

Justice Intermediary Starter Kit

MODULE 2

DEFINING THE JUSTICE INTERMEDIARY

www.justiceintermediary.org





International Principles and Guidelines on Access to Justice for Persons with Disabilities (UN Special Rapporteur August 2020)

Principle 1: All persons with disabilities have legal capacity and, therefore, no one shall be denied access to justice on the basis of disability.

Principle 2: Facilities and services must be universally accessible to ensure equal access to justice without discrimination of persons with disabilities.

Principle 3: Persons with disabilities, including children with disabilities, have the right to appropriate procedural accommodations.

Principle 4: Persons with disabilities have the right to access legal notices and information in a timely and accessible manner on an equal basis with others.

Principle 5: Persons with disabilities are entitled to all substantive and procedural safeguards recognized in international law on an equal basis with others, and States must provide the necessary accommodations to guarantee due process.

Principle 6: Persons with disabilities have the right to free or affordable legal assistance.

Principle 7: Persons with disabilities have the right to participate in the administration of justice on an equal basis with others.

Principle 8: Persons with disabilities have the rights to report complaints and initiate legal proceedings concerning human rights violations and crimes, have their complaints investigated and be afforded effective remedies.

Principle 9: Effective and robust monitoring mechanisms play a critical role in supporting access to justice for persons with disabilities.

Principle 10: All those working in the justice system must be provided with awareness-raising and training programmes addressing the rights of persons with disabilities, in particular in the context of access to justice.

The core role of the Justice Intermediary (JI) is to maximise effective participation of persons with disabilities in the legal system, and minimise the impact of their disability on accuracy, reliability and coherence.

There are many traditions and long-held systems that negatively impact on effective participation of a person with disability.

The JI may be the person who encourages change in the system so that communication can be improved and the needs of the person with disability met, while retaining their impartiality to the case.



What's in a name?

