THE REGISTERED INTERMEDIARY
PROCEDURAL GUIDANCE MANUAL
FOREWORD

Since the introduction of the Witness Intermediary Scheme (WIS) as a pilot project in 2004, a source reference document for the role and use of a Registered Intermediary has been available to practitioners, and this version of the Registered Intermediary Procedural Guidance Manual (PGM) continues this and expands on previous versions. Key to the development of this latest version of the PGM, and central to the development of its predecessors, has been the work of Penny Cooper and David Wurtzel of the City Law School, City University London who have collated, reviewed and drafted the available information into a text that is accessible, clear and cogent to its intended audience, Registered Intermediaries. Their diligence and professional knowledge has resulted in ensuring guidance that reflects the significant developments in the WIS since 2004 and brings it to the fore in meeting the requirements of Registered Intermediaries working within the criminal justice system. For this, their efforts and achievements continue to be recognised.

In addition to the work of Penny and David, the role of members of the WIS's Intermediaries Registration and Quality Assurance Boards, and that of members of the Registered Intermediary Reference Team, as reviewers of the latest draft must also be recognised. Without the contribution of these groups the PGM would lack appropriate credibility, substance and relevance, and their patience and insight is duly appreciated and acknowledged. The PGM reflects their work as practitioners and is a credit to them in their respective roles within the criminal justice system.

Victims and Witnesses Unit
Ministry of Justice
February 2012
INTRODUCTION

Registered Intermediaries have been facilitating communication with vulnerable witnesses in the criminal justice system in England and Wales since 2004 when the Witness Intermediary Scheme (WIS) was first introduced as a pilot project, through to the completion of national roll-out in 2008 and to the WIS as it is today. Since then the WIS has been implemented nationally and has been available in all 43 police forces and CPS areas in England and Wales since September 2008.

During the course of this period the WIS has developed significantly as knowledge and usage of it, and of Registered Intermediaries within it, has become wider throughout the criminal justice system and its practitioners. Consequently, procedures and practices have evolved since the publication of previous versions of the Procedural Guidance Manual (PGM) in 2005 and 2011, and will continue to do so, and those detailed within this version reflect the position as at January 2012.

The PGM is intended to be a source reference document for Registered Intermediaries and is not intended as a guide for criminal justice practitioners on the engagement of a Registered Intermediary. However, it may be used for cross-reference with documents such as the revised Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses and Guidance on Using Special Measures which was published in March 2011, and Registered Intermediaries in action - Messages for the CJS from the Witness Intermediary Scheme SmartSite, the research report on archive material from the now defunct site, which was published on its successor, the Registered Intermediaries On-line (RIO) forum, on 08 December 2011. Similarly, there are information sources such as the RIO forum, Registered Intermediary regional support groups and presentations, training and development seminars and events which enable the exchange of information, ideas and best practice amongst Registered Intermediaries and it is recommended that these are regularly accessed.

The working life of the PGM is therefore iterative and updates to it will be made to reflect developments in procedures and best practice, relevant developments in the criminal justice system and in legislation that relates to the WIS. As such, it will only be available electronically and amendments / updates to its contents will be circulated accordingly. Furthermore, this version supersedes previous versions.

To date the Witness Intermediary Scheme, and Registered Intermediaries operating within it, has supported over 5000 people which has consequently helped to make the justice process accessible to some of the most vulnerable people in our society. In some cases a Registered Intermediary will have been the difference between a victim or witness being able to testify or not. Therefore, using this PGM will assist you as a Registered Intermediary in making that difference and it is commended to you on that basis.

Victims and Witnesses Unit
Ministry of Justice
February 2012

Part 1  **THE INTERMEDIARY’S ROLE: LAW, PROCEDURE AND PRACTICE**

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What this part covers:

- The law
- A definition of the role of an intermediary and principles of practice
- An overview of the Registered Intermediary’s involvement in a criminal case
- Step-by-step notes on procedure
- Registered Intermediary duties while at court
- Other sources of support for witnesses

**THE LAW**

1.1 Intermediaries were created by statute. The Youth Justice and Criminal Evidence Act 1999 (‘the YJCE Act’) created the provision for a range of ‘Special Measures’ for cases involving vulnerable and intimidated witnesses to give their best evidence in court, one of which is the intermediary special measure. The Witness Intermediary Scheme 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.

