

# Effective Communication: The effect of Developmental Language Disorder on young people involved in the criminal justice system.

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*'Effective communication underlies the entire legal process: ensuring that everyone involved understands and is understood. Otherwise, the legal process will be impeded or derailed'.<sup>1</sup>*

**This article will provide an overview of the potential effect of Developmental Language Disorder (DLD) on children and young adults, who are in conflict with the law, emphasising the importance of effective communication in the criminal justice system (CJS). Despite the prevalence and impact of DLD on children having been studied in depth, little is known about its impact on young adults (aged 18 to 25 years). Showing that young adults have many of the same needs as children, this article outlines the detrimental impact that having DLD as a young person (YP) and being in contact with criminal justice agencies can have, with a particular focus on the Republic of Ireland, and indicates a possible way forward.**

## Why Young People?

This article seeks to outline the impact of DLD on both male and female children and young adults in the CJS, referred to collectively as 'young people' (YP). Assessing these groups collectively is in recognition of

both the scientific evidence of continued 'neurological and psycho—social development',<sup>2</sup> impacting maturation and brain development, beyond an individual's 18th birthday and the research which indicates that the pervasive language problems, experienced by children with DLD, extend into adulthood.<sup>3</sup>

Children in conflict with the law encounter a youth justice system which is often equipped with extra support and services due to their age, maturity, and irrefutable vulnerability. Upon reaching the age of maturity, young adults often lose access to appropriate support, accommodation, and interventions; often being 'overlooked because no statutory body is charged with meeting their needs — either in the criminal justice system or elsewhere'.<sup>4</sup> Young adults are gaining recognition as a unique cohort with needs that are distinct from both children and adults. This cohort often has the needs of children but is given the consideration and services of adults due to their chronological age. Continued growth as an extension of puberty is almost unanimously agreed to extend into an individual's third decade of life.<sup>5</sup>

Emerging adulthood relates to 'development for the period from late teens through twenties, with a focus on ages 18-25'.<sup>6</sup> This theory encapsulates the development, including the continuous brain development, encountered by young adults between the ages of 18 to 25 years; it is distinct from both

1. Judicial College. (2018, March 2). *Equal treatment bench book*. Judicial College. <https://www.judiciary.uk/wp-content/uploads/2018/02/equal-treatment-bench-book-february-2018-v5-02mar18.pdf>
2. Ward, J., & Spence, R. (2022). Criminal court sentencing: The case for specialist 'Young adult' courts. *British Journal of Criminology*, 10, p.2.
3. Dubois, P., St-Pierre, M., Desmarais, C., & Guay, F. (2020). Young adults with developmental language disorder: A systematic review of education, employment, and independent living outcomes. *Journal of Speech, Language, and Hearing Research*, 63(11), 3786-3800.
4. Barrow Cadbury Commission (2005). *Lost in Transition: a report of the Barrow Cadbury Commission on Young Adults and the Criminal Justice System*. London: Barrow Cadbury Trust, p.15.
5. Nelson, L. J. (2021). The theory of emerging adulthood 20 years later: A look at where it has taken us, what we know now, and where we need to go. *Emerging Adulthood* (Thousand Oaks, CA), 9(3), 179-188.
6. Arnett, J. J. (2000). Emerging adulthood: A theory of development from the late teens through the twenties. *American Psychologist*, 55, p. 469.

adolescence and young adulthood. Arnett's theory of emerging adulthood is now largely considered to be a new life stage. The theory was built around the knowledge that the average brain is not fully developed until well into the 20s.<sup>7</sup> Nelson revisited the theory in 2020 and expanded its findings drawing on advances in research made over the previous 20 years. The adolescent brain does not cease to mature at the age of 18 years but instead continues into an individual's third decade of life.<sup>8</sup> The prefrontal cortex keeps developing during young adulthood, with an increase in the production of myelin. The cortex is responsible for regulating our actions, comprehension, and problem solving, with myelin being necessary for control of impulses.<sup>9</sup> There is also evidence of the continued region-specific growth of the corpus callosum through young adulthood; the fibres which connect the two hemispheres of the brain, enabling signals to be efficiently transmitted through the brain.<sup>10</sup> With so many pivotal cerebral functions still developing during young adulthood, it must be taken into account that behaviours and responses may be reflective of the continuing development. This highly-transformative phase of brain development which extends into an individual's 20s is only beginning to be considered as such in the eyes of the law.

### What is DLD?

In 2017, recognising the lack of consensus in terms of terminology used to describe various speech, language, and communication needs (SLCN), a panel of 57 experts, led by Dorothy V.M. Bishop, utilised the Delphi method to come to a consensus on the appropriate terminology.<sup>11</sup> DLD is classified as persistent language difficulties which affect the individual's everyday functioning and have no known biomedical

aetiology. When a potentially associated condition such as autism is also present, the term 'language disorder associated with [condition]' is used. As it is not caused by other medical conditions such as hearing loss, physical impairment, autism, severe learning difficulties, or brain injuries, it is often masked by the individual or goes undiagnosed. The lack of knowledge surrounding the disorder and its inconspicuous nature often render the condition difficult to identify, potentially leaving those that are in contact with a person with DLD unaware of its presence and unable to make the necessary adjustments.

