

Physical Disability Overview

Key points

- Disability has two key elements. The first is the limitation imposed upon the individual by reason of their physical, mental or sensory impairment. This is the medical model of disability. The second is the disadvantage or difficulty which society imposes on the individual in their environment, essentially the lack of adjustment that may allow the disabled person to access the same facilities as those without disability. This is the social model of disability. The UN Convention of the Rights of People with Disabilities 2006 defines persons with disabilities as including those who have long term physical, mental, intellectual or sensory impairments which, in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.¹
- Any disadvantage that a disabled person has in society should not be reinforced by the legal system; the individual who cannot cope with the facilities and procedures of the courts or tribunals is as entitled to justice as those without this disadvantage.
- It is not simply a question of judges being polite and understanding when faced with people whose disabilities are clearly apparent. All members of the judiciary should be able to recognise disabilities when they exist, identify the implications, know what powers they have to compensate for the resulting disadvantage and understand how to use these powers without causing prejudice to other parties.
- If any of the parties, witnesses or advocates involved in court or tribunal proceedings has a disability which may impair their ability to participate, it is important that this is identified at as early a stage as possible. Steps can then be taken to ensure that any hearings take place in accessible rooms and suitable facilities are available.
- A litigant in civil or family proceedings is treated in a different manner under the court rules only in the case of legal incapacity. The procedures then ensure that a representative is appointed, compromises and settlements are approved by the court, and there is supervision of money recovered. There will be other cases, however, before courts and tribunals in which disability manifests itself as a hurdle for a litigant that requires compensatory treatment. It is those matters that are covered in this section.

In addition to this Bench Book the reader will find assistance at www.theadvocatesgateway.org which is an important resource on all aspects of dealing with disability and other vulnerabilities.

¹ Article 1. UNCRPD entered into force on 3 May 2008 and both UK and the EU are signatories to the Convention. www.un.org/disabilities

Introduction

1. The intention of *Disability* is to provide practical information that may be used when considering the needs of individuals with a wide range of disabilities and impairments, both obvious and hidden, physical and mental. The aim is to enable litigants, defendants and witnesses (and, where appropriate, advocates, jurors and others involved in the court process) with disabilities to participate fully in the process of justice. Making reasonable adjustments or accommodating the needs of disabled people is not a form of favouritism or bias towards disabled people but may be necessary to help provide a level playing field by giving disabled people the opportunity to participate in court and tribunal hearings in whatever capacity. Disabled people need to be given the opportunity to express themselves properly and, if a witness, to give their evidence to the court or tribunal. To achieve this aim each person with a disability must be assessed and treated by the judge or tribunal panel as an individual so that their specific needs can be considered and appropriate action taken. Failure to do this may result in a decision being overturned on appeal.
2. The advice in the *Equal Treatment Bench Book* as regards dealing with parties to proceedings with disabilities is important advice which every judge and justice is under a duty to take into account when dealing with such parties.
R (on the application of King) v Isleworth Crown Court [2001] All ER (D) 48 (Jan), CA
3. Any need for an adjustment to court or tribunal procedure can usually be assessed quite quickly but the judge must balance this against the need for a fair trial to ensure that justice is done to both sides.

Incidence of disability

4. The incidence of disability may be more frequent than is generally imagined and many people have more than one disability. A report by the Papworth Trust² showed that:
 - a. 10.4 million people have a long-term illness, health problem or disability – this includes 770,000 children under 16
 - b. Only 17% are born with disabilities – most are acquired later in life.
 - c. Some two million people have significant sight loss
 - d. Most impairment is invisible – less than 8% of disabled people use a wheelchair, approximately 750,000 in the UK
 - e. 1.5 million have learning difficulties – 3 in 100. About 20% are severe.
 - f. 1 in 5 adults in the UK is functionally illiterate meaning they could not, for example, use a telephone directory or internet search engine.
 - g. 1 in 200 people have diagnosed psychoses – for example schizophrenia
 - h. 1 in 6 have diagnosed neurosis – anxiety/depression.

² [Disability in the UK 2011](#)

5. It must be understood that, although in recent years mental health problems bear less stigma than they once had, there will be those who may not wish to acknowledge the problem.

Empowering disabled people

6. We now adopt a social model of disability which sees the problem as arising from the barriers constructed by society rather than in the physical or mental impairment of the individual – the so-called medical model. Thus, to the wheelchair user the problem is that the building has steps but no ramp and to the hearing-impaired person the problem is that the venue does not have the loop system. The UN Convention of the Rights of People with Disabilities 2006, which is binding on UK courts and tribunals, defines persons with disabilities as including those who have long term physical, mental, intellectual or sensory impairments which, in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.
7. ‘Care in the community’ policies mean that more people with serious disabilities encounter the justice system in one form or another and with cut-backs in public funding fewer have a solicitor or welfare rights representative to assist them. This points to an increased role for those sitting in judgement, who may need to take positive steps to ameliorate the effects of the disability. It is helpful to remember that it is the strongest case that should win, not the strongest litigant.

A general approach

8. A start is for the judge or tribunal panel to look around the court or tribunal room and consider whether everyone present can participate as required. If there is doubt, such as where a party or witness is elderly or otherwise disabled, a simple enquiry can be made directly or through an usher: ‘Are you comfortable sitting there?’ ‘Can you see/hear?’ ‘Are you warm enough?’ It should be made clear that it is acceptable for anyone present to say if a problem develops during the hearing.
9. Simply to have shown concern by asking questions will have reassured the person of whom enquiry is made that they are a full participant in the proceedings and established positive expectations that justice is to be done. It also sends the message to others present that this is not a person who may be sidelined. If a negative answer is received it may be possible to resolve the problem by taking relatively simple measures such as moving the person to a different position. When a chair is provided for a disabled person it is important to ensure that this is of a suitable height and type; the anxiety that often accompanies participation in the legal process should not be made worse by physical discomfort.
10. In his article *Equal Access to Justice for Disabled People*, District Judge Ashton highlights a positive approach to people with disabilities or impairments:
It is not sufficient to ensure that wheelchair users can gain access to the courtroom; physical disabilities come in many other forms. Defective vision, hearing impairment and speech defects may all affect an individual's ability to participate in the proceedings unless compensated for by a sympathetic approach and the use of available aids.

11. He goes on to refer specifically to the issues surrounding the obtaining of evidence from those with mental impairment who are themselves the victims of crimes, and the concern in the criminal justice system at the apparent inability to punish those who mistreat those with learning disabilities because of the problems in hearing and accepting their evidence. His words remain a touchstone:
- A simple assessment of someone's ability to take an oath in the witness box and face a confrontation in a courtroom is no longer an acceptable approach to the protection of those with such disabilities; all available evidence should be evaluated and a learning disabled witness treated with the same care as a child, an individual approach being tailored to the specific need or needs identified.*

A positive approach

12. Do not begin with any assumptions beyond those that are clearly justified by what is immediately and incontrovertibly evident. The person involved should be addressed directly and in a normal manner unless and until it is clear that some other approach should be adopted. Then enquire as to special needs rather than the nature of the disability: 'Do you need assistance to read this?' rather than 'Is your sight impaired?' Ascertain as far as possible what functions are affected so that you can decide what adjustments need to be made. If the condition is known, or disclosed do remember that within any condition there may be varying levels of impairment, so a general knowledge of the condition and its effects may be inadequate to deal with the particular individual appropriately, although it is a start.
13. People vary in their sensitivity about disclosing their impairment and those with disabilities are often reluctant to 'make a fuss about them', so any questioning needs to be sensitive. The disabled person may be embarrassed or self-conscious, yet the judiciary needs to be aware of how they are coping if we are to ensure that further steps are taken as and when required. We must ascertain this without appearing patronising.

