

CONFERENCE REPORT

# 'Excellence in Practice'

Fifth National Registered Intermediary Conference

Hosted by The City Law School, London

18<sup>th</sup> June 2008

# Introduction

The 5<sup>th</sup> National Registered Intermediary Conference marked a significant milestone in the development of the service.

This meeting of intermediaries, the largest to date, stands as a turning point where we can mark the completion of national rollout of the Intermediary special measure and look forward to offering a consistently high quality permanent service to vulnerable witnesses and to justice across England and Wales.

This year, the agenda was more dynamic with breakout groups for intermediaries to choose between. This structure facilitated more in depth discussion of issues important to intermediaries and allowed more networking both regionally and nationally.

This year's conference was also an important one for many, since last year we have seen two recruitment campaigns completed and so we have a lot of new faces and a lot of new questions which we hope were answered and have equipped the new intermediaries with the confidence they need to be successful in their future work.

This report presents a summary of the discussions and presentations that took place and will hopefully represent the passion and interest in the development of the service which was shown by so many on the day.

**Intermediary Project Team**  
**Office for Criminal Justice Reform**  
**Ministry of Justice**  
**July 2008**

## Keynote Address

Sir Igor Judge highlights in his key-note speech the importance of intermediaries in the current criminal justice system and the absolutely key role they play in supporting the most vulnerable members of our society.

He set the role Intermediaries in the context of the special measures available for witnesses and the fundamental changes in how courts interact with witnesses. In referring to research into whether special measures are working he states that simply the fact that cases are being brought to court which before, would not have been brought to court and that convictions which should have been returned, are returned, when they would not have been returned shows that justice is being served, and voices which were previously silent are being heard.



Although noting the apparent similarities between interpreters and intermediaries he explained the key difference. Interpreters will translate what a witness says, in exactly the same demeanour

*“if the witness shrugs his shoulder, the interpreter shrugs his shoulder. It is a great skill. But there are no conversations between an interpreter and a witness”*

This final point is key, an intermediary does not translate but communicates, where necessary going outside the immediate words used to ascertain precisely what the witness means to say and then relay that to the court. Sir Igor impresses upon the intermediaries what a huge responsibility this is and stressed how high their quality of work must be;

*“For example, the witness who may appear stropky or difficult or incapable of answering a direct question with a direct answer, may be neither stropky nor difficult, and simply suffering from the condition which makes communication difficult: but it may also be that the witness is indeed stropky or difficult as well as having the difficulties of communication which lead to the involvement of the intermediary. Your responsibility is to get all these difficulties over; no more, no less.*

*None of these features or possible situations can simply be overlooked. We are seeking justice for genuine complaints, not conviction at any price”*

Sir Igor closed by reaffirming his personal support for the intermediary service with a final message for intermediaries:

*“Those of you who are trained to act as intermediaries are taking on a great responsibility. The importance of what you do cannot be underestimated. Among its requirements you have to remain calm and objective and determined to ensure not that one side or the other wins – but neutral, seeking to assist the administration of justice – and there to ensure that*

*the witness who needs your assistance has been able to do justice to him or herself and the story he or she wishes to tell, so that along with all the other evidence in the case, this particular story may be heard and considered, and justice done. It is not to be underestimated. Thank you very much for your contributions to the administration of justice."*

## End to End Case Study

The main breakout session of the morning was an End to End Case Study presented by DC Kate Sherbourne, the investigating officer, Charlotte Welsh, the trial advocate and Gary Kirkley, the intermediary.

The case involved a vulnerable witness called Dominic who suffered from cerebral palsy. Kate described how although she had heard of cerebral palsy she did not know what it was and following her first meeting with Dominic, they had great problems with communication due to his slurred speech and she did not think the case would go anywhere. Kate decided to take Dominic to his home hoping that a social worker or carer would be able to assist. Dominic was not able to tell the officers where he lived, only that it was in Brixton and so they set off in the general direction and using pointing and some basic verbal communication they managed to get Dominic home. Once there, his sister was able to translate Dominic's native tongue of West-African French. Apparently Dominic had been walking a bike to return it to his friend's house when he was approached by a man and a woman. They barred his way and the male pushed the bike to the ground, the woman then proceeded to put a knife to his chest and took his wallet. A police car passed and the male ran whilst the woman hid the knife on her person and sat down at a bus stop close by. Dominic called the police and when they arrived he pointed out the woman who had approached him. She was then searched and a knife was found. She claimed that Dominic had stopped her and asked her for sex.