1.2 The introduction of similar provisions for defendants has been gradual: first, section 33 A-C of the YJCE Act as introduced by 47 of the Police and Justice Act 2006 allowed vulnerable defendants to give evidence by live link; second, section 104 of the Coroners and Justice Act 2009 (*not yet implemented*) will allow for certain vulnerable accused to give oral evidence at trial with the assistance of an intermediary. In the interim, the practice has developed in the crown court whereby judges, exercising their inherent jurisdiction to ensure that the accused has a fair trial, have granted applications by the defence to allow the defendant to be assisted by an intermediary during their evidence alone and, in many cases, throughout their trial. The latter instance is outside of section 104 of the Coroners and Justice Act 2009 which allows only for the provision of an intermediary for a vulnerable defendant's oral evidence-giving and not the duration of the trial. However, the judgment in *C v Sevenoaks* [2009] EWHC 3008 (Admin) now provides authority for the court to appoint an intermediary to support a vulnerable defendant’s oral evidence-giving throughout the court process, including during trial.

1.3 Previously, in some instances, the Witness Intermediary Scheme’s Matching Service assisted by providing a Registered Intermediary for a vulnerable defendant when one was available. However, this was managed in accordance with the YJCE Act legislation, i.e. only
when doing so did not impact upon their availability for those whom the legislation intends their use – vulnerable witnesses.

1.4 The legal representatives of a defendant may apply to a judge to allow the use of an intermediary to assist a vulnerable defendant when giving evidence or throughout his trial. Judges are permitted in appropriate circumstances to make such orders under their inherent jurisdiction to ensure that the defendant has a fair trial. At the moment there are no statutory criteria in force which define vulnerability for defendants in respect of the use of an intermediary; each case is decided on its own facts. The defence must seek someone who is best able to help, either from their professional qualifications and experience and/or from their knowledge of the defendant and his communication abilities and needs. All this takes place outside the Witness Intermediary Scheme and the matching service is not available for defendants. The person who assists the defendant is known as a ‘non-registered intermediary’ since they will be operating outside the Witness Intermediary Scheme. Guidance has been provided to HM Courts and Tribunals Service staff at an operational level regarding non-registered intermediaries for vulnerable defendants as well as Registered Intermediaries for vulnerable defence and prosecution witnesses.

1.5 The guidance contained in this document is complementary to the guidance on conducting video-recorded interviews Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses and Using Special Measures (2007). The revised Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses and Guidance on Using Special Measures was published in March 2011 and sections 98 to 105 (excluding section 104) of the Coroners & Justice Act 2009 were implemented in June 2011.

The test of competence

1.6 For reference, before a witness can give evidence they must pass the statutory requirement of competence. This means that;

‘At every stage in criminal proceedings all persons are (whatever their ages) competent to give evidence’ (section 53, YJCE Act) however a person is not competent to give evidence if it appears to the court that he is not able to ‘understand questions put to him as a witness, and give answers to them which can be understood’ (section 53(3)). It is for the party who wishes to call the witness to satisfy the court ‘on a balance of probabilities’ that the witness is competent (section 54). When deciding this, the court shall treat the witness as having the benefit of any

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2 A non-registered intermediary is an individual – professionally trained or otherwise – who (i) assists a vulnerable defendant as an intermediary in the giving of evidence or throughout his trial; or (ii) assists a prosecution or defence witness but is not recruited, selected and accredited by the Ministry of Justice as a Registered Intermediary operating within the Witness Intermediary Scheme.


special measures direction. ‘The question is entirely witness or child specific. There are no presumptions or preconceptions. The witness need not understand the special importance that the truth should be told in court, and the witness need not understand every single question or give a readily understood answer to every question. Whenever the competency question is addressed, what is required is not the exercise of a discretion but the making of a judgment, that is whether the witness fulfils the statutory criteria’ [per the Lord Chief Justice in R v Barker [2010] EWCA Crim 4].

