



ACPO Position Statement:

The Effective use of Witness Intermediaries in Investigative Interviews

**National Investigative Interviewing
Strategic Steering Group (NISSG)**

Introduction

Over the last 4 years the use of Registered Intermediaries (RIs) during investigations and during trials has become an established practice. The purpose of this paper is to outline the practical use of intermediaries during investigative interviews.

Background

The use of an intermediary is one of the special measures provided for by Part 2 Youth Justice and Criminal Evidence 1999 (YJCEA). Their use is limited to vulnerable witnesses as defined in the legislation. The Section 16 YJCEA definition of vulnerable witness includes children under 18 and adults with learning disabilities, mental health issues or a physical disorder that has an impact on their ability to communicate. As with the other special measures, the provision only applies where it is likely to maximise the quality of the witness' evidence. The use of intermediaries does not extend to witnesses in fear or distress ('intimidated' witnesses) as defined in Section 17 YJCEA.

RIs are professional people who have the skills to communicate with vulnerable witnesses. The majority of RIs are Speech and Language Therapists but the register also includes psychologists, occupational therapists, play therapists, advocates, social workers, nurses and teachers. RIs are selected by the Ministry of Justice, attend an assessed course covering their role and the use of their skills in the criminal justice system and then registered with a requirement to demonstrate continuous professional development on an annual basis.

RIs are viewed as independent communication specialists in the criminal justice system whose only allegiance is to the court, in this sense they may be regarded as 'officers of the court' in the event that the case proceeds to trial. Their independence is such that they are not usually considered to be witnesses and should only be asked to provide a witness statement in exceptional circumstances¹.

¹ Intermediaries usually provide reports as outlined below, rather than witness statements.

RIs follow a set of procedures set down by the Ministry of Justice and detailed in the Intermediary Procedural Manual. A copy of this document is available at:

http://www.cps.gov.uk/publications/docs/RI_ProceduralGuidanceManual.pdf

The ACPO Position

RIs should be used to assist communication in an investigative interview where the communication needs of a vulnerable witness merit it. The process involved in using a RI is as follows:

1. The services of a RI can be obtained by contacting the SOCA Specialist Operations Centre (SOC) at Wyboston on 0845 000 5463 or soc@soca.pnn.police.uk.
2. The SOC will try to identify a RI with the skills needed to facilitate communication with the witness and inform the person who made the request of the outcome of their endeavours.
3. The RI identified by the SOC will then contact the interviewer or other designated point of contact to arrange for the witness to be assessed. The interviewer or other designated member of the investigative team should be present during the assessment for two reasons: to begin the process if rapport building and to corroborate and, if necessary, act upon any unsolicited comments from the witness that may be of investigative or evidential relevance. It will rarely be appropriate to conduct an interview straight after an assessment because the witness is likely to be fatigued.
4. The interviewer should then plan the interview, involving the RI at an appropriate point in the planning process.
5. The interview takes place in the presence of the RI. In most instances, the interviewer will communicate directly with the witness and the RI will only intervene when it appears to be necessary to do so (e.g. where the interviewer inadvertently asks a question that the witness is unlikely to understand). On some occasions, notably where alternative

communication systems such as signing are used, the RI's role may be more akin to than of an interpreter with the interviewer communicating with the witness through them.

6. The RI provides a written report of the witness's communication needs in support of an application for special measures in court if necessary.

Access to the SOC database that contains the register of intermediaries is only available during normal office hours on weekdays. During these hours, efforts should always be made to secure the services of an RI where the communication needs of a vulnerable witness seem to merit it. Interviewers should, however, be aware that requests made at short notice are very difficult to accommodate and can only be met when an RI happens to be available. Therefore they should only be made when absolutely operationally critical. In circumstances where it is essential that an interview takes place at short notice and it is not possible to secure the services of an RI consideration should be given to either limiting any dialogue with the witness to the initial contact conditions described in paragraphs 2.4 to 2.6 of *Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses and Guidance on using Special Measures* (Ministry of Justice 2011) and then conducting a more substantive interview with the assistance of an RI at a later date or making use of an unregistered intermediary as referred to in paragraph 2.199 of *Achieving Best Evidence*. In addition, advice on interviews with vulnerable witnesses is always available from the National Vulnerable Witness Adviser and the National Interview Adviser via the SOC during office hours or the on call facility outside those hours.

In circumstances where it is not thought that the witness has the communication skills needed to participate in an investigative interview or where it is believed that only a close relative of the witness has the skills needed to facilitate communication with them, an RI should still be called to conduct an assessment unless a clear professional opinion to the effect that such an assessment is unnecessary has been expressed by someone who knows the witness well.

It is important to note that intermediaries deal solely with the communication issues surrounding a witness. They should not be regarded as 'expert witnesses' in respect of matters concerning the witness's cognitive functioning. If evidence is required in respect of these issues a report from an expert witness should be commissioned.²

Acknowledgement

This position statement was prepared by Dr. Kevin Smith, the National Vulnerable Witness Adviser.

In the event of any queries about this position statement please contact the Specialist Operations Centre at soc@soca.pnn.police.uk, Dr. Kevin Smith at kev.smith@soca.pnn.police.uk or the National Interview Adviser, Gary Shaw at gary.shaw@soca.pnn.police.uk.

² The expert database at the Specialist Operations Centre (0845 000 5463) can assist in identifying an expert if necessary.