

Justice Intermediary Starter Kit

MODULE 6

ASSESSING NEEDS AND REPORT WRITING

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Introduction

It is important to establish credibility so that recommendations are taken seriously. It is essential that the Justice Intermediary (JI) has first hand evidence of the person's communication profile and can report on these findings, and be able to respond to any challenges to their recommendations.

Every jurisdiction will need to consider available resources in determining how best accommodations are made. This module provides ideas for assessing and reporting communication needs and accommodations, which can be adapted as necessary to reflect the local configuration of services.

What does 'assessing' involve?

Assessment can take many forms and the person with a disability should always give their consent to, and be involved in the assessment. The person with disability may have experienced other 'assessments' and have expectations of formal testing, for example in cognitive or psychological assessments. It is rare for the JI to use formalised tests.

Every JI will develop their own style of assessment; some use more formal methods, have a set pattern and structure, while others may tend toward a structured conversation, which has less formality but still covers the main areas. Some of this variation will be based on the JI's profession and experience, and some will be related to the needs of the person with a disability.

It is vital to explain to the person with disability the purpose of the meeting. It should be made clear that the meeting is not to discuss the legal case. If a report is written, it should be agreed with the person with disability and they should be offered a copy of the report.

Consent

It is important that consent is discussed with the person with disability at each stage of the process. The person with disability can, at any stage, give or take away consent. Consider obtaining consent at all the following stages:

- On referral to the JI
- When the JI requests access to information from professional reports or from carers/family
- When the JI arranges the assessment meeting
- When the JI makes recommendations for accommodations.

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Before meeting the person

With consent agreed, any available written documentation should be gathered to provide background to the assessment. For example:

- Medical records
- Educational records.

These may be held by the police investigator, by the lawyer or may need requesting from schools/doctors.

The JI should liaise with family or professional services involved in supporting the person with their care or treatment. For example:

- Social worker
- Psychiatric nurse
- Teacher
- Care services
- Family/partner/special friend (of course this will depend on the type of case and relationship to the evidence).

The JI will need to explain their role and the reason for wanting this information, and clarify that this information will not be used as evidence in the case, but will help to ensure fairness and equality of access to justice.



Assessment environment

The environment for assessment will depend on the stage of the case and situation of the person with disability. If the suspect has been detained, ask to see the person in a quiet room separate from other people.

If the person is a complainant or witness, they may feel most comfortable if the assessment takes place in their home, or in a familiar place. They may prefer to have a friend or family member present also. This additional person will need to know that they cannot interrupt or provide the answers. It may be difficult for them to do this, and in some circumstances easier for them to wait outside and have some time at the end to assist with any queries. If the person is a defendant on bail, a formal environment such as a solicitors' office or interview room may provide a better indication of how the defendant communicates in unfamiliar surroundings.

The number of people in the room, the positioning of seating, the time of day may all impact on communication. For example, asking a person who usually sleeps until noon to attend

an assessment at 9.00am will give an indication of how they will be able to communicate in the hours that a court sits. A person who communicates well on a one-to-one basis, may respond very differently when three police officers are in the room, or they are sitting in a large crowded courtroom. These aspects will need to be considered when planning to assess.

Who should be present?

Throughout the interactions between JI and person with disability, the maintenance of impartiality and neutrality is of utmost importance.

It is recommended that when meeting the person with disability for assessment, there is no reference to the details of the legal case. In some jurisdictions, a police officer is required to be present at all intermediary assessments of witnesses/complainants. This is to ensure that if the case is discussed, the police can respond, and if necessary take note of new evidence. If the intermediary is alone, they may become a witness

to new evidence, resulting in their role as an intermediary becoming untenable.

This aspect of who attends an assessment will need addressing within the specific jurisdiction and protocols agreed that do not compromise the impartial role of the JI.

Establishing rapport

It is crucial for the JI to establish rapport with the person with disability. Rapport will help ensure that during assessment the person is less anxious, more effective in their communication and able to participate fully. The level of rapport will form the basis for the future work of the JI with this individual.

