



The City Law School

CITY UNIVERSITY LONDON

Tell Me What's Happening 2: Registered Intermediary Survey 2010

By Penny Cooper¹

"And when you started to answer the question you forgot to say 'a few people' didn't you?"

"Yes, sir," the boy gulped.

Two thirteen-year-olds, George Suppus and Ulric Arthur, were even more incapable of sustaining deceit. Darrow spoke kindly, as if he were their grandfather asking them about a day in school...

From 'The Old Devil, Clarence Darrow, The World's Greatest Trial Lawyer' (page 279), by Donald McRae (Pocket Books, 2009)

BACKGROUND TO THE SURVEY

Introduction

This is the report of City Law School's second annual survey of Ministry of Justice (MoJ) Registered Intermediaries (RIs). The methodology is similar to that used in the 2009 survey².

¹ Penny Cooper is a Professor of law at The City Law School, City University London. The author is extremely grateful to David Wurtzel of The City Law School and Jason Connolly of the Ministry of Justice for their assistance with this report. David Wurtzel and Penny Cooper provide accredited training for all RIs and co-write the Registered Intermediary Procedural Guidance Manual (MoJ, 2011) which can be found at http://www.cps.gov.uk/publications/docs/RI_ProceduralGuidanceManual.pdf

² The report of the 2009 RI survey 'Tell me What's Happening', can be found on the web pages of The City Law School at

Questionnaires were distributed in hard copy in September 2010 at the annual conference and an e-copy was posted on the RI on-line forum formerly known as the 'Smartsite'. 39 survey responses were analysed at The City Law School, City University London.

Facts and figures about Registered Intermediaries (RIs)

An intermediary is a person who facilitates two-way communication between the vulnerable witness and other participants in the legal process, to ensure that their communication is as complete, accurate and coherent as possible. The Ministry of Justice operates the Witness Intermediary Scheme (WIS) which provides RIs for this purpose for victims and witnesses in the criminal courts. Thanks to the WIS many who previously were unlikely to give best evidence, and some who were unable to give evidence at all, now can. Access to justice is improved for those who are the most vulnerable members of society - children who need to be communicated with in developmentally appropriate ways and those with physical disabilities or mental disorders which adversely affect their communication.

Legislation within the Youth Justice and Criminal Evidence Act (YJCEA) 1999 introduced special measures to assist vulnerable and intimidated witnesses give their best evidence, one of which is the use of an intermediary and which was implemented through the introduction of the WIS, through which RIs operate.

RIs were 'created' by section 29 of the YJCEA 1999. RIs assist in police investigations and in the criminal courts of England and Wales.³ Their role is to help the witness communicate before trial (when the police are interviewing the witness to take their evidence) and when giving evidence at trial (when counsel or the judge wish to put questions to the witness). The RI is not an expert witness and it is not their role to give an opinion on the accuracy of a witness's recall of the facts or the truthfulness of their account.

Section 29 of the YJCEA 1999 applies to prosecution and defence witnesses only. The inclusion of defendants has been piecemeal: first, section 47 of the Police and Justice Act 2006 allowed vulnerable defendants to give evidence by live link; second, section 104 of the Coroners and

http://www.city.ac.uk/_data/assets/pdf_file/0011/77906/Tell_Me_Whats_Happening_-_Registered_Intermediary_Survey_20.pdf

³ Following the successful use of MoJ RIs in criminal courts, intermediaries are now being utilised in family courts but it should be noted that this is outside the scope of the MoJ's WIS. There is no legislation for special measures in the family courts and where family courts permit their use it is on an ad-hoc basis by a judge using their inherent powers in the interest of a fair hearing.

Justice Act 2009 (when implemented) will allow for a vulnerable accused to give their oral evidence with the assistance of an intermediary. In the interim, the practice has grown up in the crown court whereby judges, exercising their inherent jurisdiction to ensure that the accused has a fair trial, have granted applications by the Defence to allow the defendant to be assisted by an intermediary during their evidence alone or throughout the trial⁴.

In 2003 the first cohort of RIs was trained and in 2004 their use was rolled out in six pathfinder areas in England and Wales. In 2007 following '*The Go-Between: evaluation of intermediary pathfinder projects*' by Joyce Plotnikoff and Richard Woolfson⁵, national roll-out was recommended and this was completed in September 2008. Consequently, the WIS is available in all 43 police forces and CPS areas in England and Wales. Statistics provided in December 2010 by the MoJ's Better Trials Unit (BTU) showed 111 active⁶ RIs (i.e. they are available for appointment to cases) and 38 inactive RIs. There have been over 4,400 requests for an intermediary appointment since this special measure was implemented in 2004. The average number of requests per month was 96 (June to November 2010).

