

## **Highs and Lows: The 4<sup>th</sup> Intermediary Survey**

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*'I always thought fear belonged to other people, weaker people than it touched me  
and when it touches you, you realise it's been there all along.'*

From 'Fear Poem' by Temi who recited his poem at the Special Measures Conference  
in Ryton in 2013.<sup>2</sup>

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<sup>2</sup> Temi survived a violent crime and had given evidence assisted by Registered Intermediary Catherine O'Neill.

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### **1. Introduction**

'The Registered Intermediary Annual Survey 2010 includes:

"The intermediary is perhaps best described as 'a person who facilitates two way communication between the vulnerable witness and the other participants in the legal process, to ensure that their communication is as complete, accurate and coherent as possible'.<sup>3</sup>

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<sup>3</sup> As cited in *OP v SofS for Justice* [2014] EWHC 1944 (Admin)

Whilst this is an accurate description of an intermediary, it does not reveal the complexities and the scope of the role. For instance, some intermediaries are Registered Intermediaries (RIs) and some are not registered with the Ministry of Justice (MoJ). Some RIs are also engaged outside the MoJ scheme and in those cases they would not be acting in their RI capacity but as a non-registered intermediary i.e. outside the scheme. Some intermediaries are appointed under a statutory provision and some are not, for example in England and Wales no legislation is yet in force which covers the appointment of an intermediary for the accused. Furthermore the role of the intermediary differs depending on whether it relates to a witness for their testimony or a defendant for their testimony (if they give evidence) and other parts of the trial process. In addition the role is nuanced according to the part of the justice system (family courts, tribunals, criminal justice etc.) in which intermediary services are required.

The scope of the role is now wider than first envisaged when intermediary legislation was brought into force some ten years ago in England and Wales.<sup>4</sup> It involves assessing a person's needs and advising those in the justice system how best to communicate with that person. In addition the role can involve planning and managing a court familiarisation visit, helping advocates to properly word their cross-examination questions, assisting lawyers to take instructions from their client and assisting lawyers to explain the trial outcome to a vulnerable defendant.

This survey also encompassed Northern Ireland (NI) since the Department of Justice (DoJ) pilot schemes for RIs began there in 2013. It should be noted that there are differences between the position in NI and England and Wales in that RIs in NI assist communication not only with victims and witnesses but also with suspects and defendants (and in family proceedings, if requested). In accordance with the legislation, RIs in NI only facilitate defendants to give oral evidence at their trial. If a defendant requires support for the duration of his trial, a scheme is in place to provide a suitable person to act in this role.

The purpose of the survey upon which this report is based was to hear from intermediaries; this report is not a definitive description of the role but a 'snapshot' of the work of thirty eight intermediaries and their perspective on how vulnerable people are treated in the justice system. It is hoped it will support intermediary professional development and improvements for vulnerable witnesses and defendants. As the results show, sometimes intermediaries find that the system works well and sometimes they find that it does not, hence the title of this report: Highs and Lows: The 4<sup>th</sup> Intermediary Survey.

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<sup>4</sup> For how the role has developed see generally Cooper, Penny and Wurtzel, David (2014) 'Better the second time around? Department of Justice Registered Intermediaries Schemes and lessons from England and Wales', Northern Ireland Legal Quarterly, 65(1), pp. 39-61

## 2. Methodology and presentation of results

Unlike previous RI surveys<sup>5</sup> this one was designed for all intermediaries, not just those who are *registered*. Intermediaries were invited to complete the questionnaire on-line<sup>6</sup> within the period 15<sup>th</sup> November 2013 and 31<sup>st</sup> December 2013<sup>7</sup>. Emails were circulated to the two known organisations providing intermediaries outside the MoJ and DoJ schemes<sup>8</sup> and a notice was placed on RIO<sup>9</sup> drawing RIs' attention to the fact that the survey was available for completion. Most questions in the survey asked intermediaries about their work during the twelve month period from 1st September 2012 to 31 August 2013, but some questions were more general in nature. A copy of the 55 questions is set out in Appendix 1.

41 surveys were started online. In one survey the respondent did not answer 'Yes' to the first question requesting confirmation of their consent to participation and two surveys were started but no answers entered after the first question. These three surveys were not included in the results analysis. In total 38 questionnaires were analysed. Where answers could be tallied and expressed in figures these have been set out directly below the corresponding questions in Appendix 1. Where responses were expressed in 'free text' boxes, the answers were analysed<sup>10</sup> and where themes emerged they have been described below.

Direct quotes have been used to illustrate themes; the figures in brackets immediately after the quote denote the question and the respondent identifier (anonymised). For example (1:10) would indicate the answer to survey question number 1 by respondent number 10.

## 3. The respondents<sup>11</sup>

Of the 38 respondent intermediaries, all but two were female. 27 indicated their profession as Speech and Language Therapists and others listed psychologist, teacher, social worker, intermediary, nurse/ psychotherapist and occupational therapist as their professional background. A little under half described being an

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<sup>5</sup> The first three surveys of Registered Intermediaries took place in the autumn of 2009, 2010 and 2011. The reports of these surveys are available at <http://www.city.ac.uk/law/courses/continuing-professional-development/in-house-courses/intermediary-training>

<sup>6</sup> Using the Faculty of Business and Law account on SurveyMonkey - <https://www.surveymonkey.com/s/2013IntermediarySurvey>

<sup>7</sup> Research ethics approval was given by Kingston University London, Faculty of Business and Law prior to the survey being released.

<sup>8</sup> 'Triangle' and 'Communicourt'

<sup>9</sup> 'Registered Intermediaries Online' – a private forum hosted by the National Crime Agency and used by many Registered Intermediaries.

<sup>10</sup> Response analysis was carried out by Adel Puk and Penny Cooper

<sup>11</sup> A more detailed breakdown of answers to preliminary questions can be found at Appendix 1.

intermediary as their primary occupation. Intermediary length of service varied; respondents began practising in years ranging from 2003 to 2013.

30 were MoJ Registered Intermediaries<sup>12</sup>. Five respondents were newly qualified in 2013 and those five indicated they were a DoJ Registered Intermediary. <sup>13</sup> Three were intermediaries who were not registered.

For the survey period from 1st September 2012 to 31 August 2013, 24 respondents had practised for ten months or more during that time. 11 had practised for the whole twelve months.

In their responses intermediaries described their case referrals by amount and type.<sup>14</sup> The average total number of referrals accepted over the period was 19 – on average, a little less than two per month. The most referrals accepted by one individual was 56 and the least was one. All together the respondents worked with 688 witnesses. 411 prosecution witnesses were assisted ‘pre ABE’<sup>15</sup> compared to 181 referrals accepted for a prosecution witness/ victim after the ABE interview.

#### **4. Intermediaries**

The difference between a registered (RI) and a non-registered intermediary (NRI) was recently described in the High Court.<sup>16</sup>

‘A RI works through the Witness Intermediary Scheme (“WIS”) run by the MoJ and is recruited, trained, registered and regulated by the MoJ. A NRI is described in “Registered and Non-Registered Intermediaries for Vulnerable Defence and Prosecution Witnesses: Guidance for HMCTS Staff (“HMCTS Guidance”)” as “private and unregulated”.

