

Justice Intermediary Starter Kit

MODULE 7

ACCOMMODATIONS

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Introduction

UN Convention on the Rights of Persons with Disabilities 2006 (Article 13) states:

“Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.”

CRPD says that in order for people with disabilities to exercise their rights, modifications and adjustments must be made; these are known as accommodations.

Accommodations enable equal participation in society for people with disabilities.

Accommodations are defined by CRPD as:

“[The] necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.” (Article 2).

In a criminal justice context, accommodations do not relax the rules of evidence or procedures – they level the playing field.

What is an accommodation?

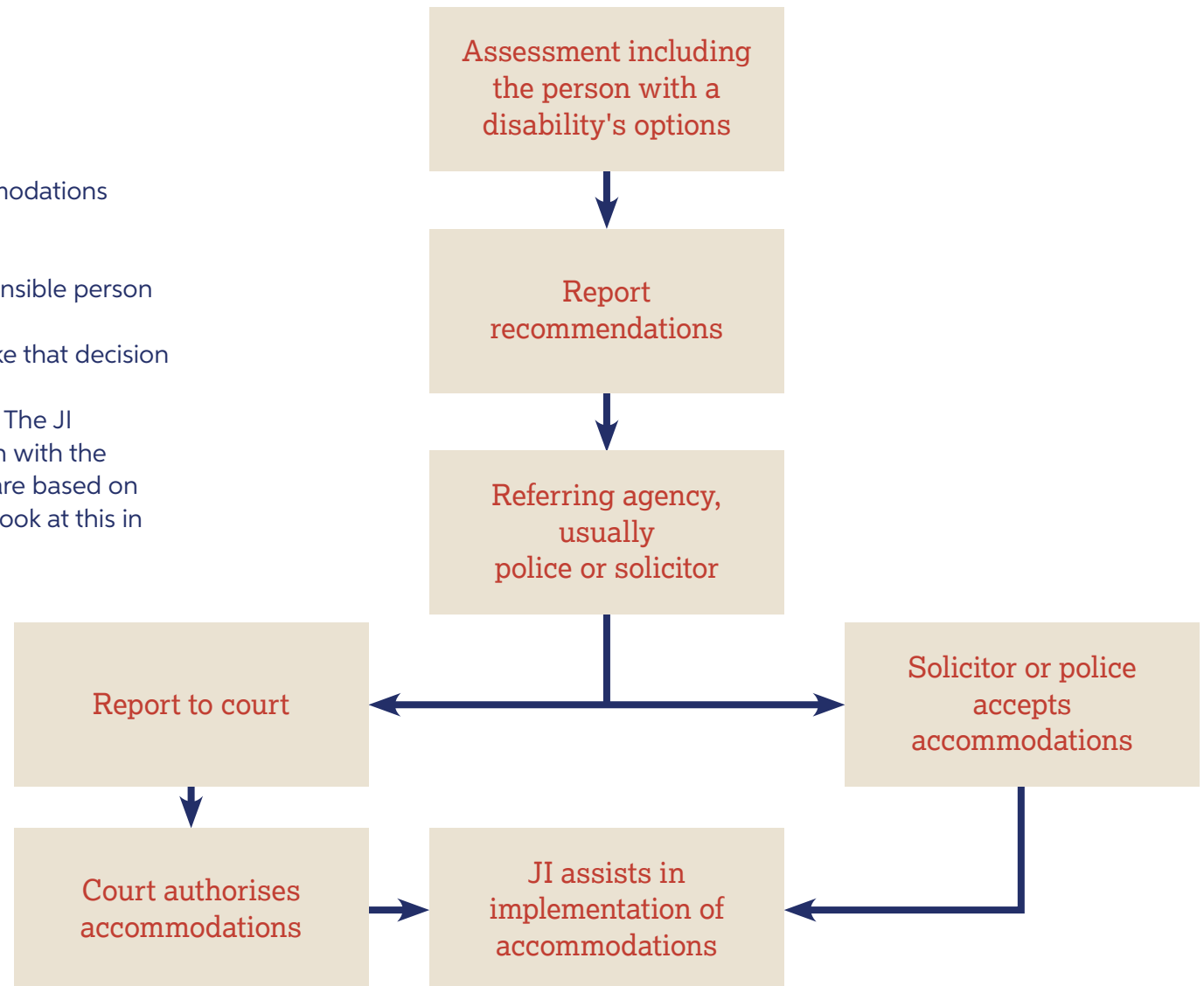
Accommodations minimise the impact of a person’s disability on their daily lives. Accommodations are anticipatory, meaning we should think about and prepare in advance for the general types of accommodations that might be necessary.

Accommodations are personal, meaning that everyone has different needs that should be accommodated in agreement with the person with a disability.

In the context of justice, persons with disabilities, including children with disabilities, have the right to appropriate procedural accommodations (Principle 3, International Principles and Guidelines on Access to justice for Persons with Disabilities, UN Committee on the Rights of Persons with Disabilities, 2020).

Whose decision?

