

# Justice Intermediary Starter Kit

## MODULE 3

### UNDERSTANDING COMMUNICATION

[www.justiceintermediary.org](http://www.justiceintermediary.org)





# Introduction

Communication is complex, both for those with and without disabilities, and it is essential that a JI has insight into this basic aspect of the role. This module starts by looking at what we mean by 'communication' for everyone and **the human right to effective communication**.

Then we examine the specific demands of **communicating in the legal system**.

Communication is one of the most complex activities we undertake as human beings. It involves the **imparting, conveying or exchange of ideas, knowledge and information** by means of speech, writing or non-verbal methods.

It is also about the way we **establish contact** with others, enabling us to **build relationships** and **influence** others.

Communication is used to **manage behaviour**, both our own and others.

Communication is a **mutual and dynamic process** and not simply a transfer of information from one to another. Communication is **influenced by context** as well as the **experiences, culture and emotions** of the people involved.

Communication is a **two-way activity** involving understanding as well as expressing. The **extent of comprehension is often misjudged**. Although in general, levels of comprehension usually exceed levels of expression, it is not always a simple equation. For example, someone may speak at length as a cover for not being able to retain, hear or process verbal language.

Oral language is the foundation for written language. Written language [reading and writing] involves assigning symbols [letters to spoken words] to things we say. Often, people who have difficulties with oral language will have challenges with written language. However, it is possible to have problems with written language while having no problems with oral language.

“The role of the Justice Intermediary (JI) is focussed on maximising effective participation of persons with disabilities in the legal system.

A great deal of this participation is affected by communication.”



**Communication environment** will impact on all communication abilities, and the legal environment in particular is our focus as JIs. It is quite common not be consistent in our communication skills as a result of changes in our mood, level of medication, time of day, intense emotions, past experiences and topic of communication.

For example, when we are woken suddenly in the middle of the night, we will not be as coherent or articulate as we normally are; when we have just been asked to speak in a novel environment to a large group of strangers, we may hesitate and stutter, when usually we are fluent.

According to the Convention on the Rights of Persons with Disabilities 2006 (CRPD) Article 2:

**"Communication"** includes languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;

**"Language"** includes spoken and signed languages and other forms of non-spoken languages;"





# General societal barriers

These barriers are created by the other people with whom, and the society in which, the person needs to communicate. Society makes assumptions, fails to address individual needs and may have preconceived ideas of the contribution a person with a disability can make. Aside from these prejudices, there will be day-to-day barriers.

## Inappropriate expectations

These could be too high, too low or just out of place. For example, there may be an expectation that a person can read and understand the instructions in a hospital appointment letter; or that a person is unable to use a mobile phone to download an app, when they are perfectly competent; or that a person with early onset dementia is unable to decide what they want for dinner, when they can.

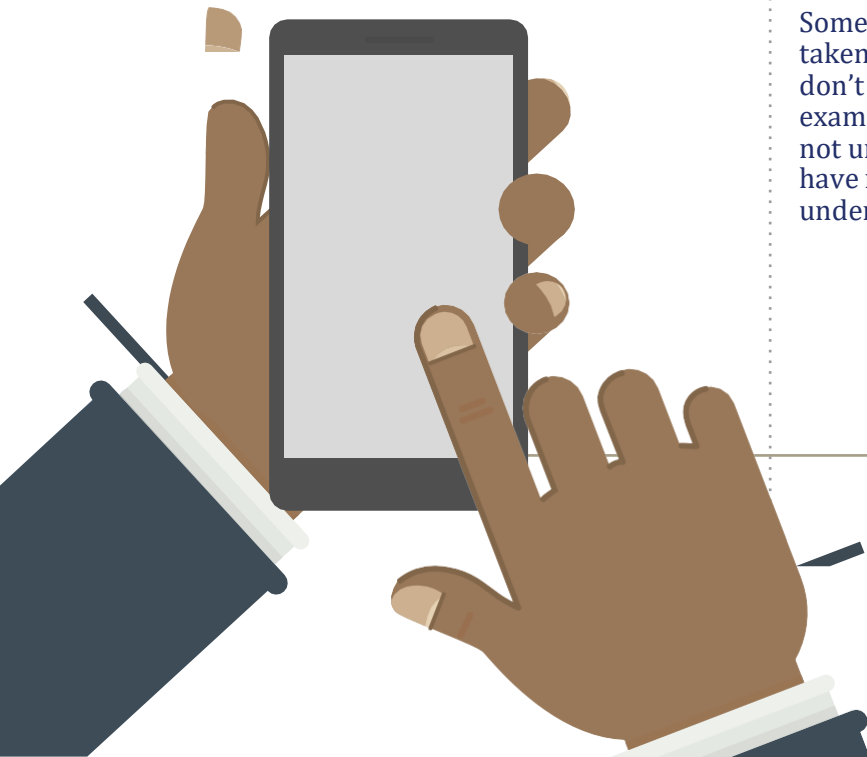
Sometimes, a person's expressive language is taken at face value because they 'look OK' and don't indicate when they have not understood. For example, when asked 'Do you understand?', it is not unusual for people to say 'Yes', even if they have not understood, or are not sure if they understood or not.

