

Being an Intermediary:

Guidance for Unregistered Intermediaries

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Foreword

Nothing in the law involves the public more than a criminal trial. It is in everyone's interest that a defendant is tried fairly, and that they are not convicted unless the case is proved against them. That only happens if all witnesses—whether they are called by the prosecution or by the defence—are able to give their evidence to the best of their ability.

Until now, not every witness has had that chance. The Bar has therefore welcomed the provision of 'special measures' in court. They are designed to make sure that the quality of each witness's evidence is maximised. The use of Intermediaries is the latest 'special measure' to be introduced. As an unregistered Intermediary, you will be helping someone who, because of their age or disability, would not otherwise be able so well to communicate to the court and to understand what they are being asked. In many cases in the past, they would not have been able to give evidence at all, and a trial may have had to proceed without their evidence.

I have practised at the Bar for 30 years. I know how important your role is. Barristers who question witnesses also have a duty. While evidence that is not accepted must be properly tested, they recognise that they must assist in making special measures work effectively. The Criminal Bar Association is giving its full support to the vulnerable witnesses legislation.

This book and its accompanying video will help you to take part in the criminal justice process, a process in which you will be making a difference. Each of us who takes part has the same goal: fairness, to all the parties. We have much to be proud of in our system. The Bar is grateful to you for helping to make it better.

Peter Rook Q.C.

Chairman, Criminal Bar Association 2002–2003
December 2003

Introduction

This book and its accompanying video are designed to demystify the role of the Intermediary. It is intended that, having read the book and watched the video, you will feel much better equipped to carry out your role as an *unregistered Intermediary*.

Where an Intermediary is required, *registered Intermediaries* will normally be used. Registered Intermediaries have undergone face-to-face training and assessment, but this book and video are designed specifically for *unregistered Intermediaries*.

All Intermediaries, whether registered or not, have an equally important role to play: to assist in the communication process for certain vulnerable witnesses during police investigations and trials.

Keep this book handy. As you go through it, mark up or highlight the pages/sections that are most useful to you so that you can easily refer back to them.

Penny Cooper
Barrister and Director of Continuing Professional
Development
The Inns of Court School of Law



Part 1:

The Criminal Justice System

This section contains information about the criminal justice system in England and Wales. It begins by describing the law which introduced Intermediaries and then summarises what happens when the police investigate a crime.

This first section is vital background information you need before you act as an Intermediary, either at the police investigation stage or during court proceedings.

The Law

When you are asked to act as an Intermediary it is because of a law called the Youth Justice and Criminal Evidence Act 1999. Under this Act 'special measures' or special arrangements, can be made for certain vulnerable witnesses.

Special measures include the following examples.

- Intermediaries whose function is *'to communicate to the witness, questions put to the witness, and to any person 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 person in question'*.

If you are the Intermediary in a case, you must remember that your primary duty at all times is to the court. You must not 'take sides' and you must remain impartial.

- Providing the witness with devices to enable questions or answers to be communicated, for example picture books, pen and paper or special electronic devices that certain witnesses would need to help them communicate.
- Screens, which prevent the witness from seeing the accused while they are being sworn in or giving evidence. The witness, the tribunal, any interpreter and at least one legal representative for each side must all be visible to one another.

- Evidence by TV link, known as 'live link'.
- Evidence may be given in the absence of anyone specified by the court, but only in cases of a sexual offence or where there are reasonable grounds for believing that someone other than the accused has sought, or will seek, to intimidate the witness. The accused, legal representatives, any interpreter and one named press representative may remain.
- Dispensing with the wearing of wigs and gowns.
- Video-recorded evidence-in-chief.

Special measures directions are available to all prosecution and defence witnesses but they are NOT available to a defendant who is giving evidence on their own behalf.

VULNERABLE WITNESSES

Who are 'vulnerable witnesses' under the Youth Justice and Criminal Evidence Act 1999?

Section 16 witnesses

1. Witnesses who are aged under 17 at the time of the hearing of the application are eligible. Police should automatically assess children as to the nature of their vulnerability due to age.
2. Witnesses who the court is satisfied are suffering from a mental or physical disability or disorder or a significant impairment of intelligence and social functioning by reason of which the court considers that the quality of evidence given by them is likely to be diminished (reduced). The applicant party must prove that the witness is so eligible. The rules of court provide for disclosure of expert evidence.

Section 17 witnesses

1. Witnesses, the quality of whose evidence is likely to be diminished by reason of fear or distress on their part in connection with testifying in the proceedings. Here the court must look at the particular witness in the round, and take into account (i) the nature and alleged circumstances of the offence, (ii) the witness's age, (iii) where relevant, the witness's social and cultural background, ethnic origin, domestic and employment circumstances, and religious and political beliefs, and (iv) any behaviour towards the witness on the part of the accused, his family or associates and any other likely accused person or witness.
2. Witnesses who are complainants of a sexual offence. They are also deemed to be eligible as of right, unless they have informed the court of their wish not to be eligible.

Children are eligible for the primary rule. The primary rule is that the evidence-in-chief of children should be video-recorded and the balance of the evidence should be given by live link. This rule does not apply if the court is satisfied that compliance with it would not be likely to maximise the quality of the witness's evidence so far as is practicable.

Where the offence is one of a sexual nature, or the charge is one of kidnapping, cruelty, false imprisonment or of any offence which involves an assault on, or injury or a threat of injury to, any person, however, then the child is deemed to be in need of special protection and the direction should be made without querying whether it would maximise the quality of their evidence. This latter rule is now being considered by the House of Lords, to see if it is consistent with the defendant's right to a fair trial.

The Intermediary

THE ROLE OF INTERMEDIARIES

As an Intermediary you will be asked, by the prosecution or the defence, to carry out one or more of the following tasks.

- Assist the police in communicating with witnesses at the investigatory stage, and specially when a video is made or a statement is taken.
- Take part in the pre-trial meetings and court familiarisation visits.
- Assist communication with the witness at trial.

It is presently intended that (as with language interpreters) the Intermediary at trial will not be the same person who has been assisting until then. However, there may be exceptional circumstances which require continuity. Because of the needs of a witness, it may not be possible to find two Intermediaries with the same specialist skill and experience in that particular disability. It may also be vital to the witness's capacity to give evidence that they have established a relationship of trust and rapport with a particular Intermediary.

Remember, as an Intermediary you are not a witness supporter and you must at all times remain impartial. Your duty is to the court. In order to be impartial you must have no direct or indirect involvement with the incident in question.

If you are unsure about this then you must tell the police, prosecution or defence lawyer immediately.

HOW THE SYSTEM WILL WORK

The following account looks at the system from the point of view of a prosecution witness. For a defence witness, the defence solicitor will be responsible for making necessary arrangements. They must ascertain whether any of their witnesses are eligible to give evidence with the assistance of an Intermediary, by seeking the advice of doctors, social workers, carers and family.

- Police are the first point of contact with a witness. After identifying that there is a communication difficulty, they should obtain more information (for example, from a doctor or carer) about the nature of it. The witness should be involved in the process of deciding whether an Intermediary is necessary.
- Police hold an early special measures meeting with the CPS, to confirm the need for special measures.
- A meeting is held with, for example, a social worker, carer and/or doctor. An Intermediary will be selected and briefed.
- The Intermediary carries out a preliminary assessment of the witness, in the presence of the interviewing officer and the carer or social worker. A written record must be kept of this. The purpose is to ascertain whether the Intermediary possesses the necessary skills to communicate with this particular person, and to establish rapport. The witness may have his or her own requests in terms of age, sex, sexual orientation, or political or social considerations. The requests must be reasonable.

- The video-recorded interview takes place, probably in a special interview suite for vulnerable witnesses.
- During the interview, the interviewing officer must be able to see the whole communication exchange between the Intermediary and the witness, and have the process explained to them.
- The Intermediary will in due course have to prepare a briefing note for the court, which identifies any special issues that the court should consider; for example, communication needs, physical and mental well-being, and how often a break is needed and how that should be indicated.
- An intermediary may attend a witness' pre-trial familiarisation visit to a court. These visits are organised by the Witness Service which supports witnesses in all criminal courts in England and Wales. More information can be found in the Home Office publication *Witness in Court*. Copies can be obtained by calling 0870 241 4680.
- There must be a full and open record of the involvement of the Intermediary throughout the process, including written notes of assessments, which may be disclosable (given) to the defence.
- An application is made at the 'pleas and directions hearing'. The court is asked to approve the use of an Intermediary. The court must be satisfied that the quality of the witness's evidence would be diminished without the use of an Intermediary.

- There will be a pre-trial meeting, which may be attended by the reviewing lawyer, the trial advocate, the caseworker, the officer in charge, the witness and their legal representative (if any), relative or carer or supporter, and the Intermediary. The purpose of this meeting is to establish a link with the witness and to provide them with reassurance, and with an explanation of the court procedures; to confirm that special measures are appropriate and either to confirm the witness's views or to inform them of what directions have been made and of their binding effect.
- If another Intermediary will be assisting at trial, there must be a hand-over process between them and the person who has been assisting so far.
- An Intermediary at trial must make a declaration that they will faithfully perform their function as Intermediary. Part 3 has more on this.
- At trial, the Intermediary must communicate the reply as given, no matter how irrelevant or illogical the answer appears. If clarification is needed, they must ask the court. They must not interrupt the questioner, hypothesise (assume answer), anticipate the questioner's intention, or alter the question or its nature or the thrust of it for the purpose of shielding or protecting the witness. Matters of concern should be brought to the court's attention at the time they occur, and raised during appropriate pauses and breaks.

