

Traumatic Brain Injury (TBI)



What is TBI?

A traumatic brain injury (TBI) is an injury to the brain which causes brain damage.

TBI usually results from a violent blow or jolt to the head or body. Common causes include falls, traffic accidents, physical assaults and sports injuries.

A TBI typically affects four key, (often overlapping) areas:

PHYSICAL

These symptoms affect how the body works and may include issues with fatigue, speech and mobility (one side of the body may be more affected).

COGNITIVE

These symptoms affect how the person thinks, learns and remembers. They may include issues with memory (particularly short term and working memory), maintaining attention, inhibitory control (controlling automatic urges), planning, information processing and reasoning.

COMMUNICATION

An individual who has sustained a TBI may have a range of communication difficulties, including: speech difficulties and difficulties 'finding' the words they want to use, expressing themselves clearly, following the rules of social communication, understanding words and sentences, or following longer stretches of verbal information (like legal arguments).

BEHAVIOUR

A brain injury may change how a person feels and acts. They may experience personality changes, mood swings, depression, anxiety, frustration, anger or obsessive behaviour. They may exhibit verbal and physical aggression, or sexual disinhibition.

Impacts in legal proceedings

The impact of a TBI will vary widely from person to person, depending on the individual, as well as the location and severity of the injury. Your client may experience difficulty with:

- **Retaining information.** This may include legal advice, information about the case discussed in conference, simple explanations of terms or concepts, or evidence heard during proceedings
- **Attention.** They may find it challenging to focus for long periods or to switch their attention between topics or speakers. They may 'miss' important information (such as a point of evidence they disagree with) or neglect to raise an important point with their legal counsel
- **Understanding abstract concepts.** For example, the role of threshold in family proceedings or the principle of joint enterprise in a criminal case

Communication tips

General tips



Introduce participants and their roles clearly at the outset of meeting and hearings (your client may have difficulty remembering faces or names)



Send reminders before meetings and hearings

To assist attention



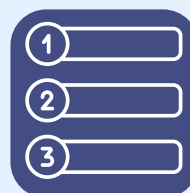
Keep meetings short



Take regular breaks and implement responsive breaks when your client appears overwhelmed or fatigued



Reduce distractions in the environment (e.g., choose a quiet room, close windows to reduce background noise or ask remote attendees to turn off their cameras)

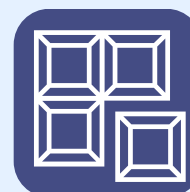


Use a visual task list to signpost topics

To assist understanding



Use short sentences and simple words.



Give one piece of information at a time

- **Understanding verbal information.** They may find it challenging to process verbal information. This could include simple explanations of proceedings, or more complex verbal information, like legal advice or expert evidence. They may misinterpret verbal information or simply not understand. This may be more pronounced when verbal information is delivered at length
- **Weighing up information** can be particularly challenging due to difficulty retaining information, 'seeing the whole picture', pinpointing key issues, filtering out less relevant points and reaching a conclusion. Decision-making may feel especially overwhelming
- **Adapting their communication to a professional or formal setting.** They may not observe the 'communication rules' of court (e.g. using appropriate language, taking turns in conversation, listening to the judge without speaking)
- **Giving instructions or evidence.** They may digress from the topic at length, have difficulty finding the words they wish to use to express themselves, or struggle to provide a clear, well-sequenced narrative
- **Emotional management.** They may struggle to regulate their emotions, rapidly becoming anxious or angry. They may behave impulsively
- **Reading case documents.** Some people who have sustained a TBI may have issues with literacy, including difficulty decoding words, comprehending sentences and extracting meaning from a text.





Explain information in different ways (e.g., using [visual diagrams](#) or interactive tasks)



Ask comprehension questions to check your client's understanding. For example, ask "What is bad character?" rather than, "Do you understand bad character?"



Ask short, simple questions, starting with a 'question word' (Who, What, Why, How, Did, Is)



Use diagrams (like balancing scales, flow charts, mind maps and pros and cons lists) to support decision making.

These could include key points to consider, to help your client retain and focus on the most important information. [Learn how to use visual aids here](#)

To support memory



Recap important information frequently



Write short, simple bullet-point summaries of meetings or key information from hearings (subject to your client's level of literacy). [Learn how to create easy read documents here](#)



Send short voice note recaps of key information (if your client uses smartphone apps but has literacy difficulties)

To support expressive skills



Allow extra time (between 3-5 seconds) for your client to process questions and formulate responses



Repeat back your understanding, if your client's speech, word use or syntax (spoken grammar) is unclear. Ask them whether you have understood correctly



Use a symbol to indicate when it's time to swap turns in conversation. During evidence, a "listen" and "speak" symbol could be indicated by an intermediary (if allocated). During conferences, be direct and explicit in saying when it is your client's time to talk. Visual cues may assist.

In the courtroom



Ensure a Ground Rules Hearing is held to discuss measures to assist your client's participation



Request extraneous noise and movement are kept to a minimum (this may include restricting access to and from the public gallery until breaks are taken).



Request frequent, flexible breaks, dependant on your client's attention, emotional regulation and level of fatigue.



Request ground rules regarding question types which will be put to your client. Short questions starting with a question word will likely assist them to give their best evidence.

TBI & mental capacity

It is important to remember that the difficulties explored on page one can affect an individual's capacity in legal proceedings.

The Mental Capacity Act (2005) states that an individual is *“unable to make a decision for [them]selves if [they] are unable to understand the information relevant to the decision, to retain that information, to use or weigh that information as part of the process of making the decision, or to communicate [their] decision...”*.

Further reading

- **Interact-ABI-lity** - Free online course from the University of Sydney's ABI Communication Lab, developed to help people with no experience of TBI to learn communication skills that assist those with a brain injury. The full course takes 2 hours and has helpful bite-sized modules you can 'dip into'.
- **Headway** - Brain injury charity offering a wide range of resources and information. The service includes a freephone helpline, which your client could be signposted to.

From The Access Brief

- [How to create visual aids](#)
- [Supporting emotional regulation](#)
- [How can an intermediary assist at trial?](#)

With thanks

This resource was created with the indispensable support and advice of **Dr Nicholas Behn**, Senior Lecturer and Speech and Language Therapist, City University of London.

Intermediary services

If you are concerned about your client's ability to communicate effectively and participate in legal proceedings, Communicourt can help.

We will assess your client to understand their communication needs and how these might affect them in court. Your client does not need to have a diagnosis. Our reports will identify any particular communication issues and make bespoke recommendations to help you and your client throughout proceedings.

If intermediary assistance is recommended, one of our highly trained intermediaries can be there throughout proceedings to facilitate those recommendations.

Intermediaries are mostly funded by HMCTS, with no charges or payments required by legal representatives.

How to book an intermediary

- 1 Refer online.** Refer your client for an assessment through [our online portal](#) (5 minutes).
- 2 Funding.** We send a quote for you to send to Legal Aid / HMCTS to approve (24 hours).
- 3 Book assessment.** Once funding is approved, please let us know. We will schedule an assessment (2-6 weeks).
- 4 Assessment will** take up to 3 hours and can be conducted in person or remotely. You will then receive a report (7 days).
- 5 Book dates** for hearings or conferences. We will send you booking forms to be signed by the court. Once signed, we will book the intermediary.