



The City Law School

CITY UNIVERSITY LONDON

Tell Me What's Happening: Registered Intermediary Survey 2009

"I have been the advocate in 10 trials with intermediaries and have won 9 of them. The trials I have mentioned could not have taken place 5 years ago due to the disabilities of the victims who were being 'priced out' of justice"

Lead CPS prosecutor, 2009

1. Background and summary

An intermediary assists witnesses who have communication difficulties to achieve best evidence¹. A questionnaire survey of practising intermediaries was carried out at the fifth national conference for Registered Intermediaries held on the 3rd and 4th of September 2009 in Ryton, Warwickshire. Over one hundred people attended the conference of whom three quarters were intermediaries.

The results of the survey are detailed in this report and they show that the services of intermediaries in the criminal justice system are highly valued. However, procedures designed to ensure their effectiveness at court are not being followed in approximately half of the trials in which they take part. The report recommends action is taken to improve practice at court, to continue to monitor what is happening in reality and to explore ways of enhancing online intermediary support.

¹ Intermediaries have been facilitating communication with vulnerable witnesses in the criminal justice system since 2004. The use of intermediaries is based on statutory law. The Youth Justice and Criminal Evidence Act 1999 created the scheme of 'special measures' for cases involving vulnerable and intimidated witnesses. Intermediaries are just one type of 'special measure'. Intermediaries have to undergo intensive, accredited training and assessment at the City Law School, City University London in order to become Registered Intermediaries.

2. What do Intermediaries do?

Intermediaries are communication specialists who work at two key stages in the criminal justice process: when a witness is being interviewed by a police officer, and when the witness gives evidence at trial.

Intermediaries allow those who were previously unlikely to give best evidence, or to give evidence at all, to have a voice. Thus access to justice is given to some of the most vulnerable members of society - children and those with physical or mental disabilities which affect their communication.

The National Policing Improvement Agency (NPIA) Specialist Operations Centre (SOC) operates and manages the matching service element of the Witness Intermediary Scheme (WIS) on behalf of the Office for Criminal Justice Reform (OCJR)². Police officers, Crown Prosecution Service (CPS) lawyers and Defence solicitors can contact the matching service³ for advice about the use of an intermediary and to request a referral for one. The SOC holds and manages the national database of Registered Intermediaries, known as the Intermediary Register. Upon receipt of a request those who work for the matching service will seek to find the intermediary who is the best match for the witness in terms of their communication expertise and geographic area coverage. There have been over 3,000 referrals made since the scheme began in 2004.

3. Research methodology

Every year since 2005 Registered Intermediaries have gathered for an annual conference⁴. In August 2009, the matching service was transferred to the NPIA⁵ Special Operations Centre and as a consequence the latest conference was hosted by the NPIA in Ryton.

² OCJR's Better Trials Unit is responsible for the policy and strategy management of the Witness Intermediary Scheme and has overall responsibility for the scheme.

³ The NPIA Specialist Operations Centre can be contacted via 0845 000 5463 or wit@npia.pnn.police.uk

⁴ In 2009, the majority of conference delegates were Intermediaries, however the audience also included civil servants, members of the Intermediaries Registration Board (the WIS's governance board) and the Quality Assurance Board (its regulatory board), lawyers, academics, police officers and other professionals. Speakers included Lord Bach (Parliamentary Under-Secretary of State at the Ministry of Justice, former practising barrister), Frank Glen (Head of the NPIA Specialist Operations Centre), and practising intermediaries who shared their case experiences. There were workshops and seminars on a

There are currently 95 practising intermediaries on the NPIA register, the majority of whom attended the 2009 conference. At its conclusion, those who had taken cases during the previous twelve months were asked to complete a short survey, a copy of which can be found in Appendix One.

48 completed questionnaires were handed in on 4 September 2009. A copy of the survey form was subsequently placed on the intermediary SmartSite⁶. A further 9 completed questionnaires were received by email/post in September 2009 bringing the total number of completed questionnaires to 57.

4. Survey results analysis

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

A total of 815 referrals were reported, making an average of just over 14 per intermediary per year. Responses ranged from 45, reported by one intermediary, to 0, reported by another. Over 60 % of respondents had received ten or more referrals in the previous twelve months.

Question 2: How many trials have you been involved in during the last 12 months?

There were 167 trials reported, which averages at 2.9 per intermediary per year. Six had not been involved in any trial.

variety of subjects including communicating non-verbally with children, assessment methods, preparing for trial, tax for the self employed, working with the OCJR and NPIA and the latest NSPCC/Nuffield Foundation research on child witnesses. The author of this report recorded interviews with some of the conference presenters and the link to the podcast of these interviews, as well as a transcript of the podcast, has been posted on the 'SmartSite'.

