . . . . . . . . . . . . . . 1 ....... 0 . .

Reading signposts . . . . . . . . . . . . . . . . . . . . . . . 2 . . . . . . . . . . . . . . . . 1 ....... 0 . .

Orienting oneself in a strange place or complex environment, e.g., tube station . . . 2 ................. 1 ....... 0 . .
Appendix 2: Workplace dyslexia checklist.

Please tick the items which you feel cause difficulty.

**Reading**
Following written instructions
Following technical manuals
Quickly getting the gist of letters or reports, etc.
Recalling what you have read

**Writing**
Reversible letters, e.g., b, d
Sequencing letters (which – wihch)
Spelling
Grammar
Punctuation
Handwriting
Filling in forms
Expressing ideas clearly in writing
Writing memos or letters
Writing reports
Taking notes or Minutes

**Numerical data**
Copying numbers
Tabulating numbers
Doing arithmetical calculations

**Speech and comprehension**
Following a conversation or discussion

Contributing to a discussion

Presenting thoughts succinctly

**Memory and concentration**
Following oral instructions

Remembering telephone numbers

Remembering messages

Remembering appointments

Concentrating for long periods

**Visuo-motor skills**
Inputting data on a computer or calculator

Analysing complex visual arrays, e.g. maps, graphs

Getting your bearings in large or complex buildings

**Sequencing**
Filing

Retrieving files

Looking up entries in dictionaries or directories

**Organisation**
Planning work schedules

Meeting deadlines

Keeping papers in order

Working efficiently
Please ring any of the following words or phrases which you feel describe the emotions associated with the above difficulties:

frustrated  angry  confused  lacking in confidence  anxious

low in self-esteem  defensive  aggressive  embarrassed  withdrawn