This rapport can sometimes be hard to establish and may take more than one session. With young children, for example, the chance to play with toys, or with an adult to opportunity to have a chat about their pet or their local football team will encourage rapport.

Purpose of assessment

The purpose of assessment is to identify the needs of the person with disability within the context of their involvement with the judicial process.

All aspects of assessment should meet this purpose and should remain confined to this purpose. The purpose of the assessment is not to inform a therapy or treatment regime.

Its purpose is not to understand the needs of the person with disability in their daily lives, for example in employment or education.



Its purpose is not to help the person get the legal result they desire.

The assessment enables necessary accommodations to be identified, resulting in effective participation in the justice system.

The JI must judge each piece of information in relation to the impact on the person with disability's involvement in the legal process and the importance of establishing rapport.

It can be easy to lose sight of the boundaries of the JI role and ask for more information than is necessary to perform the role impartially and effectively.

Discussing aspects of their lives may however give insight into their communication skills without having to formally test this aspect. For example, asking about TV programmes may provide information about their ability to narrate a story, their recall the timing and orientation, and provide more information about their level of literacy.

Does the JI need to know...

- The names of people who live with the person being assessed?
- The year the person got married?
- Their home address?
- Their employment record?
- The names of carers and significant others in their life?
- Their medication regime?
- Their understanding of the legal system?
- Their favourite TV programmes
- How they spend their day?
- Their experience of education?

How can information about communication be gained from asking such questions?

- The names of people who live with them, the names of carers and significant others in their life – this will give information on ability to name, orientation in time and place, and may help in knowing the emotional support available
- Their work – and work history – will tell more about how they have successfully communicated in various roles and may provide insight into their literacy levels
- Their understanding of the legal system, the legal terminology – will help the JI know how much they will need explanations, how effectively they can comprehend the legal process
- Their favourite TV programmes will help direct some conversation to their interests, and if they can narrate a story from a programme, their reasons for liking / disliking, and the sequencing of a story
- Their medication regime will tell you about their diagnoses and symptoms, whether time of day makes a difference to their communication, if they will need medication during the court day, the side effects, how effective they believe the medication to be, any recent changes
- How they spend their day – is there structure, set time for waking, will an early start impact on their involvement in the case, how much assistance do they need in activities of daily living such as reading letters, paying bills will indicate their communication needs with legal documentation
- Their education experience – did they attend any special schooling, need extra help, and which were their best subjects – will indicate how much assistance they need to attend and process new information.

Assessment is likely to vary depending the role of the person with disability, or the stage of the legal case. For example, a witness, complainant or suspect speaking to the police about their experience or in response to a charge, will require a different set of communication skills than a defendant or mother in a child custody case where the majority of their involvement will be in listening and understanding the proceedings.



Here are some areas to consider assessing for persons with disability who are at the interview stage:

- Understanding of their legal rights depending on local law, such as telling the truth, when to plead
- Knowing the role of the interviewing persons or questioners
- Knowing how the interview will be used
- Understanding complex questions
- Ability to disagree or challenge an error
- Verbal processing and working memory
- Narrative skills
- Understanding of time, distance, place and sequencing
- Emotional regulation and strategies
- Attention and concentration
- Medication and its impact
- Support systems
- Vocabulary for intimate body parts
- Understanding and ability to use key words used in legal process such as ‘evidence’, ‘statement’ and ‘consent’.

Here are some areas that may need assessing if the person with disability is attending a full hearing, for example as a defendant or a mother in a child custody case, or at a civil tribunal:

- Understanding the primary legal roles such as judge, jury, lawyers
- Understanding the basic legal process as related to their case including consequences
- Understanding of complex vocabulary
- Understanding basic legal terms
- Understanding complex questions
- Ability to disagree or challenge an error
- Verbal processing and working memory
- Narrative skills
- Understanding of time, distance, place, sequencing
- Emotional regulation and strategies
- Attention and concentration
- Health status as it relates to needs of legal process such as sleep patterns, fatigue
- Medication and its impact
- Already developed strategies for managing stress, lack of understanding.



