

Royal College of Speech and Language Therapists Registered Intermediaries briefing, England and Wales August 2012

Who are intermediaries and what do they do?

An intermediary is someone who the court approves to assist the witnesses to communicate their best evidence in criminal investigations and at trial. The intermediary is allowed to explain the questions or answers so far as is necessary to enable them to be understood by the witness or the questioner but without changing the substance of the evidence. They can also provide communication assistance in the investigation stage.

Who qualifies for the use of an intermediary?

In criminal proceedings, vulnerable witnesses may apply for a range of 'special measures' introduced through legislation in the Youth Justice & Criminal Evidence Act (YJCEA) 1999, including examination through an intermediary. The definition of a vulnerable witness¹ covers: children who are under the age of 18²; those who suffer from a mental disorder or significant impairment of intelligence and social functioning, those with a physical disorder or condition that is likely to affect their evidence. Courts must approve the use of an intermediary on a case-by-case basis through a special measures application being submitted to them.

Why are intermediaries necessary?

Some vulnerable witnesses (including victims) need assistance with communication and understanding in order to give their best evidence - intermediaries can assist them in communicating during an investigation and at trial.

What is a Registered Intermediary?

The Witness Intermediary Scheme (WIS) was set up by the Ministry of Justice's Better Trials Unit to implement the intermediary special measure and through the WIS operates a national database, the *Intermediary Register*, of Registered Intermediaries, recruited, selected, trained and accredited by the Ministry of Justice, to assist prosecution and defence witnesses. Since September 2008, the WIS, and Registered Intermediaries operating within it, has been available in all 43 police forces and CPS areas in England and Wales.

How do I become a Registered Intermediary?

The national database of Registered Intermediaries covers a wide range of communication skill areas. To become a Registered Intermediary an applicant must demonstrate that they have the competencies required of the role. The competencies include skills in facilitating communication and establishing credibility in the criminal justice system. These competencies are assessed at sift and interviews by expert panels and on an accreditation training course. Successfully passing this course, and meeting specified administrative requirements, will result in the individual being added to the national database and being able to commence practising in the role of a Registered Intermediary.

¹ As defined in the YJCEA 1999.

² Raised to the age of 18 years through the implementation of legislation in the Coroners and Justice Act 2009.

Can courts be assured of the professionalism of Registered Intermediaries?

All Registered Intermediaries will have successfully completed a rigorous assessment and accreditation training process and understand the responsibilities of their role. Registered Intermediaries must comply with a Code of Practice and a Code of Ethics which are overseen by the WIS's Intermediaries Registration Board. Quality assurance and regulation and monitoring of the professional standards of Registered Intermediaries is undertaken the WIS's Quality Assurance Board. Membership of the this Board comprises of representatives of professional and vocational organisations (including the Royal College of Speech and Language Therapists) and subject matter experts from the Crown Prosecution Service and the Serious Organised Crime Agency.

Does a person need to be a registered speech and language therapist to become a Registered Intermediary?

No. Registration with specific professions is not a pre-condition of becoming a Registered Intermediary. Current Registered Intermediaries come from a wide background of professional roles and occupations including speech and language therapy, occupational therapy, psychology, social work, teaching and nursing, and bring the skills and experience gained in these roles to their work in this role.

What is the registration process?

The registration process is competence based and is open to a wide range of people to apply on the basis of their being able to provide evidence to demonstrate appropriate individual skills and experience. Where they are relevant, qualifications, training programmes, membership of professional bodies and other experience will all be taken into account. Ultimately, Registered Intermediaries are sanctioned by the courts and their personal expertise and conduct may be open to legal challenge. Successful candidates for registration will have demonstrated that they are experts at facilitating communication with people in the way envisaged by the YJCEA 1999 legislation and that they have the ability to operate effectively as Registered Intermediaries in criminal proceedings.

Will the Registered Intermediary be on the side of the prosecution or the defence?

Although initial contact is likely to be with the police or another justice agency, the duty of the Registered Intermediary is not to act on behalf of the prosecution, defence or even the witness. Registered Intermediaries are neutral and their responsibility is to the court.

What about the defendant?

Initially defendants were specifically excluded from special measures under the YJCEA 1999. The statutory criteria by which a defendant may take advantage of special measures appears in section 47 of the Police and Justice Act 2006 which empowers a court to allow a defendant to give oral evidence through a live link:

- Where the accused is aged under 18 and his ability to participate effectively in the proceedings as a witness giving oral evidence in court is compromised by his level of intellectual ability or social functioning and use of the live link would enable him to participate more effectively in the proceedings as a witness (whether by improving the quality of his evidence or otherwise).

- Where the accused is 18 or over and he suffers from a mental disorder (within the meaning of the Mental Health Act 1983) or otherwise has a significant impairment of intelligence and social functioning, he is for that reason unable to participate effectively in the proceedings as a witness giving oral evidence in court and use of a live link would enable him to participate more effectively in the proceedings as a witness (whether by improving the quality of his evidence or otherwise).

The statutory criteria which empower a court to allow the examination of the defendant to be conducted through an intermediary (section 104 of the Coroners and Justice Act 2009, **not yet implemented**) are:

- Where the accused is aged under 18 when the application is made the condition is that the accused's ability to participate effectively in the proceedings as a witness giving oral evidence in court is compromised by the accused's level of intellectual ability or social functioning.
- Where the accused has attained the age of 18 when the application is made the conditions are that (a) the accused suffers from a mental disorder (within the meaning of the Mental Health Act 1983) or otherwise has a significant impairment of intelligence and social function, and (b) the accused is for that reason unable to participate effectively in the proceedings as a witness giving oral evidence in court.

However, Ministers have deferred implementation in order to enable the issues involved in doing so to be considered and addressed. These include the number and supply of Registered Intermediaries and the administrative and organisational arrangements for the provision of a Registered Intermediary matching service (to defendants).

Should defence counsel require an intermediary they should liaise with the local court concerned as guidance has been provided to Her Majesty's Courts & Tribunals Service staff at an operational level regarding appropriate procedures to follow.

Who should I contact for further information?

Query	Contact
<ul style="list-style-type: none"> • SLTs interested in becoming a Registered Intermediary. • Expressions of interest regarding Registered Intermediaries and the Witness Intermediary Scheme. • Management of the Witness Intermediary Scheme. 	Jason Connolly Victims and Witnesses Unit Ministry of Justice London, SW1H 9AJ jason.connolly@justice.gsi.gov.uk
<ul style="list-style-type: none"> • General policy queries 	Claire Moser, RCSLT Policy Officer Claire.moser@rcslt.org
<ul style="list-style-type: none"> • RCSLT and SLT membership queries 	RCSLT information and membership team 020 7378 3000