⁵ The transfer of the Witness Intermediary Scheme is recognition of the valuable contribution that the NPIA is playing in supporting the police service in tackling crime and increasing public safety - Frank Glen, Head of the Specialist Operations Centre, NPIA see <http://www.npia.police.uk/en/13864.htm>

⁶ Registered Intermediaries can access the 'SmartSite', an online community which communicates by email. The site is hosted by Google. The facility is referred to as the 'SmartSite' because it was originally hosted by a different provider and started life as a 'smart group'. Membership of the 'SmartSite' is by invitation only and regulated by the OCJR. As well as intermediaries, members include the author of this report, David Wurtzel of The City Law School, Dr Kevin Smith of the NPIA Specialist Operations Centre Witness Intermediary Service and Jason Connolly of the Better Trials Unit of the OCJR.

These results suggest a ratio of approximately 5:1 for referrals to trials. 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, or sometimes because they realise that the victim will in fact be able to give evidence.

Question 3: In how many of those trials in the last 12 months did you get the chance to speak to both Prosecution and Defence counsel before the witness gave evidence?

Respondents reported 79 instances of having the chance to speak to both Prosecution and Defence at trial. This is only 47% of the total number of trials. This should happen in 100% of cases.

Question 4: 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 in relation to questioning the witness before the witness gave evidence?

Only 71 instances of Ground Rules Hearings were reported for the 167 trials, which is 42% of the total. This is despite the fact that Special Measures Guidance from the Professional Practice Committee (<http://www.barcouncil.org.uk/guidance/SpecMeasuresGuidance/>) states, '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 witness'. Judges have similar guidance ('before the witness gives evidence there should always be a hearing between trial judge, advocates and the Intermediary about the ground rules on which the witness will give his evidence') which is on the JSB intranet. The conclusion is that either barristers and/or judges are unaware of the guidance which applies to them or, if they are aware, they disregard it.

One intermediary reported that out of the 6 trials she had been involved in, there had been 5 Ground Rules Hearings, "but I had to insist!!" she added.

Question 5: In the last 12 months as an Intermediary have you ever been excluded from a joint police/social worker ABE interview? Y/N

Only 1 intermediary said that they had been excluded in the preceding 12 months.

Question 6: In the last 12 months as an Intermediary have you ever been excluded from the court whilst the intermediary special measure was discussed? Y/N

18 respondents (32%) said Yes, they had experienced being excluded from the court whilst the intermediary special measure was discussed. This is despite the guidance to the judiciary on the JSB intranet stating that 'if the special measures application is contested, then the Intermediary must be asked to attend court, to explain their report and to answer any questions. A contested application should not take place in their absence'. If there is a contested special measures application, the intermediary, if available, should be in court to answer any queries the judge or counsel may have about the report or how the intermediary would assist in the trial.

Question 7: 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?

There were 45 responses to this question. The responses indicated that approximately 95% of witnesses had to wait of over 10 minutes before they gave evidence.

Question 8: If some of 'your witnesses' had to wait more than 10 minutes, did this make a difference? Y/N If Yes, in what way?

40 intermediaries said that the wait had made a difference, and when elaborating on the difference it made, 39 respondents indicated a negative impact, most responses indicating that the witness suffered from increased "anxiety" or "stress". Comments included:

"Huge increase in anxiety level of witness. No one to sit with witness – left alone for long periods."

"Created additional anxiety – in 1 case the witness had to wait for 2 and a half hours"

"Waiting can be beneficial – witness gets acclimatized to the court. I can continue building rapport. Too long to wait + they become stressed + lose concentration."

Other intermediaries also said:

"Concentration levels dipped/behaviour dipped"

"Case adjourned/technical link difficulties/witness – just wanted to get it over. Became lethargic + despondent"

“Wit. threatened not to stay”

Question 9: 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

84% of respondents said that they had received feedback and none reported negative comments.

Question 10: If Yes, please describe:

Responses indicated that this feedback came from police officers, CPS, barristers, judges and parents of witnesses. A selection of responses is set out below. (IO is an abbreviation for interviewing officer, OIC is an abbreviation of officer in charge and RI is Registered Intermediary.)