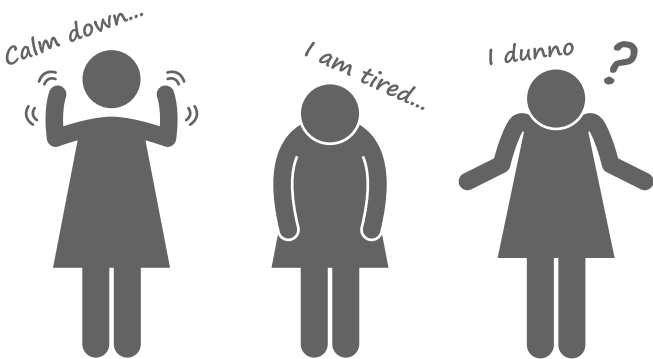
Here are some additional areas to assess when working with young children or persons with the cognitive age of a young child:

- Vocabulary for body parts on a simple drawing
- Understanding and use of positional words such as on, under, between, behind, above etc
- Ability to sequence a story in the correct order
- Ability to provide detail such as colour, shape etc
- Level of compliance with adult authority.

Use of visual aids for assessment

It is helpful for the JI have access to or collect materials to use for assessment. **Module 11 Resources** has references to assessment aids and materials. They will need adapting to local systems and culture. For example, materials might include:

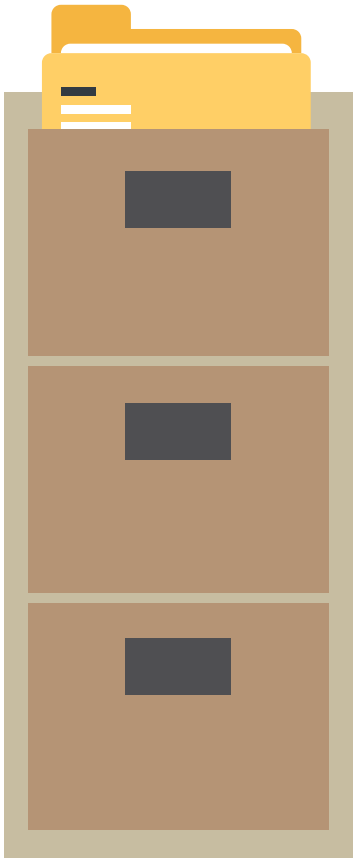
- Signs for feelings
- Body maps and figures with moveable parts
- Pictures of a courtroom
- Signs for 'I need a break', "don't know", 'don't understand', and more
- Timelines.



Here are some visual aids that can be used to encourage the person giving evidence to take their time in answering and to encourage the person to indicate if they need a break.

Rules for answering questions		
<p>Listen carefully to the question.</p>	<p>Think about the question.</p>	<p>Take your time. Answer the question</p>
Do I need a break?		

Recording assessment information



In many situations, it will be possible to take written notes during the assessment. These are important to inform the follow-up report and provide evidence of how recommendations were concluded.

However in some cases, it may be necessary and/or beneficial to audio or video record the assessment. For example with young children, or persons with only non-verbal communication, it may not be practical to write notes.

Consent for audio and video recording should be gained from the person with disability or if a young child, from the responsible adult. (The consent can be in written form or on the audio/video)

It is useful for the interviewing police officers to be present during the JI assessment. Their observation of the person with disability, when not discussing the criminal case, will help the officer to understand how the recommendations of the JI develop from their observations, and how communication is most effective. It may be a good opportunity for the officer to observe how changes in the JI's communication results in more effective communication (both understanding and expression) of the person with disability.



Record keeping

All information including assessment notes, reports and plans needs to be held securely and confidentially. Depending on local legislation, there may be a need to register the JI in accordance with local data protection laws and ensure that regulations are adhered to.

