

Justice Intermediary Starter Kit

MODULE 10

PRACTICAL ISSUES

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The Justice Intermediary Process

Justice Intermediary (JI) schemes will be different in every country, partly as a reflection of the local justice system and the human rights concerns most prominent in access to justice.

Schemes across the world have developed from different sources – see **Module 9 Around the World** which explores this development. Many schemes have emerged from Human Rights organisations wanting to improve access to justice for people with disabilities. In other places, the originator has been the Ministry of Justice, which has developed the scheme to enable fairness of access to effective participation.

This module is an example of how the JI Scheme is run in practice. Each phase needs some further explanation.

Process of involvement of JI



Identified need for JI

It is usually the personnel within the justice system who are expected to recognise that a person with disability may require the assistance of a JI. For example, with a witness, complainant or suspect, the police officer may be expected to recognise this need for referral. For a defendant, it is more likely to be the responsibility of the defense lawyer.

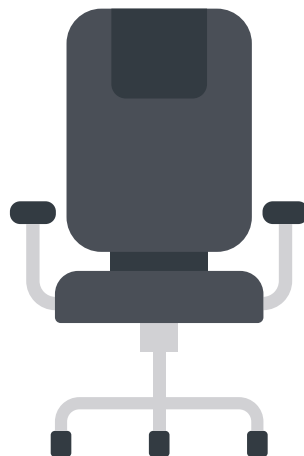
This presupposes that police and lawyers are able and willing to recognise disability. A key part of implementing the JI scheme will be developing training for those professionals.



Referral to JI

Depending on the availability of Justice Intermediaries, there will need to be a central referral system. In some countries this referral is done by way of a detailed form, and the referrer becomes the point of contact for setting up assessments.

The choice of JI will be important and matching their skills to the needs of the person with disability, such as knowledge and experience of working with that age group or type of disability will be vital in ensuring the expertise is specific. For example, a school teacher with experience of children with developmental disabilities will not be an appropriate match for a defendant diagnosed with dementia.



Assessment

Module 6 on Assessment, includes some information on practicalities. The risks (both personal safety and contamination of evidence) should be considered if the JI is expected to assess on their own. The assessment should not include discussion about the legal case. There may be situations where more than one assessment is required. For example, if a trial is delayed and the person with disability's status and needs changes over time, reassessment nearer to the trial will be appropriate.

Report with accommodations

In some situations, written reports are not required. **Module 6 Assessing and Reporting** gives further information. The JI report is not part of the case – it is non-evidential and in some schemes it is not to be shared with other agencies outside the courtroom/police station. Each scheme will need to clarify how this fits with the legal system.

In other jurisdictions, reports are written in collaboration with the person with disability and this should be encouraged.

Authority for accommodations and appointment of JI to court/police station

The authority to implement the accommodations will need to come from the court (or from the police if at investigative stage). In some jurisdictions a Ground Rules Hearing is arranged at which the JI can participate in discussion with attorneys and judge about the recommended accommodations and how they will be implemented.

Some courts take on the accommodations, but decide that the court can implement them without the JI being present. For example, having a break every hour, or letting the witness come to court at a set time in the afternoon.

Each case will be different, and in some instances this decision is based on a lack of recognition of the impact a JI may have, or the inconsistencies that may occur during a trial which require re-evaluation by the JI.

Ground Rules Hearings

Ground Rules Hearings are used in some jurisdictions to ensure the accommodations are discussed and authorised by the court before the trial starts. This gives the JI the authority and guidance for assisting the person with disability. For example, the judge may agree to breaks, but prefer the JI to indicate by raising their hand rather than speaking.

Or perhaps the JI has recommended that lawyers sit down when addressing the person with disability and needs the judge to authorise this.

Reference for further reading – **The Advocates Gateway Toolkit on Ground Rules Hearings.**



Assistance in meetings, interviews, etc

The JI may be asked to assist with any interaction with the person with disability. For example:

- Meetings with their lawyer to instruct, decide on a plea, sign written documents
- Meetings with expert witnesses such as psychologists who may find communication difficult without assistance
- Conferences or meetings during the trial with lawyers, to comment on prosecution evidence, make plans, decide whether to give evidence ('take the stand')
- Visiting the court before the trial to familiarise the person with disability with the environment and assist in deciding how best to give evidence such as via a video link, behind a screen in court etc
- Meetings after guilty verdict/plea where the most appropriate sentence is evaluated
- Meetings in which the victim gives a statement of 'personal impact' of the crime to the police officer
- Meetings at which the police officer informs the witness/complainant of the outcome of the trial.