1.7 The role of a Registered Intermediary is not to discuss, assess or comment upon a witness’s competence to give evidence.

The criteria for eligibility

1.8 Sections 16 and 17 of the YJCE Act set out the criteria for eligibility for special measures. Only those prosecution and defence witnesses who fall within section 16 may take advantage of the intermediary provisions [section 18(1) (a)], that is:

(i) a witness who is under the age of 18\(^5\) or:

(ii) someone whose evidence is likely to be diminished in quality by reason of any of the following circumstances:

- The witness suffers from a mental disorder within the meaning of the Mental Health Act 1983.
- The witness otherwise has a significant impairment of intelligence and social functioning.
- The witness has a physical disability or is suffering from a physical disorder.

1.9 ‘Quality of evidence’ means quality in terms of completeness, coherence (that is, the ability when giving evidence to give answers which address the questions asked and which can be understood both individually and collectively) and accuracy. Any views expressed by the witness must be considered by the court.

1.10 Section 29 of the YJCE Act provides for;

‘any examination of the witness (however and wherever conducted) to be conducted through an interpreter or other persons approved by the court for the purposes of the section (an intermediary).’

1.11 The function of the intermediary in section 29 is to communicate:

- To the witness, any questions put to the witness; and

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\(^5\) The age was raised from under 17 to 18 years when section 98 of the Coroners and Justice Act 2009 was brought into effect in June 2011.
• To any persons asking such questions, the answers given by the witness in reply to them; and

• To explain such questions or answers so far as necessary to enable them to be understood by the witness or the questioner.

1.12 The statutory definition may seem formal to some, and it was drafted before anyone knew how the Witness Intermediary Scheme would work in practice. In practical terms, the central part of the intermediary’s role is to assist in communication in its widest sense; in other words, to assist the court, both prior to and during the giving of evidence by the witness by facilitating two-way communication in order to achieve best evidence. A witness does not have to display a ‘disability’ (such as a physical cause making communication difficult) in order to qualify for an intermediary or any other special measure. The communication difficulty can be related to age (e.g., very young albeit typically developing children), learning difficulties, personality disorders and mental health issues. In the majority of cases in which an intermediary is used at trial, the witness’ evidence-in-chief will have been recorded (section 27) and the witness will wish to give evidence at court by means of a live link (section 24) but neither is a pre-condition for use of section 29.

1.13 The use of any special measure for a witness requires the approval of the court through a ‘special measures direction’. This is given by the judge either on an application by the party who is calling the witness or on the court’s own initiative (section 19). The court is obliged to decide first whether any available special measure or combination of them would be likely to improve the quality of the evidence given by the witness. If it decides that quality would be improved, it identifies the special measure(s) and then makes an appropriate direction.

1.14 The special measures direction is retrospective in the sense that it allows the witness to give evidence-in-chief with the assistance of an intermediary by means of the recorded interview, the interview having already taken place. It is prospective in that it allows the witness to give evidence at the upcoming trial with the assistance of an intermediary. The judge decides whether the application has met the statutory criteria.

Provisions for defendants

1.15 The statutory criteria by which a defendant may take advantage of special measures appears in 33 A-C of the YJCE Act, as introduced by 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)

1.16 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.

1.17 Until section 104 is implemented there is no statutory framework for allowing the use of an intermediary for a defendant. The Sevenoaks case is the current authority for allowing the use of an intermediary for a defendant. The judiciary should consider the judgment in the Sevenoaks case to ensure that the defendant gives their best evidence and receives a fair trial, helping them deal with the circumstances of each particular defendant accordingly.

1.18 The legal representatives of a defendant may apply to a judge to allow the use of an intermediary to assist a vulnerable defendant when giving evidence or throughout his trial. Judges are permitted in appropriate circumstances to make such orders under their inherent jurisdiction to ensure that the defendant has a fair trial. At the moment there are no statutory criteria in force which define vulnerability for defendants in respect of the use of an intermediary; each case is decided on its own facts. The defence must seek someone who is best able to help, either from their professional qualifications and experience and/or from their knowledge of the defendant and their communication abilities and needs. All this takes place outside the Witness Intermediary Scheme and the matching service is not available for defendants.