As a minimum, the JI should record the following information relating to the case:

- Venue and times of meetings and phone calls
- Attendees at meetings
- Consent of the person with disability
- Observations from assessment
- Key personnel in the case.

It is be good practice to offer the person a copy of the record.

Reporting

The JI will most likely need to write two main types of report:

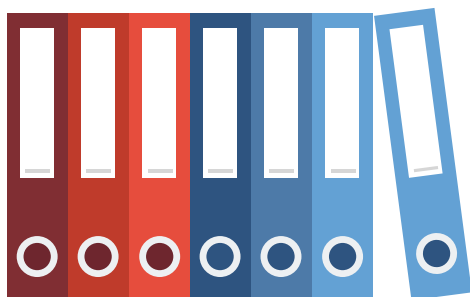
1. For the police officer (or public prosecutor) who is planning to interview the suspect, complainant or witness:

this report will focus on maximising disclosure and detailed evidence at the start of a case.

The advice may be in oral or written form, depending on the time available to the JI between assessment and the interview.

2. For the court, including judge and advocates on both sides, when a trial is planned:

the report will focus on the accommodations necessary to ensure effective participation of the witness or defendant when attending court.



Reports

In some jurisdictions, JIs write extensive reports. Sometimes, the reports are limited to a list of recommendations with supporting evidence. In others, there are no written form of recommendations.

The protocol for practice will need to be considered within the local resources and skillsets.

It is important that reports are:

- Presented professionally
- Retain confidentiality
- Retain impartiality
- Are accurate in reporting observations
- Do not diagnose or recommend outside the boundaries of the role . The JI is not an expert witness or an advocate. This is explored further in **Module 8 on Emotional resilience and Boundaries.**

There are many different ways a report can be organised, which will depend on the author, the remit, the local culture and legal system. Here are some headings to consider:

- Chronology of referral and dates of involvement
- Background information gained from expert reports/documents provided
- Person's understanding of purpose of meeting
- Medical history (if relevant)
- Understanding of language
- Verbal expression
- Literacy
- Emotional regulation
- Understanding of legal process
- Non-verbal communication
- Opinion of involvement of JI
- Recommendations and Accommodations
- Role of JI.

Here are some further details of the information that may be included in a report:

- **Background** – where and when assessed, who was present, how long, a meeting, did he attend on time, transport issues
- **Information from other sources** such as expert reports, family, friends, school, workplace, solicitor etc
- **Diagnoses** – established and suggested, medication, side effects, impact on legal process
- **Current status** for example employment, education experience, independence in daily living
- **Concentration and attention** – how long for, what helps, eye contact, insight to this, fatigue signs
- **Understanding of language** – general vocabulary, vocabulary of the court
- Understanding of the relevant legal process
- **Ability to express** – non-verbal and verbal, narrative, sequences, detail
- **Emotional management** – during session, reported issues such as anger outbursts, fluctuating mood, auditory and visual hallucinations, insight, strategies already used to manage mental health
- **Literacy** – reading level, writing skills functional to situation
- **Numeracy** – if relevant to case
- **Concept of time**, place, oriented, timings of events, reporting history of events
- **Ability to challenge errors**, and initiate queries
- **Reasoning and logic** – making decisions and inferences
- **Credibility and suggestibility** (these may be outside the remit of the JI to assess (depending on their professional background, but information maybe available from an expert witness report).

Information about the JI and the JI Scheme

It is helpful to the person reading the report to know about the background of the JI such as qualifications, experience and specialisms.

Some background to the JI service should be included in the report, for those reading the report who may be encountering the JI scheme for the first time.



Impartiality of the JI

The need for the JI to maintain impartiality has been emphasised throughout JISK. In a report, there must be clear boundaries for comment and opinion.

Here are some report statements that are acceptable:

"The man reported that he struggles to read the letters from the solicitors."

"On assessment the child was unable to recognise twelve o'clock on an analogue face."

"The witness presented as confused by many simple questions such as 'where do you live?'"

"During the meeting, the man failed to challenge errors relating to his current employment status."