In the case of alleged or established victims and non-defendant witnesses, section 29 Youth Justice and Criminal Evidence Act 1999 (“YJCEA”) empowers a court to order intermediaries. The legislation excludes a defendant. No licence requirements are in place before individuals may describe themselves, or practise, as an intermediary. A criminal court may order that an intermediary be appointed to work with a defendant, victim, or witness. Two separate mechanisms, one for defendants, one, the WIS, for victims and witnesses, exist.

The WIS is not a professional framework as is for example the General Medical or General Dental Council but a mechanism giving effect to section 29

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<sup>12</sup> Of these RIs, 9 also offered their services as an unregistered intermediary.

<sup>13</sup> The only Registered Intermediary training that took place in 2013 was in Northern Ireland, where eleven candidates passed the course.

<sup>14</sup> Where averages are given, numbers have been rounded to the nearest whole number.

<sup>15</sup> Achieving Best Evidence in Criminal Proceedings Guidance on interviewing victims and witnesses, and guidance on using special measures (MoJ 211)

<sup>16</sup> *OP v SofS for Justice* [2014] EWHC 1944 (Admin) [6] to [8]. This decision is being appealed by the MoJ.

YJCEA. The WIS maintains a register of those intermediaries eligible to be matched with witnesses or victims so as to ensure the provision of experience and expertise at a suitable standard. The expression “RI” indicates an individual registered with “the Intermediary Registration Board” and appointed through the WIS.’

Where intermediaries work outside the MOJ scheme (for example working with vulnerable witness in the family court<sup>17</sup> or with defendants in England and Wales) they usually do so as an intermediary who is not registered for the purposes of that instruction.<sup>18</sup> Most intermediaries who responded to this survey worked mostly within the criminal justice system as RIs in England and Wales.<sup>19</sup>

## **5. Other special measures, remote link and theadvocatesgateway.org**

Responses revealed that over half of the intermediaries surveyed said when they worked with a witnesses, witness cross-examination was usually conducted over *live link* (from a room somewhere else in the court building), evidence in chief was usually played from a pre-recording, sometimes aids to communication (such as pictures or models) were used and sometimes wigs and gowns had been removed. It was less usual for the witness to be screened, for there to be a witness supporter or for evidence to be given in private (the public gallery cleared).

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<sup>17</sup> See generally ‘Family Cases (England and Wales)’ at <http://www.theadvocatesgateway.org/cases> and also Cooper, Penny (2014) Speaking when they are spoken to: hearing vulnerable witnesses in care proceedings. *Child and Family Law Quarterly*, 26(2), pp. 132-151

<sup>18</sup> Without wishing to complicate matters even further, there are some rare family court and defendant intermediary appointments through the MoJ scheme but they are not the norm.

<sup>19</sup> The MoJ provided information (email dated 20 June from N Peel, MoJ, to the author) covering the period 1st September 2013 to 31st Aug 2013 as a basis for comparison to the results obtained from the questionnaire albeit of course that the MoJ can only provide information on RIs in England and Wales.

As the number of qualified RIs can change on a regular basis the numbers provided by the MoJ were averages taken based on reports from February 2013 and August 2013. The average number of those on the register was 105 with an average of 83 being available at any one time to accept referrals. According to the data from the MoJ the respondents to the survey represented a sample of just under a third of those who were RIs at that time and of those who were available for referrals. The RIs who responded to the questionnaire reported being involved in just over 40% of the number of referrals the MoJ stated had been matched during the relevant time frame. For 1st Sept 2013 to 31st Aug 2013 police referrals received were 1177 of which 1146 were matched, 18 cancelled and 13 unmatched. CPS referrals received were 375 of which 349 were matched, 15 cancelled and 12 unmatched. The gender ratio of the respondents was consistent with MoJ data with females being the dominant gender in the profession (MoJ 97% and this report 95%). Not unlike the survey cohort, the MoJ response showed that 74% of MoJ RIs were speech and language therapists. 7% were teachers and others were from a variety of other professions including occupational therapists, psychologists and sign language interpreters. The MoJ reported that there were just over three times as many referrals from the police as the CPS and, taken together, over 96% of these referrals were matched. Consistent with what the responses to the survey, the main MoJ reported reasons for returned referrals were date changes by the end user and the RI being unavailable for trial.

I had one case where the monitors were screened from the public gallery and names of the children were not read out in order to provide some anonymity for a culturally sensitive case, and another case where both Counsel questioned a young witness face to face (in an adjacent court room) rather than via live link (31:15)

Only nine respondents <sup>20</sup> had experience with witnesses giving evidence over *remote live link* (somewhere away from the court building):

Set up in witness' home due to physical difficulties. Engineer on standby (outside house) in case of any issues with link (42:10)

[F]rom secure psychiatric units- I was the only person from the Court present plus a technician and a witness supporter-very stressful feeling very responsible as no Usher etc. to get information from -issues with moving patient to live-link room within confines of secure unit. One room not that suitable as next to staff canteen (42:12)

[Witness] with MND<sup>21</sup> used remote link in his home (42:16)

From a witness's care home. Worked very well. A private company was involved in setting up and operating the equipment (42:24)

The Advocate's Gateway - the [advocatesgateway.org](http://advocatesgateway.org) - provides best practice guidance relating to vulnerable witnesses and defendants. Since the survey was carried out a 'toolkit' has been developed which provides guidance on the use of remote links to court.<sup>22</sup> Intermediaries have been key contributors to all the toolkits on The Advocate's Gateway website. The toolkits were cited as 'best practice' in the 2013 Criminal Practice Directions for England and Wales.<sup>23</sup>

Over three quarters (28) of respondents said they 'always' or 'nearly always' mention the toolkits/ the website in their reports although six never do.<sup>24</sup> The respondents who use the toolkits most often use the one on Ground Rules Hearings<sup>25</sup> and the one on planning to question a child or young person<sup>26</sup>. Intermediaries would like to see<sup>27</sup>

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<sup>20</sup> See question 42 - Appendix 1

<sup>21</sup> Motor Neurone Disease

<sup>22</sup>

<http://www.theadvocatesgateway.org/images/9planningtoquestionsomeoneusingaremotelink100714.pdf>

<sup>23</sup>[2013] EWCA Crim 1631 at para 3D.5, p 8

<http://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Practice+Directions/Consolidated-criminal/criminal-practice-directions-2013.pdf>

<sup>24</sup> It may be that they work in areas where at the time of the survey there was limited information on their field on the site. The number and scope of toolkits is growing.

<sup>25</sup> <http://www.theadvocatesgateway.org/images/toolkits/1cGroundrules211013.pdf>

<sup>26</sup> <http://www.theadvocatesgateway.org/images/toolkits/6Childoryoungperson211013.pdf>

<sup>27</sup> Question 38 – see Appendix 1

further toolkits on a number of topics. Most requested was mental health and questioning using Alternative Augmentative Communication/props (communication aids). At the time of writing this report new toolkits (including one on questioning vulnerable witnesses and defendants with mental disorders<sup>28</sup>) had recently been added to theadvocatesgateway.org and further toolkits are being developed including one on communication aids.