Police Investigations

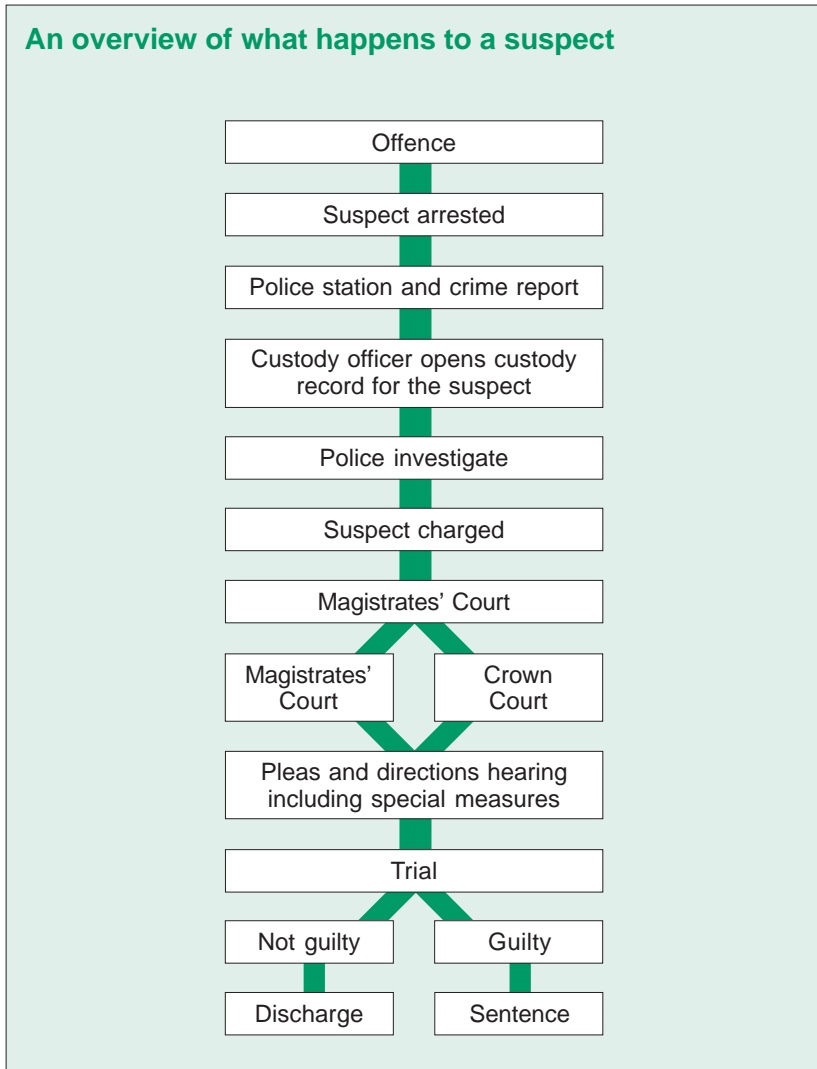
The police are under a duty to investigate offences. This includes taking statements from witnesses, making enquiries of members of the public, obtaining forensic evidence and interviewing suspects. They also have the power to search premises.

As an Intermediary you may be required to be present when the police take a statement from a vulnerable witness. As an Intermediary you may also be required to assist when a witness makes an identification.

From 1 April 2003, the 'first choice' procedure is a video identification. The suspect's picture is included among a databank of people of similar age, race and looks. The witness looks at the video in a room in which the only other people are a police officer and a legal representative of the defendant. This procedure is itself videoed.

Alternatively, there can be an identification parade. The suspect agrees to appear in a 'line up' with live volunteers. The witness looks at them through a one-way glass. The next best option is a 'group identification' where the witness stands, for example, in the concourse of a shopping centre or underground station, and at some stage the suspect walks through. The least preferred method of identification is 'confrontation', where the witness is shown the suspect and asked if this is the person. This is the choice of last resort, since it reduces the procedure to a yes/no alternative.

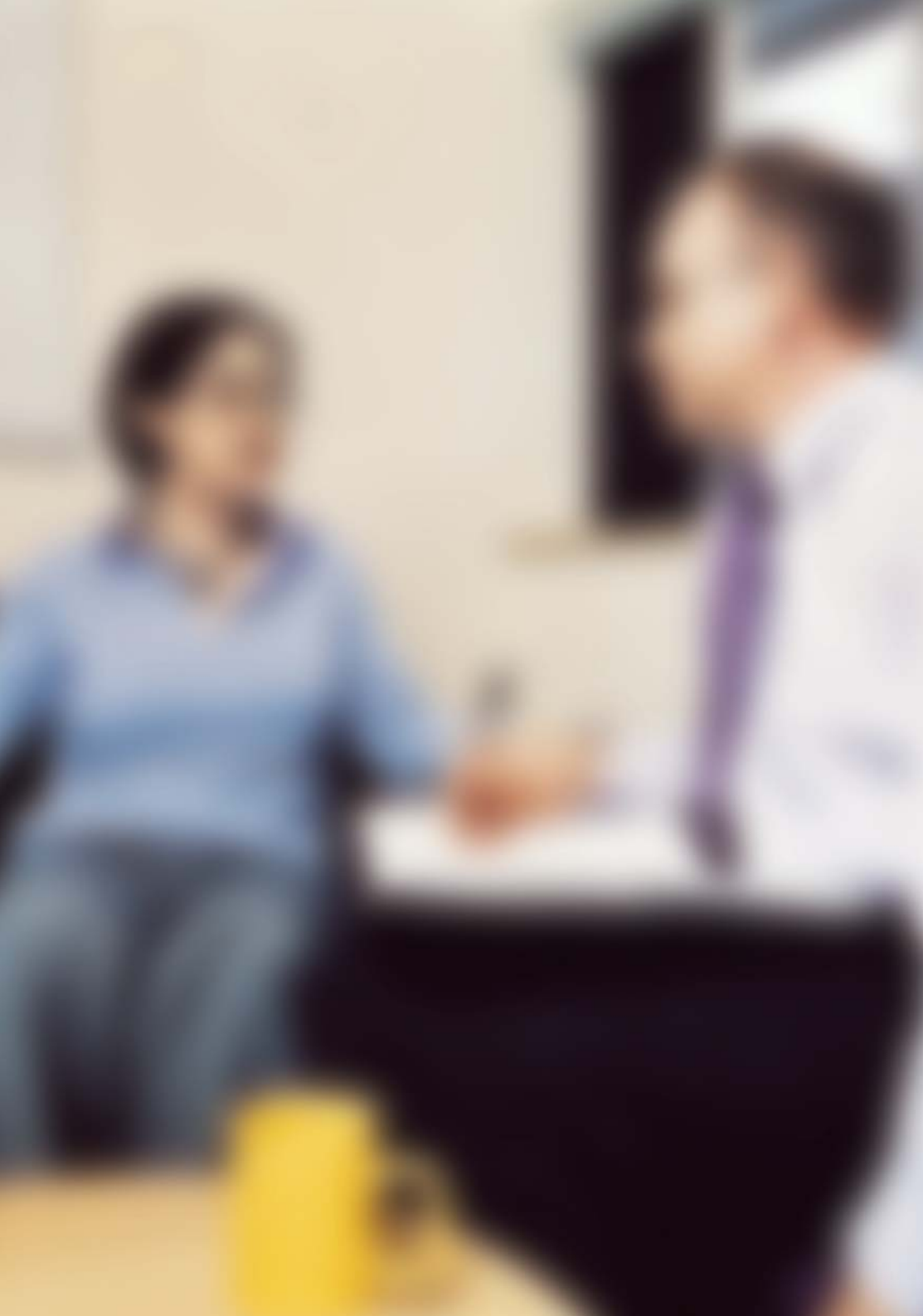
Once the police have investigated the crime, they or the CPS may decide to charge the suspect and the case proceeds to a trial in the Magistrates' Court or, in the case of more serious offences, a trial in the Crown Court. The diagram below gives an overview of what happens from the offence through to the verdict of guilty or not guilty.



Part 2:

Being an Intermediary Before Trial

This section will give you guidance on how you can undertake pre-trial tasks with more confidence. It will look in particular at how you can ensure that you take good notes at each pre-trial stage.



Note Taking

OVERVIEW

Once you have agreed to act as an Intermediary, there are certain tasks you may have to undertake. These include:

- attending the police station (or defendant's solicitor's office) for the interview of the witness
- in some cases, attending an identification of a suspect (video or parade)
- attending a meeting (possibly more than one) with the legal team that has instructed you, so that you can discuss, with the witness, what help and assistance they may need in an interview. The information you give will be used both to plan the interview and for the application to the Judge at the pleas and directions hearing, to ensure that all necessary special measures are approved before the trial
- attending a pre-trial meeting (possibly more than one) with the legal team, to iron out any final issues about communication needs, including provision of equipment.