Interview

The JI meets with the interviewing police officer to advise on accommodations that will assist in achieving best evidence from the witness or suspect. The JI role is NOT to impact on evidence by giving opinions or explaining on behalf of the person with disability. The JI is a conduit for communication between the parties.



Trial

The JI sits with the person with disability throughout their involvement both in court and in adjournment conferences.

The JI liaises with other court staff and attorneys to make accommodations effective such as arranging for a practice in witness stand, planning questions, confirming a written agenda for next court session, reducing background noise.

The JI requests an adjournment if something urgent occurs that requires the attention of the court in the absence of the jury.

Giving evidence

If there has been a ground rules hearing and accommodations have been authorised, the JI should indicate when there is any contravention of the ground rules. However if there has not been a ground rules hearing, the JI will need to be assertive in indicating to the judge and lawyers when accommodations have not been used.

In practice this often is more disruptive to the jury and is a reminder that a ground rules hearing can be a very effective use of court time.

The JI will intervene as has been agreed, perhaps to ask for a question to be rephrased, to rephrase themselves, to ask for a break, to repeat an unintelligible answer (word for word), etc.

The JI will provide any visual aids to assist, as agreed with the court.

Post-verdict involvement

The JI may need to assist a witness or defendant understand the verdict. This should be in the presence of the police/lawyer, as the JI cannot do more than simplify what has been said, interpretation/opinion is not their role.

The JI may need to assist the defendant at a post-verdict assessment, for example by probation or prison in relation to possible sentencing.

However, the JI's involvement with this person with disability is complete when the case finishes. This is not an ongoing role in most jurisdictions, whatever the verdict.

Funding

There are several countries where a JI service has been initiated as part of an NGO, and the organisation has provided the service without any governmental funding.

In countries where the justice system has decided to implement a JI service, the funding usually comes from the Ministry of Justice.

Training for Justice Intermediaries may be funded by the justice system, along with training for other stakeholders who interact and refer to the service, such as police, judges, lawyers.

Module 9 Around the World has more detailed information about how these schemes are funded.

Quality control

During the planning of your JI scheme, there will need to be checks in place to maintain quality of the service. Consider for example:

- Who will be responsible for quality control?
- Who are the stakeholders? The legal professionals, the persons with disability, the police officers, the family of persons with disability?
- How can the feedback from stakeholders be collated and how will it be used?
- Supervision, mentoring and observation of both new and experienced JIs.



Recruitment and retention of JIs

Referring back to **Module 2, Identifying Justice Intermediaries**, your scheme will need to set out a person specification and agree a method of recruiting. The JI can be self-employed, contracted in via an agency or employed directly.

Retention of the JI needs to be addressed from the start of the scheme, as so much of the quality of the work depends on accumulated learned experiences on the job, which cannot easily be replicated with new starters. Terms of pay and retainment will be important to ensure recruitment of suitable professionals.



Supervision and management

The work of a JI can be challenging in many ways. More information on this subject is contained in **Module 8, Emotional Resilience and Boundaries**.

To ensure retention and quality of service, peer support, supervision and management will be vital. This has often been a 'light-touch' approach, but is important and should be factored into fundraising and resourcing.

In summary

Each JI scheme will be different. However there are some tangible practical steps in the JI process:

- Identify the person with disability
- Refer to the JI scheme
- Assessment by the JI and recommendation of accommodations
- Authorisation of recommendations
- Ground Rules Hearings
- JI assistance at interview and court hearings
- Post-verdict involvement.

Other practical issues to consider include:

- Funding
- Quality Control
- Recruitment and retention of JIs
- Supervision, support and management of JI service.

Reflection Tool: Module 10

This is an opportunity for the user to reflect on the content of the module and also assist us with continued improvements and updates.

Please [Click here](#) to contribute your reflections.

How do you think this model of JI process will fit within your local justice system?

Think about it in sections, referring to the flow diagram at the beginning of the module (slide 4). For example:

Who would be the referrer?

What awareness training will be necessary for legal professionals?

Who would collate a database of trained Justice Intermediaries?

Continued over the page...

How would Justice Intermediaries define their competencies?

Who will pay for this service?

Who are the stakeholders who will help to make this scheme happen?

What level of reports will be appropriate for your locality?

How can you make the Ground Rules Hearings fit your system?

What realistic timescale do you need to consider for setting up this scheme?