1.19 The person who assists the defendant is known as a ‘non-registered intermediary’ since they will be operating outside the Witness Intermediary Scheme. Guidance has been provided to HM Courts and Tribunals Service staff at an operational level regarding non-registered intermediaries for vulnerable defendants as well as Registered Intermediaries for vulnerable defence and prosecution witnesses. Provision of non-registered intermediaries is

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6 A non-registered intermediary is an individual – professionally trained or otherwise – who (i) assists a vulnerable defendant as an intermediary in the giving of evidence or throughout his trial; or (ii) assists a prosecution or defence witness but is not recruited, selected and accredited by the Ministry of Justice as a Registered Intermediary operating within the Witness Intermediary Scheme.
not the responsibility of the WIS, the Ministry of Justice or the National Policing Improvement Agency. Arrangements for non-registered intermediaries for vulnerable defendants will be the responsibility of the defendant’s legal advisors and / or the court.

1.20  The Ministry of Justice does not provide funding for Registered Intermediaries; they are paid by the local police and / or the Crown Prosecution Service depending on the stage of the case. The Ministry of Justice does not provide funding for non-registered intermediaries who assist defendants and the guidance to HM Courts and Tribunals Service includes information about the administrative and financial processes to be followed in arranging for payment.

A DEFINITION OF THE ROLE OF AN INTERMEDIARY AND PRINCIPLES OF PRACTICE

1.21 An intermediary may be defined as a person who facilitates two-way communication between the witness\(^7\) and any other participants in the criminal justice process to ensure that communication with the witness is as complete, coherent and accurate as possible. This includes communication at meetings between the witness and the police and/or the Crown Prosecution Service, in the ABE interview, during any identification procedures and during the trial process. It may also include communication at meetings between a defence witness or a defendant and the defence solicitor.

1.22 An intermediary appointed through the Witness Intermediary Scheme (WIS) will be a Registered Intermediary, a professional\(^8\) who has been recruited, selected and accredited\(^9\) by the Ministry of Justice, and whose details are recorded on the Intermediary Register, the WIS’s national database. The WIS does not use or appoint non-registered intermediaries, i.e. those individuals not on the Intermediary Register – see footnote 2. This manual is therefore written on the basis of the role of a Registered Intermediary operating within the Witness Intermediary Scheme.

PRINCIPLES OF REGISTERED INTERMEDIARY PRACTICE

1.23 The following principles apply to Registered Intermediary practice:

- The Registered Intermediary is impartial and neutral. Their paramount duty is to the court.

- They must adhere to the Registered Intermediaries Code of Practice and Code of Ethics (see Part 3).

\(^7\) ‘Witness’ means a prosecution or defence witness.

\(^8\) 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.

\(^9\) Initial and refresher accreditation courses for Registered Intermediaries are conducted by the City Law School, City University London on behalf of the Ministry of Justice.
Throughout the process there must be appropriate consent for the use of a Registered Intermediary. There must be an effective 'matching' of the Registered Intermediary to ensure he / she has the necessary skills to establish rapport and facilitate communication with the witness.

- The Registered Intermediary’s role must be transparent throughout.

- The Registered Intermediary is not a witness supporter.

- The Registered Intermediary is not an Interpretor.

- The Registered Intermediary is not an Appropriate Adult.

- The Registered Intermediary is not, in this context, an expert witness.

- Throughout the process there must be appropriate consent for the use of a Registered Intermediary.

- There must be an effective 'matching' of the Registered Intermediary to ensure he / she has the necessary skills to establish rapport and facilitate communication with the witness.

- To enable the effective matching of a Registered Intermediary to a case, Registered Intermediaries must regularly inform the NPIA of any additions and / or changes to their stated professional skills and qualifications, and to their stated areas of expertise / specialisation. Registered Intermediaries must exercise their professional discretion and judgement in accepting any case and should not accept cases which are outside / beyond their stated level(s) of skills and expertise.

- The Registered Intermediary must keep full records of their involvement throughout the process, including notes of assessments. These are disclosable by the prosecution to the defence. The notes must be kept safe and comply with Ministry of Justice guidance on data protection as well as the law on data protection and confidentiality, i.e. the Data Protection Act 1998.