### What does DLD look like?

DLD can affect a person in numerous ways. The Irish Association of Speech and Language Therapists (IASLT) categorised the weaknesses often experienced by those with DLD as morpho-syntax (how language is used to convey meaning), vocabulary (the words used), phonology (how language sounds), and pragmatics (the context and interpretation of language).<sup>12</sup> There is no exhaustive list of the ways in which DLD may impact on expressive and receptive language skills. It may cause an individual to experience an

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unfamiliarity with vocabulary and phrasing including figurative and non-literal speech, a difficulty comprehending long passages of speech, a difficulty retaining and recalling information, a difficulty following instructions and understanding what is being asked of them, a lack of the concept of time and sequences of events, a difficulty repairing misunderstandings, and a difficulty constructing sequential narratives. These issues often result in an inappropriate attitude when communicating. Pragmatic difficulties are potentially the most deceptive. An

7. Nelson, L. J. (2021). The theory of emerging adulthood 20 years later: A look at where it has taken us, what we know now, and where we need to go. *Emerging Adulthood (Thousand Oaks, CA)*, 9(3), 179-188.

8. Giedd, J. N. (2004). Structural magnetic resonance imaging of the adolescent brain. *Annals of the New York Academy of Sciences*, 1021(1), 77-85.

9. Johnson, Sara B., Ph.D., M.P.H, Blum, Robert W., M.D., Ph.D & Giedd, J.N., M.D. (2009) Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy. *Journal of adolescent health*, 45(3), 216-221.

10. Blakemore, S. & Choudhury, S. (2006) Development of the adolescent brain: implications for executive function and social cognition. *Journal of child psychology and psychiatry*, 47(3-4), 296-312.

11. Bishop, D. V. M., Snowling, M. J., Thompson, P. A., Greenhalgh, T., Adams, C., Archibald, L., Baird, G., Bauer, A., Bellair, J., Boyle, C., Brownlie, E., Carter, G., Clark, B., Clegg, J., Cohen, N., Conti Ramsden, G., Dockrell, J., Dunn, J., Ebbels, S., . . . and the CATALISE-2 consortium. (2017). Phase 2 of CATALISE: A multinational and multidisciplinary delphi consensus study of problems with language development: Terminology. *Journal of Child Psychology and Psychiatry*, 58(10), 1068-1080.

12. Irish Association of Speech and Language Therapists (IASLT) (2017), *Supporting Children with Developmental Language Disorder in Ireland*. <https://www.iaslt.ie/documents/public-information/>

individual may develop their expressive and receptive language skills over time but still struggle with using their language skills in an appropriate way according to the social setting they find themselves in. Additionally, pragmatic deficits can become exacerbated when the person is in 'high stress, unfamiliar, or socially complicated situations'.<sup>13</sup>

### How Prevalent is DLD?

Estimates of the prevalence of DLD in the general population range from 6 per cent to 12 per cent.<sup>14</sup> The IASLT estimate that there are 70,000 children in the Republic of Ireland with DLD.<sup>15</sup> There is a growing body of literature which evidences the disproportionate number of YP who come into conflict with the CJS and have a DLD, whether diagnosed officially or displaying indicators of the presence of the disorder. Communication issues were first identified as being highly prevalent among high-risk adolescents by Cozad and Rousey; of the 300 boys and girls that were tested, 58 per cent showed evidence of a speech disorder.<sup>16</sup> Research since then has consistently identified 'young offenders as a population that is high-risk for clinically significant, yet unidentified language impairments' such as DLD.<sup>17</sup> Winstanley et al. published the first study on the relationship between identified DLD and offending in a UK context in 2018, finding that the high instance of language difficulties experienced by young adults in the CJS have gone unrecognised and, therefore, unsupported.<sup>18</sup> Although there is no consensus, due to methodological limitations, on the prevalence of DLD among young offenders, with estimates ranging from 50 per cent to 87 per cent, even the lower bound contrasts starkly

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with the 6 per cent to 12 per cent of the general population who are affected.

Winstanley et al. found that DLD was a powerful predictor of recidivism, above and beyond other known risk factors; young offenders with DLD were 'at least twice as likely to reoffend as their peers without a DLD'.<sup>19</sup> The 2021 study sampled 145 YP from five local community youth offending services in the Northwest of England, 112 of whom were male. Adversity scores for each YP were constructed from available youth justice records which included data on standardised scores of language ability (The Wechsler Abbreviated Scaler of Intelligence Performance subscale) and IQ (Clinical Evaluation of Language Fundamentals). 60 per cent of the sample were deemed to have a DLD. A survival analysis was then conducted to establish the differences between the sampled YP with and without DLD. 46 per cent of the sample reoffended within one year, the mean time to next offence was 33 weeks. The cumulative incidence of reoffending within one year of the YP's court date varied by cohort; 62 per cent incidence (53) among those with a DLD and 25 per cent incidence (14) for those without a DLD. This recidivism measure was elected as it was deemed to be a more robust measure than arrest, and the data could be reliably collected. No significant gender difference was detected.