During the investigation an ABE interview was carried out with a French interpreter and Dominic's sister but no social worker. During the pre-trial meeting, new guidance for dealing with vulnerable witnesses was discussed and it was decided to get an intermediary involved. Gary Kirkley was allocated to the case and after doing an assessment, Dominic was re-interviewed. Now that Dominic was able to communicate Kate was amazed at his memory as the second interview took place many months after the event and his testimony did not alter at all.

Charlotte Welsh then explained her experience of the case; as the trial advocate in the case, 3 weeks before the trial she read the case papers. This included a transcription of the first ABE interview and the first thing she noticed was that the sister was involved during the interview and that due to Dominic's slurred speech there were problems with the interpreter and the sister was trying to communicate for him. Charlotte knew this interview would never be allowed to go before a jury. They need a clear account of events; the jury must be able to understand. At a meeting with defence counsel, both parties agreed that an intermediary was necessary in this case. Similar to Kate, Charlotte knew Dominic suffered from cerebral palsy, as it was in all

the paperwork, but not *how* it affected him. Charlotte left it to the police to find an intermediary but in all honesty did not think that they would be able to help. However, upon receiving Gary's report Charlotte realised that the intermediary would be crucial. He understood the witness, what his problems were but also what the witness *could* do – he had no problems with understanding, concentration or memory. The judge was also suitably impressed with Gary's report and understood that a new ABE interview was needed. This took place and with Gary and a new interpreter's assistance the new interview was amazing – short, concise, clear, just watching it back Charlotte could see that they were close to obtaining a conviction.

During the trial the Gary's presence was vital, the court may have been aware of Dominic's problems but they had no experience of them and Gary helped communicate these to them. The court team had a meeting before hand so everyone knew how it would work and ground rules were laid down. It turned out to be the smoothest trial Charlotte had been involved in. The jury took only 20 minutes to make their decision and the defendant was convicted. The trial Judge specifically praised the intermediary/interpreter team as well as the witness himself.

## Questions

*When working with interpreters, report/recommendations go to the police and court, do they go to interpreters as well?*

- They should do, if an interpreter is involved intermediaries and interpreter should work as a team. Be pro-active and explain your role and the issues that the witness faces.

*When working with interpreters, deaf intermediaries will often monitor the interpretation, did Gary do the same?*

- To some extent he did, however he had difficulties with local accents and dialects.

*Did you favour using formal or informal assessment?*

- Gary assessed Dominic for a number of things, often using informal assessment. Kate commented that during the assessment Dominic seemed very much to be enjoying himself which very much put him at ease and helped build rapport with the interpreter and Gary.

## Consent and Report Writing

During this session which was attended by all intermediaries, Penny Cooper (City Law School's Director of CPD and Associated Dean) talked about Consent and Data Protection and Sally Jones (Director of Services for Children and Young People in Greenwich and longstanding SLT advisor to the Intermediary project) discussed Report Writing.

Penny explained the main points relating to consent:

- The consent to act as an intermediary

- o The officer would normally have obtained this consent from the witness however it is good practice to confirm this
- The consent to obtain information
  - o All intermediaries have been provided with consent forms for use when obtaining information from 3<sup>rd</sup> parties
- The consent to disclose information contained in your report
  - o Intermediaries are required to share information with Police/CPS/Defence and the court, however requests from third parties for information about the witness should be treated with extreme caution.

Consent can be given (or refused) by children under 16, who have sufficient understanding to make their own decisions. If they do not have the capacity to give consent this can be sought from a number of other parties. The Mental Capacity Act of 2005 outlines the provisions relating to the ability of adults to give consent, however there is a presumption of capacity.