- In practice, the final decision to authorise accommodations remains with the legal professional
- In court, the judge or magistrate will be the responsible person
- In police stations, the interviewing officer will make that decision
- The Justice Intermediary (JI) has an advisory role. The JI recommends the accommodations in consultation with the person with a disability. Their recommendations are based on assessment and reporting. Perhaps it is easier to look at this in diagrammatic form.



Accommodation categories

Accommodations are recommended to increase effective participation and maximise accurate, reliable and coherent communication. In this module there are details of many of the accommodations that have been used across the world.

To make it easier to think about them, they have been grouped into categories. Each accommodation will relate to the assessed need of the person with disability. There are likely to be many new and innovative other accommodations that develop over time, to suit the local needs and the individual.

General environment

Consider how the environment is a significant variable that impacts on effective communication for all people, with or without disability.

It may be appropriate to interview a complainant/witness in their home environment, to make them feel more relaxed or because they don't like to leave their home (for a number of reasons such as agoraphobia, fear of strangers, mobility issues).

However there should be some consideration for the impact of disclosing traumatic experiences in a familiar surrounding. There is evidence that, from then on, the room then becomes a trigger for flashbacks and trauma reactions.

If interviewing in a police station, some countries have developed informal interview suites, that are away from the station or have a separate entrance. For many traumatised victims, being interviewed in a room with a comfortable chair/

sofa, in a homely décor, with a drink and a nearby toilet facilities will have an impact on participation. Many people like to know there is a quick exit to outside space, sometimes just for a cigarette break and time alone.

In the courtroom, there is unlikely to be much flexibility as by its very nature it needs to be formal and is inevitably based on long-standing traditions. However the JI needs to look at the courtroom with fresh eyes, as often the legal professionals have become so acclimatised that they fail to notice the strangeness of the courtroom environment for the lay person. The low level repetitive noise or the bright lights may cause sensory overload. The position of the lawyers, often with their backs to the defendant may not be conducive to effective listening.

So the JI may recommend accommodations that change the traditional environment to enable the person with disability to participate most effectively.



Times and breaks

There may be a need to recommend accommodations about the time of day and how often there are breaks during interview or in court. For example:

- If the person's medication is most effective in managing symptoms of paranoia in the afternoon, a witness should appear in court, or be interviewed in the afternoon
- If the person's concentration levels are very low, additional breaks should be agreed as an accommodation, as well as some flexibility for the JI or person with disability to request an additional break
- If fatigue is an issue, the court should not ask the witness to appear for evidence toward the end of the day. For the defendant it may be necessary for the court to sit shorter days or have a long lunch break.

Seating and positioning

It is important to consider the seating positions of the person with disability during assessment, interview and in court. For example, they may benefit from sitting close to others and directly facing them if they cannot hear well. They may prefer to keep a distance as they feel uncomfortable if there is any chance of physical contact.

They may prefer to sit with their backs to others, as they feel so exposed when disclosing personal information. They may be better at right angles to the interviewer, rather than directly facing which can be interpreted as confrontational. They may not like to make eye contact.

In the courtroom, the questioner may reduce anxiety in the person with disability if they sit rather than stand. Speaking from across a very large courtroom can be more intimidating, and it may help for the questioner to move to a closer position to the witness box. The courtroom may have too many stimuli (noises, lights, movement) that is an overload and needs controlling. For example, the court

usher could be asked by the judge to minimise public coming and going from the courtroom, or during a virtual conference all participants could be asked to 'mute' to minimise background sounds.

In some jurisdictions the witness is expected to stand, and it may require an authorised accommodation to arrange seating, perhaps for the very anxious, for the person with physical limitations such as pain or inability to stand.

If technology is available, giving evidence from a room outside the court (either in the same building, in a police station or even from home) can improve the quality of evidence. The JI should be on view alongside the witness on the TV monitor in the courtroom.

The use of a screen/curtain around the witness in court may reduce anxiety and shield an alleged victim from an alleged perpetrator, resulting in improved quality of evidence. The JI should be beside the witness, both on view to the lawyers and judge.

Uniforms/physical presentation

For the witness/complainant and suspect being interviewed by the police, there can be accommodations in terms of clothing. If asked, an investigating officer may wear less formal clothing, rather than uniform.

In the courtroom, accommodations may include requesting that formal traditional judge and attorney clothing is swapped for less formal attire. In England and Wales, where wigs and gowns are traditional, there is a well-used accommodation of asking for these to be removed, particularly with young child witnesses and with people who have increased anxiety. For others, the presence of formal dress helps them to see the seriousness and importance placed on their involvement in the court, and identify who the judge is. The JI will need to seek out their views before assuming the most appropriate accommodation.

There may be a need to specify the preference for specific gender of the questioner. Obviously this is a delicate matter, but if, as an example, a highly traumatised rape victim is less likely to communicate well with a male interviewer (or a male JI), the services needs to be sensitive to this.

Presence of support persons

Consider the presence of family/friend/support worker is present during assessment, interview or court appearance.

For example, if a person with severe anxiety and panic attacks is usually supported in their home by a carer who has strategies to manage these symptoms, it may be useful to have the carer sit just outside the interview room, or sit alongside the person.

Contamination of evidence will need to risk assessed, and if that carer is also a witness in the case it will not be possible. This will be best discussed in advance with the interviewing officer.