## 6. Intermediaries and the police

Responses showed that a little under a third of the referrals accepted by intermediaries for prosecution witnesses occurred after an initial interview/s of the vulnerable witness had taken place.<sup>29</sup> Three quarters of respondents noted difficulties ensued for the witness and/or the intermediary when they were brought in after an interview had already been attempted. Most often intermediaries<sup>30</sup> cited time pressure:

I think the most significant difference is that often there is very little time for assessment, pre-trial when you get a referral post ABE as it is generally near trial date and this impacts on opportunity to build rapport with witness, also pressure to produce report (12:12)

Difficulty with time scale as often short notice and one occasion where I couldn't watch the ABE until the day before XX (12:13)

Two respondents noted advantages in coming in at this later stage: the intermediary could put in her report examples of the witness's communication needs as demonstrated in the ABE interview; it was easier to coordinate their tasks as the trial date had usually been set.

Two intermediaries refer to difficulties where a police officer had previously taken a statement from the vulnerable witness in the traditional written form.

Meant very difficult and time consuming for witness to give evidence in chief and obvious witness had a very different communication style from what was written in his statement (12:21)

Particularly difficult in cases where written statements had been taken as difficult sometimes to ascertain how VW [vulnerable witness] communicated during this and sometimes throws up issues where the RI can be placed in a difficulty [sic] position of potentially criticising the officer or even questioning the validity of the statement in some way. Very later referrals from CPS close

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<sup>28</sup>

<http://www.theadvocatesgateway.org/images/12generalprincipleswhenquestioningwitnessesanddefendantswithmentaldisorder100714.pdf>

<sup>29</sup> Questions 10 and 11 – Appendix 1

<sup>30</sup> 12 mentioned this.



to trial also causes issues of not enough time to do the work required (although I will not personally accept cases if the time is so short that I do not feel the job can be done properly) (12:19)

In responses to question 33, most thought that in general police officers could be better at identifying early on the communication needs of the vulnerable witness.

‘they do not always know that there will be reports at school and at home which will explain in detail the nature of the difficulty and what impact it will have on an interview (33:8)

One respondent described an ethical dilemma that arose even though she had been brought in before the ABE interview:

Police officer interviewing severely traumatised 4 year old, ignoring all my advice resulting in terrible ABE and very distressed child. Wondered whether I should have complained about IO conduct (47:38)

In contrast one intermediary described her best experience as:

Working with very positive police officers and improving their opinion of the Intermediary service and what it can offer (49:5)

Another said that what she liked most was:

Working with a dedicated police officer to support a VW to tell what has happened to them. I am often amazed to what lengths some IOs will go to do whatever is necessary to support a VW (51:28)

## 7. Intermediaries and witnesses

The survey reflects intermediary work that was mostly with prosecution witnesses and of those slightly more child witnesses (318) than adult prosecution witnesses (293).<sup>31</sup> In comparison defence and family court witness work was relatively small (13 and 10 witnesses respectively). One respondent had also worked with a vulnerable witness in a Mental Health Tribunal.<sup>32</sup>

There were two narrative responses in relation to question 15 asking intermediaries how defence and prosecution witness work compared; both cited ‘funding’/‘finance’ as a difficulty when working with the defence. One described difficulties working as a defendant intermediary as follows:

Obtaining funding from LSC /Courts. Obtaining information from solicitors. Ensuring someone with RI during assessment /interview. (police not involved) Not getting involved with the defendant as often the witness is a

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<sup>31</sup> Question 13

<sup>32</sup> Question 14

relative or boy/girlfriend. Difficulty in Witness Service waiting room-as although a defence witness can be supported by them-there may well be prosecution witnesses in there as well (15:9)

One thought the role with the defence witness assisted her to,

be a more competent RI as it gives me a broader understanding of the court process (15:7)

Four responses comparing criminal court witness with family court work indicated a lack of clarity in some family courts about the role of the intermediary:

[M]ore informal, less clear about role (16:1)

[F]ar more chaotic, much more time spent planning and advising and negotiating, in the event none of these 4 children were called to give evidence (16:3)

After many hours of discussion /consultation/reports it was decided by the court to use an expert witness instead (16:9)

I was called as a witness at family court to discuss the reason why certain procedures were carried out (16:17)

Three respondents described three different ways in which their services were funded in family cases:

LAA, court, local authority (17:3)

It would have been the court I think (17:9)

[F]unds taken from legal aid and paid to me by the city council (17:17)

According to responses to questions 40 and 41 (about waiting times for witnesses with an intermediary), 109 out of a possible 634 witnesses were kept waiting at court for more than an hour before they began their evidence. 19 of the 27 respondents said this waiting led to increased witness stress/ anxiety and/or a reduction in the witness's ability to concentrate:

Increased anxiety and stress with older witnesses. Boredom, tiredness and diminishing attention skills with children (41:10)

Generally I advise it will be much longer than they expect, but effect [of waiting] is to heighten [sic] anxiety, one witness left and got very drunk and was then arrested and put in the cells. Some children have become distressed particularly if they are not able to be with other family members who are also witnesses (41:12)

In the case of an adult with learning disability it greatly increased her anxiety and she became tearful. Needed much reassurance and calming down. In another case the 2 child witnesses became overtired and giddy, and their parents became very stressed (41:28)

The waiting facilities can make a difference:

The impact on the witness depended on the environment in which they had to wait and with whom they were waiting. In one trial an officer, a grandparent, a mother and a friend were all with the witness in a large room. The witness did not seem anxious or bored. In other cases only one support person is present in a small room with witnesses from other trials and that is very stressful for all. (41:8)

Two respondents felt that the witness did not have a problem waiting as they had been forewarned. Two respondents described their role keeping the witness occupied during the wait, for example:

I had warned the child witnesses that there might be some waiting around; and they had stuff to play with. I popped in every now and then to the waiting room to reassure them I was still waiting for our time to go to video link, and that lawyers often have to do a lot of talking with the judge (41:20)

One intermediary (qualified in 2009) felt that the situation was improving:

[J]udges and courts are becoming far more aware of not keeping the witness waiting and are timetabling for the witness to give evidence on the 2nd day (41:22) <sup>33</sup>

Since the survey was conducted, a pilot scheme for section 28 of the Youth Justice and Criminal Evidence Act 1999 (pre-recorded cross-examination and re-examination) commenced and intermediaries have been involved in some cases.<sup>34</sup> The survey asked respondents to consider the proposal (as it then was).

Respondents thought *advantages* could include<sup>35</sup>:

- less stress for witnesses and family members;
- less pressure in cross-examination;
- 'less opportunity for barristers to play the jury';
- less waiting time at court;
- the witness not having to wait a long time for the trial;
- a greater opportunity for intermediary input into question planning.

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<sup>33</sup> Interpreted to mean the second day of the trial rather than the first day when jury selection and prosecution opening speech etc. will usually take place.

<sup>34</sup> The ongoing pilot is being conducted at Kingston, Leeds and Liverpool Crown Courts.

<sup>35</sup> Question 43

One respondent voiced a note of caution:

Unless those cross examining have experience and have training about how to question young witnesses, accurate evidence may still not be achieved and the experience may still be traumatic for the child (44:8)

Respondents thought that the *disadvantages* could include for some witnesses<sup>36</sup>:

- the possibility of being called back at trial for further questioning;
- being traumatised/ further traumatised if recorded questioning happens soon after the witnessed event;
- feeling deprived of their 'day in court'.

## 8. Intermediaries and defendants

Ordinarily intermediaries were appointed for more than just the defendant's testimony (question 20 responses revealed one appointment for the defendant's testimony compared with 63 for testimony and other parts of the trial).