Witnesses or Parties

14. A person's physical and mental health may influence their experience as a witness or their ability to participate as a party. Whilst discussions often focus upon learning disabilities, physical impairment and mental health problems may also make it difficult for some people to participate or give evidence. These conditions are not mutually exclusive. Physical and intellectual disabilities can be associated, such as may occur with an acquired brain injury where motor skills are also affected, or where there are known co-morbidities such as learning disability and epilepsy. Additionally physical disability may be accompanied by mental illness; for example, reactive depression. A witness who has more than one condition is likely to be especially vulnerable.

Approach to potential Disability issues

15. Enquire as to what is needed rather than the nature and extent of the impairment.
16. Talk directly to the disabled person even if there is an interpreter, carer or personal assistant and face this person if you can – with lip-reading this is particularly important.

17. Avoid disclosure of medical histories where possible.
18. Where a condition may require regular breaks to rest or use the lavatory for example, indicate how the disabled person will indicate the need for a break to avoid them appearing to need to 'ask permission' on each occasion.

Terminology

19. In recommending the terminology to be used in relation to disability, it is important to acknowledge that some Acts of Parliament, particularly older ones, use terminology that would now be considered out of date and in some cases inappropriate. Judicial office-holders will continue to work with those statutory definitions and tests until such time as the legislation is updated. Whilst legal findings must continue to be phrased within the technical definitions, this does not justify the wider use of language that may offend and judges should be encouraged to converse in appropriate terms.
20. A disability is not the same as an illness. It is a personal quality in the same way, for example, as is being tall, White, Black or short-sighted.
21. The terms impairment and disability are frequently treated as if they mean the same thing, but they do not. For example a person born with just one kidney clearly has impairment, but they have no disability from it unless that kidney is not functioning.
22. It may be necessary to distinguish these differential aspects of an illness or condition. It is suggested that a correct use of some common terms is as in paragraph 29.
23. An individual may have impairment, a condition, an illness or disorder; this may result in a disability which comprises:
 - a. The functional or practical limitation imposed upon the individual by reason of their physical, mental or sensory impairment, or a combination of those, and
 - b. The disadvantage which this imposes on an individual in their environment.
24. If the disability is of a sufficient degree the individual may be treated as legally incapacitated (or incompetent) and this may be due to:
 - a. Mental incapacity, or
 - b. Physical inability, or
 - c. Both
25. Handicap is an outmoded term and its use is to be avoided.
26. There are a variety of definitions or tests that may be used in different contexts and it may be important in a legal context to identify the appropriate one. For example in a county court claim of disability discrimination the definition is contained in the Equality Act 2010.

Use of terms

27. To use terms as labels, especially in the wrong context, is stigmatising and demeaning to the persons concerned. It also leads to assumptions that may be false, or just stereotyping.

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28. There is not, however, agreement as to all use of terminology. For example, the phrase 'person with a disability' is the choice of some organisations because it emphasises the person rather than the disability, but 'disabled person' was preferred by the Disability Rights Commission because it reflects the social model of the person who is disabled by society.
29. There are expressions and terms which should not be used as they may cause offence
- a. Avoid:
 - i. Comparisons with 'normal' and referring to 'the disabled' as if they were a distinct class;
 - ii. Referring to someone as 'handicapped' – use instead 'disabled person';
 - iii. Talking about people as if they are medical conditions: 'epileptic' or 'arthritic' – use instead 'person with epilepsy'.
 - b. Terms to avoid:
 - i. 'wheelchair bound' – use instead 'wheelchair user';
 - ii. 'suffers from' – use instead 'has' or other more neutral terminology;
 - iii. 'mental handicap' – use instead 'learning disabilities' or 'learning difficulties';
 - iv. 'mental illness' – use instead 'mental health issues' or 'mental health problem';
 - v. 'the blind' – use instead 'blind people' or 'people who are visually impaired';
 - vi. 'the deaf' – use instead 'deaf people' or 'people who are hearing impaired'.
 - c. Other Terms to use:
 - i. 'physical disability', 'sensory impairments', 'partially sighted', visually impaired
 - ii. 'deaf without speech' pre-lingually deaf, hearing impaired'.

Trial management and disability

30. Trial management is concerned with how a hearing may best be managed where a party, witness, defendant, juror or advocate has a disability which might become a consideration. It is based on common sense and common courtesy which should in any event, be applied to the management of the hearing. More detailed guidance on steps that must or can be taken is offered in the following chapters. HMCTS administration has experience and some expertise as to facilities which may be necessary and their availability; ask your venue manager.
31. The overall aim must be to ensure that no disability amounts to a handicap to the attainment of justice. The person who has difficulty in coping with the facilities and procedures of the courts is as entitled to justice as those who know how to use the legal system to their advantage. There are many potential sources of discrimination and not being heard or being misunderstood by the judge is as discriminatory as an inability to access a court or tribunal building.
32. There is a Practice Direction for Tribunals issued by the Senior President of Tribunals in November 2008. It is discussed below.

Key elements for people with disabilities

33. Likely to need more time – so a longer time estimate may be required for a hearing
34. May not be able to hear, read, be understood or fully comprehend what is taking place.
35. May be using up much of their energy to cope with the disability and therefore tire more easily.
36. The stress of attending may exacerbate symptoms
37. Some disabilities may make it impossible to attend a hearing at all.

Pre-hearing planning

38. Although those with disabilities are frequently encountered in the legal process there has historically been a tendency to treat each instance as a 'one-off' and there is no co-ordinated approach.
39. Making any special arrangements in advance will save time and, as importantly embarrassment at the hearing. There is scope in both the civil, criminal and tribunal processes to identify at an early stage whether anyone involved has special needs. The forms completed by the parties should make enquiry so that the administration know when facilities to accommodate disabilities are required and the judiciary must be alert to when special directions are needed. Advisers should be encouraged to tell the court or tribunal that a litigant or witness has particular requirements.
40. It is often easy to compensate for a disability, but in some instances special facilities or procedures are needed which require advance planning or specialist knowledge. Accessibility consultants should be available for this purpose. If in doubt as to what is required, ask the disabled person directly and in advance to indicate what may assist their participation. This will not only ensure a more just outcome but also result in more efficient use of time.

Criminal proceedings

41. In criminal cases the preliminary hearing or the plea and case management hearing is the best place to address potential problems. The 'pro-forma' form used by the court contains a dedicated 'special measures' box in which parties can identify and address such questions, giving an indication of what support would be useful. It is at this stage that the provisions of the Youth Justice and Criminal Evidence Act 1999 should be considered and appropriate directions given in anticipation (e.g. 'Special measures' directions).

Civil justice in both courts and tribunals

42. Proceedings are governed by the overriding objective of enabling the court or tribunal to deal with cases justly. The details of the overriding objective vary according to the jurisdiction but usually includes:

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- a. Ensuring that the parties are on an equal footing
 - b. Saving expense
 - c. Dealing with cases in ways which are proportionate to the issues involved, importance of the case, complexity of the issues and financial position of each party;
 - d. Ensuring that cases are dealt with expeditiously and fairly;
 - e. Allotting to cases an appropriate share of available resources.
43. The court or tribunal must seek to give effect to the overriding objective and the parties are required to help. Instead of leaving them to progress litigation, the judge now acts as 'case manager', often adopting an interventionist role. This may include encouraging the parties to co-operate, deciding how the issues can best be resolved and fixing timetables. In addition court hearings should be dealt with without the need for the parties to attend at court if possible.
44. As the intention is to ensure that the parties are on an equal footing there is much of potential benefit to people with disabilities or other disadvantages. Whilst there is no specific mention of a duty to address the personal needs of litigants and the emphasis may appear to be upon financial inequality, the overriding objective is wide enough to encompass disability issues and the judge in managing cases should take these into account.

Implications

45. The best outcome is for any special needs to be identified at the preliminary stages and for procedures to meet any difficulties or disadvantage to be in place at the commencement of the hearing. The court or tribunal staff should check with any person with a disclosed disability (or their solicitor or other representative) what is required, or whether what is being proposed is appropriate. Often attending court or a tribunal venue can impose considerable stress on a person with a disability and consideration should be given to the number of pre-trial hearings which are held and how these might be managed or limited. This may especially apply in family cases where reviews are held more frequently than in other forms of litigation. Options now available include telephone conferences or the use of video links. Consideration should be given as to whether a disabled person might access a video link from a local/community facility. HMCTS should be able to investigate on the direction of the judge.