- In the case of prosecution witnesses, the Registered Intermediary must inform the officer-in-charge of the case of anything that they become aware of which might undermine the case for the prosecution against the accused. However, when assisting a defence witness (whether the defendant or witness for the defence) the Registered Intermediary must not disclose anything about the defence case or what has been said to them without the defendant (defence solicitor’s) express consent.

- At no stage must the Registered Intermediary express an opinion as to the truth or reliability of what the witness has said. At no stage must the Registered Intermediary express an opinion on the truth or the reliability of what the witness has said.

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- The Registered Intermediary must not be left alone with the witness at any point and must ensure that when they meet with a witness they are accompanied by a neutral third party.

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• Where a Registered Intermediary acts either as a non-registered intermediary or as an expert witness on the basis of their professional specialism then they must make clear to the court the distinction between their role as a Registered Intermediary and the role they are taking in this trial, and that they are not coterminous.

AN OVERVIEW OF THE REGISTERED INTERMEDIARY’S INVOLVEMENT IN A CRIMINAL CASE

1.24 The steps described below give an overview of a Registered Intermediary’s involvement in a criminal case when assisting communication with a prosecution witness, for whom the majority of Registered Intermediary work is conducted.\(^\text{10}\)

a. The police officer in the case identifies that the witness might benefit from the assistance of a Registered Intermediary. If appropriate and practical the police officer contacts the CPS lawyer to discuss this with this activity often being called an early special measures discussion\(^\text{11}\). The police are used to obtaining consent from witnesses to obtain copies of reports, and it would be good practice for the police to obtain consent from the witness which would allow the Registered Intermediary in due course to have sight of any relevant reports about the witness and also to speak, for example, to teachers and doctors who know the witness.

b. The police have not used a Registered Intermediary and the CPS lawyer identifies the witness might benefit from the assistance of a Registered Intermediary

c. The police officer or CPS lawyer (the End-User) contact the Witness Intermediary Scheme Matching Service run by the National Policing Improvement Agency ((NPIA), see Part 4 Further Resources: contact details and websites). The officer / lawyer completes and submits the NPIA Request-for-Service (RfS) form (see Annex A). The NPIA quality assures the RfS and identifies and contacts a Registered Intermediary with the necessary skill set(s) operating in the geographical area of the witness and available to conduct the work on the dates required. This process is undertaken in an auditable manner that ensures a fair rotation of Registered Intermediaries being offered work for which they are suitable and available to conduct. The NPIA forwards them the RfS and the Registered Intermediary will then make contact with the officer / lawyer by phone or email within 24 hours; at this point the officer / lawyer will discuss further details about the witness and may provide a broad outline of the alleged offence. The officer / lawyer and the Registered Intermediary will discuss when and how the Registered

\(^{10}\) It should be noted that not every case involves a Registered Intermediary from the outset, and that the recognition of the need for one may not happen until after the initial interview with the police has taken place.

\(^{11}\) In practice, it is more likely for a police officer to telephone the CPS to discuss the possible involvement of a Registered Intermediary in a case.
Intermediary’s assessment will take place including the presence of a responsible third party who ought to be the interviewing police officer. The Registered Intermediary then fills in part 8 (Letter of Engagement) of the RfS and forwards this to the requesting officer/lawyer. This process then forms the contractual agreement between the Registered Intermediary and police/CPS.

d. Prior to carrying out the assessment, the Registered Intermediary should, as far as is practicable in the time available, obtain copies of any relevant reports from professionals on the witness’s needs, and should speak to people who can assist such as teachers, doctors and psychologists. If the police have not obtained consent to date, then consent must be obtained. In practice this process has not unduly delayed the Registered Intermediary’s face-to-face assessment with the witness and may be obtained after the assessment and before writing the report.

e. The Registered Intermediary conducts the assessment. There is no set form of Registered Intermediary assessment; the form of the assessment will depend on the witness’s communication abilities and needs and on the Registered Intermediary’s professional/clinical specialism.