Two respondents noted an ethical dilemma specifically with defendants<sup>37</sup> (though it should be noted that the majority of ethical dilemmas cited overall were not defendant specific):

[B]eing left alone with a defendant when the court neglected to inform the defendant and the intermediary that the case had been put back until the afternoon. I did not want to be left alone with the defendant but I had a responsibility ... not abandon him either. He was extremely vulnerable with a learning disability and sought my assistance as I was the only face he recognised in the court building (47:32)

Strong pressure from judge to agree defendant able to continue giving evidence when exhausted. Some issues being identified as one of the defence team (47:30)

This intermediary also noted that her worst experience as an intermediary was:

Judge asking me to visit defendant in cells then agree he was able to continue giving evidence, followed by judge's anger at my advice after visit that he should not continue that day (48:30)

## 9. Intermediaries and court staff

17 out of 25 respondents said that they had experienced difficulties when practising or trying to practice using the *live link* with the witness. Practising with *live link* must

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<sup>36</sup> Question 44

<sup>37</sup> Similarly this was noted as an ethical dilemma by another respondent when working with a vulnerable witness

usually be done outside court sitting hours when the court staff and the court are available. Comments suggest that some court staff were reluctant participants at first, but became supportive once they understand why practising was important for the witness and their evidence.

All courts are different. The ushers are usually on lunch break and they are the only ones who can operate the live link equipment at many courts. I find these visits could be more effective if we only had to liaise with one service rather than two [Court Service and Witness Service]. Even with endless hours of planning they're [sic] court visit sometimes turns out to be a visual look around rather than an experiential learning (38:7)

I have always managed it - but it has sometimes taken a great deal of persuasion, quoting of documents with court managers etc. to set it up. Generally, feedback after it has actually happened is very good from the court staff who have supported it, once they have 'got it' (38:15)

I have found that in every case I have been involved that I have been unable to practise using the live link. We have been shown the court and live link room but always have been told that it is not possible to actually use the live link. (38:4)

## 10. Intermediaries and judges

The intermediary should encounter the trial judge at a Ground Rules Hearing (GRH). The 2013 Criminal Practice Directions for England and Wales state that a GRH is good practice<sup>38</sup> in all cases where there is a vulnerable witness or defendant:

‘3E.1 The judiciary is responsible for controlling questioning. Over-rigorous or repetitive cross-examination of a child or vulnerable witness should be stopped. Intervention by the judge, magistrates or intermediary (if any) is minimised if questioning, taking account of the individual's communication needs, is discussed in advance and ground rules are agreed and adhered to.

3E.2 Discussion of ground rules is required in all intermediary trials where they must be discussed between the judge or magistrates, advocates and intermediary before the witness gives evidence. The intermediary must be present but is not required to take the oath (the intermediary's declaration is made just before the witness gives evidence).’<sup>39</sup>

Questions 25 to 30 asked intermediaries about their experiences of GRHs. It was frequently cited by respondents that the *most effective* GRHs were those:

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<sup>38</sup> Criminal Practice Directions [2013] EWCA Crim 1631

<sup>39</sup> General matters 3E: Ground Rules Hearings to Plan the Questioning of a Vulnerable Witness or Defendant

- which took place in advance as a separate hearing and ‘not on the morning of the trial’ (25: 27);
- where the judge proactively took charge of the discussion involving the intermediary and counsel;
- where the judge understood the role of the intermediary and was supportive of it;
- where counsel went through their questions with the intermediary in advance;
- where the judge and counsel met the witness beforehand.

Ground rules took place one week prior to the court case at the invitation of the judge There was plenty of time to discuss the needs of the [witness] (25:7)

The Judge seemed to want the hearing to be a discussion, rather than a formality (25:15)

[The most effective GRHs are] Hearings held before the day of evidence (I often have to press for this) Hearings where both counsel and I had pre hearing discussions Hearings where I had prepared a summary of key topics to discuss hearings where the judge was proactive and understood the role of the RI Counsel and judge aware of [The Advocate’s Gateway<sup>40</sup>] and referred to its recommendations (25:19)

[M]ost effective when judge very bossy; when I present my recommendations as the judge should/counsel should/the intermediary should; when actual visual aids shared; when met 1:1 with defence counsel beforehand (25:3)

Trial with elderly very deaf witness. Judge and both counsel very supportive, including having a practice in court to establish where best they could stand while questioning so that she would best be able to see and hear them. ...Counsel also gave RI all his questions to suggest any changes... Judge [in another trial] very supportive of all RI suggestions... explained to defence counsel the necessity of my interventions as he strongly objected to my presence (25:9)

For two small children, witnesses (not relations) in the same trial, I was able to meet judge and counsel, to go through my recommendations, show the visual aids I had suggested, and agree how I would intervene. The cross examinations then proceeded well and I only had to intervene a few times (25:20)

The two best GRH were when the defence counsel in both cases went over their questions with me beforehand and then followed the rules. This is very good practice and was very effective (25:28)

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<sup>40</sup> theadvocatesgateway.org

The *least effective* were those the GRH was superficial:

One GRH was totally ineffective because the judge did not want to participate. He said the report was excellent and they would all follow the rules and he would not allow me to talk further about it. When I asked how he would like me to intervene, if it was necessary his response was: "As little as possible and only as a last resort"! If the prosecuting counsel had objected it would have been better, but he said nothing (26:28)

Hearings where they are very formal, often 'slotted in' when time is short on the first day of the trial. Some Judges do not welcome a 'discussion' and seem to want to just 'tick off' the fact that a ground rules hearing has happened by making a statement such as 'well we've all read the ground rules'. It can be difficult to turn this sort of hearing into a useful discussion of how to put the ground rules into practice. (26:15)

Intermediaries indicated<sup>41</sup> the most important matters which needed to be discussed at a GRH:

- i. The recommendations in the intermediary report/ going through the questioning recommendations<sup>42</sup>
- ii. When breaks should occur (for the vulnerable person) and how often they should occur
- iii. How and when the intermediary should intervene / get the judge's attention if there is a communication issue
- iv. How to introduce and use communication aids
- v. Strategies to keep the vulnerable person calm and engaged
- vi. The role of the intermediary
- vii. The relevant materials from The Advocate's Gateway
- viii. When the vulnerable person will practice with the video link (if used)
- ix. When the judge and counsel will meet the vulnerable witness
- x. The need for flexibility e.g. to have another GRH if the situation changes

One intermediary summed up GRHs as follows:

In my mind there are two kinds of GRHs 1. where the judge just skips through the recommendations and barristers play lip service to agreeing to them and 2. where there is a genuine discussion between all parties about the witness and the RI recommendations. So much hinges on the attitude of the judge and their directions to the barristers...I think one of the main things is where the judge and both barristers fully understand that the RI is there to assist all parties, and not there to protect or help the witness, and there is a genuine

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<sup>41</sup> Question 27

<sup>42</sup> 20 respondents said this was the most important thing to cover at the GRH

willingness to understand the difficulties of the witness and have read the relevant Advocates Gateway Toolkits! (25:22)

Most intermediaries experienced judges who ‘nearly always’ or ‘sometimes’ enforced the ground rules that they had set (21 out of 27 responses), whilst only three said judges ‘never’ did and only three said they ‘always’ did.<sup>43</sup> Some intermediaries wondered why this might be the case for example:

I am surprised that judges leave it to me to intervene when ground rules are broken, but they do (29:25)

I think the intention was their [sic] but they did not always recognise when there was a problem (29:7)

## 11. Intermediaries and advocates

One respondent cited working with advocates as her best experience:

...on the suggestion of the prosecution barrister, the defence willingly ran all the questions, to be put to a 7 year old, passed [sic] me. After reading the relevant toolkits over a weekend she then asked to go through some more questions. The cross examination was then only 10 minutes long. In another trial the defence asked for my advice as to how to phrase questions (49:22)

However even after a GRH, an advocate’s questioning might not be proper:

... ground rules meeting appeared very effective. During questioning defence barrister did not follow any of the ground rules. [T]agged, double negative, leading all allowed by judge. RI suggestions over ruled by judge, spoke to barrister who agreed ground rules not being followed but he never intervened or supported RI. Witness left court very distressed on day one. Next day went slightly better but RI still intervened frequently (26:7)

16 out of 28 respondents<sup>44</sup> said that advocates ‘sometimes’ abide by the ground rules, whereas two out of 28 respondents said advocates ‘always’ abided by the ground rules set by the judge. One respondent said:

Some tried really hard but the style recommended was outside their comfort zone and their training (28:7)

When an advocate broke a ground rule, intermediaries said it was not usual for opposing counsel to object. 15 out of 27 respondents said they ‘never’ did and 12 said they ‘sometimes’ did.

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<sup>43</sup> Question 29

<sup>44</sup> Question 28



This is rare in my experience, which is a pity, it makes such a difference if the opposing counsel stands up for the RI Ground rules (30:28)

In response to a question about the most effective special measures, one intermediary said:

Almost all difficulties have been because of counsel not planning questions carefully enough (32: 9)

One respondent said cross-examination raised this ethical dilemma:

I am concerned that ensuring that justice is served may be at the expense of the well-being of vulnerable young witnesses. We don't see the long term outcomes for children who have been cross examined and I wish I could be more sure that they are not sometimes being damaged by participating (47:25)

24 intermediaries responded to the question asking them to state one thing that they would change about cross-examination of vulnerable people.<sup>45</sup> By far the most common response was that cross-examination should be less adversarial/ hostile and questions should not be leading but aimed at getting to the truth. One respondent said:

Attitude to witness often dismissive and even hostile resulting in a very traumatic and dehumanising experience (45:12)

24 intermediaries identified the one thing that they would change in relation to vulnerable defendants. <sup>46</sup> By far the most common suggestion was to avoid delays getting cases to trial. Several also said that there should be wider and easier access to intermediaries for defendants.

I have assisted with defendants in other years. A greater understanding of the disabilities that defendants have which are often hidden, would make the situation in which defendants find themselves less traumatic (46:8)

## 12. Intermediaries' worst and best times

28 out of 33 said they were likely to be acting as an intermediary in a year's time, five were 'not sure' and no one said they were unlikely to be acting as an intermediary in twelve months.<sup>47</sup>

When asked what they *liked most*<sup>48</sup> about being an intermediary the words 'challenges'/'challenging' came up most often and the 'variety' of the work was also cited several times as well as finding the work they did rewarding and satisfying. 32

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<sup>45</sup> Question 45

<sup>46</sup> Question 46

<sup>47</sup> Question 50

<sup>48</sup> Question 51

intermediaries cited what they *liked least*<sup>49</sup> and a number of issues were raised: chasing people to get hold of them, chasing payment, juggling administration and report writing, working at the weekend, unpredictability of work scheduling, isolation and travelling long distances.

*Worst* moments being an intermediary included:

[T]oo many under fives who are sole witnesses to murder - seven in one year was too much (48:3)

A six year old witness was questioned for over three hours using language entirely inappropriate to any child (48:8)

Being asked into the witness box for ground rule hearing, the Judge not looking at me at all, stating to the court I am most reluctant to agree to the use of an RI, How much does it cost ? (48:12)

Getting a phone call from court when I was at a station on my way to an assessment to say that the court were waiting for me to arrive and no one had mentioned the trial date to me. [T]he police throughout the CPS were and touch and CPS thought police were. Very stressful experience! (48:13)

My 90 minute GRH followed by oppressive hostile cross examination of the two witnesses - with no attempt by judge or prosecutor to intervene (48:19)

Being in court with a witness who had allegedly been raped. Callous attitude of defence barrister who commented "oh we will have to get the tissue box out" while waiting for the witness to come in. Relentless and totally insensitive questioning of the witness, during which the judge did not intervene, and the prosecution did so only once. The witness turned to me and said, in amongst floods of tears "This is sick" and later "I feel dirty, I want a wash". And I could do nothing as the defence were not breaking any of the ground rules/recommendations (48:22)

Being told by a court official not to interrupt the barrister during cross examination whilst in video-link room with a child victim! (48:24)

*Best* moments included:

[S]itting in on a sentencing for two defendants who got 25+ years each; being one of a team of more than 30 police, social workers, foster carers, teachers who had got three very disturbed young children through their evidence; hearing the judge close to tears in his summing up (49:3)

[W]orking with a 15 year old girl who was selective mute and was able to disclose at [ABE] using visual props which I provided that she had been

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<sup>49</sup> Question 52

sexually assaulted. The OIC was convinced that it would not be possible to do this (49:4)

Yesterday when the judge came to see the witness (adult with Down syndrome) before trial, he was very relaxed, made her giggle at his jokes and told her there were no rude words she couldn't say. She then replied "Can I say F\*\*\*" and he replied "Of course, you can say f\*\*\* as often as you want!" at the end of her XX she clambered up to the bench to shake his hand and thanked him for making her feel so much better (49:13)

Finding the 97 year old woman's teeth in the bathroom when I went to use the toilet. Also, some very positive feedback from working with police officers (49:14)

Assisting a defendant with a learning disability and visual impairment in a rape trial (49:27)

[Receiving] a Commendation for 'professionalism, dedication and support to a vulnerable victim' from [the] Detective Chief Superintendent (49:31)

### **13. Analysis and recommendations**

#### **(i) Police requests for intermediaries**

Encouragingly most referrals are made prior to the ABE interview of the vulnerable prosecution witness, but a significant proportion are not. The majority consensus is that receiving a referral post ABE has disadvantages; a witness may have struggled to communicate their initial account to the police and may not have had their evidence video recorded for the court and late referrals create time constraints for the intermediary. The absence of an intermediary at interview may also be relied on to oppose the use of an intermediary at court.

**Recommendation One: Professionals to continue to raise police awareness of indicators of vulnerability<sup>50</sup>, the intermediary role and the importance of early special measures discussions between police and the CPS.**

**Recommendation Two: The Advocate's Gateway toolkit 'Identifying Vulnerability in Witnesses and Defendants' (July 2014) and other theadvocatesgateway.org materials to be incorporated into police and CPS training.**

#### **(ii) Witness familiarisation visits**

An important aspect of trial preparation is the court familiarisation visit. The Witness Service can organise such a visit and the intermediary, where one is engaged, would normally also attend. This visit is an entitlement for victims under their Code.<sup>51</sup> Practising with the live-link, is also an entitlement for child victims<sup>52</sup> who the code says 'should see the court room and practice using Special Measures equipment like video links or screens around the witness box depending on what the court has ordered. Where possible, you will get to meet the staff who will help you on the day.'<sup>53</sup>

There is no obvious reason why this is only an entitlement for child witnesses. Practising with the technology should be an entitlement for *all* vulnerable witnesses and defendants.