How the Witness Intermediary Scheme (WIS) operates

The National Policing Improvement Agency's (NPIA) Specialist Operations Centre (SOC) operates and manages the matching service element of the WIS on behalf of the Ministry of Justice. Police Officers and Crown Prosecution Service lawyers (known as End-Users) contact the matching service for advice about the use of an RI and to request a referral for one. The SOC operates the national database of RIs, the Intermediary Register. Upon receipt of a

⁴ For instance see P. Purnell QC and G. Frost, 'The Use of Intermediaries for Defendants', *Criminal Bar Quarterly*, Summer 2011 – Issue 2, pages 8 to 10.

⁵ J. Plotnikoff and R. Woolfson, '*The Go-Between: evaluation of intermediary pathfinder projects*', (Ministry of Justice, 2007). Research summary available at <http://lcjb.cjsonline.gov.uk/area1/library/National%20Evaluation%20of%20Pathfinder%20InterMed%20Scheme.pdf>

⁶ Active RIs are those available to undertake suitable work offered to them as opposed to inactive RIs who have indicated to the NPIA that they are currently unavailable to accept work offered to them. Reasons for inactivity include maternity leave, regular / known primary employment commitments, sabbatical periods(s), academic study, school holiday periods, etc, and the duration of this inactivity varies accordingly. RIs are classed as self-employed individuals (although they may be in full-time employment elsewhere and take annual leave from that employment to act in this role) and are under no compulsion by the Ministry of Justice, the NPIA or any other criminal justice organisation to accept work offered to them.

request, the SOC seek to identify an RI who is suitable (based on the professional skill-set(s) required), available to conduct the work on the required dates and willing to accept the work in the specified geographic area.

2010 judicial note of intermediaries

In 2010 and for the first time three judgments from the higher courts (two are from the Court of Appeal Criminal Division and one is from The Supreme Court) referred to the role of the intermediary.

In *R v Barker* [2010] EWCA Crim 4, the Defendant had been convicted at the Old Bailey primarily on the evidence of a four year old girl who had disclosed that he had anally raped her when she was less than three years old. Though she gave evidence over a live TV link without the assistance of an intermediary, the judgment makes reference to intermediaries:

‘The trial process must, of course, and increasingly has, catered for the needs of child witnesses, as indeed it has increasingly catered for the use of adult witnesses whose evidence in former years would not have been heard, by, for example, the now well understood and valuable use of intermediaries’ (The Lord Chief Justice, Sir Igor Judge at para 42).

In *R v Watts* [2010] EWCA Crim 1824 the Court of Appeal noted that this was the ‘first occasion on which the evidence of complainants suffering from such profound levels of disability has been brought to the court's attention’ (Mr. Justice Mackay, delivering the judgment of the Court of Appeal, para 17). The defendant was charged with sexual assaults on women with mental disorders who lived in a care home. He was convicted and appealed. An intermediary was utilised pre-trial and one was available for the trial.

In the Supreme Court in *Re W (Children) (Abuse: Oral Evidence)* [2010] UKSC 12, [2010] 1 FLR 1485 the court was considering the test to be applied when determining whether or not a child should give oral evidence in family proceedings. Baroness Hale said:

‘The Youth Justice and Criminal Evidence Act 1999 now provides for a variety of special measures to assist children (and other vulnerable witnesses) to give evidence in criminal cases. These include screens, live television links, using video-recordings as evidence-in-chief, providing aids to communication and examining the witness through an approved intermediary. (para 9)

‘One possibility is an early videoed cross-examination as proposed by Pigot. Another is cross-examination via video link. But another is putting the required questions to

her through an intermediary. This could be the court itself, as would be common in continental Europe and used to be much more common than it is now in the courts of this country.’ (para 28)

Number of RI referrals to number of trials

MoJ statistics indicate that in the period covered by this survey (Sept 2009 to August 2010) there would have been in the region of 45,500 trials in the magistrates’ court and 33,000 cases listed for trial in the Crown Court, not all of which turn out to be effective.⁷ Not all trials will involve a witness or defendant who requires an intermediary and there are no statistics available to show what proportion would. RIs assist in a small percentage of criminal cases overall.