The hearing

46. Measures which can be taken at the hearing to ensure that vulnerable litigants and witnesses are fairly heard have two main aims:
- a. To reduce the fear and trauma of attending;
 - b. To ensure that the quality of evidence is preserved as far as possible.
47. Listed in the box below are some general points. They are only broad indications owing to the need to treat each person as an individual. It is important to be aware of the impact of the proceedings generally on the person with the disability. This means looking out for signs of stress, discomfort, fatigue or lack of concentration. If possible,

though within the confines of the need to be fair to both sides and the requirements of a fair trial, action should be taken to alleviate the situation after an enquiry of the person with a disability. Support cannot be forced on people however, and it must be borne in mind that a person with a disability may refuse an offer of assistance.

Measures that can be taken at the hearing

48. Position a carer near to the disabled person
49. Have frequent breaks. Concentration may be impaired or there may be a need to eat or drink more frequently perhaps to restore blood sugar levels or take medication and then allow time for this to work. Ask if a person with physical disability needs a period of movement to relieve discomfort.
50. Ensure that those with mental health problems or learning disabilities have things explained to them slowly or more than once. They may be particularly nervous and under stress.
51. Consider the order in which evidence is heard so that they are not kept waiting longer than necessary.
52. If applicable, it may be helpful if wigs and gowns are removed.
53. Consider the layout of the room and whether this is likely to cause discomfort.
54. Permit a person with visual impairment to be accompanied by a guide dog. Remember that the dog will need a 'comfort break', water and perhaps a walk.
55. Consider the stress placed on persons with a hearing impairment of concentrating and communicating in a different environment through an interpreter, and the length of time that it is reasonable to expect a signing interpreter to work without a break, generally considered to be about 20 minutes owing to the physical nature of this form of interpretation.
56. Consider how to cope with the various types of equipment that a person may need to use in order to communicate. This may be slower and more tiring than other forms of communication.
57. Be aware of the powers to prevent inappropriate questioning, and use them where appropriate.
58. Ensure that fresh drinking water is available and the room is not too crowded or stuffy.

Adjournments

59. If a hearing before a court or tribunal needs to go part heard or be adjourned as a result of the need to make reasonable adjustments for a person with a disability, it is good practice to record that this is the reason for the extended hearing or adjournment and ensure their availability prior to the recommencement of the case.

Jurors and disability

60. There will be occasions when a disabled person is called for jury service. Guidance is provided in s.9B of the Juries Act 1974 which states that it is for the judge to determine whether or not a person should act as a juror. The presumption is that they

should so act unless the judge is of the opinion that the person will not, on account of disability, be capable of acting effectively as a juror, in which case that person should be discharged.

61. There have been many cases in which persons who are blind have served on juries. In *Re Osman [1996] 1 Cr App R 126*, it was held that a person who is profoundly deaf and unable to follow the proceedings in court, or deliberations in the jury room, without the assistance of an interpreter in sign language should be discharged from jury service pursuant to s.9B because such a person could not act effectively as a juror and it would be an incurable irregularity in the proceedings for the interpreter to retire with the jury to the jury room. The same reasoning might apply if a person called for jury service required the full-time attendance of a carer. In a case in Liverpool, a disabled person's carer was allowed to sit near to this person in the courtroom but when it came to retiring the carer remained outside the jury room and the other members of the jury attended to their colleague's needs.
62. The fundamental problem appears to be the presence of a thirteenth person in the jury room, because no evidence has ever been presented that a deaf juror is less able to assess the demeanour of a witness. Legislation may be required to overcome this obstacle. There has as yet been no challenge under the Equality Act 2010 or UN Convention on the Rights of Persons with Disabilities.

The statutory environment

63. The main statutory provisions directly bearing upon disability in the courtroom are:
 - a. the Equality Act 2010 (the EA);
 - b. the Human Rights Act 1998 (the HRA);
 - c. the Youth Justice and Criminal Evidence Act 1999.
64. See below for a more detailed description of the legislation regulating discrimination against disabled people.

The Equality Act duties: compliance by HMCTS

65. Whilst the core judicial functions are exempted administration of Courts and Tribunal venues will, as under the *Disability Discrimination Act 1995* (repealed by the *Equality Act 2010*), require compliance as to the provision of appropriate facilities, and legal action may follow failure in that regard. However it is the role of the judiciary to assist the administration to comply with its legal obligations.
66. Those issues are really outside the purview of this book, as most judicial office holders will not be concerned with the practical aspects.
67. Irrespective of any statutory obligation the ethos of this volume is that the legal process over which the judiciary has control or influence should as far as possible assist those in a position of vulnerability to access justice equally with others in society.

Equality Act Claims dealt with by the courts

68. Most civil claims are dealt with in the county courts because of the level of damages. Employment tribunals deal with the cases that arise in an employment context.
69. There has been a successful claim against HM Courts Service where a judge proceeded with a hearing after a party complained that the loop system did not work and he could not hear. Other practical examples include that it may be an unlawful act not to provide an interpreter for a deaf witness or large print or Braille if requested for a person whose sight is impaired.
70. Through these cases, judges are becoming aware of the realities of life for people with disabilities and the standards that are being set are open to critical comment in the public domain.

The Human Rights Act 1998 (the HRA)

71. The HRA has also had an impact on both the work of the courts and tribunals and the way in which they are conducted. It provides considerable support for litigants with disabilities and this is likely to produce many new arguments and challenges to the traditional ways of doing things. UK law, whenever possible, is to be interpreted in a way that is compatible with the rights contained in the European Convention on Human Rights. In addition, under s.6 of the HRA, it is unlawful for a public authority to act in a way which is incompatible with the Convention.
72. Article 14 of the Convention prohibits discrimination in the enjoyment of all other rights on any ground.
73. The right to a fair trial contained in Article 6 is likely to have the single largest impact in the area of disability and the administration of justice. It is in this context that awareness of the issues which disability may raise in the management of a trial becomes important. Proceedings have not only to be fair, but to be seen to be fair by all concerned.
74. In so far as is possible the UK law also has to read in accordance with the UN Convention of the Rights of Persons with Disabilities which aims to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

The Youth Justice and Criminal Evidence Act 1999

75. Part 11 of this Act deals with the giving of evidence or information for the purposes of criminal proceedings and makes provision for 'special measures' to be taken in respect of 'eligible witnesses' who are defined as witnesses the quality of whose evidence is likely to be diminished by reason of defined circumstances. These circumstances are:
 - a. That the witness:
 - i. Suffers from mental disorder within the meaning of the Mental Health Act 1983, or
 - ii. Otherwise has a significant impairment of intelligence and social functioning;

- b. that the witness has a physical disability or is suffering from a physical disorder.
76. The 'special measures' which may be taken include:
- a. The giving of evidence by means of a live link or by means of a video recording;
 - b. The examination of a witness through an interpreter or other person approved by the court as an 'intermediary';
 - c. the provision of such device as the court considers appropriate with a view to enabling questions or answers to be communicated to or by the witness despite any disability, disorder or other impairment which the witness has or suffers from.

Tribunals

77. The Senior President of Tribunals issued a Practice Direction in 2008³, applying to the First Tier and Upper Tribunal in respect of child, vulnerable adult and sensitive witnesses, children being those under 18, the vulnerable adult definition being that set out in the *Safeguarding Vulnerable Groups Act 2006*, and sensitive witnesses being defined as an adult witness where the quality of evidence given by the witness is likely to be diminished by reason of fear or distress on the part of the witness in connection with giving evidence in the case. A witness falling within any category will only be required to attend as a witness and give evidence at a hearing where the tribunal determines that the evidence is necessary to enable the fair hearing of the case and their welfare would not be prejudiced by doing so. The tribunal, having heard representations from the parties and others affected such as the parents of a child, must consider how to facilitate the giving of any evidence from such a witness. It may be appropriate for the tribunal to direct that the evidence should be given by telephone, video link or other means or to direct that a person be appointed for the purpose of the hearing who has the appropriate skills or experience in facilitating the giving of evidence by a child, vulnerable adult or sensitive witness.
78. It may be possible to adopt these measures in some other types of proceedings.