### Does DLD Co-occur with Certain Behaviour?

Özcebe et al. conducted a comparative analysis of 68 Turkish children with and without DLD and found that children with DLD have significantly higher scores for various social, emotional, and behavioural (SEB) issues, including aggressive behaviours. The article

13. LaVigne, M. & Van Rybroek, G.J. (2011). Breakdown in the Language Zone: The Prevalence of Language Impairments among Juvenile and Adult Offenders and Why it Matters. *UC Davis Journal of Juvenile Law and Policy*, 15, p.59.
14. Chow, J. C., Wallace, E. S., Senter, R., Kumm, S., & Mason, C. Q. (2022). A systematic review and meta-analysis of the language skills of youth offenders. *Journal of Speech, Language, and Hearing Research*, 65(3), 1166-1182.
15. Irish Association of Speech and Language Therapists (IASLT) (2017). *Supporting Children with Developmental Language Disorder in Ireland*, Dublin: IASLT. <https://www.iaslt.ie/documents/public-information/>
16. Cozad, R., & Rousey, C. (1966). Hearing and speech disorders among delinquent children. *Corrective Psychiatry & Journal of Social Therapy*, 12(3), 250-255.
17. Snow, P. C., Sanger, D. D., Caire, L. M., Eadie, P. A., & Dinslage, T. (2015). Improving communication outcomes for young offenders: A proposed response to intervention framework: Improving communication outcomes for young offenders using an RTI framework. *International Journal of Language & Communication Disorders*, 50(1), p.2.
18. Winstanley, M., Webb, R. T., & Conti Ramsden, G. (2018). More or less likely to offend? Young adults with a history of identified developmental language disorders. *International Journal of Language & Communication Disorders*, 53(2), 256-270.
19. Winstanley, M., Webb, R.T. & Conti Ramsden, G. (2021). Developmental language disorders and risk of recidivism among young offenders. *Journal of Child Psychology and Psychiatry*, 62(4), p. 396.

offers three potential explanations for the co-occurrence: language difficulties may be a risk factor for behavioural problems, behavioural problems may interfere with the development and acquisition of language abilities, and the association between behaviour issues and language difficulties may stem from shared aetiologies or co-occurring risk factors.<sup>20</sup> In 2021, Goh et al. conducted a study which investigates the relationship between SEB difficulties and language ability. The study found the relationship to be stronger among those with lower language abilities and acknowledged that the co-occurrence between clinical language disorders, such as DLD, and SEB difficulties is amplified. Furthermore, the study found that children with DLD have higher rates of behavioural and emotional disorders later in life.<sup>21</sup> Chow also found that language skills were a predictor of emotional, behavioural, and psychosocial outcomes; 'in a society in which successful interactions involve language, prosocial behavior, and successful communicative skills, children who struggle with language or problem behaviors are already at a disadvantage'.<sup>22</sup> The association between communication disorders and SEB issues becomes more pronounced as adolescence progresses and young adulthood is entered.<sup>23</sup> Although the majority of the research is focused on childhood DLD, the communication disorder extends into adolescence and adulthood, with many continuing to experience difficulties into adulthood.<sup>24</sup> A systematic review conducted by Dubois et al. focused on specific

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difficulties experienced by young adults with DLD and highlighted the longitudinal research indicating that children with DLD persist to have difficulties into adulthood.<sup>25</sup>

#### Four Stages of the Criminal Justice System

A CJS is a web of individuals and institutions which 'involves a range of high-stakes situations that rely upon the application of language skills'.<sup>26</sup> Contact with the system will see an individual placed in many situations that require effective language skills, the success of which will directly impact the outcome for the YP.<sup>27</sup> The justice system in the Republic of Ireland can be broken into four stages where barriers are experienced by a YP with DLD, three of which are identified by the scoping review carried out by Sowerbutts et al., namely pre-conviction, peri-conviction and post-conviction; the fourth and final stage is post-release.<sup>28</sup> These are now considered in turn.