2010 SURVEY RESULTS AND ANALYSIS

2010 survey

39 responses were received in total representing a little over a third of practising RIs, as at December 2010) compared 57 responses (over half of practising RIs) for the 2009 survey. Questions 1, 3, 6, 7, 9, 10 and 17 of the 2010 survey questionnaire had an equivalent question in the 2009 survey thus the results for those questions are compared. All percentages are rounded up to the nearest whole number unless otherwise stated.

Number of referrals in criminal cases

Question 1: How many referrals have you accepted in the last 12 months?

In this survey RIs reported the number of cases they have taken on (number of referrals) over the previous 12 months (September 2009 to August 2010). Results showed that the number of referrals reported by RIs ranged from one to 50. The average number of reported referrals was 13 per RI (based on the 37 RIs who reported referrals for criminal trials i.e. not including the two survey responses who reported no referrals for criminal trials). This figure is slightly lower than in 2009.⁸

⁷ ‘Court Statistics Quarterly July to September 2010’, Ministry of Justice Statistics Bulletin, 14 December 2010.

⁸ This figure could be affected by a number of factors including that some RIs who completed the survey may have started new to this work or resumed work after being inactive. In future for a survey question of this kind it would be useful to know for what part of the survey period the RI was active i.e. available to accept referrals.

	2009	2010
Average number of referrals reported per RI per annum	14	13

Question 2: How many witnesses/defendants in total?

The total for all 37 respondents was 522 making an average of just over 14 witnesses / defendants per RI per annum.

Question 3: How many trials have you been involved in during the last 12 months?

There were 37 responses to this question. The range was from zero to seven. Eight RIs reported no trials. The total number of criminal trials reported was 92 which equates to an average number of trials just shy of 2.5 per RI. The results are broadly consistent with the 2009 results and suggest a ratio of approximately five referrals to one trial.

	2009	2010
Average number of trials per RI per annum	2.9	2.5

As was noted in 2009, there will always be more referrals than trials because not all cases proceed to trial; they may be discontinued for various reasons or the defendant may plead guilty to one or more charges, sometimes because they realise that the victim will in fact be able to give evidence.

Attendance at contested special measures applications

Question 4: In the cases where the special measures application was contested, were you in attendance at the hearing of the application?

- Yes/No (Please circle one)
 - If Yes, did the Judge hear from you directly?
- If No (you were not in attendance), please state the reason (if known)

This year, for the first time, the survey asked RIs whether they were in attendance at the hearing where there had been a contested special measures hearing. Of the 18 who indicated either 'Yes' or 'No' to this question, ten RIs reported that they were there for the contested special measures hearing as compared to eight who said they were not. The stated reasons, where known, for not being in attendance were 'Not allowed', 'Instructed to wait outside', 'Barrister advised I was not permitted in court' and 'I was called in afterwards'. One RI reported that she went to court and 'was not informed why I was asked to attend until in witness box before being cross-examined by counsel'.

Application for the use of the RI

Question 5: In your cases in the last 12 months, when was the application for the use of the Registered Intermediary at trial being made? (Please tick one)

- Mostly they were dealt with at the plea and case management hearing (PCMH)**
- Mostly they were dealt with on the first day of the trial**
- Other (please give details)**

Of the 26 responses to this question thirteen said that mostly the application to use the RI at trial was made at the PCMH, nine said that mostly the applications were made on the first day of the trial, one said that they were made mostly the day before the witness was due to give evidence, one said it was mostly a few days before the trial, one describes a 'late application by the CPS' and one said that sometimes it was at the PCMH and sometimes on the first day of trial.

Timing of the application to use the intermediary	2010
Mostly at the PCMH	50%
Mostly 'late'/ few days before trial/ first day of trial/ day before the witness was to give evidence	46%
Other	4%

Question 6: In how many of ‘your’ trials in the last 12 months did you get the chance to speak to both Prosecution and Defence counsel before the witness gave evidence?

26 respondents reported 52 instances of having the chance to speak to both prosecution and defence counsel before the witness gave evidence. This should happen in 100% of cases to enable the proper handling of the vulnerable witness and best use of the RI.

	2009	2010
Trials when RI spoke in advance with prosecution and defence counsel ⁹	47%	57%

Question 7: In how many of those trials in the last 12 months did you have a Ground Rules Hearing i.e. a meeting all together with the Judge, Prosecution and Defence counsel in the trial to establish the do’s and don’ts for questioning the witness?