Penny also described the key points of the Data Protection Act 1998 that intermediaries should be aware of, how it affects their work and the way they should handle different kinds of information (her slides are on the Intermediary Smart Site).

Sally then went on to discuss report writing. Her overarching message was to use common sense and be flexible. Templates have been produced but they should not be used rigidly. When writing the report the issues of each case should be considered; Who is the report for? What is its purpose? and When should they be written?

During the Q&A it was discussed that intermediaries still need to send in anonymous reports when submitting expenses and the IRB would prefer if this was done electronically for easier storage.

It was agreed that Penny and Sally would look at a sample of completed reports and publish good examples of the various types of reports required from brief summaries through to complete and full reports on the Smart Site.

## **ABE Training**

John Smith spoke about how ABE training first came about and his experience as an ABE trainer.

He said that The "Memorandum of Good Practice on Video Recorded Interviews with Child Witnesses of Criminal Proceedings" was first published in 1992. It was based on the Pigot Report (1989) which first recommended that video recorded interviews with children in criminal cases, conducted by a police officer or social worker, should be used as a substitute for the child's live evidence-in-chief at trial.

John then referred to the new ABE guidance issued in 2007 which recommended that the ABE guidance to be used, in conjunction with other

relevant guidance, as a key resource in the training of police and social care social workers involved in the investigative interviewing of witnesses. John recommended that it should also be used as a resource by those concerned with providing pre-trial support and preparation and those involved in the trial process.

He explained that ABE training varies from force to force, but that improvements are being made. He said that reference to the use of the intermediary has now been included and that sometimes intermediaries are invited to participate on the course to raise awareness of their role.

Although John admits that there is still a long way to go in regards to training and raising awareness about the use of an intermediary changes are slowly being made.

Copies of the ABE folders can be ordered via Prolog (08702 414 680).

## Questions

*Who should be carrying out ABE interviews with vulnerable witnesses?*

- The training levels are Level 2 – Foundation and Level 3 – Advanced. ABE interviews should be carried out by those who have been trained at Level 3 but unfortunately there are not enough trained officers. If a case is allocated to a Police Officer then they work on the case regardless of whether they have been trained or not.

*In some cases intermediaries are asked to be involved in part of the ABE training course. Should intermediaries approach the police to offer their services?*

- The Police will approach the IRB Secretariat or intermediary directly.  
**NB.** If intermediaries are approached directly please check that the force will be covering your expenses and forward the details to the IRB.

*A lot of referrals from Witness Care only come after the interview has been done. Is there anything intermediaries can do about it?*

- Training still required for Police to spot vulnerable witnesses/victims. Intermediaries should speak up and raise awareness. There is a box for intermediary involvement on the statement form and interview package.

*Intermediary involvement in training should be formalised. There should be more than one intermediary involved as different communication skills required.*

- There is the possibility of incorporating more than one intermediary but this would be done at the Advance Level 3.

*Should this not be covered at the basic initial training too?*

- Any changes to the syllabus won't happen for another 2 years. It takes time. It is difficult to ensure all officers are aware of the need and use of an intermediary but the information is out there.

## Communication Aids and Assessment Tools

Janet Larcher (intermediary) ran a breakout session on Communication Aids and Assessment tools.

The general consensus was although this was an extremely worthwhile subject for discussion, there wasn't time to reach proper conclusions and consideration should be given for further activities with relation to this.

One key issue that came out was the comparison between the use of informal and formal assessment tools, though no real consensus was reached. Defence will often ask for objective data from assessments but more often than not an intermediary will, rightly, use their experience to make an assessment and it will then fall to them to defend their judgement.

## Court Room Skills

During the conference invitation process another area which intermediaries requested a breakout session on was courtroom skills and tips. This was hosted by David Wurtzel (ICSL) and was well received, giving them a confidence boost which in the intense situation of a courtroom can be very much needed. During the session David urged all intermediaries to be assertive but in a targeted way—it is the advocate who has to make the application and the judge who has to be persuaded. David also clarified that special measures are not 'agreed'; it is an order of the court—and they must know whether it has been ordered so they don't do anything they shouldn't in a case that may not be going forward.