There will clearly be times when the JI has to learn the strategies used by the carer (for example, in helping to manage a panic attack) and practice using them with the person with disability so they can be confident of appropriate support.

**DON'T USE A BIG WORD
WHEN A SINGULARLY
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CONTEMPORARY
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Language

There are many areas of language that will require accommodations based on the results of assessment. These will be addressed in the following sections:

- Speed and tone of delivery
- Level of vocabulary
- Level of grammar
- Complexity of questions
- Ability to narrate independently
- Time, orientation and distance related questions
- Level of literacy.

1. Speed and tone of delivery

If the person struggles with processing language and/or retaining even short passages of information, the JI will need to recommend accommodations that slow the pace of the conversation or line of questioning. The questioner should be encouraged to speak more slowly.

Similarly if the person struggles with organising their thoughts and deciding how to say something, the interviewer/questioner will need to encourage them to take their time. It can be difficult to sit in silence when the other person isn't speaking, but silence can be valuable for planning and organising what is to be said. This may be possible in the interview stage of an investigation or the evidence giving stages of a trial.



2. Level of vocabulary

Many people will struggle to understand language used in the justice system, and vocabulary can be misinterpreted. This is especially true for people with communication needs.

The JI will need to develop skills in using only more common vocabulary, and simplifying the vocabulary used by others. The JI should also recommend that others avoid using complex words and legal jargon.

For example,

- Avoid specific legal terms such as evidence, mitigation, prosecution, dock, jury, verdict
- Avoid words that have other meanings outside the legal system such as sentence, case, matter
- Avoid words or phrases that are not concrete such as metaphors. For example, the idiom 'keep your head down' was misunderstood by a defendant who was autistic and thought she must sit with her head bowed throughout her trial. These will be language specific and JIs will know what is relevant to their own context

3. Level of grammar

If the person may struggle to understand or use complex grammatical structures. Grammar will be language specific. JIs will know what to look out for in their own contexts and be able to recommend that grammar is simplified. The following examples relate to English grammar:

- Avoid the use of the passive tense. For example, "*Tom was hit by John*" may be understood as Tom did the hitting
- Avoid the use of negatives in a sentence may confuse such as "*Were you not going to leave the house?*" will need to be revised to "*Were you going to stay in the house?*" Or "*Were you going to leave the house?*"
- Avoid using the present tense when discussing or questioning traumatic events. This may be retraumatising. Instead use the past tense
- Avoid using other complex grammatical structures such as a 'tagged question'. This is a statement followed by a 'tag' such as "*You eat tomatoes, don't you?*" or "*You didn't eat the tomatoes, did you?*" where both positive and negative is contained in the same sentence. These are difficult to process.

4. Complexity of questions

Some of this is covered in the sections above, but attention should be given to the complexity of the question with the aim of keeping it as simple as possible. For example"

- Giving choices can add complexity, limit the possible answer or be leading. For example “*Were you going to the bakery or had you already bought the bread you needed?*” This could be simplified to either “*where were you going?*” or “*Were you going to the bakery?*” or “*Were you going to the bakery or somewhere else?*”
- It may help to ensure that any ‘choice’ questions have a ‘none of these/ something else’ as a choice, for example: “*Do you prefer a pitta bread or a baguette or something else?*” Some people with limited comprehension or a propensity to comply, will tend to agree with the last choice. Open questions are often more effective
- Questions should be short and with only one part, for example “*Did you go to the shops or to the cinema before you went home?*” will require simplifying to “*I want to ask you about going home.*” “*Where did you go?*” “*Did you go to the shops?*” “*Did you go to the cinema?*” (Each of these questions should be separate and may not all be required depending on the response of the witness.)
- Questions should not have an introductory phrase such as “*in relation to...*” “*you remember when...*” or unnecessary information that is already well accepted such as “*on the date in question...*” or ‘*when you met your uncle Mr Snow...*’. These phrases add processing load for the person with a communication impairment and it may be difficult for them to know which part of the sentence to focus on.

5. Questions in advance

In some jurisdictions the courts require the defence and prosecution to present their questions in writing to the JI in advance of the hearing. This enables the JI to simplify the questions without changing the meaning, and to offer this advice for discussion. The defence, prosecution and JI meet together with the judge who rules on whether the JI suggestions are acceptable.

This does not preclude any spontaneous changes in questioning during the evidence in chief and cross-examination. However it does reduce the number of JI interventions and improves the flow of questions and answers for the jury.

The essence of this accommodation is the perceived impartiality and neutrality of the JI.

The judge often uses this opportunity to rule on the length of questioning to be permitted and the topics that can be addressed. For example, in some courts judges rule that the cross-examination of a person with disability should be no more than two hours.

The judge may rule that cross-examination that ‘puts the case’ i.e. tells the witness they are lying, may not be permitted for a very young child or an adult with psychosocial disabilities.

The lawyer would then be expected to make their case to the jury during a closing speech.

Initially this concept of prepared questions was difficult to gain support among legal professionals. In England and Wales, however, many lawyers now say that the practice has helped them hone their skills in simplifying language, and they often use these techniques with all witnesses regardless of any disability.