JIs are sometimes given other titles

Canada

Communication Assistance

Vermont, USA

Communication Support Specialists

England and Wales

Registered Intermediaries for witnesses,
Non-registered for others

Israel, Mexico and Spain

Facilitator

New Zealand

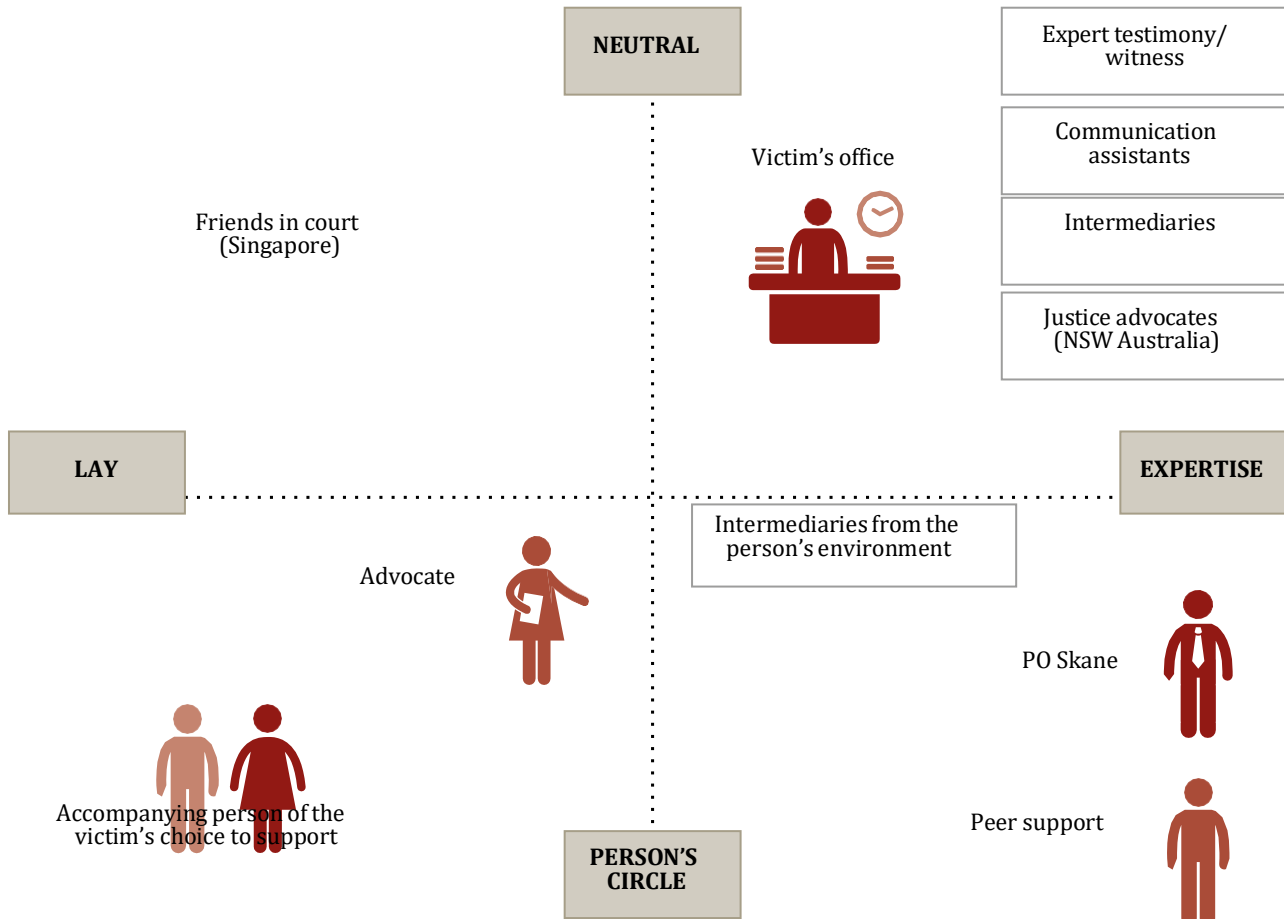
Communication Assistants



The name may well reflect how the JI has been used in that jurisdiction. **Around the World.** JISK is unable to reflect all models. As mentioned, the responsibility is on the individual jurisdiction to interpret as best fits their needs.



Access to Justice: Supporting Figures



Support figures/Accompanying person: New Zealand, Spain and EU Legislation.

Appropriate Adult: (UK, Singapore), Independent Third Persons (Victoria, Australia) – the need to be present during police interviews, getting finger prints – evidence given may be rejected in court.

Intermediaries/Communication Assistant: have different roles. Some are present during all the proceedings, some only in the moment of giving evidence. Some are conceived to support the person, some are thought to facilitate communication among all parties.



Important principles of the JI role

- **Impartiality** – the JI has no role in the content of the case, whether criminal or civil, does not take anyone’s side, and is not thereto explain the impact of a disability on the case, only on the legal process. Advocating for justice for a person with disability is NOT about taking sides.
- **Confidentiality** – the JI maintains confidentiality, not discussing details about the person or the case outside the remit of the legal process.
- **Advisory** – the JI advises the court but final decisions on accommodations lie with the judiciary.
- **Not a legal advisor** – the JI has no role in legal advice, only to simplify language of the lawyer and enable effective communication.
- **Knowledge and experience** in working with people with disabilities, particularly **in the field of communication**.
- **Professionalism** – the JI understands the boundaries of their role, knows how to clarify their position and respond appropriately to other professionals as well as the public.



Describing the role of JIs, Lord Chief Justice in one jurisdiction said:

Intermediaries are not emotional supporters of the witness. They are neutral and independent, offering assistance to the court and responsible to the court. Their presence is designed to assist the judge, the legal professionals and the person with disability to ensure everyone understands each other.



Skills and knowledge before training as a JI

- **Professional skills** in helping children or adults with a disability to communicate
- Ability to quickly **establish rapport** with people with communication needs
- **Experience in actively facilitating communication** between a person with disability and another party to overcome a communication breakdown
- **Excellent oral and written communication skills** including experience of report writing and presenting information to a group
- **Experience in working with a range of different professionals** and ability to tailor information in a way that makes it accessible to all parties
- **Adaptability and the ability to work creatively under pressure**

Each of these attributes is explored in more detail...

Professional Skills

Professional skills will depend on local resources and services. This Starter Kit does not direct which professional background would best suit the role. The most often recruited professionals are speech and language specialists, psychologists, special needs teachers, occupational therapists and lawyers. There are however exceptions and individuals with the necessary skill set outside these professions may also be considered.

Whatever the background, it will be important for the JI to recognise their boundaries of competency. For example, if the person with disability has had a severe Stroke and the JI is a specialist in working with young children, the JI would need to defer to a colleague (if one is available) or explain to the justice system that they do not have the appropriate professional profile. The JI needs experience with the type of disability they intend to assist.

Ability to establish rapport

The JIs involved with the person with disability for a relatively short period. They are unlikely to know them beforehand and will cease contact after the end of the justice system process.

