INTERMEDIARIES – A VOICE FOR VULNERABLE WITNESSES

FREQUENTLY ASKED QUESTIONS

Who are intermediaries and what do they do?

- Section 29 of the Youth Justice and Criminal Evidence Act 1999 provides for the examination of a witness to be conducted by an intermediary approved by the courts.
- This measure will assist witnesses who need help to communicate their best evidence and who fall into at least one of the following groups: children – aged under 17 years; people with a mental disorder or learning disability; people with a physical disability or physical disorder.
- An intermediary is someone who the court approves to communicate to the witness the questions that the court, the defence and the prosecution teams ask, and to communicate the answers that the witness gives in response.
- They can also provide communication assistance in the investigation stage – approval for admission of evidence so taken is then sought retrospectively. The intermediary is allowed to explain the questions or answers so far as is necessary to enable them to be understood by the witness or the questioner but without changing the substance of the evidence.
- Intermediaries are not investigators and their role is not the same as appropriate adults, witness supporters or expert witnesses.

Do intermediaries help only at trials?

- No. The intermediary can also carry out duties at the pre-trial stage, for example by facilitating communication during a police interview. They may also help out in pre-trial preparation such as a court familiarisation visit by the witness.

Why are intermediaries necessary?

- Some vulnerable witnesses (including victims) need assistance with communication and understanding in order to give their best evidence - intermediaries can assist them in communicating during an investigation and at trial. Intermediaries will help to make the justice process accessible to some of the most vulnerable people in our society. In some cases an intermediary will be the difference between a witness being able to testify or not.

What are the benefits for criminal justice practitioners?

- Intermediaries help decision makers by providing critical information about the communication needs and abilities of vulnerable witnesses.
- They provide practical information about how to get the best evidence out of the witness, including how to avoid misunderstandings, and directly assist in facilitating the question and answer process.
- The intermediary scheme will help agencies to better identify communication needs in vulnerable witnesses and to then meet their needs (this objective is one of the 7 priorities for victims and witnesses identified by the National Criminal Justice Board).
- It will contribute to bringing more offences to justice and to increasing confidence in the criminal justice system.
When will intermediaries be introduced?

- These provisions are new and the procedures are being tested out in 6 criminal justice areas before national implementation. Although the project is referred to as a pilot it is more accurately phased implementation with the ‘pilot’ areas being pathfinders to identify good practice and to test structures, procedures and resources.
- The scheme is up and running in Merseyside, Thames Valley, West Midlands, South Wales (Cardiff Crown Court and a limited number of magistrates’ courts), Norfolk and Devon & Cornwall (Plymouth Crown Court and Plymouth Magistrates’ Court). The pilots are being evaluated until early 2006 with a view to national roll out later in 2006.

What ‘best practice’ has been identified so far?

- The evaluation has identified the need for clear ‘ground rules’ to be agreed by the parties and the court before an intermediary case gets to trial. These would clarify issues such as how the intermediary will signal to the court that the witness has not understood a question or needs more time to answer or needs a break. Practical issues about the use of a live link room also need to be considered in advance.

Where do intermediaries come from?

- We have established a national register of around 80 intermediaries covering a wide range of communication skill areas. To become a Registered Intermediary an applicant must demonstrate that they have the competencies required of the role. The competencies include skills in facilitating communication and credibility in the criminal justice system. These competencies are assessed in interviews by expert panels and on a 5 day training course.

Can courts be assured of the professionalism of intermediaries?

- Registered Intermediaries will normally be used. They have successfully completed a rigorous assessment process and understand the responsibilities of the intermediary role. Registered Intermediaries must comply with a code of practice and a code of ethics which are overseen by an Intermediary Registration Board. They will be re-assessed periodically to ensure that they still meet the required standards.
- Unregistered intermediaries will only be used in exceptional circumstances when a suitable person cannot be found from the register. An unregistered intermediary should still be a recognised communication expert and ideally unknown to the witness – a carer or family member or friend of the witness should only be used as a last resort. Detailed guidance has been produced for the use of registered and unregistered intermediaries.

Does a person need to be a registered speech and language therapist to become an intermediary?

- No. Registration with specific professions is not a pre-condition of registration as an intermediary. The registration process is competence based and it is open to a wide range of people to apply on the basis of their individual skills and experience. Where they are relevant, qualifications, training programmes, membership of professional bodies and other experience will all be taken into account. Ultimately, intermediaries are sanctioned by the courts and their personal expertise and conduct will be open to legal challenge.
Successful candidates for registration will have demonstrated that they are experts at facilitating communication with people in the way envisaged by the intermediary role and that they have the ability to operate effectively as intermediaries in criminal proceedings.

Who will qualify for the use of an intermediary?

- In criminal proceedings, vulnerable witnesses may apply for a range of ‘special measures’, including examination through an intermediary.

- The definition of a vulnerable witness (section 16 of the Youth Justice and Criminal Evidence Act 1999) covers: witnesses who are under the age of 17; and those who suffer from a mental disorder or significant impairment of intelligence and social functioning or have a physical disorder or condition that is likely to affect their evidence.

- *Witnesses under the age of 17 are automatically vulnerable witnesses and should always be considered for the full range of available special measures which includes intermediaries.*

- Courts must approve the use of an intermediary on a case by case basis. The accused is specifically excluded from special measures under the 1999 Act.

Will deaf people be provided with intermediaries?

- Deaf witnesses may, or may not, require an intermediary. This will be considered on a case by case basis. The introduction of intermediaries will complement rather than replace the arrangements which already exist for the provision in court of interpreters for deaf people – for example, British Sign Language (BSL) interpreters, SSE interpreters and Lip-speakers.

Will the intermediary be on the side of the prosecution or the defence?

- Although initial contact is likely to be with the police or another justice agency the duty of the intermediary is not to act *on behalf of* the prosecution, defence or even the witness. Intermediaries are neutral and their responsibility is to the court and to justice.

Have there been any trials involving intermediaries?

- There have been three trials at Liverpool Crown Court in which intermediaries assisted four complainants to give their evidence. These trials resulted in two convictions in one of which the defendant was found guilty of rape and sentenced to 10 years imprisonment. There have also been trials in Reading Crown Court, Oxford Youth Court and Cardiff Magistrates’ Court.