HOW TO DECIDE WHO WOULD BENEFIT FROM A JI?

6. Ability to narrate independently

For a person being interviewed, either as a witness or a suspect, it is essential to be able to narrate their story.

If the person struggles with providing a narrative independently, the JI will need to think about accommodations to facilitate as much relevant detail as possible. For example:

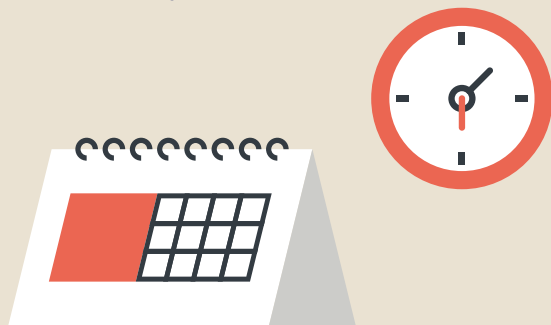
- Advise the use of free flow description without interruption, followed by recap where interviewer asks about each section of the description to get more detail. *“tell us what happened yesterday”.....wait for as long as possible, then “now let’s go back to the beginning. Where were you? Who else was there?”*
- Use visual aids such as timelines, body maps, drawings of witness
- Suggest person responds in writing rather than speech if this is easier. The JI can either read this out and/or pass the response to the court for reference
- For a non-verbal witness with knowledge of sign language, a suitable interpreter will be needed. If the JI is fluent in the same sign language this will be a dual role
- Some people will use augmentative communication aids. The JI will need to either have experience of these specific aids or enlist the help of a relevant professional to ensure they can assist appropriately.

**Further details on the
PEACE APPROACH**

7. Time, orientation and distance questions

Concepts of time, orientation and distance can be hard for people with certain disabilities, for example intellectual disability or dementia.

- Time and timings may need to be talked about in relation to how the person perceives the world such as before lunch, after breakfast, a school day, in relation to a religious holiday or a birthday, rather than speaking about dates, days or clock times
- Distance may need to be talked about in terms of 'how many houses away' or how many bus stops' rather than metres or yards.



8. Level of literacy

For many people entering the justice system, their level of literacy may be very different to the legal professionals. The justice system depends on many written documents and often assumes a high level of literacy.

The JI may need to ask for accommodations to ensure understanding of these documents. For example:

- Any written documents should be provided in advance so that the JI can simplify them either in writing or verbally
- Where a written oath is required, the JI will require time with witness/defendant to practice reading, or to agree repetition in short phrases is the better option
- If statements are in written form, JI will need time to ensure person with disability has understood before signing. Reading aloud at speed will not ensure comprehension if the person has auditory processing difficulties
- In some jurisdictions the accommodation is routinely made, with certain documents provided as 'easy read' versions.

9. Compliance and suggestibility

Some people may be compliant, suggestible or eager to please, especially in conversation with or being questioned by persons in authority. For example they may agree to a statement because it will please the person making it. It is important therefore that the JI ensures that questions asked do not lead the person into an unreliable response. Accommodations may include:

- Using visual aids to encourage the person takes time to evaluate choices and make decisions. For example, using flow diagrams to show the impact of a choice to plead guilty or not, for example the stages of the proceedings and the likely outcome
- Avoiding closed questions where the answer 'yes/no' does not allow for alternative answers. For example, '*Did you take the bus to work?*' would be better asked as '*How did you get to work?*'
- Avoid tag questions (explained in point 3) and leading questions such as '*you hit him on purpose, didn't you?*'
- Avoid several questions in a row which are all answered with 'yes' (or all with 'no') as there will be a tendency to continue to answer in the same way, without fully considering the true answer.

Simplifying language

As the JI will need to simplify language in real time, it is important to practice and become proficient in this skill.

The following practice examples are given in English; when the modules are translated, examples will be given in the relevant language.

Think about doing these practice examples in writing to begin with, and then try simplifying in real time, as the sentence is spoken.

In some jurisdictions, the court will only want the JI to indicate where simplification is required and then expect the questioner to do this themselves. In other places, it will be accepted that the JI will intervene and simplify directly.

Practice examples



“The issue is not in dispute.”



“No one would doubt that the wool was pulled over your eyes.”



“It can be intimidating for anyone.”



“Are you saying that you left after having taken the money?”



“Was the meeting prearranged or did you happen upon one another in the street?”



“At thirteen hundred hours the police executed a search warrant.”



“Follow my train of thought... were you travelling east?”



“Is it true that you made yourself known to the police as a witness?”

Visual aids

For most people, the use of more than one channel of communication assists in comprehension. This means that using visual aids to support understanding of speech, or visual aids to support expression of information will increase effectiveness.