It was also advised that intermediaries make contact with as many of the involved parties as possible, this will ensure everyone is aware of what is going on and there will be no surprises come the day of the trial.

A key point which was raised was the necessity to remain impartial, however closely you are involved with the witness

during assessment and rapport building sessions. An intermediary's duty is to the court and to justice. A witness is not helped if their evidence is discredited.

## Age related child cases

The final breakout session centred on intermediary referrals for children who have no additional communication difficulties. This was facilitated by Frances LeRoy and Natasha Dean from NSPCC.

Issues raised included that fact that Intermediaries should ensure that a child has access to pre-trial preparation as well as the intermediary. At the very least, a pre trial visit to the court should be arranged. Intermediaries should make themselves aware of local services that may help with this, eg: court-based witness services or NSPCC. Before the trial the child should be prepared for what to expect from the court process as well as being assessed in terms of their communication needs. The ideal situation is for a child to have pre-trial preparation and support from a specialist agency in addition to an intermediary at the interview and the trial if appropriate.

Various barriers to communication for children at court were discussed:

1. Power imbalance and the child's sense of powerlessness within the criminal justice system
2. The court environment and the more generally unsuitable environment for children, proximity to the defendant, cells, police, etc.
3. The impact of the crime or abuse and the possible re-traumatisation of the child through the court process.
4. The child's developmental stage.

All these can hinder a child's ability to communicate effectively and should be taken into consideration by the intermediary when assessing and working with children at court.

Concern was raised that police forces having to pay the costs of intermediaries direct may make it less likely that children will be considered for an intermediary unless they have significant speech and language difficulties. Children who have normal development may not be considered for an intermediary when the legislation clearly allows for this and many children may give better evidence with the assistance of an intermediary.

## Panel Discussion

There was a panel discussion with PC Kay Alder from Thames Valley Police and Janet Bazley QC, an expert in family law.

Kay began with a short presentation on the interaction between social services and intermediaries.

For example in the cases of child abuse, the investigation can proceed jointly or it may remain solely with the Social Services (if the situation does not amount to a crime) or solely with the police (if it is not within the family). The decision process will include an assessment (non-intermediary) under ABE guidelines as to whether the child will be able to give evidence or if they have anything to say.

In Thames Valley, Social Services investigators are trained in ABE interviewing and are as able to lead ABE interviews as their police colleagues. More often than not it is the police who lead, but depending on the rapport with the witness and their best interests it may be the Social Services. When an intermediary becomes involved, they can be required to work closely with both the police and Social Services. Social Services may not be as aware of the role and may be defensive as they may feel their role is being somewhat overtaken but you can obviously clarify this is not the case.

Janet Bazley Q.C. then made a short presentation on the situation when criminal and family court proceedings run in parallel, which has come up as a discussion point on the smart site several times.

She explained that you can often find criminal and family proceedings running in parallel with the same set of facts but what intermediaries may find surprising is that you may have a different outcome in each. This is often because the standard of proof in family court (the standard is met if the proposition is more likely to be true than not true) is different to that in criminal court (proof beyond reasonable doubt).

Family court will often have a lot more information to look at and see a much wider view of the case than in criminal proceedings as any material that could be pertinent is considered including hearsay evidence.

Janet then went on to clarify the situation of disclosure between proceedings. Materials are more often than not disclosed between proceedings depending on which began first. A piece of evidence or expert opinion in one case will more than likely help the other. The sharing of evidence also minimises costs and can avoid the case of divergence of opinion in the case of expert witnesses/analysis.

## Questions:

*During the training it was drilled into intermediaries that the success of the service rests with police identifying vulnerable witnesses as soon as possible. With the pilot areas coming off bridging funding and other areas soon to follow and local forces having to pay for intermediary involvement will police still make the effort to identify vulnerable witnesses if it means additional time and resources to the investigation?*

- In Thames Valley Kay has seen absolutely no procedural change in involving an intermediary since they have come off bridging funding. OCJR are monitoring areas that have begun paying and have seen no drop off as yet. Officers have an obligation under the Victims code to identify and assist vulnerable witnesses with all the special measures that are available including intermediaries.