³ [Child, Vulnerable Adult and Sensitive Witness Practice Direction \(2008\)](#)

Physical disability

Key points

- Physical disabilities come in many forms.
- Any physical disability may affect the ability of the individual to participate in a court hearing whether as litigant, defendant, juror witness or advocate.
- The judge is responsible for the conduct of the hearing and should ensure, so far as is possible within the constraints of the law and the environment, that those with physical impairments are able to participate to the full extent required of them whilst avoiding prejudice to other parties. If environmental constraints are severely restricting participation alternatives may need to be sought; this is discussed elsewhere.

Introduction

1. Physical disability may comprise impaired mobility and dexterity, sensory impairment (poor sight or hearing) or impaired ability to communicate. Any associated pain may be aggravated by the stress of the proceedings. There are many chronic and degenerative conditions that affect in particular elderly people.

Implications for the hearing

2. The ability of an individual to participate in court or tribunal proceedings may be affected in many ways.
 - a. Impaired mobility may make it difficult to enter the building or cope in a particular hearing room.
 - b. Impaired hearing makes it difficult to identify what is going on.
 - c. Impaired vision may make it difficult to read documents or identify who is speaking.
 - d. Communication limitations may prevent others from understanding the individual.
 - e. Limited concentration spans or the need for regular medication may make regular breaks appropriate.
 - f. Some disabilities may make it impossible for a disabled person to attend at all. In extreme circumstances the Court or Tribunal may convene at their home or a hospital⁴
3. Steps should be taken at an early stage to ensure that suitable adjustments to the normal arrangements are made so as to avoid an adjournment when the impairment becomes apparent. Not all of these adjustments can be made by the administration and in some instances directions will be required from a judge. Ideally the forms used

⁴ Re B (Consent to Treatment:Capacity) 2002 EWHC 429

and enquiries made would provide a specific opportunity for parties to disclose any relevant disability at an early stage but this is not always the case.

Vulnerability of witnesses

4. Witnesses with physical disabilities will feel vulnerable in various ways.
 - a. Pain, discomfort and stress.
 - i. This may well be increased by the pressures of court or tribunal procedures and the need to concentrate for long periods.
 - b. An unfamiliar environment.
 - i. The need to adjust to the hearing environment and the public nature of the proceedings may have an adverse effect.
 - c. Fatigue.
 - i. Trying to cope with impairment in a new situation can be stressful and tiring.

Information

5. HMCTS maintains a directory of disabled facilities available in courts and hearing centres. Reference may be made to this at a court or tribunal office. The keeping of such information will vary between courts and tribunals or judicial regions; your court manager or judicial leader will be able to assist as to how it may be accessed.

Practical measures

6. When the situation is understood there are many imaginative ways in which steps may be taken to cope with a physical or sensory impairment. Examples are set out below but not all will apply to criminal trials, and care must be taken with party and party proceedings particularly in the family context that a fair trial is not compromised by the hearing being perceived to be on territory which is not neutral. Domiciliary hearings also create a Health and Safety risk, which may need assessing. In some tribunals⁵ the decision to direct a domiciliary hearing is referred to a District Tribunal Judge, who has management responsibility.

Steps that can be taken

7. Facilitation by video link may be possible
8. Transfer the case to a venue in the area where the disabled party resides or to a venue with better disabled access or arrange for it to take place other than in a court or tribunal room, perhaps the litigant's home or a nursing home.
9. Be aware of the problems for a person using a wheelchair if they are constantly required to look up.
10. Ensure that there are facilities for the hearing impaired, in particular the loop system where it may assist, or a signer in the correct sign language. BSL may not assist where

⁵ SCS where that person will be able to access health and safety advice and information as to other local facilities which may be preferable, eg a doctor's surgery.

the deaf person has not been brought up with English; even American Sign Language is different.

11. Permit a carer to be present.
12. Facilitate representation in a form that might not otherwise have been permitted.
13. Produce all documents in large print or Braille. A direction may be given at an early stage in the proceedings that any documents or communications be sent to the disabled party in a large font produced on a word-processor or after enlargement on a photocopier.
14. Allow a longer time estimate, shorter hearings or more frequent breaks.
15. Arrange for the evidence of a disabled witness to be taken prior to the hearing or by telephone or video link.
16. Introduce yourself to a person who has a visual impairment and make sure they understand the layout of the hearing room and where everyone is sitting.
17. If the person has a speech or language impairment, concentrate on what they are saying and try not to guess what they want to say. If necessary, ask them to repeat the sentence and then repeat what you understand to gain confirmation.

Place of hearing

Access

18. Clearly it is sensible to ensure that any hearing takes place at a venue to which the parties and any witnesses (or advocates) can gain access. This should not overlook, where necessary, the ability of such persons to park a vehicle and be conveyed to and enter the building. Difficult journeys and the need to stay overnight should also be taken into account, and such factors may dictate timing, or that the hearing take place in the locality of an elderly, infirm or disabled party or witness.

Facilities

19. The facility to accommodate the individual in the hearing room itself is also important and it may be necessary to reposition people in the room. A party using a wheelchair will feel marginalised if not able to see everyone in the room and will suffer prejudice if not able to reach documents and make notes.

Attendance by non-parties

20. A physically disabled person who is neither a party nor a witness may wish to attend a particular hearing, perhaps involving a member of the family or a friend, but be unable to gain access to the usual venue. If a party to the proceedings has not raised the matter with a view to transfer to an accessible venue, it may be that a direct approach to the judge should receive consideration, although the parties' views should be sought.

Carers

21. Have in mind that family carers may have difficulty finding someone else to take over the caring role. It helps if they can be given set times for the beginning and end of the hearing and, where child care is an issue, timing during the school term may be preferable.

Need to attend a hearing

22. In civil proceedings the court now controls the issues on which it requires evidence and the way that evidence is given (see Civil Procedure Rules). A statement or pleading verified by a 'statement of truth' may be treated as evidence of the facts stated if it has been duly served on the other parties. It may only be necessary for the party or witness to attend a hearing to give evidence if cross-examination is required. It follows that the court may take into account the disability or infirmity of a potential witness when deciding whether oral evidence is required from that source. See also the Senior President of Tribunals direction to Tribunals in relation to the treatment of child and vulnerable adults referred to above.

Taking evidence elsewhere

23. Where it appears necessary for the purposes of justice, the court may order the examination on oath of any person at any place in England and Wales (CPR r.34.8–34.12 or in family proceedings RSC Order 39 r.1 and CCR Order 20 r.13 as well as Rule 24.7 Family Procedure Rules 2010). This procedure, which is known as taking depositions, allows the evidence of a party or witness who is unable to attend the trial to be taken in advance and, if necessary, elsewhere. The person being examined can, if necessary, be assisted by an interpreter. The power is discretionary but an order will usually be made (and is often made by consent) where the witness:
 - a. Is too old to attend a trial;
 - b. Is so ill or infirm that there is no prospect of being able to attend the trial;
 - c. might die before the trial.
24. It follows that when a witness is too infirm to attend the hearing, arrangements may be made for that person's evidence to be taken in advance in a manner that suits the circumstances. This could be in a local court before the district judge, or in the individual's own home or a nursing home before an independent solicitor appointed for the purpose. There should be little difficulty in arranging this because there are many fee paid tribunal judges or deputy district judges who practise as solicitors throughout the country and one could be appointed for the purpose, although professional fees would have to be paid.

Communication

Facilities

25. Some hearing rooms have the loop system for hearing impaired people. Persons who have a hearing impairment may be better able to cope at a hearing in the judge's

chambers rather than a large courtroom. Background noise can exacerbate hearing problems so it may be necessary to consider changing rooms.