Intermediaries have faced difficulties when trying to ensure that the vulnerable witness practises using the court equipment which creates for most a new and alien

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<sup>50</sup> For a summary of guidance including police guidance on identifying vulnerability <http://www.theadvocatesgateway.org/images/10identifyingvulnerabilityinwitnessesanddefendants100714.pdf> <http://www.theadvocatesgateway.org/intermediaries>

<sup>51</sup> Code of Practice for Victims of Crime (MoJ 2013) at para 2.15 (adult witnesses), p 19 and 1.22, p 50 (child witnesses).

<sup>52</sup> Ibid

<sup>53</sup> Ibid at p 51

way of communicating in what is already an alien environment with alien customs and practices. Survey results suggest that some court staff would benefit from more information about the purpose and importance of the witness and intermediary practising with the technology at the familiarisation visit.

**Recommendation Three: Government guidance on vulnerable witnesses to include an entitlement for all vulnerable people to familiarise themselves with the venue and equipment (if any) that they will use to give their evidence.**

**Recommendation Four: Court staff training to include awareness of the role of the intermediary and the importance of the opportunity for the vulnerable person to practice with the equipment (even if there is no intermediary).**

**(iii) Advocates and judges**

Extracts from The Criminal Procedure Rules 2014:

*Rule 3.9 (3)*

*‘In order to prepare for the trial, the court must take every reasonable step—*

*(a) to encourage and to facilitate the attendance of witnesses when they are needed; and*

*(b) to facilitate the participation of any person, including the defendant.’*

*Rule 3.9 (6)*

*‘Facilitating the participation of any person includes giving directions for the appropriate treatment and questioning of a witness or the defendant, especially where the court directs that such questioning is to be conducted through an intermediary.’*

In addition to the Criminal Procedure Rules, the Criminal Practice Directions of 2013 place emphasis on the importance of GRHs. The practice requirement for there to be a GRH in an intermediary case has existed since 2010. The issue now is not so much that it should happen in an intermediary case but *how* it should be conducted. As one survey respondent said there seem to be ‘two types’ of GRHs, those that are proper and those that are perfunctory. There needs to be greater consistency. GRHs ought to take place before the trial and be in the form of a discussion between the intermediary, judge and the advocates involved in the trial.<sup>54</sup> Judges should also use the GRH as an opportunity to check that the advocates have sought the advice of the intermediary to ensure their planned questions are framed in a way that is likely to

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<sup>54</sup> For a discussion on the development of GRHs and an updated GRH checklist see Cooper et al (2014) ‘Getting to Grips with Ground Rules Hearings’ (forthcoming).

achieve the best quality evidence from the vulnerable person. The author has observed that this has now become standard practice in ‘section 28’ pilot cases.

There may well be a correlation between the way a GRH is carried out and the advocate’s willingness (or not) to abide by the ground rules established. If the judge does not treat the GRH seriously, will the ground rules be clear and firm?

**Recommendation Five: Advocate and judicial training further to address best practice in conducting GRHs including the effective participation of intermediaries when assisting advocates to plan their questions and during GRHs.**

**Recommendation Six: The Criminal Procedure Rule Committee to consider a new rule that in all cases where there is an intermediary the advocate should discuss with the intermediary the questions they propose to put to the vulnerable witness in order to reach an agreement as to how to achieve the best quality evidence from the witness. The areas of agreement/ disagreement would then be discussed at the GRH and the judge would make such directions as are necessary for a fair trial.**

Waiting times continue to present difficulties for vulnerable witnesses. Through an intermediary may be on hand to minimise the anxiety and other issues that result, more could be done. It is recognised that listing for trial and timetabling of witnesses is challenging. In February 2012 in the ‘Joint inspection report on the experience of young victims and witnesses in the criminal justice system’<sup>55</sup> identified as good practice at Birmingham Crown Court that ‘the court clerk would remind the judge when a young witness had been waiting for between 60 and 90 minutes’.<sup>56</sup> The Witness Service would send a message to the clerk using the ‘Xhibit instant messaging system,’ so that the judge could take a view on how soon the witness would be required or whether to release the witness for the time being.

**Recommendation Seven: Court clerks in every court to establish a protocol with the Witness Service and intermediaries so that they are messaged and can inform the judge when a vulnerable witness has been waiting more than 60 minutes to give evidence.**

### **‘Section 28’ - Pre-recorded cross-examination and re-examination**

After this survey was conducted section 28 pre recordings started to take place<sup>57</sup>, some where the witness has an intermediary and some where the witness has not. Rosemary Wyatt (MoJ RI) has been collecting feedback from intermediaries who

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<sup>55</sup> HMCPSI and HMIC (2012)

<sup>56</sup> Ibid at p 88

<sup>57</sup> As part of the MoJ pilot, the first ever pilot for pre-recording cross-examination in England and Wales, section 28 hearings started taking place in April 2014.

have been involved. Intermediaries are well placed to assess the impact on witnesses and as this survey shows they foresee many possible benefits but possible disadvantages too.

**Recommendation Eight: The MoJ to capture and analyse feedback from intermediaries involved in section 28 pilot scheme cases.**

**(iv) Growing demand**

The findings show that, while not being allocated in equal measure to vulnerable defendants, the frequency of intermediaries being employed to support vulnerable defendants is significant as is the role they play in the trial usually being more than simply for testimony. It is likely that the demand for intermediaries will continue to grow as awareness of vulnerability and the benefits of an intermediary grow.

Latest information from the MoJ<sup>58</sup> regarding RIs in England and Wales is that in June 2014 there were (from police and the CPS) in total 263 requests for an intermediary and there are 53 RIs who are currently active i.e. available to take new referrals. A further 24 MOJ RIs are being trained in November 2014 and 12 are currently being trained in Northern Ireland for the DoJ.

**Recommendation Nine: The MoJ urgently to conduct a review of the demand and supply of intermediaries in the justice system.**

**14. Conclusion**

Intermediaries for vulnerable people in the justice system are in high demand because of the benefits they bring in ascertaining the best evidence. The intermediary role is both challenging and rewarding. Since the first RIs were trained in 2003 and the scheme became operational in 2004 the nature and scope of the role has continued to evolve. Intermediaries are a precious resource and the role has 'highs', namely the reward of making a positive and significant difference in the lives of the vulnerable, but too often there are 'lows'. The 'lows' occur when the role is not well understood and other professionals do not adequately engage with them and consider their advice. The nine recommendations in this report aim to address this.

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<sup>58</sup> This information came from Nick Peel to the author in a telephone conversation on 21 July 2014.

## Appendix 1

The questionnaire has been duplicated below with questions in bold. Results which could be expressed as numbers are also included beneath the questions to which they relate.

### Responses to Questions

- 1. I confirm that I have read and understood the introductory information above and I have been informed of the purpose, risks and benefits of taking part. I understand what my involvement will entail and any questions have been answered to my satisfaction I understand that my participation is entirely voluntary and that I can withdraw at any time without prejudice I understand that all information obtained will be confidential. I agree that research data gathered for the study may be published provided that I cannot be identified as a survey participant. Contact information has been provided should I (a) wish to seek further information from the investigator at any time for purposes of clarification (b) wish to make a complaint. I confirm that I will not be supplying information that identifies any individuals or cases. The information I supply will be anonymous.**

- Yes 41
- No answer 1
- Yes but didn't answer the rest of the questions 2

38 responses were analysed and where the following results do not add up to 38 it is because one or more respondent left that particular answer blank.