"The man reported that he had been bullied at school."

Here are some unacceptable statement and the reasons why these would not fit with the remit of the JI report:

"The defendant is unlikely to have committed the offence as he isn't intelligent enough to do it."

This is not impartial to the case. It is outside the JI remit.

"The suspect told me he did it but I don't believe he knew what he was saying."

This is opinion about the case and is an issue for discussion with their lawyer.

"The complainant has issues with her father so is unlikely to tell the truth."

This is related to the case and a JI does not comment on truth.

"The defendant continued to deny the charge, even though I told him we would not be talking about his legal case."

This does not need to be reported as it relates to the case.

"He was bullied at school."

This suggests the JI saw him being bullied or has evidence to support the claim. It would be preferable to state

"The man reported that he was bullied at school."

This area of report-writing will need training and clear guidelines depending on the professional background of the recruited JIs.

Report recommendations

The JI's report will often recommend accommodations that involve changes to legal procedures. These recommendations may require legal practitioners and the judiciary to adapt long-standing traditions. To gain their agreement and authorisation, it will be important for the JI to provide evidence that supports the accommodation. Here are four recommendation examples, and the evidence to support them:

Recommendation 1

Recommending use of a screen for a witness could be supported by the evidence of witness describing their fear of the defendant, the evidence of the witness' prescribed medication to manage anxiety and/or the description of panic attacks and observations of the witness' reduced communication when talking about an emotional topic.

Recommendation 2

Recommending that vocabulary is simplified could be supported by examples of words found in the assessment that client did not understand or misunderstood.

Recommendation 3

Recommending that questions relating to timescales should be avoided could be supported by explaining that client was not oriented in time during the assessment, and could not explain how long it took to get to the meeting, or did not know his age or the time he had been in prison.

Recommendation 4

Recommending that the courtroom is kept quiet during client's evidence could be supported by explaining how client responded negatively to sudden noise or their level of distractibility during assessment. In some countries, guidelines exist detailing how a JI report should be written. The following is based on a procedural manual from England and Wales (Ministry of Justice Procedural Guidance for Registered Intermediaries August 2019) and has been edited to exclude local judicial procedures which may not be universal. This is just one example, and the details of other JI schemes can be found in **Module 9 Around the World** and **Module 11 Resources**.

Here is an example of the introductory section of a JI report from the same source:

"I have been asked to:

1. Indicate whether or not the witness has the ability to communicate their evidence and, if so, how
2. Indicate whether the use of an Intermediary is likely to improve the quality (completeness, coherence and accuracy) of the witness's evidence
3. Advise the advocates on the most effective way of communicating questions to the witness
4. Make recommendations as to special measures and other adjustments to enable the best communication with the witness.

"My role as an Intermediary is to assist communication with the witness and their communication with others. I am not instructed as an expert witness. I cannot give an opinion on the accuracy of the witness's recall of the facts in this case nor can I give an opinion on whether a witness is telling the truth in his/her evidence. My role is limited to facilitating communication before trial and during the witness's evidence and advising how to assist them to achieve best evidence."

In summary

Assessing and reporting styles and protocols are likely to vary widely depending on the local needs, available resources and legal protocols. There are however some essentials that relate to the guiding principles of the JI role:

- Impartiality
 - Professionalism
 - Understanding of role boundaries
 - Transparency
 - Aiming toward effective participation of the person with disabilities
- Assess only what is relevant to the interaction with the court
 - Assess without addressing the details of the case
 - Report about communication needs and accommodations, not about details of the case
 - The final decision on authorisation of accommodations is with the court.

Reflection Tool: Module 6

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 experience will the potential JIs have in the assessment and reporting role?

How might they need to adapt their previous experience?

What materials might the scheme need to provide the newly recruited JIs?

Continued over the page...

How is consent of the person with disability legislated for in your jurisdiction?

What local data protection legislation needs to be considered?

How will assessing and reporting be monitored in your scheme?

What level of assessing and reporting will be feasible considering your local resources?