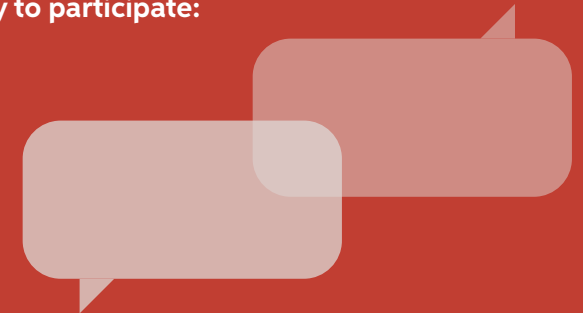
For example:

- Use of a simple stick figure drawing or model to show the position of people such as in a case related to sexual assault
- Use of simple line drawing of events in time, so that the events can be sequenced
- Cards showing reminders to indicate 'don't know', 'slow down', 'don't understand' etc
- Choices shown pictorially such as 'Yes/No/Don't know/Something else'
- Drawings of room layouts to assist with understanding of events.

Managing concentration and attention

For those who struggle to attend for more than a few minutes, sitting through either an interview or a court hearing will limit their ability to participate:

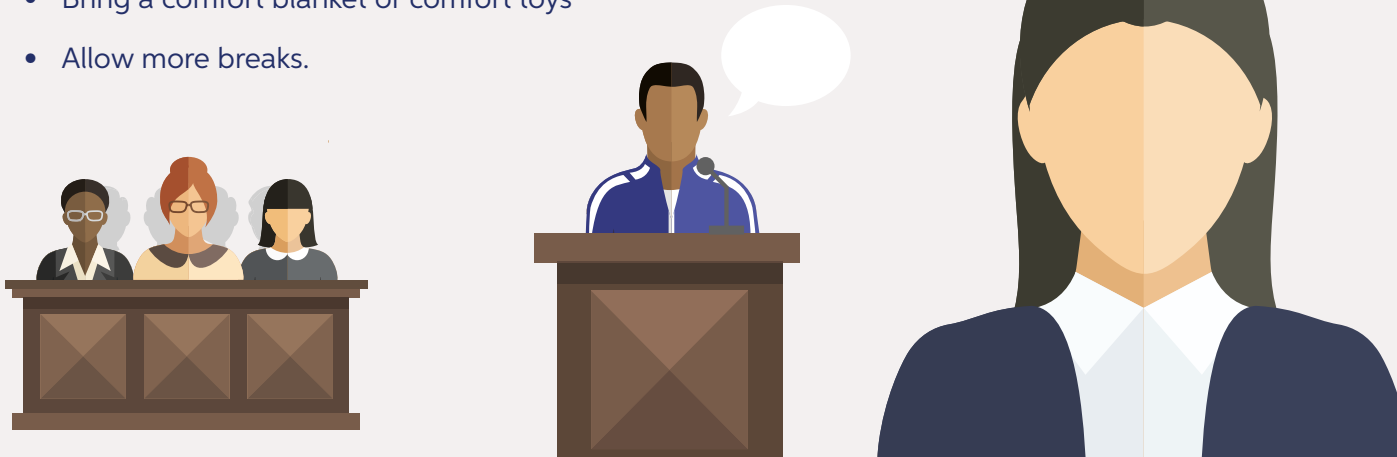
- Ask for an increased number of breaks. Consider the length of the break also
- Ask for permission to use 'tangle toys'/distractors that can be manipulated by the person with disability. This assists focus
- Consider giving paper and pen to 'doodle'
- Prepare a list of the hearing 'agenda' which person can be assisted to 'tick off' as proceedings progress
- The defendant to attend court only when jury is in court. The defendant would then sit in a breakout room during legal argument and planning. The JI would attend court and then help the attorney to simplify an explanation of the proceedings that took place in person's absence.



Managing emotional regulation and trauma responses

The JI's role is not to minimise all emotional responses to the situation. It may be important for the person with disability to show their emotions in relation to the case. However, where emotional irregularity impacts on the effectiveness of communication, the JI may consider accommodations. For example:

- Help the person feel safe, modify their defence mechanisms and regulate their emotions. This may require the JI to recommend adaptations to the court process, to stay in physical contact with a witness (such as touching their arm) or to relay answers to questions
- Change the position where the person sits or stands
- Bring a comfort blanket or comfort toys
- Allow more breaks.



Managing novel situations and limiting change

For those who struggle with new events, unfamiliar people and unpredictability, the JI can suggest accommodations such as:

- Visit to the interview setting a few days before the actual interview appointment
- A pre-trial visit to the court to acclimatise to the environment, try out standing in a witness stand (in an empty court with assistance from court admin staff), or a video link room, with some non-evidential neutral questions arranged by the JI
- A brief meeting with both attorneys in a neutral waiting room, with JI present
- Setting out a simple list for each court session, so the person can mark off progress.

A mother attending a family court describes her experience of being assisted by a JI

Transcript of audio

“ *I am a woman with a late diagnosis of autism following a number of years of difficulty communicating with authorities over the medical treatment and education of my children. I was taken to family court suspected of causing them harm, where I learned why my difficulties had not been appreciated; they are masked by my high average intelligence and my advanced use of vocabulary.*

After many months of struggle, I finally had access to an intermediary. She arranged for us to have access to a private room at court which reduced anxiety and sensory overload. She facilitated communication between my legal team and I by encouraging them to create, and stick to, an agenda, and by spotting when misunderstandings might be beginning to occur. She also spoke to the court and advocates and made sure that they all understood my needs.