## Lack of time

For example, a person with a stutter may be reluctant to express an opinion if they know that the listener has little time and is likely to be impatient. Similarly, a family member may answer questions on behalf of a relative with a disability, thinking that it might save time, or complete a sentence for them if they pause to consider what they want to say.

## Pre-empting

When faced with a person who communicates in an atypical way, for example, doesn't make eye contact as might be expected, it can be easier to assume or pre-empt the expected intention, without asking for the information. This denies the person the opportunity to communicate. A person with Multiple Sclerosis may have lost the ability to speak, and so decisions may be made without their involvement. However, given the appropriate communication aid, time to respond and an effective listener, they are able to express their opinion.





### Physical barriers

Sometimes we don't think enough about the environment in which we are asking the person with a disability to communicate. Changes to the environment affect everyone but may impact more on a person with a disability. Here are some factors in daily life that may impact on effective communication:

- **Physical discomfort**, for example pain, will have an impact on the person's ability to concentrate and attend to what is happening around them
- **Environmental noise** for example in a large group may be distracting or cause a person to withdraw. Sensory overload impacts everyone but those with specific disabilities, such as autism, in particular
- **Visual distractions** such as lighting changes, television on, and people moving about, may impact on concentration
- **The number, and role of people** present at a meeting, for example when disclosing sensitive information, may negatively impact the person's ability to listen and express themselves fully.

Other societal barriers:

- A **change in routine** or change of plans can be very disruptive, causing confusion and distress for some people with a disability
- The **time of day** can impact on level of alertness. If sleep patterns are disrupted, early mornings are not a good time for communication
- Similarly, a **medication regime** may impact on levels of cognition; for example if a person with paranoid thoughts has a fortnightly injection, it may be harder to manage those symptoms at the end of a cycle of treatment, and thereby impact on communication
- The **clothing worn by professionals**, especially uniforms, such as those worn in a court or by the police, may negatively impact on a person's ability to communicate freely. Conversely a uniform may provide some reassurance
- The **stress and emotive nature** of certain communications, such as making a complaint, may impact on the effectiveness of disclosure.

Physical disabilities, such as limited mobility or vision, are more likely to be accommodated than disabilities that impact a person's cognition and communication. This may be because it is often easier to recognise when a person has a physical disability and to know how to respond.

In **Module 4 Understanding Disability**, intellectual and psycho-social disabilities will be explored in relation to access to justice.

**These factors are not comprehensive and may not affect every person to the same degree, or indeed at all, but they should be considered when seeking the most effective communication environment.**

**Persons with disability may inevitably be disadvantaged in their communication in many aspects of their lives, but the extent will be unique to them. With the right accommodations, many of the barriers to effective communication can be overcome.**