There were 27 responses to this question. 56 Ground Rules hearings were reported which equates to 61% of the trials reported. One respondent said that she always cites in her report ‘part 29 of the Criminal Procedure Rules 2010’ and the requirement for Ground Rules to be established for questioning the witness. The 2010 RI survey shows a slight improvement on the 2009 result.

	2009	2010
Trials when a Ground Rules hearing occurred ¹⁰	42%	61%

In the 2009 survey the results indicated that in only 42% of the trials that RIs reported had there been a Ground Rules Hearing. At the time of the 2009 survey there was no requirement in the Criminal Procedure Rules, merely Special Measures Guidance from the Professional Practice Committee which stated ‘it is essential, before the witness’s evidence begins, for counsel, the intermediary and the judge to hold a hearing to discuss the recommendations in the intermediary’s report and to set down the ground rules for the examination of the

⁹ Expressed as a percentage of the total number of trials reported by RIs.

¹⁰ Expressed as a percentage of the total number of trials reported by RIs.

witness'.¹¹ Judges also had similar guidance on the JSB intranet but it still seems that many barristers and judges were unaware or disregarded the guidance. The Criminal Procedure Rules Committee addressed this issue and as a result there was an amendment to the special measures application form indicating there should be a Ground Rules hearing¹². The survey results may suggest that Ground Rules are becoming more common practice.

Witness support from the Witness Service

Question 8: Overall how would you describe your experience of the court-based Witness Support service for the witnesses you worked with? (please tick one only)

- Excellent**
- Good**
- Acceptable**
- Not acceptable**

Please give examples of Witness Service good / bad practice

The vast majority of RIs described their experience of the court-based Witness Service witness support as either excellent or good. Of the 31 respondents the ratings were as follows:

42% Excellent

42% Good

6% Acceptable

3% Not acceptable

6% Other*

* Other: two did not rate according to the criteria, one writing that it was 'Extremely mixed' and the other that it was 'very variable'.

The respondents were invited to give examples of good or bad experiences. Good experience examples included 'Once my role was explained it was easier to work together. They were very supportive of the witness', 'helpful, supportive and accommodating', 'Provided extra visits

¹¹ <http://www.barcouncil.org.uk/guidance/SpecMeasuresGuidance/>

¹² See 'APPLICATION FOR A SPECIAL MEASURES DIRECTION (Criminal Procedure Rules, rule 29.3 and 29.10)' form at <http://www.justice.gov.uk/guidance/courts-and-tribunals/courts/procedure-rules/criminal/docs/CrimPR-Part29-3-29-10-application-for-special-measures.pdf>

where necessary. Arranged for witness to arrive by special entrance. Nothing [was] too much trouble!'.

Bad experience examples included 'frightening a 4 year old to death and talking at her for ages – had to intervene as mother and child were terrified. After I had done my utmost to settle them' and another said 'crying whilst listening to child's evidence (DVD)'.

Witness waiting times

Question 9: Of the witnesses you have worked with in the last 12 months, approximately what percentage had to wait more than an hour at court before they gave evidence?

Question 10: If some of 'your witnesses' had to wait more than an hour, did this make a difference? Y/N If Yes, in what way?

Of the 27 who responded to the question about waiting times, 22 (82%) respondents said that all their witnesses had waited more than an hour at court to give evidence. the other 5 responses ranged from zero to approximately forty percent of their witnesses had to wait more than an hour.

In 2009 the survey the question asked about witnesses who had to wait more than ten minutes: 'Of the witnesses you have worked with in the last 12 months, approximately what percentage (if any) had to wait more than 10 minutes before they gave evidence?' and the result had been that approximately 95% of witnesses had to wait over 10 minutes before they gave evidence.

Responses in 2009 and 2010 indicate increased witness anxiety is the usual effect. RI responses described witnesses as becoming 'agitated', 'tired', 'distracted', 'extremely anxious'. It was reported by one RI that a witness 'fell asleep on the sofa' and by another that the witness 'ran off with mother'¹³. One RI noted that the witnesses became 'fidgety (especially young children)'.

Leading Questions - recommendations for 'no leading questions' and interventions to prevent leading questions

The 2010 survey contained a series of questions about the use of leading questions with vulnerable witnesses.

¹³ RI case study interviews include descriptions of waiting at court with witnesses – for example http://podcast.ulcc.ac.uk/accounts/CityUniversityLondon/interviewregisteredintermediary/Interview_w ith Registered Intermediary Donna Ravening_hi.mp3

Question 11: Just considering the cases in the last 12 months that went to court and where the witness gave evidence, for how many witnesses (including defendants if any) did you recommend that leading questions should NOT be used? (Please specify the number of witnesses/defendants).