Time estimates

26. It is often the case that any hearing must proceed at a slower pace, or with more regular adjournments, when a person with disabilities is involved. The need for regular medication or attention to bodily functions, or shorter concentration spans, may alone dictate this. Examples of treatment may be testing blood sugar for someone with diabetes, using an inhaler in COPD or a GTN spray to combat angina. The latter two may result in some dizziness for a short period after being administered. Not only should the modified pace be recognised by all concerned during the hearing, but the advance recognition of a signal to be used by the person affected when a break is required will preserve their dignity. Longer time estimates should be allowed in advance so that sufficient time is available. A balance should be maintained because this increases costs and may deny allocation to the fast track in civil proceedings. In all cases the overriding objective will be the touchstone.

Interpreters

27. The legal system is adept in the use of foreign language interpreters, but additional consideration needs to be given when there is some other form of communication difficulty. Sign language interpreting, for example, can be very physical, and these interpreters will require regular breaks. Judges should be alert to the use of new methods of communicating through a computer. The shortage of trained interpreters and Palantypists for deaf litigants makes it necessary to book them well in advance of a hearing, and directions given if adjourning should reflect this. Useful examples and approaches appear in the Medical Glossary.
28. It is not impossible to contemplate a situation where an elderly person who was competent to give evidence could neither read an affidavit nor hear it being read, and other methods of communication should then be investigated such as whether close family members are able to understand the person and explain matters to them. See paragraph 31.

Representation

29. Parties with sensory impairments or physical disabilities who are not legally represented may need to be supported when presenting their cases. Tribunals are generally more flexible than the courts in this regard and in many there is an absolute right to be represented by any person of the party's choosing.

McKenzie friends

30. During a hearing of civil or family proceedings any person may accompany an unrepresented party as a friend to take notes, quietly make suggestions and give advice, but this does not extend to acting as an advocate. The 'friend' can be excluded if unsuitable, such as someone pursuing their own or an unsuitable agenda.
31. Where a party is elderly, disabled or inarticulate it is always open to the judge to seek assistance from any such person present in court who clearly has the confidence of

the party. This is not the same as allowing such a person to act as a representative in the proceedings; that person may be looked upon more in the light of an interpreter and where the disability or disadvantage does not fall into a recognised category it may only be a close family member who is able to assist.

Lay representatives

32. These are permitted in most tribunals. There will generally be written confirmation of the party's wish that the lay person act for them. If the party is present oral assent may be given.
33. It may be appropriate for parties who have difficulty representing themselves to be permitted to have their case conducted by a representative of their choice. This person may have no right of audience in a court, but the judge may confer such right, although only in exceptional cases in the absence of the party. In the 'small claims' track under the Civil Procedure Rules a lay representative has a right of audience in the presence of the party. The important point is to ensure that the party desires the representative to be heard and that the representative is acting in the best interests of the party – there are those who seek to pursue their own agenda.
34. For further guidance on unrepresented parties, see the section on Litigants in Person.

Glossary: Disability

Acquired brain injury

This is a non-progressive injury to the brain which is acquired after birth. Trauma is just one cause. It can result from a variety of causes such as stroke, brain tumour, infections such as meningitis or metabolic conditions such as severe hypoglycaemia (low blood sugar).

The consequences can vary enormously between individuals and range from cognitive impairment to behavioural and mood changes in addition to physical problems such as seizures, incontinence and headaches.

Cognitive effects– these affect the way a person thinks, learns and remembers. There may be problems with memory, the ability to concentrate and to pay attention to more than one task at a time, particularly when tired or under stress, speed of processing information, including understanding fast speech, difficulties in planning and problem solving and with language skills.

Emotional and behavioural effects may result in agitation, anger and irritability, lack of awareness and insight, impulsivity, depression and anxiety.

For more information, see the website for Headway, the brain injury association at www.headway.org.uk.

Attention Deficit Hyperactivity Disorder (ADHD)

The definition of ADHD (and hyperkinetic disorder) is based on maladaptively high levels of three main behaviours which are typically present from before the age of seven years and may continue into adulthood.

Inattention/distractibility difficulty focusing on tasks or listening for a sustained period of time and becoming easily distracted by external stimuli or one's own thoughts.

Impulsivity a lack of inhibition which could show itself as the need for instant gratification, blurting out inappropriate comments, interrupting excessively or having difficulty awaiting turn, together with erratic and unpredictable behaviour. Traits also include failing to foresee outcomes of one's actions and lack of forward planning.

Hyperactivity comprising excessive activity – both physical and mental.

Common characteristics also include failing to pay attention to detail, not listening when spoken to; failure to respond to feedback; having difficulty organising tasks and activities; difficulty getting started on or finishing tasks; frequently losing or forgetting things; fidgeting and moving around incessantly; often talking excessively or intruding on others.

ADHD has been called attention deficit disorder (ADD) in the past and this term is still occasionally used for those individuals where there is less hyperactivity but the term is no longer formally used.

Alzheimer's Disease

This is the most common form of dementia. The most commonly encountered symptoms of this progressive disease involve lapses of memory, difficulty in finding the correct words for everyday objects and mood swings.

In its later stages, the disease can also involve a loss of inhibitions, with individuals adopting an unsettling behaviour pattern such as becoming lost, undressing in public or making inappropriate sexual advances.

Perhaps the behaviour that is most likely to affect court or tribunal appearances is that of repetition. This may take the form of repetitive questioning, phrases or movements and other repetitive behaviour. The stress of a court or tribunal environment may produce a catastrophic reaction, when the person becomes extremely upset or distressed. The majority of individuals are over 60 years of age and may also be affected by some of the common infirmities associated with old age. A close relative or carer is likely to accompany the individual.

Autistic Spectrum Disorder (ASD)

Autistic Spectrum Disorder (ASD) is used as an umbrella term for a range of life-long neurodevelopmental disabilities and includes people with a range of diagnoses such as autism, Asperger Syndrome, and pervasive developmental disorder. Asperger syndrome is currently distinguished by an absence of specific language delay and general intellectual skills in the normal range. The number of males affected far outnumbers females.

People with autistic spectrum disorders have difficulty in three key areas:

1. Poor communication skills: including difficulty understanding instructions or retelling an incident; words and phrases may be taken literally such as "keep your ear to the ground".
2. Impaired social skills: difficulty understanding socially acceptable behaviour and taking account of the needs of others, little or no empathy, inability to 'read' body language.
3. Inflexible thinking: difficulty coping with change, over-reliance on routines difficulty following rules (except those they have adopted, which will be followed unswervingly).

One result of this way of thinking is that people with ASD are not good at creating, telling and sticking to lies. Some people with ASD have difficulty in sensory perception; this might affect their sense of touch, smell, vision, hearing, proprioception (the ability to sense the position and location and orientation and movement of the body and its parts) and vestibular (balance and body posture) sensations. The unusual behaviours seen in autism, such as aversion to textures, motor planning difficulties and self-stimulatory behaviour are due to difficulties in sensory perception. Lack of eye contact is common. More seriously, an obsessive interest may lead them into trouble.

People with Asperger Syndrome do not have the accompanying learning difficulties often associated with autism; their speech may be fluent and they may have learned to largely conceal their problems. However social interaction always remains very challenging and they live with a very high level of stress. Being slow to process spoken information, they may produce a panic reaction when pushed to respond, such as verbal or even physical abuse. Individuals with ASD will require frequent breaks and the services of a specialist

(such as a mentor trained by the National Autistic Society) to facilitate communication. Closed questions are easier to cope with than open ones but questions written and submitted in advance would be even better.

Cerebral palsy

This is defined as a persistent disorder of movement and posture, as the result of one or more non-progressive abnormalities in the brain before its growth and development are complete. It is generally caused by insufficient oxygen getting to the brain at birth but can be caused by toxins or genetic factors.