f. The Registered Intermediary will then provide the interviewing police officer with a preliminary report to enable planning for the ABE interview. The report is verbal if the interview takes place on the same day as the assessment but in writing if it takes place subsequently. In addition to communication needs, the Registered Intermediary may suggest a particular layout for the interview room, the use of interview props, the use or avoidance of particular spoken vocabulary, and how to ensure the witness stays calm and engaged.

g. The ABE interview takes place. The Registered Intermediary is not a second interviewer but is present in order to advise and assist with communication if required.

h. If, before the referral, an interview has already taken place or a statement has been taken from the witness by the police, then the Registered Intermediary must assess the witness before viewing the video or reading the statement. Their report should mention this and explain how if at all their assessment has altered as a result of watching the video or reading the statement. Thereafter their involvement is as below.

Note – Points g. and h. will not apply if the request for a Registered Intermediary has been made by the CPS and a Registered Intermediary has not been previously used by the police.

i. The Registered Intermediary writes a report for court based on their assessment as well as other information where available, for example

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observations of the ABE interview, reports from school / social worker / GP, etc). The report writing template provided should be used for this.

j. The Registered Intermediary sends the completed report to the person who commissioned them (the End-User) as per the details stated on the RfS. It is anticipated that where the End-User is the police or CPS, the report will be circulated to the other organisation and vice versa in these circumstances. The CPS attaches the report to the application form for special measures, which is served on the defence solicitor and the court.

k. If the application for special measures is opposed, the Registered Intermediary should be in court for the contested application.

l. If the special measures application for use of the Registered Intermediary is granted by the court, the Registered Intermediary will be at the trial when the witness is due to give evidence.

m. Prior to trial the Registered Intermediary may attend the witness on their court familiarisation visit and will inform the Witness Service of any relevant matters regarding the witness’s care and well-being.

n. Before the witness gives evidence the Registered Intermediary must be involved in a ‘ground rules’ hearing\textsuperscript{13} with the trial judge and advocates to agree all the matters regarding the witness giving evidence with the Registered Intermediary’s assistance.

o. Registered Intermediaries assist during the giving of evidence. Usually the Registered Intermediary is sitting alongside the witness as they give evidence from the TV link room at the court. The extent to which they intervene during the evidence of the witness depends on the witness and also the extent to which the Ground Rules are followed.

p. In practice Registered Intermediaries have also been asked to assist in matters which are ancillary to the trial, namely, to help a witness who is giving a victim impact statement (either by video or a written statement) and to help in the explanation to a witness about the outcome of the case.

\textbf{STEP-BY-STEP NOTES ON PROCEDURE}

1.25 This section details the procedure when a Registered Intermediary assists with, unless otherwise stated, a prosecution witness.

\textsuperscript{13} In accordance with the Application for a Special Measures Direction (part 29, Criminal Procedural Rules 2010), ground rules hearings for questioning must be discussed between the court, the advocates and the intermediary before the witness gives evidence, to establish (a) how questions should be put to help the witness understand them, and (b) how the proposed intermediary will alert the court if the witness has not understood, or needs a break.
‘Think trial’

1.26 As soon as the Registered Intermediary assesses the witness (whether before or after the ABE interview) they should ‘think trial’. The purpose of the special measures legislation is to enable vulnerable witnesses to be able to give evidence at court, even though many investigations will not get that far. The various steps along the way all lead in the direction of court and the trial.

1.27 As well as assisting during the trial, the Registered Intermediary may assist the witness during the evidence gathering part of the case that is when a video recording of an ABE interview takes place or, more rarely, during the taking of a written statement. They may also assist in related matters, for example, if the witness is asked to take part in the police procedures to identify a suspect.

The communication process

1.28 If an interview took place without the witness being assisted by a Registered Intermediary it does not necessarily mean that they do not require assistance when giving evidence at court. It may well be that the witness’s communication needs were not sufficiently recognised in the early stages of the case or that his / her communication needs develop later in the process.

1.29 It should also be recognised that the language used in a police interview is intended to encourage the witness to narrate and remember events that have occurred. The language used by the advocate cross-examining the witness at trial is intended to narrow the narrative and to ask the witness to deal with more complex language. The need for a Registered Intermediary at trial may be greater than the need at the ABE interview.