There were 25 replies to this question and the total number of times was 70. This equates to 76% of the total number of trials reported in question 3.

Question 12: Considering all the instances where you said there should be *no leading questions* for a witness/ defendant, which statement best describes the overall position? (Please tick one)

- My recommendation was *always agreed* by the judge i.e. it became a Ground Rule
- On half or more of the occasions* where I recommended it, it was *agreed* by the judge
- In fewer than half* the occasions where I recommended it, *it was agreed* by the judge
- Every time* I have recommended it, it has been *rejected* by the judge

24 respondents answered this question. Half said that this recommendation had always been agreed by the judge, whilst the remainder of responses were spread fairly evenly across 'on half or more occasions' it was agreed by the judge, 'in fewer than half' it was agreed by the judge and 'every time' it was rejected by the judge.

'No leading questions' recommendation ¹⁴	2010
Recommendation was <i>always agreed</i> by the judge	50%
On half or more occasions it was agreed by the judge	17%
In fewer than half it was agreed by the judge	13%
Every time it has been rejected by the judge	13%

¹⁴ Responses to this question are expressed as a percentage of the 24 respondents who answered this question about no leading questions.

Question 13: In your cases where your ‘no leading questions’ recommendation has become a Ground Rule, how do the cross-examining advocates react to this Ground Rule? (Please tick one)

- They have all abided by it (i.e. not used/ attempted to use leading questions)**
- Most advocates have abided by it**
- Most have not abided by it**
- None has completely abided by it**

There were 25 responses to this question. Where 'no leading questions' was a Ground Rule, only two RIs reported that everyone had abided by the rule. Included in the 25 responses were three responses marked non applicable and two RIs said that the Prosecution abided by the rule but the Defence did not.

Cross-examiner’s response to ‘no leading ¹⁵ questions’	2010
All bided by it	10%
Most abided by it	32%
Most did not abide by it	12%
None completely abided by it	28%

Question 14: If, contrary to a Ground Rule, there were witnesses/ defendants who were cross-examined with leading questions, which statement best describes what happened: (Please tick one)

- The judge(s) usually corrected the advocate without me having to point this out**
- I pointed it out and then the judge(s) corrected the advocate**
- The judge(s) sometimes allowed the leading questions even after I pointed it out**

There were 20 responses to this question. Regarding interventions when the ‘no leading questions’ Ground Rule was being contravened, 3 respondents said that the judge usually pointed it out without the RI having to, 13 said that they usually pointed it out and the judge

¹⁵ Expressed as a percentage of the 25 answers to this question.

corrected the advocate, however 4 said the judge sometimes allowed the leading question even after the RI had pointed it out.

Response to a breach of 'no leading questions' ¹⁶	2010
Judge usually corrected	15%
RI pointed it out and then judge corrected	65%
Judge sometimes allowed even after RI pointed it out	20%

Family case referrals and trials (e.g. Care cases, Contact/Residence disputes)

Question 15: Have you received any referrals to act in family cases? Y/N

Question 16: If so, how many?

5 RIs out of the 36 who responded to this question reported having worked in family Cases (e.g. care cases or contact/ residence disputes).

RIs Feedback

Question 17: Have you received feedback or comment from anyone on your role in any of the cases you dealt with in the last 12 months? Y/N If Yes, please describe:

25 out of 32 responses indicated they had received feedback or comment whilst the remaining 7 indicated they had not. Overwhelmingly the responses to this question described positive feedback. Below are sample quotes from ten different RIs.

'...have been specifically requested several times. Have been thanked directly by most [officers in charge of the case] and barristers and two judges.'

'One PC...said she couldn't believe how much my involvement had helped to put the mother at ease and move the case forward.'

'Positive feedback & thanks from 2 judges, all police officers, all witnesses & 2 family members.'

¹⁶ Expressed as a percentage of the 20 answers to this question.

'Police are more forthcoming with thanks.'

'Positive feedback from most police contacts. Commendation was sent by one police force.'

'[T]hank you; couldn't have done it without you etc'

'I would never have thought we could get an interview as good as that.'

'[Officer in the case] said that she would never make assumptions about profoundly disabled people again.'

'The Police Officer thanked me & said watching the assessment "opened her eyes" & she used it as a learning experience.'

