



Benchmark

best practice - best evidence with vulnerable people

Guideline Summary: Responsive practice with adults with Intellectual Disability

Under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) it has been clarified that access to justice is an inherent and inalienable right of all people, including those who have an intellectual disability (Art 12). Support that may be required in accessing justice must be provided, including through Universal design and the provision of reasonable accommodations (Art 13).

Understanding Intellectual Disability

1. What is intellectual disability?

- Intellectual disability can be described as a life-long cognitive impairment, which could be genetic in origin, or the result of a brain injury experienced before, during, soon after birth, or during childhood.

2. Identifying intellectual disability

- It is important to identify a possible intellectual disability as quickly as possible so that formal assessments can be carried out and appropriate support and accommodations can be put in place.
- An intellectual disability involves three factors: impaired intellectual functioning, impaired adaptive functioning, and the knowledge that these were known to have occurred before the age of 18.
- It is impossible to rely on a single factor or indicator to identify an intellectual disability. Some common traits or characteristics include difficulty understanding questions, speech difficulties, limited language comprehension or lower than expected reading ability, impaired reasoning, poor concentration, difficulty with writing or understanding information.

3. Intellectual disability in the legal context

- People with an intellectual disability can experience reduced memory retention while others may have a limited understanding of their legal rights and court processes. Some people may experience difficulty with language comprehension or expression, be more suggestible to misleading information, or be easily confused in the witness box.
- All of these issues can be addressed through responsive practice.

What can you do?

4. Engage with the person and establish rapport

- Find out about the person's communication abilities and needs. Ask the person what kinds of support would assist them, and/or work with the person's supporters to ascertain their support needs.
- Try to connect and engage with the person by asking non-threatening questions unrelated to the legal proceedings, for example about their hobbies, work and social life.
- Use a calm and non-adversarial tone and manner.

5. Slow it down and check they understand

- Proceed at a slow pace, incorporate frequent breaks, explain legal matters and processes as you go and signpost any change in process.
- Ask the person to explain what is happening or what you have just said in their own words on a regular basis.
- Remind the person of the "rules of questioning". Make it clear that "I don't know" is an acceptable answer, you want them to correct you if you get it wrong, you want them to tell you if they do not understand a question or want a break.
- Take them for a pre-trial courtroom orientation visit.

6. Engage in a responsive questioning style

- **Use plain language:** Use language that is clear, brief and builds on the information the person already knows. Do not use jargon, use the simplest word that conveys your meaning, keep sentences short and to one point at a time, use active verb rather than passive ones. Acknowledge if you have asked a difficult question or two questions at once, and rephrase it to be more straightforward.
- **Use concrete language** and avoid metaphor and other figurative language.
- **Use a chronological, logical sequence:** questions should follow the chronological order of the events wherever possible.
- **Avoid "Do you remember?"** questions as these can sometimes be confusing.
- **Use open-ended, free-recall questions:** people with intellectual disability can have a tendency to be more suggestible during interviewing than people without learning disability and this makes them more susceptible to intimidation and coercion. For best practice use open-ended, free-recall questions such as "Tell me everything you remember about going shopping with Sue".
- **Avoid leading questions:** leading questions contain and imply the suggested or preferred answer. People with an intellectual disability

may comply with the suggestion, especially if the question is “tagged” (ended with a reinforcing “tag” such as “didn’t you?”).

- **Avoid closed or yes/no questions:** Closed questions which require a yes or no answer only (was the man wearing a black jacket?) are less effective in eliciting accurate, detailed information. Closed questions are also likely to elicit a compliant response from witnesses with an intellectual disability.
- **Avoid forced choice questions:** with forced-choice questions (“Was the car red or green?”), people with intellectual disabilities may feel obliged to choose an option.
- **Avoid statement questions** such as “the red car hit the green car?” as they may not be understood as needing a response.
- **Repeat with care** as it can be very suggestive if people interpret this as meaning their earlier response was wrong. If you ask the same question in a different way explain why you are doing it.
- **Avoid allegations of lying or mistake:** as this can be very distressing for people with an intellectual disability and can disrupt their concentration.
- **Complete questioning with closure:** in the final stage of questioning summarise what has been said and make it clear that if anything in the summary is wrong then it is acceptable to correct it.

7. Make use of legislative and other procedural supports available

- You can request specific accommodations for people with an intellectual disability in the legal system.
- Examples of reasonable accommodations available include:
 - A communication assistant,
 - Visual aids for explanation and/or communication,
 - Alternate modes of testifying,
 - Language directions and restrictions,
 - Support persons under s 79 of the Evidence Act 2006,
 - Allowing the person a comfort object or activity,
 - Reduced formality in the court,
 - Meeting judge and counsel before trial,
 - Judge alone trials, and
 - increased regularity of breaks.

8. Offer post-trial support

- Explain the outcome of the case.
- Check whether the person has or needs ongoing support relating to the case.
- Advise on entitlements or rights of appeal if necessary
- Assist complainants to prepare an appropriate Victim Impact Statement (VIS) if they wish to.

- Be aware that expert evidence is relevant to sentencing a person in terms of mitigation and in terms of the appropriate penalty.

For more detailed information refer to the full guideline [[link](#)].