People with cerebral palsy may experience a wide spectrum of disorders of movement, posture and communication problems, as well as hearing and sight difficulties. It is frequently associated with epilepsy. In some cases, their speech cannot be readily understood and a speech and language therapist or someone familiar with the speech patterns of the individual may be needed to interpret responses. A communication aid, such as a speech synthesiser or word board, may be required.

Individuals with cerebral palsy may have had limited access to the community, particularly those with learning disabilities and severe physical disabilities, and it is important to take that into account when evidence is being given. Those with learning difficulties can become easily confused with complex questions and any simplification of proceedings is an advantage. Fatigue will affect concentration and the co-ordination of movement, so frequent breaks may be required.

Cerebral vascular accident (CVA) – commonly called a 'stroke'

A CVA is caused by a clot or haemorrhage in an area of the brain which can affect an apparently previously healthy individual in many different ways. These can include weakness or paralysis of an arm and/or leg on one side of the body, twisting of the face, loss of balance, disturbance of vision, difficulty in swallowing, disturbance of speech, difficulty in understanding and in using appropriate words, and loss of control of the bladder and/or bowels. Recovery from the effects of a stroke varies enormously between individuals.

For some individuals communication can be a great problem and can take the form of not being able to pronounce words, remember the correct word or put them in the right context or order. Individuals may also be unable to understand what is being said. Stress and fatigue can make all symptoms worse. Frequent short breaks should be taken, especially when incontinence is a problem. Some individuals require a wheelchair and others may need a carer. Carers may need to help with interpretation. The individual needs to be treated with dignity and respect despite physically embarrassing circumstances.

Chronic obstructive pulmonary disease (COPD)

COPD is common and is an umbrella term for people with chronic bronchitis, emphysema or both. It is progressive and non-reversible (unlike asthma). It is usually caused by smoking and the commonest symptoms are cough, wheeze and breathlessness.

Individuals may need to use inhalers at regular intervals to relieve discomfort, particularly if under stress. Inhalers take a little time to work and some can cause palpitations (a sensation of the heart beating fast) and slight dizziness so a short break may be needed.

Those individuals with severe symptoms or end stage COPD may use portable oxygen which is delivered through little tubes under the nostrils or via a face mask.

Diabetes

Diabetes is a condition that causes blood sugar to become too high. There are two main types of diabetes referred to as Type 1 and Type 2. Type 2 diabetes is the more common and is associated with increasing age and obesity. The mainstay of treatment is diet and exercise but tablets and eventually even insulin may be required to treat it. Type 1 diabetes tends to occur in younger people and it is associated with a lack of insulin. It is sometimes called insulin dependent diabetes as without insulin these individuals would die. The amount of medication or insulin taken will vary with each individual.

It may be necessary for the diabetic person in the court or tribunal to test their blood sugar level as frequently as every two hours. Occasionally it is difficult to achieve a perfect balance, and the blood sugar levels may fall below the normal level. The person concerned then has what is called a hypoglycaemic attack or hypo. These symptoms commonly include palpitations and profuse sweating, as well as a display of irritability. In extreme cases, the speech may become slurred and the individual may appear drunk. A hypo develops quickly and is treated by taking sugar in order to restore the blood sugar levels as fast as possible. Most people with diabetes carry some form of sugar on them for this purpose (glucose tablets, fizzy drinks or chocolate). Some carry a small bottle of gel (Glucogel) which can be squeezed into the side of the mouth and which acts immediately. If extra sugar is not taken quickly, loss of consciousness can occur and, in those circumstances an ambulance should be called immediately.

Diabetes can be a cause of long-term complications, such as visual impairment or blindness, or physical disability resulting from damage to the nerves or amputation of part of the lower limbs.

Down's syndrome

Down's syndrome is a common genetic disorder. The condition is associated with learning disabilities which range from severe to those with a 'below normal' IQ and individuals may not be able to understand court proceedings without simple explanations and, possibly, the use of diagrams. Individuals may be accompanied by a close relative or carer used to interpreting needs, as communication abilities vary widely.

Dyscalculia

Dyscalculia is an inability to understand simple number concepts and to gain basic number skills. Research indicates that this is due to a deficit in the cognitive system that deals with numerical representation. There are likely to be difficulties dealing with numbers at very elementary levels and consequently with learning number facts and procedures, telling the time and dealing with money and financial matters.

Dyscalculia may exist independently as a specific cognitive deficit, or it may co-exist with other Specific Learning Difficulties. Numerical processing is complex and the deficits of dyslexia and dyspraxia (short term memory, sequential abilities, retrieval of basic facts, language processing, speed of processing and visual spatial ability) commonly affect the acquisition of numeracy skills.

Dyslexia

Dyslexia often manifests itself as a difficulty with reading, writing and spelling. Even where literacy skills have been mastered, problems remain with skimming through or scanning over text and retaining what has been read. Spelling is likely to remain erratic.

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

Dyslexia can also be linked to a range of skills including innovative thinking, entrepreneurship, creativity and high-level visual spatial abilities.

Dyspraxia/Developmental Co-ordination Disorder

Dyspraxia is an impairment or immaturity of the organisation of movement. Associated with this may be problems of planning and executing actions. This is evident when working with language tasks as well as in practical spheres such as organisation and multi-tasking. People with dyspraxia may be slow and hesitant, poorly co-ordinated with poor posture and balance, even giving the impression that they could be drunk. They can appear anxious, easily distracted and have difficulty with social interaction and judging how to behave in company. Finding their way to an unfamiliar venue may be challenging.

There may also be problems with the following:

Speech and language: speech may be unclear, due to poor control of mouth muscles; pace and volume of speech may also be affected.

Communication: including incorrect perceptions and difficulty conveying ideas; laborious, immature and awkward handwriting.

Social skills: difficulties include judging socially acceptable behaviour, understanding others' needs, a tendency to take things literally.

Short term memory, sequencing skills: weaknesses in these areas affect organisational ability, decision making, retrieving information from the mind 'on the spot'.

Time management: poor understanding of time or the urgency of situations.

Managing change and new routines: people with dyspraxia lack the flexibility and the ability to re-organise and re-schedule tasks.

Dyspraxia also affects sensory integration, with the result that it may be difficult coping in a busy environment with too much sensory stimulation; there may be a feeling of being overwhelmed by the complexity of information and tasks that have to be processed

simultaneously. A tendency to react to all stimuli without discrimination leads to 'overload' and, in some cases, over-sensitivity to noise, touch and light.

Receiving likely topics for cross examination in advance would be helpful, together with clear directions, a contact phone number and a point of contact on arrival.

Epilepsy

Epilepsy is a tendency to have seizures (fits). There are many different types of seizure and each person will experience epilepsy in a way that is unique to them as it depends on the area of the brain affected. During a seizure some individuals may completely black out, whilst others experience a number of unusual sensations or movements with or without a state of altered consciousness. Seizures affecting the frontal lobe for example can be associated with what appears to be disinhibited inappropriate behaviours. Seizures can last for a few seconds (petit-mal or absence seizures) or a few minutes (grand-mal or tonic-clonic seizures). The former causes the individual to stop what they are doing, stare, blink or look vague before carrying on. The latter causes unconsciousness and, upon coming around, a period of drowsiness, confusion and headaches. In both cases individuals will have no recall of what has happened. Absences can occur hundreds or thousands of times a day. Medication is successful in controlling seizures in about 70% of cases but some types of epilepsies, particularly those associated with congenital defects and learning disabilities, may be refractory to treatment. Learning disabilities and epilepsy co-exist frequently.

Seizures can impair the memory of past events. Allowance may need to be made for this difficulty particularly if a recent seizure has occurred.

Stress can provoke seizures in some individuals and, therefore, the stress of a court or tribunal environment may have an adverse effect on a person with epilepsy.

Hearing Impairment

Hearing impairment or deafness is common. Action on Hearing Loss (formerly the Royal National Institute for the Deaf) estimates that there are more than 10 million people in the UK with some form of hearing loss.

