

## Ten years of Registered Intermediaries in England and Wales By Penny Cooper<sup>1</sup>

**The Youth Justice and Criminal Evidence Act 1999** (the 1999 Act) recognises that certain witnesses are ‘vulnerable’ and makes them ‘eligible for assistance on the grounds of age or incapacity’<sup>2</sup>. One form of assistance is the intermediary whose function is to communicate to the vulnerable witness, questions put to the witness; and to any persons asking such questions, the answers given by the witness in reply to them and to explain such questions or answers so far as necessary to enable them to be understood by the witness or the questioner<sup>3</sup>.

A witness is eligible for the assistance of an intermediary if they satisfy the test in section 16 of the 1999 Act.

- (1) *A witness in criminal proceedings (other than the accused) is eligible for assistance by virtue of this section (a) if under the age of 17 [now 18] at the time of the hearing; or (b) if the court considers that the quality of evidence given by the witness is likely to be diminished by reason or any circumstances falling within subsection (2)*
- (2) *The circumstances falling within this subsection are (a) that the witness (i) suffers from mental disorder within the meaning of the Mental Health Act 1983; or (ii) otherwise has a significant impairment of intelligence and social functioning; (b) that the witness has a physical disability or is suffering from a physical disorder*

**In 2003 the Home Office** recruited and accredited the first cohort of Registered Intermediaries. In the following year they were deployed on a pilot basis. In 2007 the Witness Intermediary Scheme was rolled out across England and Wales and through it Registered Intermediaries<sup>4</sup> have subsequently been available to all 43 police forces and in CPS areas. The Home Office selected potential Registered Intermediaries to operate through the Witness Intermediary Scheme who were already experts in communication in their own professional practice areas<sup>5</sup>. They were taught relevant criminal procedure on a

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<sup>1</sup> Professor Penny Cooper and David Wurtzel of The City Law School, train all Registered Intermediaries and co-write the *Intermediary Procedural Guidance Manual* (MoJ, 2012).

<sup>2</sup> Section 16 of the 1999 Act. Note that other sections of 1999 Act provide assistance for ‘intimidated’ witnesses but the intermediary is not available to the intimidated witness.

<sup>3</sup> Section 29 of the 1999 Act.

<sup>4</sup> Only a person recruited, selected and accredited by the Ministry of Justice to operate within the Witness Intermediary Scheme is known as a *Registered Intermediary*. Thus, a person who is acting as an intermediary, other than through the MoJ scheme, is known as a *non-registered intermediary*.

<sup>5</sup> The majority are speech and language therapists but Registered Intermediaries also come from a wide background of professional roles and occupations including occupational therapy, psychology, mental health nursing, social work and teaching and bring the skills and experience gained in these roles to their work as Registered Intermediaries.

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week-long University training course<sup>6</sup>. They were taught that they must be impartial and neutral and their paramount duty was to the court<sup>7</sup> and that they were bound by a Code of Practice and Code of Ethics<sup>8</sup>. They were trained in police and court practice and to write a report<sup>9</sup> for the court on their assessment of the witness and their communication needs. They were advised of the need for ‘ground rules’.

**There have been over 5300 requests for a Registered Intermediary** since the scheme was first implemented as a pilot project in 2004. Of that number (as at 31 March 2012), 3318 have been made since August 2009 when the National Policing Improvement Agency (now subsumed into the Serious Organised Crime Agency as part of the transition towards the launch of the National Crime Agency in April 2013) took over the matching service on behalf of the Ministry of Justice. Of the 3318 requests received at 31 March 2012, 3160 (94.95%) were matched, 70 (2.10%) were unmatched<sup>10</sup>, 93 (2.80%) were cancelled and 5 (0.15%) were in progress at the time of the statistics being published.

**There are 144 Registered Intermediaries** on the register<sup>11</sup>. They operate as ‘self-employed’ in respect of their Registered Intermediary work. Of the 144, 104 were active<sup>12</sup> and 40 were inactive. Over the 12 month period April 2011 – March 2012, an average of 105 requests per month were received for the services of a Registered Intermediary for a victim or witness. Over the same period an average of 3 requests per month were received for the services of a Registered Intermediary for a defendant however, it is the responsibility of the defence lawyer in conjunction with the court to make the necessary arrangements for the appointment of an intermediary for a defendant<sup>13</sup>. The Ministry of Justice advises that enquiries on this subject should be redirected to the court involved for it to deal with in accordance with the guidance provided to its staff.

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<sup>6</sup> Registered Intermediaries are trained by City Law School. The ‘RI’ scheme then operated out of the Home Office before the establishment of the Ministry of Justice in March 2007.

<sup>7</sup> *Intermediary Procedural Guidance Manual*, October 2005, London: Home Office, at para 2.3.1, p 10

<sup>8</sup> The 2005 manual contains the Code of Practice, pp 39 - 40 and Code of Practice, pp 44 – 42. The Codes have appeared in successive manuals.

<sup>9</sup> Though initially described as ‘a briefing note for the court’, *Intermediary Procedural Guidance Manual*, October 2005, (London: Home Office), p 26, para 3.9.11

<sup>10</sup> Reasons for a request being unmatched include a combination of factors such as not being able to identify a suitable, available RI, the request being made at too short notice etc.

<sup>11</sup> As at 23 April 2012.

<sup>12</sup> Active RIs are those available to undertake suitable work offered to them as opposed to inactive. Reasons for being inactive include maternity leave, study leave, holiday periods, etc.

<sup>13</sup> Whilst section 104 of the Coroners and Justice Act 2009 has given statutory backing to the availability of intermediaries to certain vulnerable defendants with communication needs to assist them in giving oral evidence in court, the implementation of this provision has been deferred by Ministers.



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**Ground Rules:** The first Registered Intermediary survey in 2009 suggested that Registered Intermediaries were having ground rules hearings in fewer than half their cases. In 2010 the application form for a direction for special measures was amended<sup>14</sup>. It now includes the words 'Ground rules for questioning must be discussed between the court, the advocates and the intermediary before the witness gives evidence'. Data from the 2010 and 2011 surveys suggest that the instances of ground rules hearing are increasing and occur in approximately three quarters of Registered Intermediary cases<sup>15</sup>. It should be all.

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<sup>14</sup> See now *Criminal Procedure Rules* 2012, rule 29.10 and the Application for a Special Measures Direction Form, at Part F <http://www.justice.gov.uk/courts/procedure-rules/criminal/formspage>

<sup>15</sup> P Cooper, *Tell Me What's Happening 3* (2011), London: City University London