



## ***Intermediaries: A Voice for the Voiceless***

### Overview

Intermediaries are communication specialists who assist children and vulnerable adults with communication difficulties in the justice system.

**The aim is to allow such people to understand and to be understood.**

### Eligibility

**Legislation** (section 29, Youth Justice and Criminal Evidence Act, 1999)

This special measure allows Intermediaries in the criminal courts to be appointed for:

Any young *witness* under 18

A vulnerable adult *witness* with:

- Mental health issues
- A learning disability
- A physical disability

(e.g. stroke, autism, dementia, cerebral palsy, effects of trauma)

The court must determine whether special measures would be likely to improve the quality (encompassing ‘completeness, coherence and accuracy’) of an eligible witness’s evidence (section 16 of the 1999 Act).

### **Common Law and/or Article 6 of the ECHR**

Judges may on occasion use the court’s inherent powers to appoint an Intermediary for:

- A vulnerable *defendant*
- In family proceedings
- In other jurisdictions, including tribunals

A provision permitting the appointment of an Intermediary for defendants (on narrower grounds of eligibility than for vulnerable witnesses and restricted to the giving of evidence) has not been put into effect (section 104, Coroners and Justice Act 2009).



## Who are Intermediaries?

They are independent communication specialists, introduced in 2004 as a result of the Youth Justice and Criminal Evidence Act, 1999.

Intermediaries come from a variety of backgrounds including:

- Speech and language therapists
- Psychological and mental health professionals
- Teachers
- Social workers

There is further training which is undertaken in order to attain the skills required to work as a communication specialist in the justice system.

## The role of Intermediaries

Their role is to establish a working relationship and rapport with children and vulnerable people, especially those who might otherwise disengage or not be able to participate in the legal process, and to assist at stages through this process by carrying out the following:

- Communication assessment and information gathering
- Making recommendations about and assisting with the use of communication aids
- Planning and assisting at interviews
- Planning for trials (including Ground Rules Hearings)
- Facilitating communication during trials or other hearings, with professionals working in the justice system

(See following sections for details)

**Defined legal role** This is set out in Criminal Practice Direction, 3F.1:

Intermediaries facilitate communication with witnesses and defendants who have communication needs. Their primary function is to improve the quality of evidence and aid understanding between the court, the barristers and the witness or defendant. For example, they commonly advise on the formulation of questions so as to avoid misunderstanding. On occasion, they actively assist and intervene during questioning. The extent to which they do so (if at all) depends on factors such as the communication needs of the witness or defendant, and the skills of the advocates in adapting their language and questioning style to meet those needs.



## Status

This is set out in Criminal Practice Direction, 3F.2:

Intermediaries are independent of parties and owe their duty to the court. The court and parties should be vigilant to ensure they act impartially and their assistance to witnesses and defendants is transparent. It is however permissible for an advocate to have a private consultation with an intermediary when formulating questions (although control of questioning remains the overall responsibility of the court).

Intermediaries are impartial in that they do not support the vulnerable witness or defendant, but rather assist the prosecution/ defence/ judge by supporting communication between these parties and the vulnerable person.

## Communication assessment and information gathering

The Intermediary conducts a *communication assessment* with the vulnerable person, ideally in the presence of an interviewing officer, or the solicitor or arranged relevant third party. The Intermediary:

- Avoids discussion of the allegations under consideration
- Focuses on the person's interests
- Builds rapport
- Checks the following:
  - Can they give a narrative account? (not related to court matters)
  - What kind of questions do they understand?
  - What depth of information can they give when answering a question?
  - What are their attention skills, i.e. when might breaks be necessary; how does this impact on length of question/ interview?
  - What kinds of resources will keep their attention?

This stage can appear very natural, so is often not an obvious assessment, for example using play with children, or describing a picture or doing an activity with an adult. Intermediaries may use some formal and some informal assessments.



The Intermediary can approach others to *gather information* with the vulnerable person's consent, including:

- People who know/ work with the vulnerable person (but not other witnesses in the case)
- Teachers
- Medical professionals
- Social workers etc.