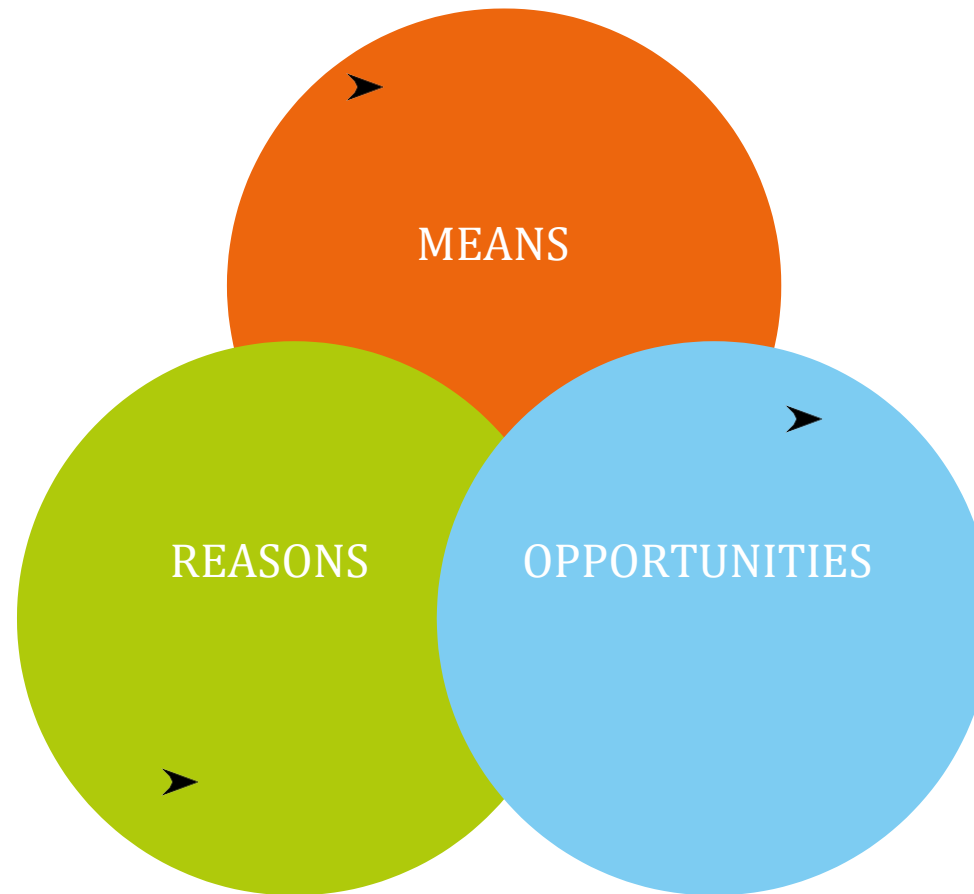


# Means, reasons and opportunities to communicate

HOW a person communicates

WHEN, WHERE AND WITH WHOM a person communicates

WHY a person communicates

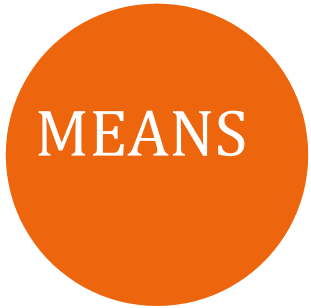


Communication is more than just having the ability to communicate.

We need all three elements to work together if we are going to have effective communication.

The three elements interact with each other and impact on each other.

Reference: Money, D and Thurman, S (2002) Inclusive Communication - coming soon near you? Speech and Language Therapy in Practice, autumn 2002, 4-5.



## How a person communicates

There are many factors that impact on how a person communicates:

- cognitive abilities
- sensory abilities
- verbal and non-verbal expression
- orientation
- literacy.

Looking at these in more detail, there is a wide range of skills required to ensure communication takes place effectively.



### Cognitive abilities include:

- a knowledge of language including grammar and vocabulary, understanding of the nuances of figurative language, of intonation to change meaning, the ability to recognise the contextual factors that impact on the actual words being spoken (for example if I say 'please', it depends on the intonation, the words that came before it, who I am saying it to, if I am being sarcastic, which affect the meaning of this single word)
  - the ability to recognise the significance of a changing environment, different levels of formality of language, etiquettes and know how to adapt to them
  - the ability to recognise change and unpredictability, and then know how to adapt communication in style and content
- the ability to access language in a timely fashion to suit the needs of the situation, for example finding the appropriate word, or being able to formulate the correct grammatical sentence to suit the level of formality of an occasion
  - memory of recent and long-term experiences, processing of new information, integration of new information and ability to make changes to thinking; attention, concentration, focus, awareness of social norms, self-esteem
  - the ability to recognise and make sense of non-verbal information, for example, tone of voice and changes in pitch, facial expression, and know how to use these aspects of communication to impact on meaning.





### Sensory abilities include:



**Hearing** – this may be an auditory impairment requiring aids or a processing impairment, for example focussing on a ‘main voice’ against background noise, other people talking or difficulties with phone/virtual system interference.