The level of deafness is defined as 'mild', 'moderate', 'severe' or 'profound' and is defined by the quietest sound measured in decibels that can be heard. The quietest sounds that can be heard by people with mild deafness are 25-39dB, for people with moderate deafness it is 40-69dB. It is 70-94 dB for people who are severely deaf and more than 95dB for those who are profoundly deaf. To give you an idea of how loud everyday sounds are: an aeroplane taking off is about 140dB; a loud rock band is around 100-120dB; a motorbike about 100dB; normal conversation around 60-65 dB; and leaves rustling about 10dB.

Those people with mild deafness will find it difficult to follow speech in noisy situations. People with moderate hearing loss may need to use hearing aids. Severely or profoundly deaf people may use a combination of hearing aids, lip reading and BSL (British Sign Language).

Deafness also affects the extent to which people can use their voices particularly in those who are born with a hearing impairment or become deaf before speech is established (often referred to as pre-lingual deafness) and may result in speech which is difficult to follow. It can lead to an emotional state of social isolation. Deaf people may appear to be blunter or

more demonstrative than hearing people and demonstrative gestures should not be misinterpreted as over-theatrical or as signs of rudeness. Background noise is very stressful for a person who is hard of hearing.

Hearing rooms should be fitted with an induction loop, which should also be fitted in the reception areas. The use of sign interpreters, lipspeakers and palantypists, along with a combination of communication methods such as hearing aids should all be considered. It should be remembered that anything said in open court will need to be interpreted.

British Sign Language (BSL) is the indigenous language of people in Great Britain who were born deaf or who became deaf early in life. It has its own syntax and grammar, so do not assume that someone who uses BSL can read documents as English may not be their first language. Sign Supported English (SSE) is used by some deaf people for whom BSL is not the first language. It is not an independent language but uses English word order with BSL manual signs. Lipspeakers are trained hearing people who repeat what a speaker is saying without using their voice so that lipreaders can lipread them. They are mainly used by deafened people. Palantype is a speech-to-text system that gives a word for-word record of what is being said using a phonetic keyboard.

Heart disease

Heart disease can affect any part of the heart but predominantly affects the heart muscle, the heart valves or the blood vessels of the heart. Examples of heart disease include congenital heart disease, cardiomyopathy (a disease of the heart muscle) and coronary artery disease. Angina is the symptom of central chest pain which sometimes radiates into the arm or jaw and is caused by too little blood flowing to the heart because of a narrowing of the coronary blood vessels (also called ischaemic heart disease). A heart attack (also called a myocardial infarction) is caused by a complete blockage of one of the coronary arteries leading to the death of heart muscle). High blood pressure (hypertension) in isolation causes no symptoms unless very high but can eventually lead to heart disease. Heart failure is a term used when the heart struggles to work as an efficient pump causing symptoms of breathlessness, fatigue and ankle swelling. Activity or stressful situations can aggravate angina and shortness of breath, and individuals may need to use a GTN spray or tablets which they put under their tongue. After use a short break may be needed as it can cause palpitations and headache.

HIV and AIDS

People living with HIV (human immunodeficiency virus) often face multiple forms of discrimination as HIV is over-represented in the gay and bisexual community and amongst Black Africans. However, the majority of prosecutions for the reckless transmission of HIV have concerned heterosexual transmission. Worldwide the number of people infected with HIV exceeds 33 million.

Meaning of the terms HIV and AIDS

The terms HIV and AIDS (Acquired Immune Deficiency Syndrome) are often used synonymously. This is wrong; they do not mean the same thing.

HIV is a virus which attacks the immune system and weakens the body's ability to fight infections. AIDS is the final stage of HIV infection when the body can no longer fight certain infections and diseases such as TB or cancer.

The National AIDS Trust (nat.org.uk) found that some people including judges are not aware of the difference between HIV and AIDS and are not aware of medical developments over the last ten years which enable those who are HIV positive to lead normal lives. Some myth busters are set out below:

- An individual cannot be infected by 'AIDS'.
- There is no cure for HIV but treatment can keep the virus under control and the immune system healthy. Treatment with anti-retrovirals does not merely alleviate symptoms but it restores and maintains the immune system, suppresses the replication of HIV in the body and often enables the individual to live a long and relatively normal life. AIDS-related illness has become much less common in the UK due to advancements in HIV treatments. Anti-retrovirals can be associated with side effects such as fatigue, depression, nightmares and diarrhoea.
- HIV can now be treated with Atripla which is the first 'one pill daily' regime licensed for the treatment of HIV.
- Research shows that HIV-positive individuals on effective anti-retroviral therapy (with a suppressed viral load for six months) and without sexually transmitted infections are sexually non-infectious.
- There are common misconceptions about how HIV is passed between people. It is transmitted through infected blood, semen, vaginal fluids or breast milk.
- It cannot be passed on through kissing or touching, biting coughing or spitting and is not transmitted via toilet seats or swimming pools.

Incontinence

The inability to control natural functions or to rely on bags and pads may be suggested by fidgety behaviour, inattention and a general unease. Stress can make matters considerably worse and cause embarrassment. Arrangements could usefully be made for the individual to give an agreed signal when a break is required.

Inflammatory bowel disease

This is a term which covers Crohn's disease and ulcerative colitis which are both chronic inflammatory conditions of the bowel. Crohn's disease affects the entire gut from mouth to anus whereas ulcerative colitis just affects the large intestine. Both can cause abdominal pain, bloody diarrhoea and general ill health such as fatigue. The conditions are characterised by episodic flare ups and although effective treatment is available many people follow a chronic course culminating in surgical removal of the diseased bowel. A type of arthritis can also be associated with both types of inflammatory bowel disease. General ill-health, the frequency and urgency of bowel action and nagging abdominal pains may sometimes lead to short temper, anxiety and despondency. It would, therefore, be necessary for a pre-arranged signal to be agreed with the court or tribunal officials if an urgent trip to the toilet was necessary.

Laryngectomy

Laryngectomy is the removal of the larynx (voice box), usually as a result of cancer.

Individuals have to relearn how to speak and this process usually starts within a few days of the operation. There are three main ways of assisting with speech: a voice prosthesis or tracheo-oesophageal puncture, oesophageal speech or an electrolarynx.

It may be easier at a hearing if questions and answers are kept to a minimum and, if necessary, for writing facilities to be made available.

Mental health problems

One in four people in the course of a year have mental health problems. These often become chronic and severe and lead to considerable disability. Many of these conditions are made worse by stress. Mental health disorders cover a broad spectrum of conditions such as depression, bipolar disorder (which used to be known as manic depression), post-traumatic stress disorder, anxiety and schizophrenia. People diagnosed as having mental health problems may have feelings or behave in ways which are distressing to themselves or others. They may have hallucinations, delusions and thought disorders.

It is a myth that people with mental health problems are dangerous and violent; they are far more likely to harm themselves than other people.

The effect of going to court and tribunal could cause the individual to go blank, panic or cry. In the most extreme cases, a court appearance for certain individuals could be extremely harmful, causing them to commit suicide. Most mental health problems are likely to have an effect on giving evidence as a witness in a court or tribunal. Because of the variety of patterns of behaviour, and their impact on the veracity of the evidence, this is a situation where the judge needs to make a particularly careful assessment of the individual and how best to deal with them in giving evidence. Many people with mental health problems are reliant on a caring and stable environment for maintaining their stability and can easily be thrown off balance by medication changes or sudden distressing experiences. They are highly sensitive and need special care and protection to feel safe. Their medication may lead to embarrassing side effects (e.g. sweating or tics).

Motor neurone disease

This is a rare progressive degenerative disease affecting specialised nerve cells called the motor neurones causing the muscles to waste away. In the vast majority of cases, intellect and memory remain intact. Motor neurones control important muscle activity such as walking, speaking, breathing and swallowing. The classic symptoms of the disease in its early stages include stumbling, weakened grip, muscle cramps and a hoarse voice which can sound extremely slurred. Inappropriate or excessive laughing or crying can also occur, conditions over which the individual has no control. This is called emotional lability. The individual may also suffer with excess involuntary yawning or drooling. At an advanced stage, there will be a loss of function of the limbs and a weakness and wasting of the muscles of the trunk and neck. Eventually there is total body paralysis and significant breathing difficulties. Such a condition will lead individuals to eventual total dependence on others. Fatigue is common, especially if much effort has to be put into communication.