#### Pre-conviction

In the pre-conviction stage, a YP may experience an encounter with the police, through an arrest or a caution, and a subsequent interview in a police station. Snow and Powell view this process as a 'vicious cycle' where the YP may not give an adequate response to questions resulting in increased questioning, therefore amplifying the experience of duress which may increase the barriers faced.<sup>29</sup> Successful cooperation with law enforcement

20. Özcebe, E., Noyan Erbas, A., & Karahan Ti rak, T. (2020). Analysis of behavioural characteristics of children with developmental language disorders. *International Journal of Speech Language Pathology*, 22(1), 30-36.
21. Goh, S. K. Y., Griffiths, S., Norbury, C. F., & the SCALES Team. (2021). Sources of variability in the prospective relation of language to social, emotional, and behavior problem symptoms: Implications for developmental language disorder. *Journal of Abnormal Psychology*, 130(6), 676-689.
22. Chow, J. C. (2018). Comorbid language and behavior problems: Development, frameworks, and intervention. *School Psychology Quarterly*, 33(3), p.356.
23. Curtis, P. R., Frey, J. R., Watson, C. D., Hampton, L. H., & Roberts, M. Y. (2018). Language disorders and problem behaviors: A meta-analysis. *Pediatrics (Evanston)*, 142(2), 1-14.
24. Lemos, C. d., Kranios, A., Beauchamp-Whitworth, R., Chandwani, A., Gilbert, N., Holmes, A., Pender, A., Whitehouse, C., & Botting, N. (2022). Awareness of developmental language disorder amongst workplace managers. *Journal of Communication Disorders*, 95, 106165.
25. Dubois, P., St-Pierre, M., Desmarais, C., & Guay, F. (2020). Young adults with developmental language disorder: A systematic review of education, employment, and independent living outcomes. *Journal of Speech, Language, and Hearing Research*, 63(11), 3786-3800.
26. Anderson, S. A. S., Hawes, D. J., & Snow, P. C. (2016). Language impairments among youth offenders: A systematic review. *Children and Youth Services Review*, 65, 195-203.
27. Cronin, P., & Addo, R. (2021). Interactions with youth justice and associated costs for young people with speech, language and communication needs. *International Journal of Language & Communication Disorders*, 56(4), p.797.
28. Sowerbutts, A., Eaton-Rosen, E., Bryan, K., & Beeke, S. (2021). Supporting young offenders to communicate in the youth justice system: A scoping review. *Speech, Language and Hearing*, 24(2), 87-104.
29. Snow, P. C., & Powell, M. B. (2005). What's the story? an exploration of narrative language abilities in male juvenile offenders. *Psychology, Crime & Law*, 11(3), 239-253.

at this early stage is pivotal for the outcome. In the Irish context, Part 6 of the Children Act 2001 indicates that this encounter should be 'in a manner and in language that is appropriate to the age and level of understanding of the child'. This interaction may necessitate YPs to process language quickly, understand their rights, understand police questioning and the implications of their answers, provide appropriate responses, recall events sequentially, provide detailed and consistent narratives, understand figurative language, and seek clarification if they do not. All elements of this stage require a high level of linguistic dexterity and comprehension — skills that people with DLD may lack.

### Peri-conviction

During the second stage, peri-conviction, a YP will need to effectively communicate with their legal representative in anticipation of a court hearing and may then experience courtroom interactions. Communication barriers at this stage may have a negative impact on the perception of the YP and negatively influence the decision made in the courtroom. An attorney-client relationship requires the YP to communicate a consistent and coherent narrative; these narrative skills may not be sufficient in those with DLD. In order to construct a defence, the legal representative will need the YP to assist by engaging in conversation, answering questions, understanding outcomes, making informed decisions, and articulating their emotional states. Before entering a courtroom, the YP needs to be able to seek clarification from their legal representatives if needed and contextualise the abstractions of a legal system. The Equal Treatment Bench Book highlights the potential for communication difficulties in courtroom environments; 'explanations or comments from lawyers and judges may not be properly understood...This may lead to miscommunication...Judges must be alive to this, and be prepared to adjust or ameliorate their approach as often as is required'.<sup>30</sup>

The nonverbal communication in a courtroom can also be a barrier; the credibility of the YP can hinge on pragmatic skills, adapting their communication to suit the courtroom environment, and appearing remorseful through their tone, body language, and facial expressions.

Akin to the potential difficulties of the pre-conviction phase, the peri-conviction phase demands multiple receptive and expressive language skills in order for the YP to engage in the process.<sup>31</sup> Courtroom proceedings may necessitate the YP to respond to a lengthy line of questioning, where the questions often contain multiple parts, and to pay attention for long periods of time. The questioning process can also require an individual to understand legal jargon, process language quickly, respond adequately, and provide answers consistent with the narrative previously provided. The nonverbal communication in a courtroom can also be a barrier; the credibility of the YP can hinge on pragmatic skills, adapting their communication to suit the courtroom environment, and appearing remorseful through their tone, body language, and facial expressions. Expressing remorse involves a high level of pragmatic skills, often lacking in those with DLD.