**2. What is your professional background?**

- Speech and Language Therapist 27
- Psychologist 3
- Teacher 2
- Social Worker 2
- Intermediary 2
- Nurse/ psychotherapist 1
- Occupational Therapist 1

**3. Which of the following best describes your primary occupation at present?**

- Intermediary 16
- Speech and Language Therapist 12
- Teacher/ Advisory Teacher / Teaching Assistant 3
- Psychologist 2



- Social Worker 2
- Occupational therapist 1
- Community officer/Nursery Manager 1
- Interviewer / Intermediary 1

**4. What is your gender?**

- Female 36
- Male 2

**5. What is your age?**

- 25 to 34 2
- 35 to 44 10
- 45 to 54 9
- 55 to 64 13
- 65 to 74 4

**6. In what year did you start practising as an intermediary? Please state as YYYY e.g. 2008**

- 2003 1
- 2005 1
- 2006 1
- 2007 11
- 2008 3
- 2009 5
- 2010 3
- 2011 6
- 2012 2
- 2013 5

**7. Which of the following apply to you at present? (please tick all that apply)**

- I offer my services as a Ministry of Justice Registered Intermediary (England and Wales) 30
- I offer my services as a non-registered intermediary (e.g. for defendants in criminal cases in England and Wales or for witnesses in family cases) 12
- I offer my services as a Department of Justice Registered Intermediary (Northern Ireland) 5
- I offer my services as a Ministry of Justice Registered Intermediary (England and Wales) AND I offer my services as a non-registered

intermediary (e.g. for defendants in criminal cases in England and Wales or for witnesses in family cases) 9

No one indicated they were a non-practising intermediary.

**8. For how many months in total were you practising as an intermediary during the twelve months from 1<sup>st</sup> September 2012 to 31<sup>st</sup> August 2013 inclusive? (Please round it up or down to the nearest whole number of months so for example two months ten days would be '2' or eight months three weeks would be '9')**

- 12 months 11
- 11months 7
- 10 months 6
- 9 months 1
- 8 months 1
- 6 months 2
- 5 months 1
- 4 months 3
- 3 months 3
- 1 month 1

**9. From September 2012 to August 2013 inclusive how many witness (including defence witness)/ victim/ defendant referrals did you accept in total?**

36 responses were giving ranging from 56 to 1. The total was 688 and the numbers of responses 36 making an average of 19.111.

**10. From September 2012 to August 2013 inclusive how many referrals for a prosecution witness/ victim did you accept PRIOR to the ABE interview?**

35 responses were given ranging from 46 to 0. The total was 411 making an average of 11.743.

**11. From September 2012 to August 2013 inclusive how many referrals for a prosecution witness/ victim did you accept for an assessment AFTER the ABE interview but prior to trial?**

36 responses were given ranging from 20 to 0. The total was 181 making an average of 5.028.

**12. From September 2012 to August 2013 IF you accepted any referrals AFTER the ABE but prior to trial, what practical difference did this make, if any, to your work as an intermediary?**

23 responded. The summary results:

No difference/other	3
Easier	3
More difficult for witness or intermediary	17

**13. For the period from September 2012 to August 2013 inclusive please give the number of referrals you accepted broken down by the categories (witness age/ type/ court) below. (Child = under 18 at the time you accepted the referral).**

- Child Prosecution witness/victim respondent 318 in total from 26
- Adult Prosecution witness/ victim respondents 293 in total from 27
- Child defence witness (not defendant) 12 in total from 1 respondent
- Adult defence witness (not defendant) 1 in total from 1 respondent
- Child Defendant 12 in total from 4 respondents
- Adult Defendant 68 from 10 respondents
- Child in Family Court 6 from 3 respondents
- Adult in Family Court 4 from 1 respondent

**14. If you entered the figure 'other' above please give details here including brief description of the type of cases and the number of witness referrals.**

- 1 responses specified 'Other' and added:
  - One client for a Mental Health Tribunal. Supported him throughout the hearing and while he was stating his wishes

**15. If you entered a figure for accepting referrals for defence witnesses please describe how this compared to your intermediary work with prosecution witness/victims or with defendants.**

[See report]

**16. If you entered a figure for accepting referrals for family court witness, please describe how this compared to your intermediary work with prosecution witnesses/ victims or with defendants.**

[See report]

**17. If you accepted referrals in a family case who paid for your services?**

- 3 responses
  - It would have been the court I think
  - funds taken from legal aid and paid to me by the city council
  - LAA, court, local authority

**18. Did you return any referrals?**

Yes 10

No 24

No responses 4

**19. Total number of trials (including family court/other hearings) did you act as intermediary?**

181 trials, 30 respondents, making an average of 6.2 trials.

**20. Between September 2012 and August 2013 inclusive, if you have acted for a DEFENDANT/S please indicate the number of trials in which you were engaged to assist during the defendant's oral testimony only or to assist during other part/s of the trial as well as oral testimony (if given).**

- Number of trials when I assisted a defendant for their oral testimony but NOT for any other part/s of the trial  
1 from 1 respondent
- Number of trials when I assisted a defendant for other parts of the trial as well as their oral testimony (if any)  
63 from 10 respondents

**21. In the period September 2012 to August 2013 IF you acted for a PROSECUTION WITNESS/ES or a VICTIM/S (criminal case) which statement best describes the frequency of Ground Rules Hearings?**

Response	No. Responses
There was always a Ground Rules Hearing	18
There was nearly always a Ground Rules Hearing	7
There was sometimes a Ground Rules Hearing	1
There was never a Ground Rules Hearing	

**22. In the period September 2012 to August 2013 IF you acted for a DEFENDANT/S (criminal case) which statement best describes the frequency of Ground Rules Hearings?**

Response	No. Responses
There was always a Ground Rules Hearing	6
There was nearly always a Ground Rules Hearing	2
There was sometimes a Ground Rules Hearing	2
There was never a Ground Rules Hearing	1

**23. In the period September 2012 to August 2013 IF you acted for a DEFENCE WITNESS/ES (criminal case) which statement best describes the frequency of Ground Rules Hearings?**

Response	No. Responses
There was always a Ground Rules Hearing	1
There was nearly always a Ground Rules Hearing	
There was sometimes a Ground Rules Hearing	1
There was never a Ground Rules Hearing	

**24. In the period September 2012 to August 2013 IF you acted for a WITNESS/ES in a FAMILY case which statement best describes the frequency of Ground Rules Hearings?**

Response	No. Responses
There was always a Ground Rules Hearing	1
There was nearly always a Ground Rules Hearing	
There was sometimes a Ground Rules Hearing	1
There was never a Ground Rules Hearing	

**25. In the period September 2012 to August 2013, considering the Ground Rules Hearing/s you have been involved in (if any), which hearings were the MOST EFFECTIVE and why? If possible please include examples of good practice.**

[See report]

- 26. In the period September 2012 to August 2013, considering the Ground Rules Hearings you have been involved in (if any), which hearings were the LEAST EFFECTIVE and why? If possible please include examples of poor practice**