Only one RI gave an example of what could be described as constructive criticism. The example was of feedback from a solicitor at Magistrates Court who suggested the RI should have slowed down the witness. The RI noted 'Because no ground rules, in retrospect should have done things differently'.

CONCLUSIONS

Whilst acknowledging the limitations of this survey, in particular the small number of respondents and the respondents' necessary approximations to some questions, trends do emerge and some conclusions can be drawn.

Not all judges and counsel in criminal cases are aware of the RI role and how RIs can help

The survey suggests that there needs to be a change in approach to RIs being in the courtroom for the contested special measures application. The RI in the case should be present in order to assist the judge to determine the application; the RI can explain their role first hand and the practicalities of how the vulnerable witness might give their best evidence. But often the RI is not in court for the contested special measures application. Why? It may be that the judge is unaware that the RI is available and could come into court to assist. It may be that the judge thinks that the presence of the RI will not assist. It may be that advocate acts as a gatekeeper and makes the decision to exclude the RI without the judge ever knowing the RI could come into the courtroom. There may be misunderstanding about the role of the RI; the RI is not a witness in the case but is nonetheless excluded as if they were. If this is indeed the reason then the RI could speak to the court usher and get a message to the judge that they are there, they are not a witness but an adviser to the court and wish to be in court to assist in the hearing of the application to use the RI. Whatever the RI may be able to do in the meantime to improve

case management, the survey suggest an ongoing need to train judges and barristers about the role of the RI.

Late applications and waiting times impacting on the vulnerable witness

Half of the RIs surveyed felt that mostly the application for the use of the RI was being dealt with at the PCMH, as it should be, whilst the other half thought they were mostly made on or very close to the first day of trial i.e. delayed until the last minute. This delay leaves the RI and, even more worryingly, the vulnerable witness uncertain about what will happen at trial: 'Will my intermediary be here to help me give my evidence or not?' Whether granted or not, late applications risk damaging the vulnerable witnesses chance to give their best evidence because of the uncertainty and anxiety they provoke.

Waiting times are also unacceptable because of the anxiety they create. Waiting times at court are significant (usually at least an hour) and, not at all surprisingly, lead to increased stress for the already anxious vulnerable witness. The 2009 and 2010 survey results about waiting times show worrying evidence of unacceptable waiting times that judges, using their case management power, should urgently address.

Ground Rules Hearings may be on the increase

It appears that the amendment to the special measures application form may be having a positive effect because the occurrence of a Ground Rules hearing (judge, trial counsel and RI meeting in court and agreeing how best to question and handle the witness at trial) has increased from 42% to 61% of cases. It is hoped that by the time of the 2011 the survey it will be approaching what it should be, 100%.

Ground Rules should be made to be followed

The challenge of making sure that the Ground Rules are followed still remains. The survey results suggest that in most instances when a 'no leading questions' ground rule was set this was not adhered to by counsel and in most instances the RI (rather than the judge) was the one pointing out this breach. A 'Ground Rules are made to be broken' attitude may be prevalent amongst cross-examining counsel and if so it undermines the purpose of the Ground Rules hearing. The survey suggests that generally judges could be more proactive in enforcing the Ground Rules that they have put in place.

Feedback from RIs on the Witness Service

The Witness Service (run by specially trained volunteers who work for Victim Support) is reported by the majority as good or excellent but some RIs report variable or poor quality of service provision.

RIs in the Family Justice System

Though 5 RIs reported having done family cases this is outside the MoJ BTU remit to record and there is no legislation for the use of an intermediary in the family courts. This is an area for possible future research since little is known about how they are instructed, how they are funded and how they operate in the family justice system.

Feedback on RIs

Once again, where feedback about the RI was reported in this survey, it was almost all in praise of the service provided by the RI.

If pre-recorded cross-examination were introduced in criminal trials

Implementing pre-trial recorded cross-examination (Section 28, YJCEA 1999) would avoid waiting times at court for the vulnerable witness and it might even have other desirable consequences; there might be an improvement in the questioning techniques of advocates if there is improved focus (because it is out of the context of the hurly burly of trial) on the best way of questioning that particular witness according to the pre determined Ground Rules¹⁷ and because counsel know they are being recorded on film¹⁸.

Penny Cooper, June 2011

¹⁷ Pre-recorded cross-examination would not obviate the need for Ground Rules to be set and enforced during the questioning of the witness.

¹⁸ If implemented, analysis of DVDs of pre-recorded cross-examination of vulnerable witnesses would make an interesting research project.