### Post-conviction

In this stage, the YP will be sent along one of several pathways, typically: custody; probation, including offending behaviour or rehabilitative programmes; education or training settings; restorative justice projects; or youth projects. In the various institutions and settings, the YP will need to master specialised vocabulary and terminology, interact with figures of authority assigned to their supervision, follow new routines and conditions, comprehend oral commands, understand the consequences of not following the rules or abiding by the conditions, and understand their rights. Many offending behaviour interventions and restorative justice programmes hinge on communication skills, requiring the YP to express their feelings and undergo a transformation of thought in order to complete the programme. Those with DLD may struggle with the skills highlighted in this post-conviction phase. There is scope for existing interventions and programmes to be amended or re-designed to cater for YPs who may have

30. Judicial College. (2021, February). *Equal treatment bench book*. Judicial College. <https://www.judiciary.uk/wp-content/uploads/2021/02/Equal-Treatment-Bench-Book-February-2021-1.pdf>, p.316.

31. Sowerbutts, A., Eaton-Rosen, E., Bryan, K., & Beeke, S. (2021). Supporting young offenders to communicate in the youth justice system: A scoping review. *Speech, Language and Hearing, 24*(2), 87-104.

reduced communication skills. In England and Wales, the HM Prison and Probation Service have accredited programmes and interventions specifically for those with learning disabilities and challenges, e.g., Becoming New Me+ and New Me Strengths. Adaptations such as reduced session length, recorded scripts, visual material as an alternative to the usual textual context, and adapted language according to readability scales, such as the Wechsler Abbreviated Intelligence Scale (WASI).

### Post-release

This article proposes a fourth stage in addition to the three identified by Sowerbutts et al. and in response to the Winstanley et al. research on the risk of recidivism among YP in contact with the CJS with DLD. This relates to post-release and the barriers faced by YPs as they experience a transition from a custodial to a non-custodial setting. Barriers faced at this stage can have a profound impact on the likelihood of reoffending or desistance. Winstanley et al. found that 'young offenders with DLD are more than twice as likely to reoffend than their unaffected offending peers'.<sup>32</sup> The incidence of reoffending was 62 per cent in the DLD group and 25 per cent in the non-DLD group. They concluded that DLD is a dominant predictor of recidivism, and that their experience and engagement post-release is paramount to the future of the YP.

A re-entry into the community after imprisonment or involvement in the CJS is a dynamic process influenced by individual characteristics, relationships, community contexts, and state policies. This process is shaped by a multitude of aspects including the YP's offending history, substance abuse history, skillset, work experience, health, attitude, and personality traits.<sup>33</sup> To complete a successful transition back into a community, the YP is required to rebuild relationships which may have broken down or been lost while they were involved with the CJS. The YP also needs to adjust to new surroundings and a new routine, requiring flexibility, adaptability, and self-regulation. This

transition calls for a high level of communication with aftercare supports, friends and family, and the community at large; the effectiveness of the communication is imperative to increase the likelihood of the YP desisting from crime. Once again, the skills required to enable this stage of the CJS to be successful may be lacking in those with DLD.

### Critical Issues

This article identifies three overarching, critical issues that arise from the communication barriers encountered by YP with DLD in the CJS. These are legislative compliance, adjudicative competence, and dialogic legitimacy.

#### Legislative Compliance

If the presence of a DLD hinders a YP's communication, engagement, and access to the criminal justice process, then we must question if the human rights of that YP are being met and if there is full compliance with the relevant legislative obligations. Article 12 of the United Nations Convention on the Rights of the Child (UNCRC) affords children the right to participation. This underpins their involvement in and experience of all aspects of society, including the youth justice system. The CJS relies heavily on communication

through language. In order to participate in the youth justice system, a child must engage in the process. The level of engagement a child or young adult has with their criminal justice journey has an irrefutable impact on the outcome for that YP. Without comprehension of the process, a YP's view cannot be properly expressed and therefore are not taken into account during the criminal justice process. The Lundy Model of Child Participation operationalises Article 12 of the UNCRC. Developed to aid educational practitioners, it identifies four steps to realising a child's right to participation: space, voice, audience, and influence. Lundy highlights the importance of 'a level of understanding and preferred ways of communicating' in achieving participation.<sup>34</sup>

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32. Winstanley, M., Webb, R. T., & Conti Ramsden, G. (2021). Developmental language disorders and risk of recidivism among young offenders. *Journal of Child Psychology and Psychiatry*, 62(4), p.396.

33. Visher, C. A., & Travis, J. (2003). Transitions from prison to community: Understanding individual pathways. *Annual Review of Sociology*, 29(1), 89-113.

34. Lundy, L. (2007). 'Voice' is not enough: Conceptualising Article 12 of the United Nations Convention on the Rights of the Child. *British Educational Research Journal*, 33(6), p.937.

All interactions and communication within the youth justice system in the Republic of Ireland are regulated by the Children Act 2001. Eight clauses of the Act address language and communication with the YP; 'in a manner and in language that is appropriate to the age and level of understanding of the child'.<sup>35</sup> While there is provision to tailor communication to meet the 'level' of understanding of the child, there is no measure for an assessment of what that 'level' is; an undiagnosed DLD may not be apparent to legal professionals. The Lundy Model of Child Participation needs to be further implemented at each of the four stages of the CJS to ensure a child's right to participation is being met.