### The use of communication aids

Use of communication aids by an Intermediary can aid a vulnerable person to communicate about subjects they find difficult for any reason. These aids can contribute to stress reduction and can be more discreet. They are often vital for people with limited verbal communication.

Examples include:

- Cue cards e.g. yes/ no, don't know, can't remember, don't understand
- Props/ pictures to show, not tell, e.g. dolls, body maps, miniature furniture
- Stress reduction strategies to assist regulation of behaviour and emotions e.g. fidget objects, 'take a break' cue cards, aromas to calm the senses

### Planning and assisting at interviews

Following the assessment in criminal matters the Intermediary can:

- Write a preliminary pre-interview/ VRI/ ABE report with recommendations
- Assist police officers plan an upcoming interview with the vulnerable person  
e.g. how best to ask questions and ensure answers are understood
- Assist during these interviews. Ideally, the interviewing officer should be present at the original communication assessment
- Assist during interviews and at pre-trial conferences between lawyers and vulnerable defendants
- Write a report for the court with recommendations



Intermediaries can be requested even if the police interview has been carried out already. Frequently the CPS make this request for witnesses required to give evidence at trial, or solicitors or judges may do so for defendants or parties or children in family proceedings.

## Planning for trials

### Further assessment

The Intermediary:

- May carry out a further assessment if the witness is required to give evidence at trial, especially if there is a significant time lapse
- Writes a report for the court with recommendations on questioning and other adjustments, which is provided to the court and the other parties
- May write an addendum to update the initial court report

### Ground Rules Hearing

This is required for all cases with an Intermediary, and includes the following:

- Recommendations are discussed with the trial judge and barristers; the judge directs what will be implemented
- The hearing provides an opportunity for the Intermediary to suggest the special measures most likely to achieve 'best evidence'
- Ideally, the barristers are directed to provide their questions to the Intermediary following this hearing
- The Intermediary assists all parties/ advocates with their questions by offering alternatives to accommodate the witness's level of understanding, if necessary

### Aims of the Ground Rules Hearing

These are as follows:

- For the barristers, judges and Intermediary to work collaboratively to find the most appropriate words, phrases and tone for the witness
- To ensure the person's vulnerabilities are not exploited
- To put in place strategies that will facilitate emotional regulation of a person experiencing stress and anxiety
- To discuss any other recommendations which the intermediary has made to support the person's communication



### Refreshing the witness's memory

Before trial, it is good practice for the Intermediary to accompany the witness while watching or reading their 'evidence in chief' (police interview or written statements) for the purpose of memory refreshing. The Intermediary may make recommendations as to how this is best managed to accommodate the witness's concentration span and emotional state.

### The pre-trial familiarisation visit to the court

The Intermediary:

- Accompanies the vulnerable person to familiarise them with the set up
- In criminal court cases, liaises with the Witness Service on any requirements of witnesses
- Tours the live link room and/ or courtroom
- Assists in arranging for the vulnerable person to practise speaking over the live link, using non-evidential questions
- Assists the vulnerable child/ adult to decide on the options for giving evidence:



#### *Inside the courtroom*

From behind a screen  
In open court, from the witness box



#### *Outside the courtroom*

Over a live link  
Over a remote live link from another location  
As pre-recorded evidence in family courts



## During trials

With the judge's permission, the Intermediary can assist:

### **Defendants/ family court participants by:**

- Sitting next to the vulnerable person in the dock or the well of the court
- Simplifying what is being said in court and explaining this
- Flagging up potential miscommunication
- Advising the court if the person becomes tired, distressed or needs emotional regulation
- Suggesting the need for breaks
- Providing explanations during the verdict, sentencing and contact with the Probation and Prison Services
- Assisting communication between the vulnerable person and their advocate/ legal team

### **Witnesses by:**

- Sitting next to the vulnerable witness in the live link room or the witness box

Making an ongoing evaluation to assess if:

- The witness is engaged with questioning
- Further adaptations are needed
- A break is needed
- A question needs to be rephrased
- Communication aids such as time lines, body maps might be useful
- Strategies for regulating stress and anxiety are needed