In fact it is recommended that the JI does not know the person beforehand as it may impact on impartiality. The same JI may however assist with different proceedings for the same person with disability, for example in a criminal and then civil or family matter.

To work effectively, the JI needs to establish rapport, a working relationship within the first one or two meetings. This skill will often come from experience of working with people with disabilities. On rare occasions, rapport may not be established, and another JI may be needed.



Experience in actively facilitating communication

Communication facilitation is at the heart of the work of a JI. They should be skilled in recognising the needs of the person with disability and how accommodations may enhance effective communication.

Module 3 of this resource details some of the knowledge required by a JI in understanding communication. Each jurisdiction will need to decide how much prior knowledge a JI candidate needs, and how much will be covered in their JI training course. Either way, it is important to ensure that any gaps in the knowledge of candidates are addressed.



Excellent communication skills

The justice system and members of the judiciary are notorious for using complex language and jargon, both in oral and written forms. As a facilitator of communication between legal professionals and the person with disability, the emphasis is on maximising effective communication on both sides.

This does not mean that every JI has to understand all legal terms. It is often beneficial to have a healthy lack of knowledge of specific jargon, as this assists the JI in recognising the assumptions that may be made. For example, if the lawyer suggests that 'the matter could be considered under section 20' it is acceptable for the JI to ask for 'section 20' to be explained.

This encourages the person with disability to ask for explanations and gives a sense of not always being the only person who fails to understand. The JI must be willing to speak up to ensure all parties can communicate effectively.

The JI will need to explain and justify their recommendations in a professional manner. This will be both in oral and written communication.

Experience of multidisciplinary working

The JI will need to work with a range of professionals including police, social workers, judges, lawyers and teachers. Additionally they will be expected to communicate with family members, supporters and carers of the person with disability. The JI is not a coordinator or manager of the person's case and must ensure they do not share confidential information inappropriately.

The reason behind these interactions will vary, for example, with family members and teachers, the JI may want to obtain information about what helps the person to communicate, while with the police and members of the judiciary the JI will suggest strategies for effective communication and provide communication support.

The JI will be expected to liaise with all, while understanding the boundaries of their role. For example, not becoming involved in the pros and cons of evidence when speaking with the defence lawyer, or giving opinions to an alleged rape victim, or their family, who wants to know how likely it will be that the perpetrator is convicted.



Experience of writing reports

Experience of writing reports will depend on the level of reporting required by the JI scheme as it develops in each jurisdiction. Some schemes do not require more than a simple list of accommodations.

Others require full reports of assessment techniques, results and evidence to back up recommended accommodations. Each jurisdiction will need to decide how they want to proceed. **Module 6 on Assessments and Reports** provides information on report design and content.



An example of the personal qualities and attributes to consider when recruiting a justice intermediary

Professionalism

JIs are required to work with a range of different people including vulnerable witnesses, police officers and legal professionals. They must be able to adapt their approach accordingly.

Credibility

JIs must be able to establish a credible persona with both criminal justice professionals and vulnerable witnesses.

Approachability

JIs must adapt their communication to ensure it is accessible to both lay people and professionals

Flexibility

JIs may be required to assess a witness within a matter of days, so a flexible approach is required. JI duties can take place at a variety of different locations so willingness to travel is essential.

Impartiality

A JI is appointed to serve the court and the interests of justice, not the witness or any particular party in the case.

Resilience

JIs may be required to act in emotionally challenging cases such as child protection and sexual offences.

Ability to work under pressure

The timescales and timetabling of the judicial system can be unpredictable and fast-changing.

Ambassadorial skills

This is a developing profession in the criminal justice system so JIs must be able to explain their role and present a credible and professional persona.



There are often many types of support available for people with disabilities and the different roles can be confusing. These are some you may encounter:



Non-legal Advocate

A person who recognises the human rights issues around the needs of the person with disability and asserts on their behalf.

May be more partial in approach.



Appropriate Adult

A person independent of the police who ensures that the rights and welfare of the person are upheld when questioned and detained by the police.

They are not communication specialists, have not assessed the person and have no role in court.



Interpreter

Where a person does not speak the language of the justice system, or not sufficiently so, an interpreter may be called to translate.

In some situations, the interpreter may explain what is happening in addition to the direct translation.



Personal emotional support for victims or defendants

Usually not able to address the judge or seen as another officer of the court, but a major right for the victim.



Variability in interpretation of JI role

way intermediary services and the role of an intermediary have developed. Although there are some important principles that all intermediary services should adopt, this Starter Kit does not specify one specific model that should be adopted.