As a result, during my evidence, questions were phrased in a way that I could answer, changes of topic were signalled to me and I had the breaks I needed. I cannot stress the importance of everything my intermediary put in place and I strongly believe it should be given to everyone in my position, regardless of their IQ. **”**



In the rest of this module, accommodations are considered for some of the people described in Module 5 Life Stories.

Ben



Ben has a long-standing diagnosis of Schizophrenia. He is a university graduate in Physics. He lives alone and struggles to form relationships. He has not worked for many years. He is accused of harassment of a bank clerk. There is a history of drug misuse.

He was assessed to have difficulty keeping on track with narrating his defence, focus on a long question, could not sit still for more than 30 minutes, and was used to sleeping until midday.

Some initial suggested accommodations:

- Fix the time for him to attend court in the afternoon
- Take breaks every 30 minutes
- Arrange a pre-trial visit to help him acclimatise to the court environment
- Ask for short questions.

Cim



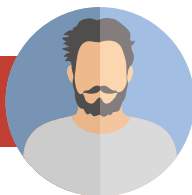
Cim attended mainstream education and worked in a local IT company after leaving school. Two years ago, he was involved in a car accident and suffered traumatic brain injury. The residual impairment was mostly cognitive; he is mobile and physically independent. He has not worked since his accident. He has been charged with domestic violence against his girlfriend. He experienced some epileptic seizures after the accident, but there haven't been any recent episodes.

He does not take any medication. When assessed by a psychiatrist, he was considered fit to plead as long as a JI is available to assist him throughout the trial. A psychology assessment diagnosed Dysphasia (an acquired language disorder affecting understanding and expression).

Some initial suggested accommodations:

- Check for any risk factors related to his epilepsy in the court environment
- JI to simplify all court proceedings, sitting beside Cim
- Consider the complexity of vocabulary in questions
- Use short simple grammatical structures in questions
- Explain to the jury that Cim may struggle to find words when he answers
- Check that Cim understands and has opportunity to indicate if not.

David



David is 50 years old and has been arrested for trespassing. He is generally a passive person who is very eager to please and quick to agree with others, especially those in authority.

People who know him well know that he would readily confess to anything he is accused of and that he doesn't understand that there could be serious consequences from doing this.

He has been assessed and found to struggle with making decisions, with logical reasoning and complex sentences. His suggestibility and compliance are of concern.

Some initial suggested accommodations:

- Ensure David knows he can say 'don't remember' and 'don't know' when asked a question
- Keep questions simple in terms of grammar and vocabulary
- Avoid questions that suggest an answer eg 'you agree with that don't you?'
- Consider whether any questions that ask 'why' need to be put in an alternative manner.

Evan



Evan (15) has intellectual disabilities. He was picked up by police and after five hours of interrogation without a lawyer, he told a story about how he and three others attacked and killed a girl. Afterwards he said, *"I had never been under this much pressure, with a person hollering at me and threatening me. I just made up a story and gave it to them so they would let me go home."*

He signed a statement that was written in longhand by investigators and when he asked to go home, was told he would be going to prison. He cried as he did not understand remand and thought he had already been convicted.

Some initial suggested accommodations:

- He should be assisted by a JI at police interview
- A JI would explain the process in simple language and check for understanding
- The JI would assess literacy and advise on best way for him to understand the written statement before signing
- The police would be assisted by JI in constructing the questions to ensure Evan understood.

Fatima



Fatima has intellectual and developmental disabilities. When police arrived at the bar, Fatima attempted to run away. She was read her Miranda rights* without assistance and did not understand what she was agreeing to. Her relatives were never called during her time in jail, or during the investigation.

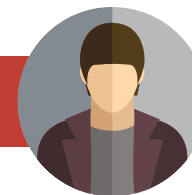
She spent 24 hours in jail without support or access to her medication. Her relatives called and spoke to the supervisor of the Adult Detention Center to inform them of Fatima's needs. They were told Fatima should have told the nurse herself about her needs and given her pharmacy information.

*Used in the US, the Miranda rights state: "You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have a right to an attorney. If you cannot afford an attorney, one will be appointed for you."

Some initial suggested accommodations:

- JI should have assisted at police interview and explained Miranda rights
- The Detention Center needed some advice from a JI about best approach to communication with Fatima and how she was not an independent adult in terms of managing her needs
- The Detention Center should consider involving a relative in managing medication needs.

Georgio



Georgio has spent all his life moving around with his family. They don't have a permanent home and so he has had very little schooling. He cannot read or write. For as long as he can remember, he has helped his father in the fields and with the animals. He went to a fair last year and met a girl.

The girl says he sexually assaulted her. He says she consented. He does not understand how the court process works and is very frightened by the wigs and gowns of the lawyers. He looks more grown up than his actual age of 15 years. Although he has not been diagnosed formally, he struggles to problem-solve, narrate an experience, and understand complex questions.

Some initial suggested accommodations:

- A JI should be appointed to assist during his conferences with his legal team
- A JI should sit beside him in court and explain the proceedings, and any complex language
- A JI should assist him with reading the case documents
- When Georgio gives evidence, the JI should assist court in simplifying questions and ensuring he has understood.