Although there are explicit regulations regarding tailoring communication to meet the level of understanding of the child, the equivalent for young adults is difficult to identify. Young adults are not afforded the same level of statutory protections and mechanisms for scrutiny as children in terms of their understanding of and engagement with the CJS. Articles 6 and 7 of the United Nations Declaration of Human Rights afford everyone the right to recognition and equality before the law. Article 6(1) of the European Convention on Human Rights and Fundamental Freedoms (ECHR) guarantees a right of access to the courts and a right to a fair hearing. For a YP to be recognised equally before the law, to be able to access justice and to be able to have a truly fair trial, participation and engagement are paramount; processes for which communication is the cornerstone.

### Adjudicative Competence

Defined as 'the ability to understand and appreciate the nature of the proceedings and the ability to assist one's counsel', a YP must be able to comprehend courtroom proceedings to achieve adjudicative competence.<sup>36</sup> This is an essential element of the right to a fair trial and due process. Much research addresses the relationship between competency to stand trial and the capacity of the YP in

terms of age, maturity, mental capacity, and intellectual or physical impairment but often neglects to consider communication abilities. Grisso et al. highlight the effect that comprehension and communication skills can have on a YP's adjudicative competence.<sup>37</sup> With the high prevalence of DLD among YP in conflict with the law, and the negative impact that DLD can have on their ability to understand the peri-conviction stage of the CJS, the adjudicative competence of this cohort cannot be presumed. Future research which assesses the capacity of a YP to go before a court must not limit capacity to maturity, mental health, and disability or impairment but also extend the concept to the language and communication abilities of the YP.

### Dialogic Legitimacy

Bottoms and Tankebe make the case for a 'dialogic model of legitimacy, meaning 'claims to legitimacy by power-holders and responses by audiences'.<sup>38</sup> This concept can be applied to procedural justice in the CJS. Procedural justice can be defined as the perceived fairness of decision-making procedures and the treatment the individual receives at the hands of the decision-maker which will influence the degree of belief in the legitimacy of the decision-making authority or institution.<sup>39</sup> By thinking about the

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interactions between actors of the justice system through the 'dialogic' legitimacy lens, we can consider the interactions more critically and thoroughly. It must be noted that a language and communication barrier can occur in both directions of the dialogue without the presence of DLD. For example, while legal terminology used by the legal professional may not be understood by the YP, colloquial phrases used by the YP during testimony may not be understood by the legal professional. Research in this domain must consider the placement of blame, whether the onus is on the legal professional or the YP to ensure legitimate dialogue, or if the onus is shared. If communication and comprehension are compromised by the presence of DLD, then we cannot ensure that the procedural rights of the YP are being met. If a sentence rationale is

35. Sections 57 and 39.4; 82.5; 88.4; 116.2; 144; 179.3; 207.5a.

36. Cunningham K. A. (2020). Advances in juvenile adjudicative competence: A 10-year updated. *Behavioral Sciences and the Law*, 38, p.407.

37. Grisso, T., Steinberg, L., Woolard, J., Cauffman, E., Scott, E., Graham, S., Lexcen, F., Reppucci, N. D., & Schwartz, R. (2003). Juveniles' competence to stand trial: A comparison of adolescents' and adults' capacities as trial defendants. *Law and Human Behavior*, 27(4), 333-363.

38. Bottoms, A., & Tankebe, J. (2012). Criminology: Beyond procedural justice: A dialogic approach to legitimacy in criminal justice. *The Journal of Criminal Law & Criminology*, 102(1), p.120.

39. Tyler, T. R. (1990). *Why people obey the law*. New Haven: Yale University Press.

communicated but not comprehended, the minimum threshold of procedural justice cannot be met and therefore, the dialogue is not legitimate.

In response to the issues surrounding legitimacy of courtroom dialogue and procedure, recommendations are emerging for the establishment of a distinctive young adult court. In 2015, The Transition to Adulthood Alliance and The Centre for Justice Innovation produced a report recommending the adaptation of the 'standard adult court process' when dealing with young adults to enhance communication and improve procedural fairness.<sup>40</sup> The report outlined the need for the language, setting, and process to be more conducive to engagement for the young adult cohort. Echoing the recommendations of the 2015 report, Ward and Spence detailed the need for a specialised court which would be tailored to reduce the barriers of engagement and participation for young adults, fostering enhanced communication and enhancing the fairness of the judicial process for a cohort with distinctive needs.<sup>41</sup> In England and Wales, young adults are afforded different treatment to adults in the Court of Appeal. Rooted in the decision made in the leading case of Clarke<sup>42</sup>, the differentiated approach for this cohort is in recognition of the cliff edge effect of turning 18 in the criminal justice system, the cohort's immaturity and continued development and diminished culpability.<sup>43</sup>

### A Way Forward?

By implementing screening and assessment, increasing assistance, and adjusting practice mechanisms and techniques, we can move towards removing some of the barriers faced by those with DLD and towards communicating more effectively with YP at all four stages of the CJS. Among workplace managers, awareness of DLD is lower than that of other disorders such as autism and Attention Deficit Hyperactivity Disorder (ADHD), findings which may be similar for certain institutions of the CJS.<sup>44</sup> With the

prevalence of DLD shown to be between 50 per cent and 87 per cent of YP who are in conflict with the law, implementing specific training for actors involved in the CJS is pivotal to catering for the varying difficulties experienced by those with DLD. This increased awareness is undoubtedly the first step in the process of this way forward.