**Sight** – this may affect various aspects of vision, for example the ability to read close up or see at a distance, peripheral impairment or colour blindness.



**Touch** – this may be a general hypersensitivity or specific to particular items or ways in which a person is touched.

**Sensitivity to light**, for example not being able to tolerate artificial bright lights, or direct sunlight.



### Expressive abilities – verbal



#### Ability to:

- use oral muscles (for example tongue, lips, teeth)
- use vocal cords
- coordinate muscles of speech
- access words (finding the word ‘on the tip of the tongue’) and organise them quickly and accurately
- monitor own speech.

### Expressive abilities – non-verbal



- Use of facial expression
- Use of gesture
- Signing informally
- Use of formal sign language
- Other body language such as appropriate postures, use of hands, personal space.

### Expression – written form



#### Ability to:

- read for meaning (that is not just read aloud, but be able to understand what is read)
- communicate in writing
- draw for example a map, a plan, a flowchart or diagram.







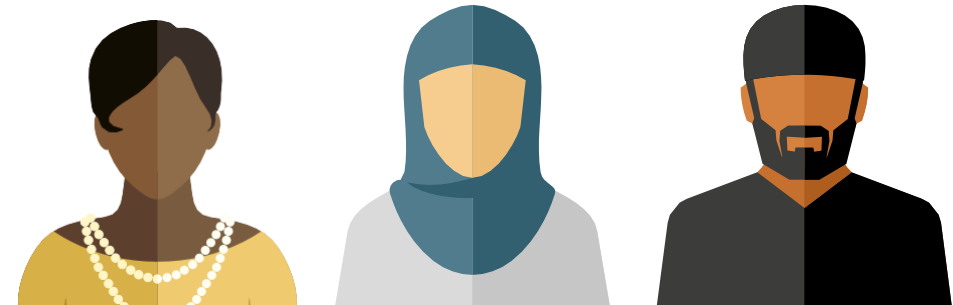
## REASONS

### Why a person communicates

There needs to be a reason to communicate. This may initially seem obvious, but if everything is provided for us, or we do not feel the need to engage with others, we will not have reasons to communicate.

Some of the reasons for communicating include:

- To ask a question
- To get attention
- To greet others
- To answer a question
- To refuse or challenge
- To express needs and wishes
- To make choices.
- To express feelings
- To express opinions and perceptions
- To report facts or tell ideas
- To listen to new information
- To hear how others feel or think
- To understand and learn.



## OPPORTUNITIES

### Where, when and with whom a person communicates

We live as part of a variety of social groups and interactions, for some more complex and numerous than others. Examples include: within the family unit, work and leisure activities, attending appointments, shopping and asking for help. This provides opportunities for communication.

Some people live more isolated lives, with fewer opportunities to interact with others and to communicate.



# The right to freely express yourself

Communication is recognised as an essential need and, therefore, as a basic right.

Without it, no individual or community can exist or prosper.

The right to freedom of expression requires effective communication to enable people to build and maintain relationships, express opinions, make decisions and assert their autonomy.

Everyone has the right to influence, through communication, what happens to them in their lives, and to be communicated with in ways that are meaningful to them.

This recognition is core to the work of a Justice Intermediary, and provides the basis on which a Justice Intermediary scheme is developed.



**“ The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice. ”**

Article 13, UN Convention on the Rights of the Child



**“ Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ”**

Article 10, European Convention on Human Rights



# The legal environment and communication

The legal system is a specific environment, with many unusual, unfamiliar and tradition-based systems and processes, with its own set of vocabulary and linguistic etiquette. This section explores some of the specific issues related to communicating in the legal system.



## Vocabulary in the legal system

The vocabulary used is likely to be different from day-to-day use in many ways:

- **Legal jargon:** barrister, conviction, bail, remand, prosecution, jury
- **Words not commonly used:** mitigation, location, on the occasion of, minded of
- **Words used with a different meaning:** 'no case to answer', 'indicate', 'cut-throat'
- **Figurative or idiomatic expressions:** 'cut to the chase', 'keep counsel'.

## Grammar in the legal system

The grammatical structures used can be routinely more complex. **Long sentences** for example '*So that you can be absolutely sure of the person in the cinema, can you tell me what he looked like?*' Knowing which part of the sentence is the actual question may present difficulties for a person with limited comprehension skills.