*Why would a case be heard in both Family and Criminal Courts?*

- For example if you had a child who had brain injury from an apparent assault that amounted to a crime and was within the family. The Criminal Court would be considering a criminal conviction and so would need to prove that the injury sustained was not by accident and who caused the injury. However the family court's main aim would be protection of the siblings so they may be able to prove that the injury sustained was not by accident and was caused by a carer at some point but not specifically who. However on this alone they could remove the siblings.

*Can an intermediary be involved in both criminal and family cases in parallel?*

- It is possible that an intermediary would become involved in both cases however it may become difficult as what they say could become admissible and they could become a witness in the case. The court is usually reluctant to involve a supporter as a witness but it can happen. If the situation arises, the intermediary should raise the fact that it may compromise their role being involved in both cases. Obviously IRB cannot fund any role in relation to family proceedings.

*Should an intermediary be involved with several siblings?*

- This should obviously be judged on a case by case basis however the childrens' needs should be foremost. It is often best to have a single intermediary involved for consistency as long as they have the necessary skills to cover all of the needs, however this can obviously be tiring for the intermediary as if the case goes to trial they may have to support several witnesses consecutively in court.

## Project Team Panel

Several intermediaries asked questions about how the matching service works.

The matching is based on the information supplied by the intermediaries themselves either on their application form or on subsequent update forms. This includes the geographic locations intermediaries identify that they are able to work in and the communication difficulties and age ranges they have experience/capability working with.

When a witness referral comes in the team use the location, communication problem and age of the witness to produce a list of intermediaries with the necessary skills to deal with the witness who are active and able to work in the desired location. This list is sorted, with those who have least recently

accepted a referral offered the referral first. When someone takes a case they go to the bottom of the list for the next appropriate case. A member of the team will then call people on the list in descending order and depending on the urgency of the case leave messages, if necessary, with a number of individuals. The case is then allocated to whoever gets back to the project team first, which is why we stress the importance of keeping us up to date with contact information and also the dates your unavailable as otherwise we will be waiting for a call back from you before attempting other intermediaries.

A number of intermediaries have indicated nationwide availability, something which we appreciate and this is taken into account during the matching process, although we try to contact intermediaries within reasonable travelling distance first.

Several intermediaries also raised concern about the future provision of the matching service. The OCJR team explained that while OCJR set up and ran the service to get it going, as an organisation we are not able to run permanent services. The team involving the project board had looked at potential external providers, but had decided that none of them could offer the same level of service in a cost effective way. OCJR was now considering the best way forward for guaranteeing a stable service which maintained or improved the current service. The OCJR team gave an assurance that having rolled out the intermediaries special measure nationally and set up the matching service, nothing would be done that undermined the service, particularly while the service was still establishing itself. More information will be provided when any decisions on the future become clearer.

## Feedback

We are grateful to all those who took the time to complete an evaluation form at the end of the day. There were numerous comments which will hopefully assist us in improving the future conferences.

Overall, Intermediaries judged the conference as good, with an average of 3.1 out of 4 for the speakers, 3.3 for the venue and catering and 3.1 for the organisation and packs. The majority of intermediaries were happy with the duration of the conference and the time allocated to the speakers but many felt the breakout sessions were too short. There was a fairly even split between the discussion sections being too short and about right.

*"The speakers were excellent"*

*"Keynote address so lucid and interesting, fantastic!"*

*"Felt the end to end case study was excellent and gave valuable insight into inter-agency working in partnership and how it can work well"*

*"Excellent (most informative as usual!)"*

*"Good to meet with other Intermediaries in our own regions. Case study excellent. Court room skills—it's always good to benefit from David's wisdom and clarity of vision (and humour!)"*

*"Let's make sure these continue"*

*"Thank you to the IRB for organising the day"*

And with that last comment from you, we at the Intermediary Team would like to thank all the intermediaries who attended and made the day the success that many felt it was.