### Systematic Screening and Assessment

Although there are regulations that require communications to meet the level of understanding of the child in the Irish youth justice system, there is no provision for an assessment of what that 'level' is. By introducing routine screening by CJS professionals and subsequent assessment by speech and language therapists (SLTs) of YP involved in the justice system, language disorders such as DLD may be identified. If CJS actors are aware of the presence of a DLD, they can tailor their communication accordingly at each of the four stages of the CJS. Criminal justice actors and legal professionals cannot be expected to gauge the 'level' of communication difficulties a YP requires; an undiagnosed DLD may not be apparent. However, utilising the available resources to increase awareness and to screen for DLD may reduce the barriers faced by the YP and increase the effectiveness of communication.

The organisation DLD and I provide an infographic on how to identify a DLD regardless of a person's qualification. The organisation also has compiled a list of language screeners for school environments that are available, ranging from clinical evaluation screening tools (administered by a qualified SLT) to more simplistic mini screening tools.<sup>45</sup>

The Royal College of Speech and Language Therapists (RCSLT) suggest the use of the AssetPlus Screening Tool and the Comprehensive Health Assessment Tool (CHAT) by CJS agents to screen for DLD. Unlike in England, where children receive a screen of their SLCN in justice agencies, the Republic of Ireland does not systematically screen children or young adults.

Utilising the available resources to increase awareness and to screen for DLD may reduce the barriers faced by the YP and increase the effectiveness of communication.

40. Thomas, J. & Estep, B. (2015). *Young Adults in Court: Developing a Tailored Approach*. UK: Centre for Justice Innovation.

41. Ward, J., & Spence, R. (2022). Criminal court sentencing: The case for specialist 'Young adult' courts. *British Journal of Criminology*, 10, 1-17.

42. R v Clarke [2018] EWCA Crim 185.

43. R v Clarke [2018] EWCA Crim 185.

44. de Lemos, C., Kranios, A., Beauchamp-Whitworth, R., Chandwani, A., Gilbert, N., Holmes, A., ... & Botting, N. (2022). Awareness of developmental language disorder amongst workplace managers. *Journal of Communication Disorders*, 95, 106165.

45. Hogan, T. (2023). *A Call for School-Based Language Screenings*. DLD and Me. <https://dldandme.org/school-language-screening/>

Identification of the potential presence of a DLD, resulting in a potential diagnosis by a SLT, may empower a YP to become aware of the accommodation they require and may prevent them from having to mask their difficulties and avoid situations. This initial screening and subsequent assessment will also allow for the further integration of the Lundy Model of Child Participation to ensure the right to participation is being met. Cronin and Addo affirm that the identification of SLCN can instigate the change process through treatment and result in a change in the offending trajectory of those YPs.<sup>46</sup>

### Assistance

Communication assistants, also referred to as registered intermediaries, can facilitate effective communication. The trained facilitator is made available during legal proceedings to support the person 'to understand information and to make informed decisions'.<sup>47</sup> Originating in England and Wales, the provision is becoming increasingly popular with New Zealand, New South Wales, Northern Ireland, and the Republic of Ireland also adopting versions of the role. Assistants are predominately SLTs but the role specification differs in each jurisdiction. While New Zealand intends registered intermediaries

to be utilised at the peri-conviction stage of the CJS, mainly during courtroom proceedings, Northern Ireland specify the availability of registered intermediaries for communication assistance during both the pre-conviction and peri-conviction stages. While the provision of communication assistance often extends to witnesses (England and Wales, and the Republic of Ireland), there are two jurisdictions that currently offer the assistance to defendants also: New Zealand and Northern Ireland. A strong argument can be made for the wider extension of communication assistance to YP as both witnesses and defendants; both parties have equal rights of access to justice and both voice is of equal importance in the peri-conviction stage of the

CJS. The article also advocates for the extension of the communication assistance provision beyond the first two stages of the CJS. The need for assistance for YP with SLCN such as DLD extends into the post-conviction and post-release stages of the system, with equal relevance and necessity.