This resource encourages jurisdictions to consider their own unique circumstances and decide how best to proceed.

Module 9, Justice Intermediaries around the World, describes how the role has been defined in different jurisdictions. For most, the principles remain the same but justice systems, priorities and resources have impacted interpretation.

VARIABILITY IN INTERPRETATION OF JI ROLE

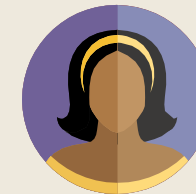
One of the principles examined in detail

Contamination of evidence

Impartiality and neutrality are essential to the role of the JI. If not adhered to, there may be contamination of the evidence. The JI advocates only for accommodations. Not for 'better' outcomes.

The JI is not invested in the case (whatever the jurisdiction), only in how participation can be effective and non-discriminatory for the person with disability.

Awareness of boundaries, professionalism and confidentiality will all impact on the likelihood of 'contamination of evidence'. This might be best understood through specific examples...



ISOBELLA – is a witness to her father's death. She is highly anxious as she struggles to cope with the traumatic experience.

The JI role IS to suggest accommodations that ensure she can be able to give evidence in court. For example, she is more likely to be able to give evidence from a video link room away from court, have her comfort blanket with her and know she can ask for a break at anytime.

The JI advises the lawyers how to simplify their questions to reduce the linguistic complexity which will overload her cognitive skills when she is highly anxious.

The JI role IS NOT to dictate which questions can be asked, for example, 'did she prefer her mother or her father?' That role remains with the judge and lawyers. That would be a contamination of the evidence.



VARIABILITY IN INTERPRETATION OF JI ROLE



BEN – is accused of harassing a bank clerk. He has some intellectual disabilities, gets very anxious in new situations and he struggles with boundaries and the social rules of interaction. He tends to speak a lot, and is not good at taking turns in a question/answer situation.

The prosecution's case is that Ben asked too many personal questions of the bank clerk (about her marriage and plans for children) and this was deemed inappropriate.

The JI role IS to suggest accommodations that ensure he can effectively participate in the court trial. For example, the position he sits in, being permitted breaks to manage his anxiety during the prosecution case. When giving his evidence-in-chief, the JI asks that he be permitted to narrate his side of the story, rather than answer a series of questions from his lawyer, although clearly in cross-examination there will need to be specific questions.

It is NOT the role of the JI to explain Ben's behaviour, his lack of understanding of the boundaries around appropriate social interaction to the court. This would be contamination of the evidence. The defence may decide this is vital to Ben's defence case.

An expert witness would then be required to explain how Ben's disability impacted on his behaviour when he entered the bank. In some jurisdictions, the distinction between expert witness and JI has been blurred. In other jurisdictions it is not acceptable for the impact of disability to be disclosed to the jury.



DAVID – is being investigated for trespassing. He has been sleeping on the streets for the past six months. He is highly suggestive and compliant, in part to manage his own heightened anxiety about speaking. He cannot read or write.

The JI role IS to suggest accommodations that ensure he can effectively give evidence to the police after being arrested. For example, the JI recommends that the questions are asked in a calm manner, that cannot be interpreted as accusatory.

All suggestions should include choices for example, 'are you sure about that, not sure, or need it explaining again?' The JI asks the police officer to take time and simplify his language to explain the 'caution' or Miranda's Law.

The JI advises the interviewing officer how best to carry out the interview, ensuring David can fully participate and give his version of events.

The JI role is NOT to explain Ben's behaviour at the time of the incident, for example, he was homeless and had nowhere else to go. It is not the JI's role to explain that David could not read the 'No trespassing' sign. That would be a contamination of the evidence.



In summary

- **There is some variability in the interpretation of the role across the world**
- **There are key principles in the work of a JI**
- **There are important pre-training knowledge and skills that need to be considered and their impact on JI training. For example, if there is limited resource of candidates with a profession related to communication or experience of working with disability, there will need to be a longer training programme**
- **There are personal attributes that should be considered when recruiting JIs**
- **There need to be clear boundaries between the JI role and other 'supporting' roles**
- **Contamination of evidence, as part of the vital impartiality aspect of the role, need to be closely monitored.**



Reflection Tool: Module 2

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 likely are you to be able to recruit professionals with the appropriate experience to this role in your local area?

What other supporting roles already exist locally, and how will the JI role boundaries fit with them?

Continued over the page...



Thinking about how long it might take to recruit and train local people, is it worth designing a small pilot project with one small area/court/police station?

What will need to be in the job description?

What are likely to be the greatest barriers to recruitment?