Henri



Henri has been diagnosed with Autistic Spectrum Disorder. He has attended special needs schools and is aged 14 years. He does not make eye contact with others, does not initiate a conversation, and fails to understand figurative language or jokes.

He does not make friends easily and struggles with changes to his routine. He can read, but often misunderstands the implied meanings in complex documents. He has been accused of sexually touching another boy in his class.

Some initial suggested accommodations:

- A JI to assist in all conferences, court attendances and testimony
- Permit Henri to give his evidence from a video linked room, where he does not have to make direct eye contact with a large group of people
- Avoid non-literal language
- Keep to plans in court, avoiding changes which will impact on Henry eg fixing his attendance and testimony timing
- Avoid asking him about his awareness of the impact of his actions on others.

Isobella



Isobella was in the room when her mother killed her father. She has no history of disability and was previously working as a teaching assistant. However since the event, she is exhibiting signs of Post Traumatic Stress Disorder, experiencing panic attacks and withdrawing from social interactions.

She has reported ideas of self-harming. Medication has reduced the intrusive flashbacks, but the requirement for her to attend court as a prosecution witness against her mother is increasing her anxiety levels. There is concern that cross-examination will be detrimental to her mental health.

Some initial suggested accommodations:

- Arrange pre-trial visits for Isobella so she acclimatizes to the environment
- Consider stress-reducing and trauma informed practice
- Introduce her to both advocates and judge before she goes into court
- Permit a screen to shield her from seeing her mother (the defendant) during her testimony
- Ensure the necessary support is in place post-testimony.

Jose



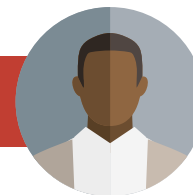
Jose is now aged 75 years and has early signs of dementia. He has limited mobility and his hearing is poor. He has been accused of a sexual offence over 40 years ago, when he lived with his wife and step-daughters.

He will struggle to sit in the courtroom on hard chairs, or for long periods. He will not hear the proceedings and will not retain the information.

Some initial suggested accommodations:

- Allow Jose to sit in the main part of the court where he can hear better
- Permit JI to use a visual aids and notes to help with recall of evidence presented in court
- Provide a suitable seat, and permit him to stay seated when the judge enters the room
- Arrange frequent breaks and possible shorter court days
- Allow Jose to leave the court for a rest during administrative court business.

Khalid



Khalid was diagnosed with Motor Neurone Disease (Amyotrophic lateral sclerosis) five years ago. He is now using a wheelchair and his speech is mostly unintelligible to the unfamiliar listener.

He does not have an augmentative communication aid, but he can use an alphabet chart and pictorial aid to help him communicate.

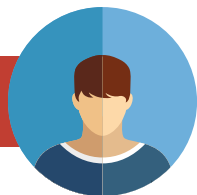
He fatigues easily. He has told the police that a care assistant physically abused him when he was supposed to be helping Khalid to have a bath.

Khalid needs to explain to the police what exactly happened.

Some initial suggested accommodations:

- Arrange for an alphabet board and pictorial aid
- Arrange short interview sessions at best time of day for Khalid
- Permit use of props
- Arrange for a familiar listener to assist if speech is not intelligible to police.

Leo



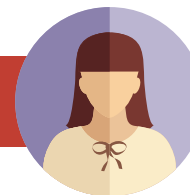
Leo is 5 years old. He told his teacher that he did not like what his uncle did every time he stayed overnight. The details are not clear.

Leo is a normally developing child, with age-appropriate language skills. He needs to tell the police officer about his experiences, and he may need to go to court to be cross-examined. Which accommodations would you suggest when Leo meets the police officer?

Some initial suggested accommodations:

- Introduce use of toy people and body maps
- Ensure environment of interview room is suitable for a young child, including low chairs, etc
- Take the lead from Leo using his vocabulary
- Video record interview
- If Leo likes to draw, use his drawings as part of evidence
- Consider asking court to use a video link room with cross-examining counsel in room rather than entering court
- Arrange a pre-trial visit to acclimatize to environment and meet judge and counsel.

Maria



Maria has lived in a care home most of her life. As well as significant physical disabilities, she has limited communication. There have been several allegations from other residents in her care home that a staff member is verbally abusive.

The police would like to find out if Maria has any evidence to add to the case.

Maria is not willing to meet with police officer. She is frightened and does not understand. She will need time to develop rapport before she can give any evidence, and it will need to be done soon, as she does not have a concept of time passing.

Some initial suggested accommodations:

- JI needs time to develop rapport with Maria, understand her level of understanding and best communication
- Ask police officer to visit with JI and get to know Maria before formally interviewing
- Consider best environment to meet with Maria, if she needs a familiar member of staff present
- Use timelines developed with Maria to help her relate her experiences.

Noah



Noah has many anxieties; he has social phobias which impact on his ability to talk to strangers and he has panic attacks.

He has been prescribed medication but does not always take it. He has a history of self-harming and new traumas will exacerbate these tendencies.

He has been accused of harassing another resident in his care home. He needs to be interviewed by the police.

Some initial suggested accommodations:

- Allow Noah to request breaks during interview
- Ask Noah about strategies to minimize panic attacks, and how to best respond when they happen
- If he doesn't have insight, the JI could introduce techniques and practice before starting an interview
- Choose an environment that is less formal than usual police interview room
- Encourage Noah to use medication around the time of the interview.