Multiple sclerosis (MS)

This is a disease affecting nerves in the brain and spinal cord causing problems with muscle movement, balance and vision. Thus there can be visual damage where the optical nerves are affected and movement can be restricted where parts of the brain or motor nerves are affected. MS affecting the sensory nerves can result in numbness or tingling. There are different types of MS affecting individuals in very different ways. The most common type is the relapsing-remitting type with periods when they are symptom free. Some people with this diagnosis have one short lived episode and are then symptom free whereas others with the secondary progressive type can deteriorate rapidly. Fatigue is a very common symptom.

An individual who is required to go to a court or tribunal will need frequent breaks. As the symptoms vary widely, the court or tribunal should be made aware of the individual's specific needs so that any extra aids or assistance can be organised. If not a wheelchair user, an individual may need somewhere to sit down and rest. In some cases, extreme heat can cause a relapse so the use of a fan or air conditioning in the courtroom during summer would be beneficial.

Visits to the toilet may need to be frequent and drinks of water should be available.

Myalgic Encephalomyelitis/Chronic Fatigue Syndrome

This is a relatively common illness of unknown cause, classified by the WHO as a neurological disease. It comprises a variety of symptoms including fatigue, malaise, headaches, sleep disturbances, difficulty with concentration and muscle pain. A person's symptoms may fluctuate in intensity and severity and there is also great variability in the symptoms and their severity between different individuals. It is characterised by debilitating fatigue which can be triggered by minimal activity. Those severely affected may be wheel-chair users. Many people with ME/CFS suffer with impaired concentration and short-term memory, difficulties with information processing and word retrieval, hypersensitivity to light and noise. Although people with ME may not appear unwell, travel to a tribunal or court venue will have been taxing and sitting in an ordinary chair is often uncomfortable. Limited mental stamina will also be a factor when participating in proceedings; breaks may be necessary to restore concentration.

Panic attacks and panic disorder

Everyone experiences feelings of anxiety and panic at some time during their life. It should not be forgotten that attending a court or tribunal is stressful for most people.

A panic attack is a sudden episode where the sufferer experiences intense psychological and physical symptoms. They may feel an overwhelming sense of fear and anxiety accompanied by nausea, sweating, breathlessness, trembling and palpitations or chest pain. They may feel that they are going to die. They may hyperventilate to the extent that they will lose consciousness. At least 1 person in 10 in the UK experiences occasional panic attacks which are triggered by a stressful event.

However about 1 in 100 people suffer with panic disorder and have repeated, often unprovoked panic attacks. For panic disorder to be diagnosed there must be evidence of panic attacks but not everyone who has panic attacks suffers with panic disorder.

One of the difficulties is that these attacks may last for a few minutes or, very rarely, a few hours, during which time the individual will find it difficult to concentrate and may be incoherent. The individual may be on medication or may have other methods of controlling their problem. The judge will need to discuss the issue with the individual to decide whether a break would assist the situation.

Parkinson's disease

This disease results when the brain no longer produces enough of a substance called dopamine which is necessary for movement. It does not occur only in older people; the average age of diagnosis is 56. Symptoms vary from person to person but the classic triad is tremor, especially in the hands, slowness of movement (bradykinesia) and muscle stiffness or rigidity. Fatigue, drooling, constrained handwriting and softness of voice are typical. Over half of people with Parkinson's develop depression and many develop cognitive impairment which in some is severe. Bradykinesia may cause a lack of facial expression and occasionally a person can become totally 'frozen'. Side effects of medication can include confusion and in some cases can cause problems with impulsive and compulsive behaviours. Breaks may be necessary during a courtroom or tribunal appearance.

Spina bifida and hydrocephalus

Spina bifida is a term used to describe specific congenital abnormalities affecting the spine and central nervous system. There are three different types of spina bifida: spina bifida occulta, spina bifida meningocele and spina bifida myelomeningocele. Disability associated with the different types is highly variable from none in spina bifida occulta to massive in myelomeningocele, which is the most severe. This can result in partial or total paralysis of the lower limbs accompanied by incontinence. Most people born with this type will have hydrocephalus (water on the brain). This excess fluid can cause damage to the brain and so a shunt is inserted to divert the fluid into the abdomen.

Many people born with hydrocephalus have permanent brain damage which causes: learning disabilities, impaired speech, memory problems, short attention span, problems with organisational skills, visual problems, problems with physical co-ordination and epilepsy.

The evidence of brain impairment lies in slow thought processes and delay in answering questions. Memory processes may take longer to record information, so that statements and facts have to be repeated. There may be a great eagerness to please and agree, which may lead to incorrect decisions being made.

There may be a tendency to take things absolutely literally, so that statements and questions must be clear and unambiguous. Despite a seemingly confident flow of speech, responses may not necessarily be by way of original thought. Change can provoke considerable stress for some individuals.

Spinal cord injury

Spinal cord injuries are very variable depending on whether they are complete or incomplete. Some incomplete injuries will allow almost complete recovery. Other severe spinal injuries can result in complete paralysis below the point of injury and in addition may

have medical complications such as bladder and bowel dysfunction and increased susceptibility to respiratory and heart problems.

Some people with tetraplegia may have impaired breathing and may be ventilator-dependent. They can shrug their shoulders and they have neck motion which permits the operation of specially adapted power wheelchairs and equipment such as phones and lap tops. They may use other environmental control units with mouth control (sip and puff) voice activation, chin control, head control, eyebrow control or eye blink.

Frequent complications are pressure sores and spasticity of the limbs so individuals may fidget a great deal, mainly to relieve pressure on the skin. Whilst most individuals are wheelchair users, many are independent. Prearranged signals reduce embarrassment where a break is required.

Stroke

See under *Cerebral vascular accidents* (above).

Disabilities caused by Thalidomide

The main impairments caused by Thalidomide affected the limbs. The most severe is a condition called phocomelia where the long bones of some or all of the limbs are misshapen and where the hands and feet arise almost on the trunk. Some individuals with lower limb disabilities may be wheelchair users. Some individuals have hearing or visual impairments.

Visual impairment

As many as two million people in the UK may be living with some degree of visual impairment and most cases are caused by ageing.

Visual impairment is defined as sight loss that cannot be corrected using glasses or contact lenses. There are two categories:

- Partially sighted or sight impaired.
- Severe sight impairment (blindness). A definition of blindness is when a person is so blind that they cannot do any work for which eyesight is essential.

Some people with impaired vision can see enough to read slowly and hesitantly, though they may have difficulty crossing the road.

The appropriate method of communicating with a visually impaired person in a court or tribunal room should be established at the outset. Various methods are available, including Braille, large print, audio tape, screen readers and disk. It is good practice for persons when speaking to identify themselves. On arrival at a hearing, the layout of the room should be explained. If a guide dog is accompanying the visually impaired person it must be allowed to enter the hearing room and have access to water and be allowed to have a short comfort break at regular intervals. Many people may also come with a personal assistant or support worker.

Visual stress

The term 'visual stress' describes a cluster of difficulties with reading owing to visual perceptual dysfunction. It is often described as a 'discomfort with reading'. The condition is associated with dyslexia (and, to a lesser extent, dyspraxia), migraines and epilepsy.

In its more extreme form it is marked by sensitivity to bright light caused by the glare from white paper. Words may appear to move around on the page, or become blurred and distorted.

Common symptoms also include frequently losing the place, omitting and misreading words, together with fatigue and/or headaches when reading. Treatment with coloured overlays can usually alleviate the effects to some extent. In addition the following points of good practice are helpful: use of tinted paper, adequate spacing, left justification of text, font size no less than point 12 and avoidance of capitalisation for whole words and phrases.