

## Submission to the Commission for Justice in Wales on the provision of Registered Intermediary assistance for Vulnerable Witnesses

Intermediaries are communication specialists trained to work with children and vulnerable adults during police interviews and in court.

We assess how well someone will be able to understand questions and express themselves before giving evidence to the police or in court.

We help the police get the best quality of evidence when they interview the vulnerable person.

We report our findings to the court and advise the judge and barristers how best to question the vulnerable person.

In court we sit or stand next to the witness/defendant and ensure questions and answers are fairly put and understood by everyone.

We facilitate communication for defendants, enabling effective participation, throughout the trial.

Our services are usually requested as “Special Measures” for all very young children, and for any child or teenager with poor language skills, autism, mental health issues or learning disability. We also assist vulnerable adults with mental health issues, learning difficulties, dementia or any other condition where communication is affected.

Intermediaries usually work in police stations and criminal, civil and family courts but assessments can be conducted in any appropriate location including people’s homes.

There are, broadly speaking, two categories of intermediary.

**Registered Intermediaries (RIs)** are selected, trained, accredited and regulated by the Ministry of Justice (England and Wales) or the Department of Justice (Northern Ireland).

**Non registered intermediaries** are not registered with the Ministry of Justice or Department of Justice, however they have been selected, trained and accredited by independent organisations.

Intermediaries frequently have to work with vulnerable witnesses, suspects and defendants with extremely challenging needs. Many of our cases involve physical or sexual abuse. Evidence from children as young as two to adults with schizophrenia, has been effectively given in cases of murder, fraud, rape, child exploitation and trafficking.

The RI scheme has recently been the subject of a review by The Victims' Commissioner (VC), the Baroness Newlove, ('A Voice for the Voiceless' <https://victimscommissioner.org.uk/a-voice-for-the-voiceless>) which made a number of recommendations regarding the governance and management of the scheme. Whilst these will apply to the use of Registered Intermediaries in England, Wales and Northern Ireland there are additional implications for Wales.

The major issues identified by the review are these:

1. Demand for intermediary services far outstrips supply
2. The Witness Intermediary Service does not effectively manage the provision of RIs for vulnerable victims and witnesses.
3. Understanding of the RI role is uneven throughout the criminal justice system and, as a consequence, practice varies within police forces, the CPS, courts and other legal professionals to the detriment of provision for vulnerable witnesses.

### **Implications for Wales**

Additional to the need to implement the VC recommendations is the need to:

1. Recruit more intermediaries based in Wales
2. Recruit more Welsh speaking intermediaries.

At the time of writing I am the only full time Welsh speaking intermediary in Wales. There are also just two non Welsh speaking RIs each of whom works full time in other jobs. Most intermediaries who work in Wales come from over the border resulting in delays in allocation of suitable intermediaries. There are consequent costs in travel, mileage, accommodation and in the conduct of assessments and interviews. If an intermediary has had to travel a distance then there is a pressure to conduct the assessment and the interview on the same day which may not be in the interests of the witness. It is

not unusual for there to be a delay in the arrangement of assessments due to the distances involved.

### **Description of the process following RI appointment**

Following a Request for Service (RfS) from the National Crime Agency's (NCA) Witness Matching Service the intermediary would be briefed by the Officer in Charge (OIC) and would be able to research and discuss the vulnerable witness' needs with professionals such as teachers, psychologists and social workers.

This would be followed by an assessment of the witness' communication needs. The OIC would then be briefed by the intermediary and they would jointly plan the Achieving Best Evidence (ABE) interview. In some cases this could be done verbally and in some cases, where the witness had particular needs, it would take longer and there should be written advice which would advise on questioning style and, for example, additional resources needed to facilitate communication such as venue, body outlines, pen and paper and floor plans.

Following the ABE should the case proceed to court the intermediary would write a report describing the special measures necessary for the witness to give their best evidence. This might encompass questioning styles, use of live link facilities, use of comfort objects, the need for breaks and similar measures. The report should be discussed at a Ground Rules Hearing (GRH), with proposed questions having been submitted in advance so that they could be discussed and agreed with advocates having the opportunity to challenge the report's recommendations. The questions, measures and a protocol for intermediary intervention having been agreed the cross examination of the witness would follow. The questions put to the witness would be those agreed at the GRH which would be monitored by the judge. Subsequent questions would conform to the principles agreed at the GRH.

The witness would have had the opportunity to visit the court before the trial and, if relevant, have practised the use of the live link facility. Everyone who encountered the witness would be aware of their

particular needs having been briefed by the intermediary beforehand.

### Good Practice Examples

Where a five year old child with a speech impediment, hearing difficulties and learning needs gave evidence it was necessary for the intermediary to repeat the questions for him and repeat his answers to the court, over a live link, the questions having been agreed at a GRH. The intermediary had visited the witness several times in order to familiarise himself with the child's speech patterns.

Where a six year old allegedly the subject of a serious sexual assault was allowed to write her answers to questions which the intermediary then read out over the live link. In her ABE she was allowed to put a cross on the relevant parts of the body on a body map which then became part of her evidence.

In an ABE interview where the complainant, with mental health issues, allegedly the subject of a serious sexual assault, would not speak to police officers but wrote her answers to questions. The intermediary then read these out so that subsequent questions could be asked, to which written answers could also be given.

Where a ten year old boy with ADHD and a very short attention span, who had been excluded from school, was allowed to give his evidence at the very start of the day to minimise the time spent waiting and was allowed to bring a comfort object into the live link with him and answered all the questions, agreed at the GRH, that were put to him.

Robert Ian Thomas

Registered Intermediary.

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