Olive



Olive has a long history of substance abuse. She has been homeless for many years. Her last medical report stated that she has intellectual disability and paranoid schizophrenia. She becomes verbally aggressive when she feels threatened.

She has been asked to attend court as a witness to a murder on the street.

On assessment, her language comprehension is very poor and she struggles with meeting new people.

Some initial suggested accommodations:

- Arrange a pre-trial visit and possible first meeting with counsel and judge
- Questions to be short, with simple vocabulary
- Give Olive a fixed time to attend court, so she does not have to wait
- JI to assist her at each stage.

Accommodations and the justice system

There may be a legal requirement for accommodations. However in current services it remains the decision of the court whether the JI-recommended accommodations are authorised.

This may be best discussed in a Ground Rules Hearing. This is a hearing where the court discuss the recommendations and authority is given (or not). This may also be the time when questions are discussed with the JI and the judge. See **Module 10 Practical Issues** for more details.

If the accommodations are required for an interview or conference, rather than in court, the accommodations are best discussed with the legal professional/police before the person arrives. The JI can reinforce their role as neutral impartial assistant to the process, rather than having any attachment to the outcome of the meeting.

The interactions with the person will have less conflict and repetition, as the interviewer takes responsibility for adhering to the accommodations.

Interventions by JI

“Intervention is an art not a science”. In other words, there will be room for differences between how one practitioner will intervene and another. During evidence, the JI needs to think if the accommodations agreed are being adhered to, and whether to intervene.

The decision to intervene or not requires full concentration and split-second timing. Too late and the person will have answered already, too early and the court may think the JI is trying to shield the witness or contaminate the evidence.

A person may cope with a complex question at the beginning of their evidence, but after being overloaded with many more questions will struggle to fully understand a similarly complex question.

The impact of disability can fluctuate

Everyone has good and bad days, and as has been noted, communication effectiveness is affected by many variables. See **Module 4 Understanding Communication** for more details.

It is often noted that a person may perform less well at assessment than during the actual proceedings. Or vice versa.

Some of this will be related to the topic. For example, emotional content of an assessment is likely to be lower than any communication about the legal case.

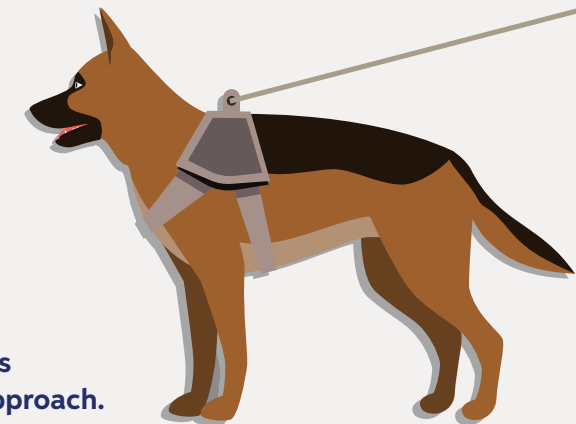
On the other hand, when discussing the case or answering questions, the person with disability will know the context, the names of the people involved in the case, and may well be assisted in their understanding, more so than when a fictional situation is explained in assessment.

Thinking ‘outside the box’

Finding the right accommodation depends on the creativity of the JI and the flexibility of the local justice system. Think ‘outside the box’ and consider that there is a first time for every accommodation.

Examples of ‘outside the box’ thinking:

- Permitting the witness to sit on the floor with her back to the camera while she answered the questions
- Allowing a child witness to play with a toy vacuum cleaner during an interview (as during assessment it was noticed that child became less anxious when allowed to ‘tidy up’)
- A defendant displayed good expressive skills but could not process specific questions when he became overly anxious and manic in behaviour. The JI suggested allowing the defendant to give his evidence-in-chief in one continuous narrative to the court, rather than in a question/answer style
- Permitting a person to bring their pet dog to the interview room to help them manage their anxiety
- Allowing a highly anxious mother in a child custody hearing to leave the court at any time, while the JI stayed to make notes and explain what had taken place during the following break.



‘Every reasonable step...’ is a compilation of accommodations recommended and should provide encouragement for this approach.

The legal system does not take well to inconsistency, and these changes in communication skills can impact the credibility of the JI’s recommendations.

The person’s mental health status could well be different on any two days, two environments, or times of the day.

The JI should highlight the possibility of these fluctuations in their report and at a Ground Rules Hearing – if held. This will assist the JI to intervene in ‘real-time’ to meet the actual needs.



Reflection Tool: Module 7

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 will these accommodations work in your local justice system?

Which will be easier to get authorised by the police or the court? Which will be harder?

How will you backup your recommendations, using information from your assessment?

Continued over the page...

How will you backup your recommendations, using information from your assessment?

**Consider the importance of maintaining neutrality in implementing these accommodations.
How will you make sure this will remain clear to everyone?**

Try simplifying a document or a set of questions in your language.

**Finding the right accommodation may often depend on your creativity.
Think 'outside the box' and consider that there is a first time for every accommodation.**