

IMPROVING VULNERABLE WITNESS EVIDENCE

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INFORMATION SESSION
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CROSS-EXAMINATION

- It is how witness evidence is tested in England & Wales and many other jurisdictions who have a similar justice system (Australia, Canada, United States, New Zealand, etc.)
- Witnesses are expected to be available to answer questions
- Many witnesses describe the experience of cross-examination negatively
- Lawyers are taught to *tell the witness*, not to *ask the witness*
- An alternative version of events is usually put to the witness
- For example, in the format of a statement then a question, 'You were driving too fast, weren't you?'

BACKGROUND TO WITNESS INTERMEDIARIES

- In England & Wales following the Youth Justice and Criminal Evidence Act 1999, section 29
- For witnesses who are vulnerable due to age or incapacity, for example learning disability, autism, stroke etc.
- Intermediaries identify communication needs and abilities of the witness
- Improve the quality of vulnerable witness evidence by enhancing communication
- At police interviews
- At court
- Intermediaries advise professionals and intervene if necessary

LORD JUDGE (2011)

- 'Intermediaries do not interfere with the process of cross-examination. They are not supporters of the witness. They are neutral and independent, offering assistance to the court...Intermediaries perform a valuable function which it is not open to the judge to perform without, at any rate, giving the appearance, if the judge acts entirely on his or her own initiative, of partiality.'

SUCCESSFUL TRACK RECORD

- Creatures of statute
- 2003 England and Wales - first intermediaries trained
- 2012 Northern Ireland
- 2016 NSW, Australia
- 2017 Royal Commission, Australia
- 2018 Victoria, Australia
- 2019 ACT, Australia
- 2020....?

SAFEGUARDS

- Panel of those with appropriate qualifications
- Further trained and assessed before being admitted to panel
- Referral matched (if suitable intermediary available)
- Intermediary is an 'officer of the court' and must act impartially
- Process is transparent and '*never alone with the witness*' rule
- *Code of Conduct* in a detailed Procedural Guidance Manual
- Court Report – transparent assessment and recommendations
- Ground Rules Hearing – for discussion and court directions
- Oath and perjury (if a person makes a false oath)

EXAMPLE OATH (ACT)

Oaths by intermediaries

I swear (*or the person taking the oath may promise*) by Almighty God (*or the person may name a god recognised by the person's religion*) that I will impartially and faithfully inform the court about the witness's communication needs and communicate questions and answers, make true explanation of all matters and things that are required of me, and do all other matters and things that are required of me in this case, to the best of my ability.

Affirmations by intermediaries

I solemnly and sincerely declare and affirm that I will impartially and faithfully inform the court about the witness's communication needs and communicate questions and answers, make true explanation of all matters and things that are required of me, and do all other matters and things that are required of me in this case, to the best of my ability.

MY TRAINING COURSE FOR INTERMEDIARIES

- In small groups
- Pre-course reading and assessment, 5 days of training and assessment (written exam, coursework and oral exam)
- Also covers CJS procedure and the role – focus is on assessment, police interviews & cross-examination
- As well as Report writing (disclosed and used when application for appointment made)
- And Ground Rules Hearing
- In addition judges and other court officials, police, social workers, lawyers are being offered information sessions

ASSESSMENT



POLICE INTERVIEW



THE COURT REPORT

- Accompanies the application to appoint
- Is witness specific
- Contains a section describing (with examples) the witness's communication needs and abilities
- Contains a section advising on questioning
- Also other recommendations which would support the witness's communication

COURT REPORT RECOMMENDATIONS



Questioning Recommendation	Advice for Questioner	Rationale	Location
Consider the use of open questions when questioning Jane.	Jane may use over agreement or silence as a means of being obliging in interactions.	The feature of 'gratuitous concurrence' should be avoided for Jane to give her best evidence.	<i>Page 6</i> <i>Section 3.3.2</i>
For Jane to have a break every forty-five minutes. Suggested break duration of 3-5 minutes.	Jane will need breaks to re-focus her attention and concentration.	Jane's concentration may be reduced when communicating under stress at court.	<i>Page 6</i> <i>Section 3.3.2</i>
Ask questions at a slow speaking pace.	Ask the question at a slow pace and allow Jane extra time to process the information.	Jane will require extra time to process spoken language, especially	<i>Page 7</i> <i>Section 3.4.1</i>

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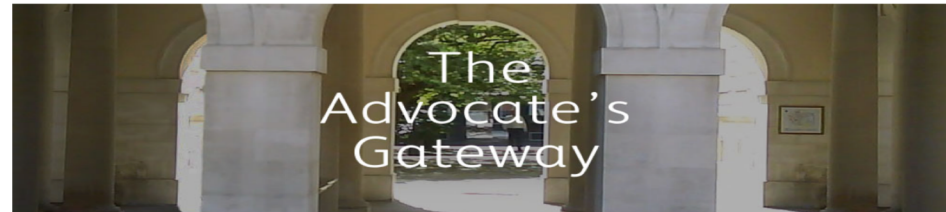
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Welcome



The Advocate's Gateway (TAG) provides free access to practical, evidence-based guidance on vulnerable witnesses and defendants.

TAG was founded in 2012. It is an independent body run by a volunteer management committee chaired by Professor Penny Cooper. TAG's main aims are to promote the maintenance of the highest ethical and professional standards in the questioning of people who are vulnerable in justice settings and to provide practitioners with evidence-based guidance and support in the form of toolkits. TAG's toolkits have been widely endorsed by senior judges and by professional bodies. TAG does not endorse any third party training but encourages the use of its toolkits subject to compliance with copyright and licensing requirements.

Use the links below to explore the resources TAG offers:

Toolkits



Resources



Toolkits

The toolkits are copyrighted materials. Please refer to the terms of use.

- 1. Ground rules hearings and the fair treatment of vulnerable people in court
- Ground rules hearing checklist
- 1a. Case management in criminal cases when a witness or defendant is vulnerable
- Essential questions checklist
- 2. General principles from research, policy and guidance: planning to question a vulnerable person or someone with communication needs
- 3. Planning to question someone with an autism spectrum disorder including Asperger syndrome
- 4. Planning to question someone with a learning disability
- 5. Planning to question someone with 'hidden' disabilities: specific language impairment, dyslexia, dyspraxia, dyscalculia and AD(H)
- 6. Planning to question a child or young person
- 7. Additional factors concerning children under 7 (or functioning at a very young age)
- 8. Effective participation of young defendants
- 9. Planning to question someone using a remote link
- 10. Identifying vulnerability in witnesses and parties and making adjustments
- 11. Planning to question someone who is deaf

WAITING AREA



EXAMPLE OF A 'REMOTE WITNESS ROOM'/'LIVE LINK ROOM'



E&W: TENTS, ROCKING HORSES, EGG TIMERS ETC.

8 year old; judge ordered silence for up to 3 minutes of non-adjourned breaks so she could settle herself in the den (Marchant, 2016)



A 'GOOD THING' AND A CULTURE SHIFT

'It is a truism that change is not just about having a new framework and new legislation in place, but about change in culture necessary to make the new legislation and framework a reality. It is evident in 2015 that some of the ideas that would have seemed radical at the outset of the intermediary pilot have been absorbed into the culture of criminal proceedings.'

Lord Thomas of Cwmgiedd (2015)

'There has been a paradigm shift in the way we approach [vulnerable witness] participation...a significant contribution to that process has been made by the introduction of the intermediary'

HHJ Topolski (2016)

FOR MORE INFORMATION

- Visit <https://www.theadvocatesgateway.org/>
- Professor Penny Cooper, BSc(Hons), Barrister, PhD