The **use of passive tenses** for example instead of saying '*the man chased the woman*', in a passive version it would be '*The woman was chased by the man*'. As the more common form is active, a very anxious person may not notice the difference between the two formats and fail to comprehend.

The **use of 'tags'** for example '*you were there, weren't you?*' This question is complicated by the use of both negative and positive forms in one sentence. Depending on the style of language in local courts, the examples will vary. However, these complex sentences demand more from the listener and are more likely to be misunderstood.



## Written language in the legal system

The legal procedures are rarely set out in a way that can be easily understood. If written leaflets are available, they may not be accessible to a person with limited reading skills.

There is a huge dependency on written language for all stages of the legal process. For example, police warnings, bail terms, requests to attend police stations or courts, evidence in the form of written statements, and bail/probation conditions.



## Legal protocol and tradition

- In a court, the main speakers often have their backs to the defendant, so non-verbal facial or gestural cueing cannot assist understanding. This is not the case in all jurisdictions
- There are no notes at the end of each session/day for the defendant to refer to as an aide memoire
- The protocols and rules are often unknown and not explained
- Legal narratives are much longer than most narratives in day to day life. Judges and advocates often make speeches in court of more than 30 minutes.
- There are often no visual aids to these lengthy speeches
- Court sessions often last two hours, placing unrealistic demands on concentration and attention span for even the most attentive listener.

## Unexplained processes and etiquette

- **Who are all the people involved and their roles:** there are no name tags, and no explanation of the different uniforms
- **Who can speak and when:** can the defendant interrupt, how does he talk to his advocate during proceedings
- **Order of play:** when will the defendant give evidence, why does the prosecution seem to go first for so much of the trial
- **Breaks:** who decides when they are, when is lunch, when does the day finish
- **What are the rules on behaviour:** when asked a question, for example, is swearing allowed, is it acceptable to say, 'don't remember' or 'I don't know'
- The **highly unpredictable nature of a trial**, with unexpected adjournments, changes to schedules and personnel.



During police interviews other aspects may impact on communication:

- **Uniforms and formal unfamiliar environments:** may increase anxiety and limit the ability to engage effectively
- **The seating position:** directly opposite, at a desk, may change the interaction and sense of confrontation
- **Not knowing the 'rules'** and feeling powerless may affect a witness' ability to disclose.



### Significance of event and emotional loading

The suspect or witness interview and the court hearings are highly significant events in the person's life, with considerable emotional content, not just in serious criminal cases such as assault, rape, murder or child custody.

The result of the experiences may be life-changing for example custodial sentences. The stakes are often high. This may seem obvious, but to legal professionals, who work in the justice system on a daily basis, it may need restating.

The emotional and trauma content of these events may be highly charged and impact significantly on the person's ability to comprehend, assimilate and express themselves. This may be true for suspects, victims, witnesses and defendants.

### Justice Intermediaries' own communication

- JIs have a role in maximising communication between the person with disability and others in the legal system, for example judges, advocates, clerks and police
- JIs need to model differing communication styles to meet the specific needs of each situation and person with disabilities, for example, using simplified language, reducing the speed of our speech, and giving time for the responses for one person, whilst using a professional vocabulary when addressing the judge
- JIs need to recognise potential for misunderstandings. This may include avoiding assumed knowledge and life experience of the person with disability, checking out understanding at every stage.



## In summary

- **Communication is the primary role of the JI**
- **Communication encompasses all aspects of verbal, non-verbal and written communication, and factors that impact on communication's effectiveness, for example environment, mental health and topic**
- **There are significant barriers to effective communication**
- **Means, reasons and opportunities to communicate are all part of understanding communication**
- **The legal system has specific traditions, etiquette, vocabulary and environments that impact on effective communication for non-legal users of the system**
- **JIs need to consider their own communication skills and how these need fine-tuning for the role.**



## Reflection Tool: Module 3

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.

**What do you think are the basic skills in communicating well in the legal environment?**

**How much training in communication will the recruited JIs need?**

**How can the other stakeholders in the legal system be enabled to adapt their communication for people with disabilities?**

*Continued over the page...*



**Does the JI scheme have a role in this aspect?**

**Which disability groups/charities might be able to assist the new JI scheme?**

**How do local legal traditions add to the complexity of the communication environment?**