Another provision which may increase the level of assistance afforded to those with DLD in the CJS is the statutory availability of SLTs. As highlighted by the IASLT in their 2020 submission to the New Youth Justice Strategy, there is currently no official provision for SLTs in the Irish CJS. Providing an SLT in the CJS process could enhance the identification of DLDs, assist all agencies involved in the system, including the YP and their families, to adapt their practice to facilitate communication between the parties, support a YP during the aforementioned four stages, and provide support for the YP to navigate their difficulties.<sup>48</sup>

### Adjusting Practice

Although increasing awareness of DLD along with provisions for screening, assessment, and assistance is undoubtedly necessary to reduce barriers in the CJS, the practical adjustments in ways that we communicate with YP with DLDs is paramount. Due to the high prevalence of communication difficulties such as DLD among YP in the CJS (estimates ranging

from 50 per cent to 87 per cent), this article advocates for the consideration of an overall adjustment of the approach to practice when working with YP in the CJS, as opposed to establishing practice adjustments only to be applied when a DLD is suspected or diagnosed. By setting the default approach to practice to respond to the needs of those with DLD or lower communication skills, the risk of missing the presence of a DLD is mitigated and the approach would be more responsive to the overall needs of the cohort.

Sowerbutts et al. propose some practical tips for actors when interacting with YP with DLD; the use of the past tense when explaining past events, the exchange of legal terminology for simpler terms, and

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avoid situations.

46. Cronin, P., & Addo, R. (2021). Interactions with youth justice and associated costs for young people with speech, language and communication needs. *International Journal of Language & Communication Disorders*, 56(4), 797-811.

47. Kearns, Á., Clarke, D., Cusack, A., Gallagher, A., Humphreys, J., Kedge, S., & McKee, A. (2022). Intermediaries in the justice system for people with communication disability: Enacting sustainable development goal 16 in Ireland, Northern Ireland, and New Zealand. *International Journal of Speech Language Pathology*, ahead-of-print, p.2.

48. Reynolds, M., Bradley, P. & Henderson, K. (2020, June) IASLT – Consultation On The Development Of A Youth Justice Strategy. <https://www.iaslt.ie/advocacy/youth-justice-strategy-consultation/>

the adoption of a tool such as The Box, an e-learning tool for professionals working in the youth justice system.<sup>49</sup> LaVigne and Rybroek advocate for the training of legal professionals to enable them to retool their own language and approach to client conversations.<sup>50</sup>

There are various international organisations dedicated to supporting people with SLCN and DLD including ICAN UK, RADLD, Afasic, The DLD Project Australia, and DLD and Me. Informed by the recommendations made by these various organisations, this article establishes that there are two areas of practice where strategies could be implemented to reduce barriers faced by YP with DLDs: language strategies and environmental strategies. These examples of strategies for adjusting practice are intended to be operationally relevant for CJS agencies and professionals.

Choosing vocabulary that is familiar to YP is the first step in adapting language strategies to cater for this cohort. Language must be plain, offering synonyms when explaining a concept or giving an instruction. A helpful tool can be to find links between words that the YP already knows when explaining something which may be unfamiliar to the YP. Instructions should be given in an active, clear, explicit, and direct manner, avoiding the passive voice, multi-part sentences, abstract concepts, and jargon. Electing vocabulary and sentence structure that is appropriate should be informed by frameworks and platforms such as Blank's Levels of Questioning and the Plain English Campaign.<sup>51</sup> The font and layout of written information should be considered, electing a large font size and a simple font such as Arial or Comic Sans. Written information

should be reproduced in alternative formats with the addition of definitions for more difficult words and concepts. The alternative formats can include mind maps, images, infographics, audio recordings and icons.

Creating an environment conducive to effectively communicating is also paramount and there is scope for practical amendments to the various CJS environmental strategies. Accommodating language processing by facing the YP, ensuring you have their attention when communicating, modulating your voice, allowing extra time between instructions and questions, reducing your pace of speaking, and balancing the amount of information given per discussion to avoid the potential of information overload. Additional environmental strategies include choosing to communicate in a space which has minimal auditory clutter and is familiar to the YP, avoiding binary and leading questions when assessing if the YP understands an instruction or conversation, and creating opportunities for the YP to express themselves and ask questions.

Acknowledging the high prevalence of DLD among both children and young adults in contact with the CJS, this article highlights the four stages of the CJS where barriers are experienced by a YP with DLD. Arising from these stages of effect are overarching issues: legislative compliance, dialogic legitimacy, and adjudicative competence. Through increased awareness and training, systematic screening and assessment, increased provisions for assistance, and adjusting default practice, a way forward is possible and more effective communication may be realised in the CJS for YP with DLD.

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49. Sowerbutts, A., Eaton-Rosen, E., Bryan, K., & Beeke, S. (2021). Supporting young offenders to communicate in the youth justice system: A scoping review. *Speech, Language and Hearing, 24*(2), 87-104.

50. LaVigne, M. & Van Rybroek, G.J. (2011). Breakdown in the Language Zone: The Prevalence of Language Impairments among Juvenile and Adult Offenders and Why it Matters. *UC Davis Journal of Juvenile Law and Policy, 15*, 37-124.

51. Blank, M., Rose, S. A. & Berlin, L. J. (1978) *The Language of Learning: The Preschool Years*. Plain English Campaign. <https://www.plainenglish.co.uk/>