In your role as Intermediary you will attend interviews and meetings where you will want to give information to others, as well as your opinion on what assistance the witness might need in order to communicate. At the same time, you will be

actively engaged in helping the witness with their communication during these meetings. You will need to keep a record throughout these events, and other people may, on occasion, wish to refer to the notes that you took. This may happen when, for example, there is a question about how an interview was conducted, and whether or not anything was done or said during the interview that affected the way that the witness responded to the questions put to them.

For this reason, you have to take the best possible notes of your involvement as an Intermediary, and ensure that those notes are kept safe and secure as well as confidential.

First, let's look at how you can improve your note taking, and then we'll turn to the situations where you might need to put this into practice.

HOW CAN YOU IMPROVE YOUR ABILITY TO TAKE GOOD NOTES?

Of course you can take notes. You do it all the time at home and at work. You've been taking notes for years, so you probably feel that you don't need to learn about notes now.

Fair enough, but consider the following.

- How often have you taken notes that did not make sense when you reread them?
- How often have you taken notes that were not even legible later?
- How often have you not been able to find a particular point in your notes when you re-read them later?
- How often have your notes missed out an important point?

This sort of problem is irritating, but in the past it has probably been no more than that. You may not have understood something properly because your notes did not make sense.

As an Intermediary there is often far more at stake, however, than simply being irritated or not understanding a point very well. If your skills in taking notes are not good enough the result may be that you fail to remember an important point that a witness or someone else involved in a case has told you, with unpredictable consequences.

Recall problems that you have had with notes you have taken in the past. Look back at them and examine them critically. Were they as good as they could be? Try to identify what the weaknesses were.

Even if your existing note-taking techniques are not too bad, they could still be more polished. In any event, you will still need to adapt your note-taking abilities for your role as an Intermediary.

The rest of this section on note taking is for guidance. It provides suggestions on how you might develop your own skills. There are also some comments on how basic note-taking skills can and should be adapted for different purposes.

As with so much in learning skills, the point is not simply whether you can understand the need for good notes, but whether you can produce them.

Essentials of good notes

The following checklist has some obvious ingredients, but it should still be useful for reviewing how good your note taking is, and may suggest some points on which you could work. A good set of notes needs to have the following qualities.

Reasonable legibility

It is not easy to improve bad handwriting, but there may be something you can do to improve or speed up the way you write. There are some tips below on how using abbreviations/initials can improve your speed. This may help legibility.

Good organisation

You must be able to find something in a set of notes. Points that deal with a similar subject or range of issues should be arranged in groups.

Clear layout

Subheadings, underlining, indentations, etc. help others to find their way around your notes.

Comprehensive coverage

Every important point must be included. It is more important to get the sense and the understanding than to get every word down.

Selectivity

You cannot write down everything, you must get down what matters without wasting space on what does not. If the exact wording does matter it must be recorded.

Abbreviation

To be able to get words down fast when necessary, some form of understandable abbreviation, shorthand or speedwriting technique is essential.

Shorthand

WHY SHORTHAND IS USED

One central element of note taking is a need to write quickly. You may already be able to write shorthand, or you may already have your own methods of abbreviation. However, many people will not be familiar with a worked-out speedwriting system, and others may be able to improve their approach.

Shorthand will enable you to take notes much more rapidly than relying on your longhand while being just as accurate. You should also gain the advantages of shorthand, e.g. being able to note timings more quickly, and ensure that more points can be noted. This should enable you to concentrate your efforts on more important things than merely writing things down all the time.

DEVELOPING YOUR OWN SYSTEM OF SHORTHAND

Some tips on how to develop your own system of self-shorthand (adapted from *Self-Shorthand*, Du Cann, London: Council of Legal Education, 3rd Edition, 1982) are given below.

Initials

You already know, and probably use, hundreds of recognised initials when you take a note. In general, you will find that the initials that you need will 'stick'. Besides, most of them speak adequately for themselves and cannot be confused with anything else.

These accepted initials are a permanent feature in your writing. That is a great advantage. Another great advantage is that they are generally understood by others too.

Use initials with discretion. So long as they are not going to mislead, confuse, puzzle or delay you, they are invaluable. Remember that context is everything. If the word 'government' occurs over and over again and you are not using any other word such as 'God', which might be confused with it, the letter 'G' will stand very well for 'government' and save the writing of nine letters wherever it occurs. In one piece of writing, hundreds of letters may be saved. That must inevitably lead to more speedy note taking.

Abbreviations: national and professional

Abbreviations are really helpful. Some which are nationally recognised you know already and have probably more or less accepted before you ever thought of self-shorthand.

Even these well-used abbreviations can often be shortened further.

Applying the important principle of 'abbreviating the abbreviations' to the weekdays, for example, we can get down to 'MWF' for 'Monday, Wednesday and Friday', but 'T' and 'S' would equally stand for 'Tuesday' and 'Thursday' and 'Saturday' and 'Sunday'. Clearly then, you cannot abbreviate down to initials in this instance.

By the aid of another principle, the small-letter principle, we may overcome this difficulty. M^y, T^y, W^y, Th^y, F^y, St^y, S^y will do very well indeed.

Make a habit of this abbreviated abbreviation and think of the time and labour saved in a lifetime!

The set of professional abbreviations of the greatest general importance to the ordinary person is that of the journalistic and printing occupations. Most of these were agreed as long ago as the International Shorthand Congress of 1887! See the table of abbreviations overleaf.

Conventional spelling

Like the Americans, take the unnecessary 'u' out of words such as 'labour' and 'honour' making them 'labor' and 'honor'. Of course, you can abbreviate these words even further: 'lab' and 'hon' are easily recognisable.

Cut suffixes such as -ette to 'et'. So write 'cigaret' and 'suffraget' at the most, or reduce them even further to 'cig' for 'cigar' and 'ci^g' for 'cigarette'.

The apostrophe in words like 'don't' and 'can't' is not necessary and can be left out. Write 'cant', 'dont', 'shouldnt'.

Fast writing habits

Practice is the secret of success but some people's writing lends itself to speed writing. A running or joined-up style of handwriting is best.

What you can try to do is eliminate unnecessary loops, for instance, both top and bottom. Journalists, who are fast writers from professional necessity, have a habit of joining words. This helps speed. It is a habit worth adopting, as it avoids delay caused by lifting the pen from the paper.

LIST OF ABBREVIATIONS FOR LONGHAND

A

a(a dot on the line)
 about abt
 according acc
 account acct
 advertisement ad
 affectionate aff
 affectionately aff^{ly}
 afternoon aftⁿ
 again agⁿ
 against agst
 American Amer
 among am^g
 amount am^t
 -ance(suffix at end of words). -ce

B

because b^{ec}
 been bⁿ
 between b^{tn}
 brought bro^t

C

caught ca^t
 chairman ch^m
 circumstance cir^{ce}
 committee com^e (or cte)
 could c^d

D

difference dif^{ce}
 different dif^t
 difficult dif^{clt}
 difficulty dif^{cty}

E

-ence -ce
 England, English Eng.
 especially esp
 evening ev^g
 ever -r
 every ev^r
 excellent exc.

F

faithfully ff^y
 for f
 Friday Fri
 from f^m
 further fur^r

G

general gen
 generally gen^y
 good g^d
 government gov^t
 great g^t

H

had h^d
 have h

I

importance imp^{ce}
 important imp^t
 -ing g
 -ion n

L

large lge

M

manuscript ms
 meeting m^{tg}
 -ment m^t
 Monday Mon
 morning m^g

N

notwithstanding notwg

O

objection objⁿ
 occasion occⁿ
 o'clock o'clock
 of o
 opinion opⁿ
 opportunity opp^y
 other o^r
 ought o^t

P

page, pages p. pp.
 particular part^r
 popular pop

Q

query q^y
 question qⁿ
 quotation quot

S

said s^d
 Saturday Sat
 several sev^l
 shall sh

should sh^d
 -sion n
 specially spec
 Sunday Sun

T

that t
 the / (the first stroke of t)
 their, there thr
 though tho
 through thro
 Thursday Thurs
 -tion n
 together tog^r
 truly ty
 Tuesday Tues

V

very v or v^y
 very good vg

W

Wednesday Wed
 whether wh^r
 which wh
 with w
 without w^t
 would w^d

Y

yesterday yest^y or y'day
 you y
 your y^r
 yours y^{rs}

Eliminations

Often the words 'a', 'an' and 'the' can be omitted without loss.

Write 'hm' for 'him' and 'hr' for 'her', as these shortenings cannot be mistaken for any other word.

Key words and recurrent expressions

In self-shorthand you must always be aware of the context. It is the context which governs key words and recurrent expressions and how they are represented.

For example 'deft' is the recognised legal abbreviation for 'defendant', and a very useful abbreviation it is. But a note-taking Judge, Magistrate, barrister or non-phonographic reporter in court will not keep writing four letters when one will do all that is wanted. A capital 'D' is enough here – though on other occasions a capital 'D' might well mean something other than defendant.