“Police gave written feedback re. positive impact ‘could not have interviewed the witness without RI’ ”

“From OIC – very positive feedback, professional, couldn’t have got to court or conviction without”

“From police officer who found my verbal debrief after assessment was extremely helpful”

“A judge at the Inner London Crown Court thanked me personally in court; several IOs have also thanked me personally & appreciated my professionalism”

“Thanks from OIC, counsel and judge”

“One judge called me into court to say thank you! 1 def barrister said he hoped all RIs were as good as me!!”

“Thanked by Judge in court and then discussions in chambers, commented that ‘we will now definitely use an Intm in the future’”

“Judge commented on good quality of my report (but did not allow proper pre-trial meeting)”

“Positive feedback from parents of witnesses, positive feedback from counsel, thanks from Judge, complimentary comments from a judge about my report, positive feedback from police”

“From CPS usefulness of my role in the video interview”

“Letters of thanks, appreciation, comments like ‘I never thought we could have gained such information’ + ‘we wouldn’t have without you’”

Two responses indicated feedback that suggested the intermediary could have done more:

“could intervene more”

“Prosecution Barrister felt I should have been more assertive & interrupted every question”

Question 11: What support do you find most helpful in your intermediary role and what further support would you like?

Many respondents indicated that they found a number of sources helpful:

- 15 said the ‘SmartSite’
- 19 indicated peer support or regional support groups (a form of peer support)
- 13 indicated “David and Penny” (referring to the ‘SmartSite’ email support on legal issues and telephone support on the same)
- 6 mentioned the NPIA/Kevin Smith
- 4 mentioned OCJR/Jason

No consensus emerged from the survey about what further support intermediaries would like but one intermediary commented that the ‘SmartSite’ could be better organised and another commented that it was over-controlled by the moderators.

5. Conclusions, recommendations and suggested action points

- Best practice regarding meeting counsel and Ground Rules Hearings is not being followed in over half of the trials involving intermediaries. There is a need to redouble efforts to educate judges and advocates regarding pre-trial meetings with intermediaries. **Action: City Law School (CLS) to raise this with the judiciary, the Bar and the CPS and to seek a Practice Direction.**
- The survey underlines what we already know; that intermediaries need to be very assertive to get judges and advocates to adopt best practice. **Action: Penny Cooper and David Wurtzel to ensure that CLS courses keep emphasising the need to ‘stand your**

ground' and tactfully educate others in the criminal justice system about how intermediaries should be utilised at court.

- The survey has provided a useful snapshot of intermediary experiences. It will be helpful to carry out another in 12 months and include questions about special measures hearings. For example: Are intermediaries being involved at the contested application for special measures? When is the application being made: at the pleas and case management hearing or on the first day of the trial? **Action: Penny Cooper to carry out a survey at 2010 conference.**
- Intermediaries readily acknowledge the support they receive is from each other via the 'SmartSite' and local groups. The 'SmartSite' does have its limitations; for instance emails can come thick and fast and the threads of email 'discussions' are not always easy to follow and can be diverted by unrelated posts. Could there be an improved website which would facilitate enhanced peer support? For example what if the website had areas for local support groups, mentoring lists, blogs for 'chat', a legal advice area, etc? **Action: Penny Cooper to make enquiries of City University London and then to report back to the OCJR.**

Penny Cooper

Professor of Law

Associate Dean

The City Law School, City University London

October 29th, 2009

APPENDIX ONE

NATIONAL REGISTERED INTERMEDIARY CONFERENCE

SURVEY 2009

Please complete this short survey and hand it in along with the completed feedback form before you leave the conference.

THIS SURVEY IS ANONYMOUS AND SHOULD ONLY BE COMPLETED BY YOU IF YOU HAVE BEEN PRACTISING AS AN INTERMEDIARY AT ANY TIME DURING THE LAST 12 MONTHS.

How many intermediary referrals have you accepted in the last 12 months? _____

How many trials have you been involved in during the last 12 months? _____

In how many of those trials in the last 12 months did you get the chance to *speak to both Prosecution and Defence counsel before the witness gave evidence?* _____

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 in relation to questioning the witness before the witness gave evidence?*

In the last 12 months as an Intermediary have you ever been excluded from a joint police/social worker ABE interview? Y/N

In the last 12 months as an Intermediary have you ever been excluded from the court whilst the intermediary special measure was discussed? Y/N

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?

If some of 'your witnesses' had to wait more than 10 minutes, did this make a difference? Y/N

If Yes, in what way?

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:

What support do you find most helpful in your intermediary role and what further support would you like?

© City University London 2009 If you have any comments or queries about this survey including suggestions for questions to be asked in the next survey please email P.cooper@city.ac.uk Results of this survey will be published on the 'smartsite'.