It has been said before but it remains true that a large proportion of the success of the intermediary service is down to the passion and professionalism shown by intermediaries in their work and this was more than evident during the course of the day. The project team look forward to the months ahead as we stabilise and streamline the service to offer increasingly consistent results.

**Intermediary Project Team  
Office for Criminal Justice Reform  
Ministry of Justice  
July 2008**

# Attendees

Alder, Kay (Thames Valley Police)  
Ali, Karen  
Attfield, Robin  
Austin, Sarah

Barnes, Karen

Bazley, Janet Q.C.  
Beaumont, Jennifer  
Bent, Emma  
Berriman, Cheryl  
Blackwell, Sally  
Boulderstone, Richard  
Bowen, Karen  
Bradley, Christine

Campbell, Lorraine  
Candler, Paul (OCJR)  
Cavlovic, Tanya  
Charatan, Philippa  
Clarke, Anne  
Clarke, Laurence  
Claughton, Toni  
Clegg, Judith  
Coffield, Christine  
Conn, Lucy  
Conway, Maddy  
Cooper, Penny (ICSL)  
Cotton, Louise  
Cousins, Alison  
Cowan, Rochelle  
Crompton, Yvette

Darvill, Gillian  
Davis, Chris  
Douglass, Ruth

Edge, Lucienne (OCJR)  
Edgington, Sophie  
Edwards, Susan  
Essery, Frank  
Evans, Melissa

Faux, Paul  
Flynn, Craig  
Forry, Catherine

Freeman, Lucy

Gillet, Elizabeth  
Gretton, Edward (OCJR)

Hare-Cockburn, Katherine  
Hasell, Judith  
Hazell, Gillian  
Hendy, Alan

Hepworth, Karina  
Hillier, Janey  
Holden, Hana  
Howell, Susan  
Hutton, Philippa

Iwi, Diana

Jackson, Ruth  
Jacobs, Gill  
Jones, Janet  
Jones, Sally (RCSLT)

Kelly, Deborah  
King, Ann  
Kirkley, Gary

Larcher, Janet  
LeRoy, Frances (NSPCC)  
Lesley, Janet  
Lloyd, Julia Claire  
Long, Fiona  
Loxley, Ann Marie  
Lwin, Rebekah  
Lyon, Susan

Man, Kate  
Marchant Ruth  
Margree, Gwen  
Martin, Kay  
Mathur, Ami  
McCann, Jacqueline  
McLellan, Amanda  
McManus, Jane  
Meade, Joanne  
Merlin-Owen, Heidi  
Middleton, Andrea  
Miles, Gaynor  
Morgan-Own, Sally  
Munro, Annette

O'Hagan, Ruth  
O'Mahony, Brendan  
Orrell, Charlotte

Parker, Kate

Parrott, John  
Patel, Bindi  
Pereira, Tina  
Phibbs, Emily  
Pink, Lorna  
Prisk, Claire  
Prosser, Liz

Ralephata, Andrew  
Ravening, Donna  
Reed, Liam (OCJR)  
Reese, Susan  
Rolt, Elizabeth

Sacchett, Carol  
Salt, Alison  
Selby, Louise (OCJR)  
Sheffield, Louise  
Sherbourne, Kate (Met Police)  
Simpson, Fiona  
Smith, John (ABE Trainer)  
Spivack, Nicola  
Stevens, Chris  
Stockwell, Jane

Tatt, Penny  
Thomas, Jane  
Thomas, Clare  
Thorogood, Pauline  
Todd, Celia  
Towning, Bridget  
Tudway, Jeremy  
Turner, Michelle  
Turner, Tim

Vallance, Sue

Walker, Julia  
Walsham, June  
Watts, Marion  
Welsh, Charlotte (Barrister)  
Williams, Gill  
Williams, Hilary  
Woolf, Celia  
Wright, Margaret  
Wright, Tim (OCJR)  
Wyatt, Rosemary  
Wunderly, Nick (OCJR)  
Wurtzel, David (ICSL)