Arbitrary symbols

Do not be afraid of using your own arbitrary symbols, even if they mean nothing to other people. Use them whenever you feel that they will help you. The more naturally they spring from the word or phrase they represent, the easier they are to understand and to remember.

The commonest words

You should pay special attention to the commonest, that is to say, the most frequently occurring words in the English language. To make and learn abbreviations for these is of special importance. The 12 commonest words are also the 12 shortest. These 12 words, it is authoratively stated, make up 25% of all normal English, whether written or spoken.

1. a or an
2. and
3. the
4. of
5. be
6. it
7. that
8. in
9. any
10. to
11. is
12. his

Warning

Never get so involved in taking notes of the words of a witness, or others that you fail to listen and watch for the non-spoken clues which will help you understand what is being said.

Non-spoken clues are things like gestures or hand movements. You may need to think about how you can record these non-spoken clues in your notes too.

Interview Notes

NOTE TAKING AT AN INTERVIEW OF A WITNESS

Although other people, and machines, will be recording what is said in the interview itself, you will need to make notes of anything that you feel affects the way the witness has communicated with you and others.

Other people may, on occasion, wish to refer to the notes that you took. This may happen when, for example, there is a question about how an interview was conducted, and whether or not anything was done or said during the interview that affected the way that the witness responded to the questions put to them.

For this reason, you have to take the best possible notes of your involvement as an Intermediary, and ensure that those notes are kept safe and secure as well as confidential.

Planning and preparation of the interview

Although you may not have much, if any, part to play in the planning and preparation of the formal interview of a witness you will need to make notes of what happens and in what order.

The basic things that you ought to note down are:

- any discussions that take place relating to the witness's communication needs
- any decisions about how the interview should proceed
- any disagreements that arise
- the date and time of the interview
- who is present

and

- anything untoward that occurs during the interview.

The interview itself will be conducted by an officer who has decided how to structure the interview, what type of questions to ask, how and when.

There is a great deal of guidance issued to police officers to assist them in this, and if you wish to learn more about the approach they take, or ought to be taking – see 'Planning and Conducting Interviews with Vulnerable and Intimidated Witnesses', in *Achieving Best Evidence in Criminal Proceedings*, section 3.

Achieving Best Evidence is available from the Home Office or visit www.homeoffice.gov.uk

Taking notes during the interview

Your main concern will be how best to fulfil your duty as an Intermediary, while at the same time keeping notes which may be relied upon later.

There are particular difficulties in taking notes of an interview of a witness. It is important that note taking supports the interview rather than making it more difficult, the problem being that you must concentrate primarily on the witness rather than on the notes.

Common problems to watch out for

- Attention tends to centre on getting everything on paper rather than on making sure that everything necessary is said.
- In making notes, you will look down quite often, losing eye contact with the witness and therefore possibly making the witness feel less involved and less communicative.
- In making notes, you may miss visual signs of how the witness is reacting.
- You cannot write down everything, and must make immediate decisions about what is important enough to record.
- In writing down one point you may miss what is said next.
- The points that need noting will not necessarily come out in the right order.
- The points that need noting will not necessarily come out with the right degree of emphasis.
- There is only one chance to take notes. Although you can go over notes to check that they are correct, there is only a limited extent to which this can be done without undermining the witness's confidence.

Vital points to remember

Have proper materials ready for taking notes

This is easy enough at home or in an office, but may be more problematic if the interview is in an unfamiliar setting. A proper notebook or paper with something to lean on should be carried.

No matter how difficult the circumstances, a little forward planning and preparation should enable you to take reasonably good notes.

Keep a relationship with the witness

Try to avoid taking notes at the very start of the interview. Explain to the witness what you are taking notes of and why. Others might also need to know this.

Make selective notes

You cannot write down everything that is said. You must be selective. When you do start taking notes, try to note the main issues briefly and clearly.

Note appropriate details

Do not try to write down too much. The details that matter, be they descriptions or figures, can often be recorded with few words. If the actual words said matter, do make sure you get them down.

Make notes at the right time

Try to judge when to write things down. It may not help if you take notes while the witness is dealing with something they find painful to deal with – knowing that everything is being taken down may discourage the witness from speaking at all.

Check the notes before the interview ends

Check your notes with the witness (and the police if appropriate) before the interview ends. This should not involve running through each and every point, but summarising issues and checking details to ensure the notes are accurate.

Check the notes after the interview

Try to reread your notes of the interview as soon as possible after it takes place to ensure that they are comprehensible and include all the relevant information. At that stage you may still remember enough of the interview to be able to make corrections; later you will not!

Keep a proper copy of the notes

Do not leave the notes of an interview on odd pieces of paper, unless the original notes are very clear. Make a copy of the notes with everything set out clearly and in a suitable order.

NOTE TAKING AT PRE-TRIAL MEETINGS

We have already looked at the question of when you are likely to attend such meetings, and the purpose behind them, i.e. to ensure that you, the witness and the legal team who have asked you to help have an opportunity to meet and discuss the ways in which the witness can be helped, both at interview stage and later at trial.

You will agree upon the range of equipment that might be needed, you will advise as to the specific language requirements of the witness and other communication issues. It is also a chance for the legal team to meet you and the witness and see how the proposed special measures are likely to work in court. Such meetings will also help the team

to prepare for the application they must make to the Judge at the pleas and directions hearing before trial, to ensure that the measures requested by or on behalf of the witness are put in place for trial.

At each of these meetings, you again need to be ready to take notes that confirm:

- the date and time of the meeting
- who is present
- matters discussed
- agreements reached
- any disagreements among you

and

- any action points, e.g. if a new word board is to be supplied, by whom, by what date, etc.

As with all notes that you take, you must keep them safe and secure and confidential.

These points apply equally to the notes that you take if you are asked to attend an identification procedure with the witness.

General point about note taking as an Intermediary

All this is general guidance offered to you as a starting point for establishing best practice. We have to remember that the role of Intermediary is so new that the format for note taking, in certain specific areas, may well become standardised over time, for example with the use of a prepared booklet with sections to be completed by you.



Part 3:

Being an Intermediary at Trial

This section tells you about the trial process, how to prepare, what to expect when you go into the courtroom and how to remain calm once you are in there.

The Courts

We will start off by looking at the structure and hierarchy of the criminal courts in England and Wales.

Magistrates' Courts and Youth Courts

These are at the bottom of the hierarchy. They are presided over by lay Magistrates or a District Judge.

Crown Courts

These are presided over by a Judge. Crown Court trials are decided by Judge and jury. Appeals from Magistrates' Courts are decided by a Judge sitting with Magistrates.

Divisional Court

The Divisional Court has a panel made up of two or three High Court and Court of Appeal Judges who sit in London and hear appeals from the Magistrates' Courts on points of law.

Court of Appeal

The Court of Appeal is made up of two or three High Court Judges, Court of Appeal Judges, and sometimes a Circuit Judge, who sit in London and hear appeals from the Crown Court.

House of Lords (soon to be the Supreme Court)

This has a panel of five Judges who hear appeals on a point of law but only where it is felt that an issue of public importance is at stake.

As an Intermediary you will be in either the Magistrates' Court, the Youth Court or the Crown Court.

THE MAGISTRATES' COURT

Magistrates are usually local people, and they are not legally qualified. They sit in panels of two or (more usually) three. Some Magistrates' Courts are presided over by District Judges. These are barristers or solicitors who have been appointed to sit, full-time, as Magistrates. They are professional Judges. They normally sit on their own.

Magistrates have summary jurisdiction, that is, they can try cases which, according to law, can or must be tried in the Magistrates' Court. Cases which must be tried in the Magistrates' Court are called 'summary only'. Magistrates can also hear cases which might otherwise be heard in the Crown Court if it is appropriate to hear them in the Magistrates' Court.

THE YOUTH COURT

Most defendants under 18 are dealt with in the Youth Court by specially trained Magistrates or by a District Judge. There is no jury in these cases. Unlike the adult Magistrates' Courts and the Crown Court which is usually open to the public, the law restricts access to the Youth Court to:

- members and officers of the court
- both sides involved in the case and their legal representatives
- witnesses
- other people directly involved in the case

and

- members of the media and other people who the court has authorised to be present; the media may report the proceedings but may not normally name any of the young people involved in the case.

THE CROWN COURT

The Crown Court Judge will have come from the ranks of barristers or solicitors. He or she will previously have served as a Recorder, that is, a barrister or solicitor who sits part-time, for up to six weeks a year, as an acting Judge. Once appointed, the Judge ceases to practice as a solicitor or barrister and becomes a full-time Judge. High Court Judges sit in the Crown Court on the most serious cases, notably murder.

The Crown Court deals with cases which must, according to law, be tried in the Crown Court (for example, rape, murder and robbery), and also with cases which can be tried in either the Magistrates' Court or the Crown Court but which it is more appropriate to deal with in the Crown Court.

The Judge alone decides questions of law (for example, whether it is fair for one side or another to introduce a particular piece of evidence) but the jury decide the facts, i.e. whether the defendant committed the offence or not.