[See report]

- 27. What are the three most important things to cover at a Ground Rules Hearing?**

[See report]

- 28. From September 2012 to August 2013 inclusive in your experience (considering all your cases where there were ground rules in place) did advocates abide by the ground rules for cross-examination that had been set by the judge?**

<b>Response</b>	always	Nearly always	sometimes	never	No response
<b>No of responses</b>	2	10	16	0	10

- 29. From September 2012 to August 2013 inclusive in your experience (considering all your cases where there were ground rules in place) did trial judges enforce the ground rules for cross-examination that had been set?**

<b>Response</b>	always	Nearly always	sometimes	never	No response
<b>No of responses</b>	3	10	11	3	11

- 30. From September 2012 to August 2013 inclusive in your experience (considering all your cases where there were ground rules in place) did opposing counsel object if a ground rule for cross-examination that had been set by the judge was breached by the cross-examiner?**

<b>Response</b>	always	Nearly always	sometimes	never	No response
<b>No of responses</b>	0	0	12	15	11

**31. From September 2012 to August 2013 inclusive in your experience which other special measures were USUALLY also granted to the witnesses/victims you worked with (i.e. in addition to the intermediary special measure)? (please tick all that apply)**

Response	Number of responses
None	0
Witness supporter	8
Screening the witness	16
Giving evidence from outside the courtroom via live video link	26
Giving evidence in private (public gallery is cleared)	2
Removal of wigs and/or gowns by judges and lawyers	21
Evidence in chief by way of video recorded interview	24
Aids to communication (e.g. interpreter, pictures, models or other communication aid)	23

**32. From September 2012 to August 2013 inclusive in your experience rate the following special measures according to how effective they were in helping the victims/ witnesses give their best evidence?**

	Always effective	Nearly always effective	Sometimes effective	Never effective	This was not used with any of the witnesses/victims I worked with	I don't know
Witness Supporter	1	3	3	0	12	1
Screening the witness	6	7	1	0	6	1
Giving evidence from outside the courtroom via live video link	13	9	3	0	2	1
Giving evidence in private (public gallery is cleared)	2	1	0	0	12	1
Removal of wigs and/or gowns by judges and lawyers	10	6	2	1	5	2
Evidence in chief by way of video recorded interview	18	5	2	0	2	0
Use of an intermediary to assist in communication	20	8	1	0	0	0
Aids to communication (e.g. interpreter, pictures, models or other communication aid)	10	11	2	0	3	0

**33. From September 2012 to August 2013 inclusive (for the prosecution witnesses/ victims you worked with) did the police adequately assess the special measures needs of the witnesses/ victims?**

Response	No of Responses
Always	4
Nearly always	12
Sometimes	15
Never	1
I don't know	0

**34. From September 2012 to August 2013 inclusive (for the prosecution witnesses/ victims you worked with) did the CPS adequately assess the special measures needs of the witnesses/ victims?**

Response	No of Responses
Always	3
Nearly always	12
Sometimes	8
Never	0
I don't know	7

**35. Currently which toolkit (if any) from The Advocate's Gateway do you access most often?**

Response	No of Responses
1a) Case management in young and other vulnerable witness cases	3
1b) Case management in young and other vulnerable witness cases (summary, without sources and hyperlinks)	1
1c) Ground Rules Hearing Planning to question someone with communication needs	6
2a) General principles from research: planning to question a vulnerable person or someone with communication needs	0
2b) General principles from research: planning to question a vulnerable person or someone with communication needs (summary)	0
3 Planning to question someone with an autism spectrum disorder including Asperger syndrome	3
4 Planning to question someone with a learning disability	3
5 Planning to question someone with 'hidden disabilities': specific language impairment,	1



dyslexia, dyspraxia, dyscalculia and attention deficit disorder	
6 Planning to question a child or young person	5
7 Additional factors concerning children under 7 (or functioning at a very young age)	1
8 Effective participation of young defendants	0
I am not sure which I access most often	6
I use them all equally	5
I don't access the toolkits on The Advocate's Gateway	1

**36. What, if anything, would like to see covered by/ in a toolkit that is not already there on The Advocate's Gateway?**

- Mental Health 6
- Questioning using Alternative Augmentative Communication/props 2
- Working with deaf people 1
- Remote live link 1
- Behavioural Difficulties 1
- Questioning through interpreters 1
- Dementia 1
- More information on the impact of anxiety on communication skills 1
- Something about communication between all parties 1

**37. Currently when you write your court reports do you mention in them The Advocate's Gateway website/ the toolkits on The Advocate's Gateway?**

Response	No of Responses
Always	22
Nearly always	6
Sometimes	0
Never	6

**38. Between September 2012 and August 2013 inclusive, during vulnerable witness/ victim court familiarisation did you ever encounter difficulties when practising/ trying to practice using the live link with the witness/ victim?**

Yes	No
17	8

**39. Between September 2012 and August 2013 inclusive where you worked as an intermediary at trial for a prosecution witness/ victim, how many witnesses were required to watch their ABE recording at the same time as the jury?**

63 in total from 19 respondents  
0 from 7 respondents

**40. Between September 2012 and August 2013 inclusive, of the witnesses/ victims you have worked with, how many were kept waiting at court to give evidence for more than an hour before they began their evidence?**

Total number kept waiting to give evidence for more than an hour:

109 witnesses from 26 respondents

0 witnesses from 2 respondents

**41. Between September 2012 and August 2013 inclusive IF you worked with witnesses/ victims kept waiting for more than an hour please describe the impact (if any) this had on them.**

[See report]

**42. Between September 2012 and August 2013 inclusive did you ever assist when REMOTE live link was used? If so please briefly describe how it was used.**

yes	no
9	19

**43. The Ministry of Justice plans to pilot the use of pre-recorded cross-examination for vulnerable witnesses. In your opinion what will be the ADVANTAGES (if any) of pre-recorded cross-examination for vulnerable witnesses?**

[See report]

**44. In your opinion what will be the DISADVANTAGES (if any) of pre-recorded cross-examination for vulnerable witnesses?**

[See report]

**45. If you could change one thing about the cross - examination of vulnerable witnesses or defendants what would you change?**

[See report]

**46. If you could change one thing about the criminal justice system and how it operates in relation to vulnerable defendants what would you change?**

[See report]

**47. Please describe any ethical dilemma/s that you have faced at any time in your role as an intermediary.**

[See report]

**48. During the period September 2012 to August 2013 what was your WORST experience as an intermediary?**

[See report]

**49. During the period September 2012 to August 2013 what was your BEST experience as an intermediary?**

[See report]

**50. Are you likely to be acting as an intermediary in twelve months' time?**

Yes	No	Not sure
28	0	5

**51. What do you LIKE MOST about being an intermediary?**

[See report]

**52. What do you LIKE LEAST about being an intermediary?**

[See report]

**53. Is there anything else you would like to suggest to improve the justice system?**

[See report]

**54. If you wish to leave your name and email contact, please do so here.**

21 intermediaries entered their email address.

**55. Thank you very much for responding to this intermediary survey. The report of the results will be published as soon as possible. Please contact Prof. Penny Cooper by email at [p.cooper@kingston.ac.uk](mailto:p.cooper@kingston.ac.uk) for further information. If you would like to leave feedback on this survey, please do so here.**