The Trial Process

Magistrates' Courts are sometimes seen as more 'informal' than the Crown Court. Cases are shorter, and usually finish within the day. Robes are not worn. The Magistrates are laymen or laywomen or a District Judge. In the Youth Courts, matters are even more informal in order to make the young defendant and his or her parent or guardian feel at ease. In addition, Magistrates have a combined role as fact finders, judges of law, and sentencers.

In the Crown Court, cases are longer – lasting days, weeks or even months – and robes are usually worn. Jurors sometimes spend a part of the day in their retiring room or in the canteen while the Judge and the lawyers argue over the law. This can also be frustrating for the witnesses, who are kept waiting too. Sometimes jurors find that the case feels like a mosaic (short evidence, long adjournment, long evidence, short adjournment) rather than a continuing process, but it means that the jury only hear what they are entitled to hear. This avoids the need for re-trials.

Summarised below are the key stages in a trial in a Magistrates' and a Crown Court.

ORDER OF TRIAL – MAGISTRATES' COURT

- Prosecution opens the case to the Magistrates, explaining what it is all about and how the Crown intends to prove its case.
- Prosecution evidence is called. The prosecutor asks questions (examination-in-chief) and then the defence asks questions (cross-examination) of each witness.
- The prosecutor may re-examine the witness. The Magistrates may also ask questions.
- Close of prosecution case.
- Defence (if appropriate) submits that there is no case to answer, that is, the prosecution evidence on its own does not prove the case, or it is so weak or inconsistent that the case should not go any further.
- Defence evidence. The defence lawyer asks questions (examination-in-chief) and then the prosecution asks questions (cross-examination). Depending on the matters raised in cross-examination, the party who called the witness may conduct a re-examination.
- Defence speech. Defence lawyer argues why the Magistrates should have a reasonable doubt as to the defendant's guilt.
- The Magistrates reach their verdict. Lay Magistrates usually leave the court and discuss the matter between themselves in private before returning to the court and announcing the result. District Judges often make their decision then and there.
- Sentence (if guilty).

ORDER OF TRIAL – CROWN COURT

- The defendant is asked whether they plead guilty or not guilty (arraigned). This is done by the clerk of the court.
- The jury are empanelled. A group (or panel) of jurors is brought into the court. Their names are called out by the clerk of the court and they go into the jury box. When there are 12, they take the oath to try the case ‘and to return a verdict according to the evidence’.
- Prosecution opening speech. Counsel explains to the jury what the case is about and how the Crown intends to prove it.
- Prosecution evidence is called, as in the Magistrates’ Court (see page 43). Statements of witnesses whose evidence is unchallenged may be read out.
- Close of prosecution case.
- Defence (if appropriate) submits that there is no case to answer.
- Defence evidence. The defendant normally gives evidence first. The defence may also read out a statement which has been taken from a witness, if the prosecution does not wish to challenge the witness in any way.
- Prosecution closing speech.
- Defence closing speech.
- Judge ‘sums up’ the case, that is, he or she tells the jury what the relevant law is and then summarises the evidence which the jury have heard.

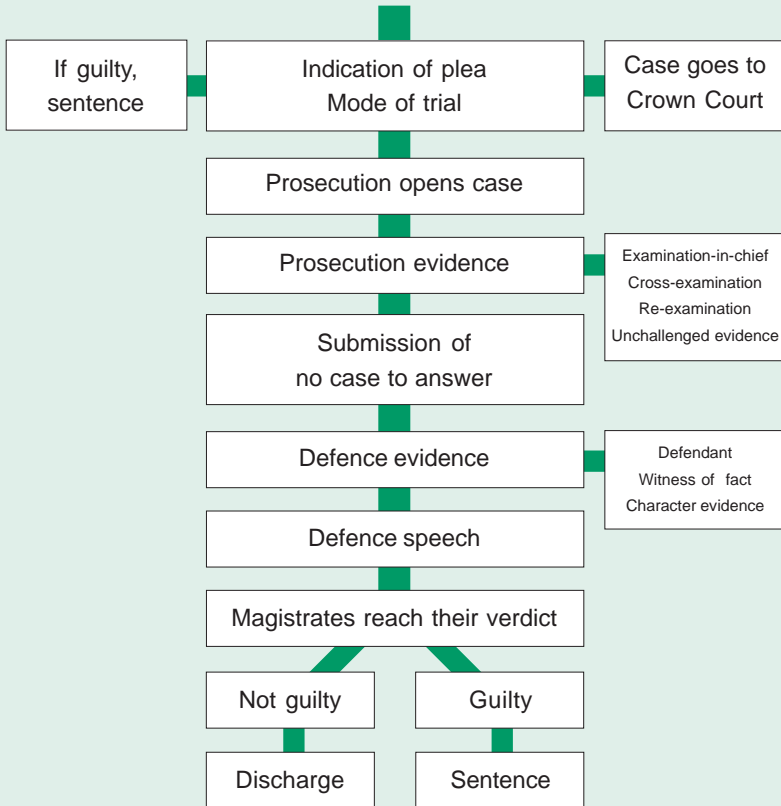
- The jury leave court and 'retire' to a room where they discuss their decision in private. A jury must try to reach a unanimous decision. If, after two hours of deliberation, they are unable to be unanimous, the Judge may allow them to return a verdict by a 'majority' of 10–2 (or 10–1 or 9–1 if one or two jurors have previously been discharged).
- Once the jury have reached a decision, they come back into court. The foreman stands up. The clerk asks the foreman if they have reached a verdict. The foreman replies either 'yes' or 'no'. The clerk asks, in respect of each charge (count) on the indictment, whether the jury find the defendant guilty or not guilty. The foreman says only 'guilty' or 'not guilty'. A jury are forbidden to discuss their deliberations outside the jury room.
- Sentence (if a 'guilty' verdict).

N.B. At both the Magistrates' Court and the Crown Court, witnesses remain outside until they are called to give evidence. After they give evidence they are entitled to sit in court but they are forbidden to discuss the case with anyone who has not yet given evidence.

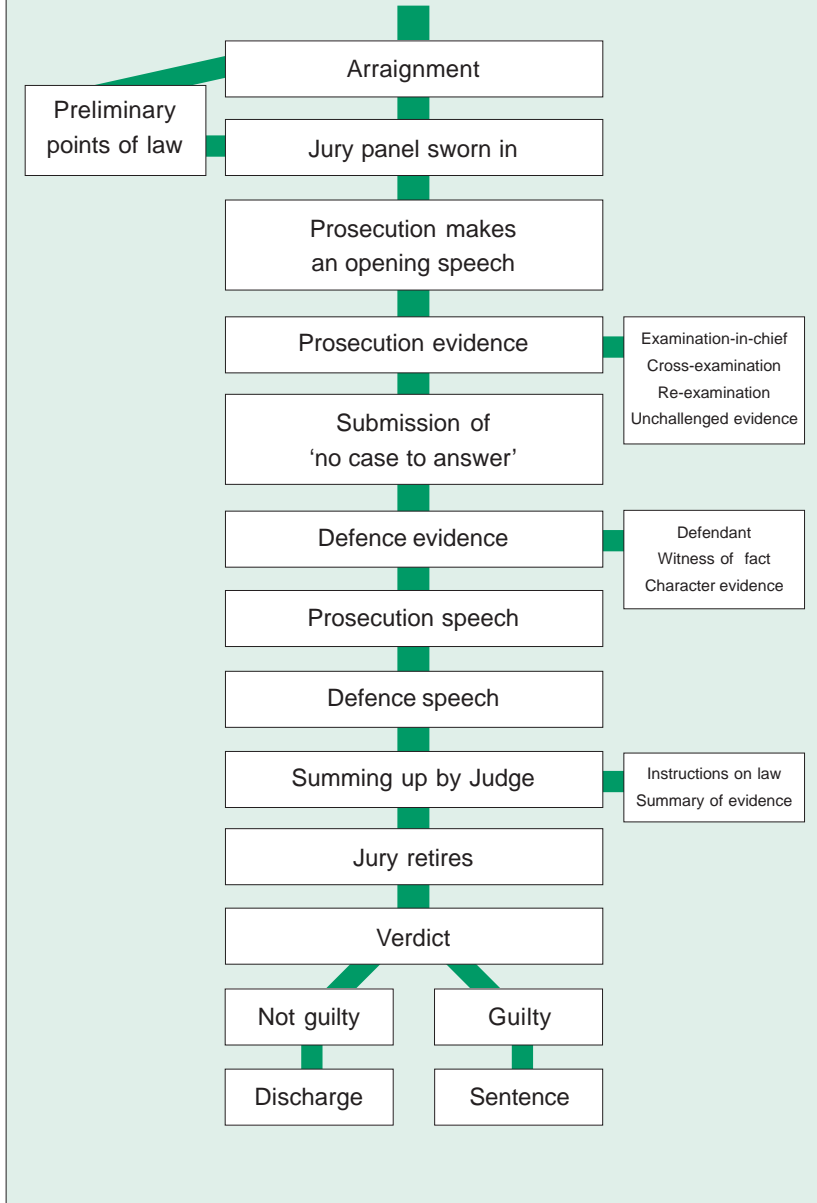
Burden and standard of proof

It is the prosecution which brings the case and the prosecution which has to prove it. The Magistrate/jury can only convict if they are sure (beyond reasonable doubt) having listened to ALL the evidence which both sides adduce (present), that the prosecution has proved its case on that particular charge. When someone appears on several charges (or counts on the indictment, in the Crown Court), the court may find them guilty of all, not guilty of all, or guilty of some and not guilty of others. Each charge or count has to be looked at separately in the light of the evidence which relates to it. The prosecution has to disprove such defences as self-defence.

An overview of Magistrates' Court trials



An overview of Crown Court trials



Etiquette

Court cases are stressful and at times emotional experiences. It is therefore essential that each participant treats the others with respect. The issue is whether the defendant is guilty or not guilty; the issue must not become someone's behaviour in court.

Language

Magistrates are referred to as 'sir' or 'ma'am' according to the sex of the Magistrate or District Judge being spoken to.

Crown Court Judges are referred to in court as 'your Honour' or, in the Old Bailey, as 'my Lord' or 'my Lady'. A Judge is referred to in the third person as 'Judge Smith'.

High Court Judges are referred to as 'Mr (or Mrs) Justice Smith'. In court (and they sometimes sit in the Crown Court) they are called 'my Lord' or 'my Lady'.

People are sometimes referred to by their function rather than by their name, for example, 'the usher', 'the dock officer', 'the witness', 'counsel for the defence'. No one, apart from child witnesses, is normally called by their first name.

THE ROLE OF THE WITNESSES

A witness is someone who can or does give relevant evidence at a trial. It is not necessarily someone who actually saw the crime.

The police normally speak to a potential prosecution witness and a statement in writing is then taken from them. The person is asked to sign the statement as correct, together with a caution which states that they realise that they can be prosecuted for perjury if they have wilfully stated anything which they know to be false or do not believe to be true.

When the witness goes into the witness box, both advocates (and the Judge, but NOT Magistrates) have a typed copy of the statement in front of them. The witness will have been shown the statement, to refresh their memory, before going into court.

People who are entitled to take advantage of special measures may be interviewed on video. A copy of the video is then disclosed to the defence. When a person makes a video, it may be shown to the jury as the evidence-in-chief. The witness will watch their own video at the same time that the court does.

When either side calls a witness, they draw out evidence from the witness in what is called evidence-in-chief. The party that calls a witness cannot ask leading questions, unless the other side agrees. A leading question is not an awkward question but a question which assumes the answer or assumes or suggests facts which have not yet been proved ('you were angry, weren't you?'). Questions-in-chief should consist of open questions such as 'where did you go?', 'what happened next?'

The purpose of cross-examination is to challenge the account given by the witness, and to put the alternative case to them. In cross-examination the advocate 'tells' the witness, that is, he puts positive assertions to him ('You weren't there, were you?'). Questions can relate to any fact in issue, or to matters which might affect whether the court can believe this witness (their 'credibility'). Leading questions are permissible; in fact they are the basis of most cross-examination.

The advocate who called the witness may re-examine the witness, but only on matters which arose during cross-examination. No leading questions are allowed.

The Role of the Intermediary

Throughout the evidence-in-chief, cross-examination and re-examination, you the Intermediary will help the communication process. You will do this by accurately, completely and coherently communicating the questions to the witness and, accurately, completely and coherently communicating back the answer given by the witness. You must not alter the content of the question or the answer or change the evidence in any way. Remember, your primary duty is to the court; you must not take sides or see your role as a witness supporter. On the contrary, you must remain unbiased and neutral.

PREPARING FOR COURT

If you know you have prepared properly you will feel much calmer. Writing a list and checking off what you have to do is a good idea. Here are some things you might need to include on your list. You can probably think of several more.

- Get ready any communication aids the witness is going to use, e.g. sign charts or drawing paper and pens.
- Get your clothes cleaned and ready to go.
- Arrange how to get to court; check train or bus times or the driving route to court.
- Arrange overnight accommodation, if required.

- Agree whom to meet at court, e.g. the solicitor who has asked you to attend.
- Agree exactly where to meet, not just “at court”.
- Book time off work, if required.

KEEPING IN TOUCH WITH YOUR LAWYER

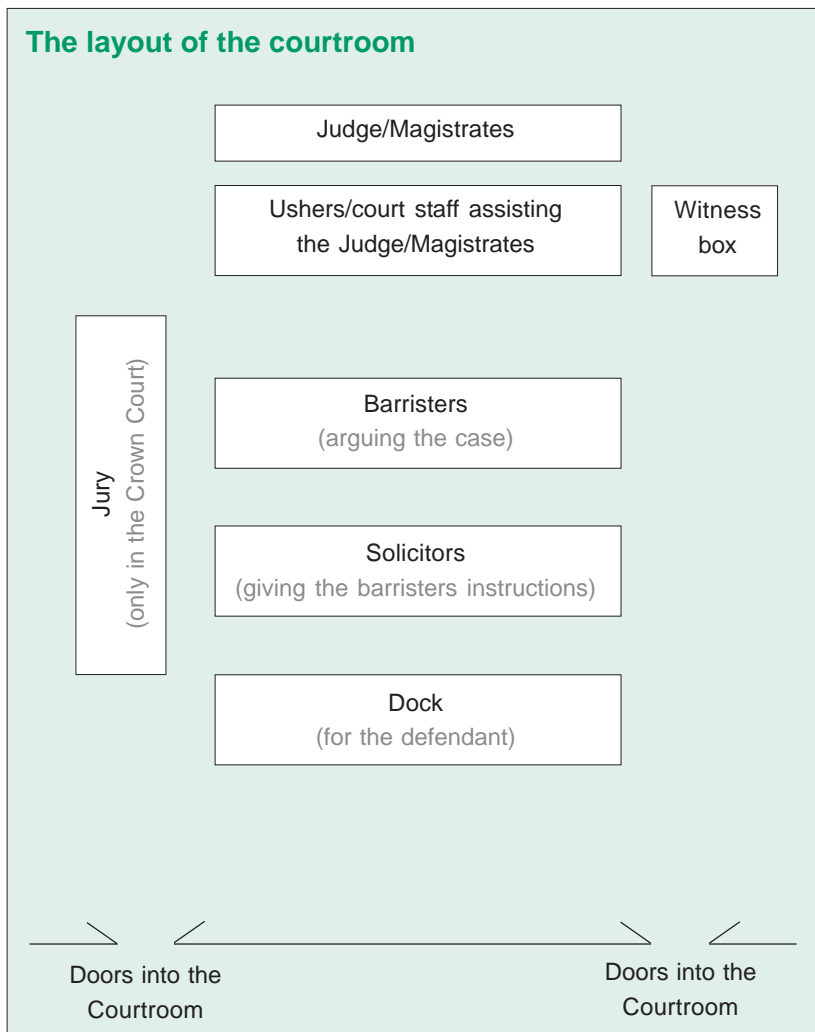
‘Lawyer’ is a general term and covers solicitors, barristers and other legal professionals. Whether you are assisting a defence or a prosecution witness, you will need to keep in regular contact with the lawyer who is expecting you to be at court. Don’t assume you will be kept up to date in the run-up to the trial. You may have to chase the lawyer for information such as what day the trial starts, which court it will be in, and what day and the exact time you will be required at court.

As the day approaches make sure you have followed your preparation checklist. On the day allow yourself extra time and arrive early for the hearing. Once you are at the court building find out which court number you will be in. You can find this out from a member of the court reception staff.

Unless told otherwise, you should wait outside the actual courtroom where the hearing is taking place until you are invited in by a member of the court staff or the lawyer who has asked you to attend. In some cases there may be particular arrangements made for you and the witness to attend a part of the court building away from the courtroom itself.

THE LAYOUT OF THE COURTROOM

Broadly speaking you can expect the court to be laid out as below. Remember that every courtroom is different: some are modern, some are old.



WHERE WILL YOU, THE INTERMEDIARY, GO?

The Judge or Magistrate will discuss with you where you should be in relation to the witness. You will be positioned so as to facilitate the witness's giving evidence but not so as to obstruct the lawyers', the defendant's or the jury's (if you are in the Crown Court) view of the witness.

The Judge or Magistrate will probably indicate whether you should stand or sit, however, if in doubt stand until you are told you may sit. Once these practicalities have been sorted out, the court is ready for the witness's evidence.

THE WITNESS GIVING EVIDENCE

Once you and the witness are in place the order of things will be as follows.

- 1) The Intermediary declaration: you will read a specially worded declaration (see below). The usher will hand you a card so that you can read the words from it.
- 2) The witness oath/affirmation: the witness chooses to swear or affirm. The usher will hand a card to the witness to read from.
- 3) Evidence-in-chief/examination-in-chief: the witness is asked by the lawyer calling them to tell their story.
- 4) Cross-examination: the other side's lawyer challenges the witness.
- 5) Re-examination: the lawyer calling the witness is allowed to ask questions to clarify any points raised in cross-examination.

- 6) Witness is released: the Judge thanks the witness and tells them that they can go.
- 7) Witness and Intermediary leave the witness box.

As an Intermediary you will assist communication with the witness, if necessary, at all stages from the oath until you both leave the court.

THE INTERMEDIARY DECLARATION

The declaration required to be made by an Intermediary has been drafted in the following form:

*'I solemnly, sincerely and truly declare that I will well and faithfully communicate questions and answers and make true explanation of all matters and things as shall be required of me according to the best of my skill and understanding.'*¹

1. From Rule 2 of The Crown Court (Special Measures Directions and Directions Prohibiting Cross-examination) (Amendment) Rules 2004.

BARRISTERS' CROSS-EXAMINATION TECHNIQUES

The barrister may use various techniques when cross-examining, for example:

- quick-fire questions
- jumping round the issues
- jumping round the chronology
- sarcasm
- pretending not to understand
- body language to interrupt
- aggressive/angry tone
- series of yes/no questions
- long, complicated questions/language
- multi-part or composite questions
- trying to get the witness to 'guess at an answer'
- focusing on errors in the witness statement
- accusing the witness of lying.

Whatever the technique, take your time. Do not rise to the bait. Do not argue with the barrister; do not become angry or agitated. Remain calm and communicate the question to the witness, however unpleasant you think the question may be.

You can rely on the Judge or Magistrate to intervene if they think the question is unfair. You must convey the question accurately, completely and coherently. If you, the Intermediary, do not understand the question and therefore cannot communicate it to the witness, tell the Judge or Magistrate. If you cannot remember the whole question, for example, because it was very long, tell the Judge or Magistrate.

TIPS ON STAYING CALM

These few simple strategies will help you remain calm and clear once you are in court.

- Decide how you want to come across and plan to be that way, for example, you may decide 'I will be clear, calm and confident'.
- Visualise yourself performing your role as an Intermediary and doing it well. It will help if you have been along and seen the courtroom before the trial starts.
- Concentrate on breathing if you find yourself becoming very tense and anxious.
- Remember the Judge is human and needs your help. The Judge wants you to perform your role well.
- Eat a little but not a heavy meal. Bananas are said to be stress-relieving food! Remember you cannot eat or drink in court. Once you are at the witness box, however, the usher will give you some water if you become thirsty or your throat is dry.
- Avoid caffeine and other stimulants. Tea/coffee also dries your throat. If your mouth dries up, try gently pinching your tongue between your teeth for a second or two.
- Prepare. It's boring but nothing beats it. Draw up a preparation checklist and follow it.
- Allow yourself plenty of extra time to do things so that you avoid a last-minute rush to court.
- Wear comfortable clothing, of cotton (if possible). Courts can feel extremely hot, especially if you are nervous. Choose low-key colours and simple designs.
- Turn off your mobile. You do not want to be worrying that it will go off in court. It may annoy the Judge if it does.

DO'S AND DON'TS FOR INTERMEDIARIES IN COURT

Do's

- ✓ Read relevant documents beforehand (your lawyer will be able to identify these for you).
- ✓ Think about jargon or medical terms that may need to be explained to the Judge.
- ✓ Bring copies of material that you are planning to use, such as word or picture books.
- ✓ Tell your lawyer if you spot errors or omissions in any of the papers.
- ✓ Arrive at court in good time.
- ✓ Make sure you know who to meet, where and when.
- ✓ Dress smartly.
- ✓ Take along food/snack (it may be a long wait), but remember do not eat inside the courtroom.
- ✓ Refer to the barristers as 'counsel' not 'Mr X' or 'Ms Y' (there is no need to try to remember the barristers' names).
- ✓ Look at the witness when they are speaking.
- ✓ Look at the barrister when they are speaking.
- ✓ Project your voice (the microphone on the witness box is usually only for recording, it doesn't amplify your voice).
- ✓ Talk slowly enough for the Judge to take notes.
- ✓ Turn off your mobile phone.

Dont's

- ✗ Discuss the evidence with the witness, EVER.
- ✗ Wear anything uncomfortable or garish.
- ✗ Eat or drink in the courtroom (except for water supplied by the court).
- ✗ Take anything up to the witness box (unless the lawyer or Judge says you can).
- ✗ Talk at the same time as the Judge/barristers.
- ✗ Talk to the witness if they are having a break from their evidence.
- ✗ Struggle on if you need a break for the toilet or feel ill. Tell the Judge.
- ✗ Argue or try to score points with counsel.
- ✗ Produce last-minute material (such as a new set of word or picture boards) in the witness box, unless already shown to your lawyer and the other side.

Conclusion

Having read this book and watched the accompanying video you will have gleaned essential information about the criminal justice system and the Intermediary's role within it.

At the end of this book you will find the Intermediary's glossary of legal terms. It is worth reading through to familiarise yourself with the language of the criminal justice system.

Although not essential, you may wish to carry out further background reading. The websites listed on the next page may be useful to you.

Above all, however, remember this: your primary duty is to the court. You have a vital role to play in the criminal justice system. Use this book and video to prepare well.

Penny Cooper, Virginia Garaux and David Wurtzel
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USEFUL WEBSITES FOR FURTHER READING

www.nspcc.org.uk

The Young Witness Support Service helps children develop confidence to say what happened to them and be cross-examined.

www.victimsupport.org

Regional support schemes may operate in your area. In addition, every Crown Court should have a 'Witness Service'.

www.dca.gov.uk

The Department for Constitutional Affairs. This website contains useful information about the English legal system.

www.cjsonline.gov.uk

The Criminal Justice System online, a government website which has a list of useful links.

www.homeoffice.gov.uk

The general Home Office website, with signposts to relevant pages and other useful links.

Annex:

Intermediary's Glossary of Legal Terms

Intermediary's glossary of legal terms

Adjournment	A break in the proceedings or hearing, for example, for lunch.
Advocate	Solicitor or barrister representing the prosecution or the defence.
Admissible evidence	Evidence the Judge allows before the court to assist in decision making. It must be relevant. The Judge will not allow the evidence if it is inadmissible.
Balance of probabilities (on the)	The standard of proof required to win a case in the civil courts, sometimes described as at least 51%.
Bar (the)	The collective term for the barristers' profession.
Barrister	An advocate normally based in chambers and self-employed. Also known as counsel.
Bench (the)	Collective term for Judges or Magistrates, also the name for the place where Judges sit in court.
Beyond reasonable doubt	The standard of proof required to win a case in the criminal courts.
Burden of proof	The party that carries the burden of proof has the responsibility for proving the case or particular issue in the case. Usually the prosecution is the party with the burden of proof in a criminal case. The prosecution must prove beyond reasonable doubt that the defendant committed the offence.
Child witness	There are several definitions of 'child' for legal purposes. For the purposes of the special measures directions which may be made under the Youth Justice and Criminal Evidence Act 1999 to assist eligible witnesses to give evidence, a child witness is a witness who is eligible because they are under 17 when the direction is made. Unless child witnesses are in need of special protection, there is a presumption that their evidence-in-chief will normally be received in the form of a video recording, with

live link being used for cross-examination and any re-examination (as to which see 'examination-in-chief'). A child witness is in need of special protection if the offence consists of one of a number of violent offences such as assault and kidnapping, or if it is sexual. In such cases there are further presumptions steering the court towards the use of video-recorded evidence-in-chief and, in the case of sexual offences, pre-recorded cross-examination too.

Another relevant definition of 'child' for the purposes of the Youth Justice and Criminal Evidence Act 1999 relates to the giving of unsworn evidence. A 'child' under the age of 14 who is competent to give evidence does so without taking an oath or making an equivalent solemn affirmation, i.e. unsworn.

Civil proceedings

A case at civil law is normally one between individuals and/or organisations. Typically it will be about defining the rights and relations between individuals (for example, disputes about where the child of separated parents should live, claims for damages for personal injury, etc).

Committal proceedings

Offences which are triable only on indictment are sent immediately for trial in the Crown Court after a preliminary hearing by Magistrates at which the evidence is not considered. Where an offence may be tried in either the Crown Court or the Magistrates' Court (an 'either way' offence) the Magistrates determine first whether the case is to be sent to the Crown Court for trial ('mode of trial' proceedings). If the case is to be tried in the Crown Court, the Magistrates also hold committal proceedings in order to give the defence an opportunity to argue that the evidence is insufficient to justify sending the case to trial. In practice this is rarely done and committal proceedings are often a formality. Witnesses are not called at committal proceedings.

Compellable (witness)

The general rule is that if a witness is competent to give evidence they are also compellable. This means that the court can insist on them giving evidence.

Competent (witness)	In criminal proceedings a person who is not competent may not give evidence. Section 53 of the Youth Justice and Criminal Evidence Act 1999 provides that 'all persons are (whatever their age) competent to give evidence'. An exception applies where a person is not able to understand questions put to him or her as a witness, and to give answers which can be understood. If the question is raised it is for the trial Judge (or, in a Magistrates' Court, the Magistrates) to decide whether a particular witness falls within the exception. The party who wishes to call the witness to give evidence must prove that the witness does not fall within the exception, in other words, that the witness is in fact competent. A person over 14 who is competent but who does not appreciate the significance of an oath gives evidence unsworn, as do children under the age of 14.
Complainant	According to section 63 of the Youth Justice and Criminal Evidence Act 1999, 'complainant', in relation to any offence or alleged offence, means a person against or in relation to whom the offence was (or is alleged to have been) committed. Thus a person may be a 'complainant' even where he or she did not actually make the initial complaint.
Contempt of court	A Judge may hold you 'in contempt' if you prejudice the course of justice, in which case you could face a fine or imprisonment or both. Disobeying a court order, for example, could lead to you being 'in contempt'.
Court	Often means a typical courtroom, but could refer to a less formal decision-making arena such as a tribunal.
Cross-examination	The procedure in the trial after examination-in-chief, where the lawyer representing the side which did not call the witness seeks to establish its own case by questioning the other side's witnesses. Among the special measures which the Youth Justice and Criminal Evidence Act 1999 allows for eligible witnesses is that they may be cross-examined by means of a live link. Sections 34 and 35 of the 1999 Act prevent the accused, in person, from cross-examining a witness who is the complainant

in a sexual case, or a child witness where the offence is of a violent or sexual nature. Section 36 gives the court power to prevent the accused, in person, from cross-examining a witness in any other criminal case where to do so is justified in the circumstances of the case.

Crown Court	The criminal court that tries those charged with offences which are generally too serious for the Magistrates' Court to deal with. This includes the most serious offences which are triable only on indictment, such as rape. Trial at the Crown Court is by Judge and jury; however, the Crown Court also hears appeals against convictions or sentences imposed in the Magistrates' Courts, and against findings of guilt and orders made upon such findings by Youth Courts.
Defendant	A person who is on trial in criminal proceedings. Under the Youth Justice and Criminal Evidence Act 1999 a defendant is not eligible for special measures.
Disclosure	The process in which parties declare/show in advance the evidence upon which they intend to rely (see below for 'evidence').
Eligible (witness)	'Eligible' is the term used in the Youth Justice and Criminal Evidence Act 1999 to describe a witness in respect of whom a special measures direction may be made. A witness may be eligible (i) on the ground of age if under 17 when the direction is made; (ii) on the ground of incapacity if they have a physical or mental condition specified by section 16 and the quality of their evidence is likely to be diminished as a result, and (iii) on the ground that the quality of the witness's evidence is likely to be diminished by reason of fear or distress on their part in connection with testifying in the proceedings. In deciding eligibility, the court must take account of the views expressed by any witness who is said to have an incapacity or to be likely to suffer fear or distress. A witness who is a complainant in relation to a sexual offence is automatically eligible unless they tell the court that they wish not to be. The defendant is not an eligible witness.

Evidence-in-chief	The evidence given by a witness on behalf of the party who calls them. Once evidence-in-chief has been completed, the witness is normally made available for cross-examination by the other party or parties to the proceedings. Under the Youth Justice and Criminal Evidence Act 1999 it is possible for a video recording to be used as a witness's evidence-in-chief. This can also be done even where they are not available for cross-examination, provided that the parties to the proceedings have agreed that cross-examination is not necessary or where a special measures direction provides for the witness's evidence on cross-examination to be given otherwise than by testimony in court.
Evidence	All written statements, reports, documents and exhibits presented before the court, together with the live/oral evidence given by all witnesses under oath; NOT including counsel's speeches, or the Judge's summing-up.
Examination-in-chief	The procedure in the trial where, normally, the lawyer representing the side who has called the witness takes that person through their evidence (see evidence-in-chief). The Youth Justice and Criminal Evidence Act 1999 allows a video recording of an interview with an eligible witness to be played as the witness's evidence-in-chief. When such a recording is admitted, the witness is not normally examined-in-chief by the lawyer at the trial. Depending on the matters raised in cross-examination, the party who called the witness may conduct a re-examination.
Expert witness	A person who by virtue of qualifications and/or experience is permitted to give opinion evidence.
Exhibit	Usually a document attached to a statement but this term could refer to real evidence.
Hearsay	An assertion other than one made by a person who is giving oral evidence.

Inadmissible evidence	Evidence which, though it may be relevant to some disputed matter, may not legally be used to prove or disprove it. Section 78 of the Police and Criminal Evidence Act 1984 gives a criminal court the power to exclude evidence if it would prejudice the fairness of the trial. In civil proceedings, the rules of evidence are more relaxed, and evidence is frequently admissible which would be inadmissible in a criminal case.
Indictment	The list of offences for which the defendant is being tried in a Crown Court.
Intermediary	A person facilitating the giving of evidence by a witness with communication difficulties. The use of the Intermediary is permitted when a Judge makes the 'special measures direction'.
Judge	The decision maker in court on matters in law.
Jury	Twelve men and women who consider 'the facts' in serious criminal cases and return the verdict.
Lawyer	A general term encompassing the solicitors' and barristers' profession, more widely used in America where there is no solicitor/barrister distinction.
List office	The court office with responsibility for timetabling of cases.
Live link	A special measure for eligible witnesses to give evidence by means of a closed-circuit TV link. The witness is usually in another part of the court building.
Magistrates' Court	The criminal court that tries most offences, specifically non-serious cases which are triable summarily only, and offences triable either on indictment or summarily ('either way' offences) which are judged to be suitable for summary trial. Most Magistrates are lay people though a minority are legally qualified District Judges. District Judges may try cases alone, while lay Magistrates sit in panels of at least two, usually three, and are assisted on matters of law by the Magistrates' legal advisor.

Newton hearing	A hearing (after a defendant has pleaded guilty) to determine facts which will be relevant to sentencing.
Perjury	The crime of taking a false oath. It comes from the Latin 'to swear'. If you lie on oath you could face the very serious charge of perjury.
Pleas and directions hearing (PDH)	As a preliminary to a trial in the Crown Court, a PDH is held. At the hearing, pleas are taken and, in contested cases, both the prosecution and the defence are expected to assist the Judge in identifying the key issues, and to provide any additional information required in connection with the case. The purpose of a PDH is to ensure that all necessary steps have been taken in preparation for trial, and to provide sufficient information for a trial date to be arranged. Because it is envisaged that special measures directions will be made at the PDH stage wherever possible, the court will need to have full information on all matters which bear on the provision of special measures for witnesses appearing for the prosecution or for the defence.
Primary rule	Under the Youth Justice and Criminal Evidence Act 1999 witnesses under the age of 17 at the time of the relevant hearing are subject to the primary rule when the court decides which of the special measures to grant. The primary rule states that the court must provide for any relevant video-recording to be admitted as evidence-in-chief, and for any evidence given by the witness which is not given by video-recording to be given by means of a live link. The limitations on the rule are first, that the measure in question must be available in the area; second, that the video-recording must not be one which in the interests of justice should be excluded; and finally, that the rule does not apply to the extent that the court is satisfied that compliance with it would not be likely to maximise the quality of the child's evidence.

Quality (of an eligible witness's evidence)	According to section 16(5) of the Youth Justice and Criminal Evidence Act 1999, 'quality' means quality in terms of completeness, coherence and accuracy, and 'coherence' for this purpose refers to a witness's ability, in giving evidence, to give answers which address the questions put to the witness and can be understood both individually and collectively.
Real evidence	A piece of tangible or physical evidence brought to court by either party, for example, the weapon used in an alleged assault.
Section 9 statement	A written statement taken by police during a criminal investigation. It can be read out in court as evidence if agreed, in special circumstances.
Solicitor	Usually working within a firm, a solicitor is the defendant's primary legal representative.
Special measures	The measures specified in the Youth Justice and Criminal Evidence Act 1999 which may be ordered in respect of some or all categories of eligible witness by means of a special measures direction. The special measures are: the use of screens; the giving of evidence by live link; the giving of evidence after excluding certain persons from court; the removal of wigs and gowns; the showing of video-recorded evidence-in-chief, cross-examination and re-examination; and the use of Intermediaries and aids to communication.
Special measures direction	A court order permitting the use of one or more special measures to assist an eligible witness.
Trial	Unless the defendant pleads 'guilty' the prosecution must establish his guilt by calling evidence, the truth of which is then assessed ('tried'). In the Crown Court, the body that decides the disputed issue of guilt is the jury. In the Magistrates' Court it is the Magistrates.

Usher	The court assistant responsible for the smooth running of the trial, e.g. showing witnesses to the witness box, handing documents to the witness, fetching water.
Victim support	Voluntary support before, during and after trial, for victims of crime.
Vulnerable witness	Mentally or physically impaired adults and some children may be classified as vulnerable witnesses and special provisions such as giving evidence over TV link may be applied.
Witness of fact (lay witness)	A person called to give evidence of what they saw, heard, did or felt, in other words observations of fact but not opinion.
Witness service	Voluntary support at court for those giving evidence, including explanations about the roles and responsibilities of those involved in court proceedings.
Youth Court	The Youth Court deals with most young people aged between 10 and 17 who are prosecuted for criminal offences. However, young people who are accused of murder and rape are tried in the Crown Court. The Youth Court can also send young people accused of very serious crimes, such as indecent assault and cases where an adult could be sent to prison for 14 years or more, to the Crown Court if it thinks its own powers of sentencing are insufficient. Magistrates who sit in the Youth Court receive specialised training.