1.30 Identification of the witness’ needs may be most straightforward if there is some form of learning and/or physical disability or injury which affects the ability to speak. Other situations may be more difficult to identify, e. g., an adult who has had a minor stroke with no physical symptom but an inability to remember some common words or phrases, or a person with a mental illness that affects their ability to understand what is being said to them, or a child who has a wide spoken vocabulary and appears to have no communication needs but in fact has low levels of comprehension.

1.31 Communication may be affected by a broad range of factors including the ability to understand and make sense of words and images, the level of ability to use speech and language to express needs or ideas, age and level of development and physical disabilities.

1.32 There is a need for all to recognise the complexities involved in the communication process. These can relate both to understanding and to communicating with others. The following are examples of instances where communication problems may arise:

- A child responding to the ‘adult world’ but having a different understanding to an adult’s due to their stage of intellectual and emotional development.

- A witness trying to make sense of and giving meaning to speech, signs or symbols.
• A witness finding it difficult to deal with abstract concepts relating to the past, present and future (this can be particularly difficult for young children, or people with a learning or cognitive disability).

• A witness experiencing difficulty in using language to express meaning especially where the content is complex or abstract.

• A witness associating words and symbols with objects, people and activities.

• A witness with a mental illness that impacts on their ability to communicate, particularly where no physical signs are apparent or evident.

The police officer's initial contact with the Registered Intermediary

1.33 In a criminal investigation the police are often the first agency to come into contact with a witness. Whether or not the witness is also the alleged victim, police officers have a responsibility to identify that there is a difficulty in communicating directly with the witness. Where children are involved, there must be an automatic initial assessment of the nature of their vulnerability due to their age and consideration must be given to appropriate special measures.

1.34 A series of 'prompts' have been produced as part of Vulnerable Witnesses: a Police Service Guide which may assist the early identification of vulnerable witnesses. It is anticipated that this document will be replaced by an updated version in 2011. Prompts are also to be found in Achieving Best Evidence in Criminal Proceedings and, similarly, a revised version of this document is due to be published in 2011.

1.35 After identifying that the witness may have communication needs, the officer should attempt to obtain as much information about the witness as possible from those who have been involved with him or her – teachers, doctors, family, carers, social workers, etc. Witnesses with impaired communication skills may well have been involved with services than can helpfully assist. The officer should obtain written consent from the witness to speak to others and to ask for copies of reports / parts of reports which will assist the Registered Intermediary to assess the witness’s communications needs and abilities. Failing this, consent may be verbal however this must be documented accordingly.

Reports

1.36 The Registered Intermediary should have access to these reports or request any relevant reports from other appropriate professionals as necessary – these reports should be referred to in the Registered Intermediary's report. They should not be included in the appendices of the report. They should be returned to the original provider / to the Investigating Officer (IO) for storing or destroying as appropriate, or destroyed by the Registered Intermediary, with a note being made of what action has been taken.

1.37 Once the officer is aware of the communication need and that a Registered Intermediary may be required, he or she should speak to CPS (in what has been called an
early special measures discussion meeting) to inform them so that they appreciate that a witness in the case may not be able to give evidence without the assistance of special measures. The CPS lawyer should advise the officer accordingly.

1.38 If it is felt that the witness may need a Registered Intermediary, then the officer should make a referral to the WIS Matching Service run by the NPIA (See Part 5 Further Resources: contact details and web sites). The officer will be sent a Request-for-Service form which, when completed, should include as much information as possible about the witness’s needs which has been obtained by the officer. This then enables the Matching Service to best match the witness with a Registered Intermediary with the requisite skills. Not every Registered Intermediary is qualified to assist every witness and their preparedness to work in different geographic (CJS) areas throughout England and Wales varies. Any preference by the witness for a particular Registered Intermediary (e.g., by gender) needs to be identified and considered.

**The involvement of the Registered Intermediary**

1.39 Once informed of the referral, the Registered Intermediary should speak to the officer. This is the beginning of the Registered Intermediary’s information gathering and therefore the beginning of the making of notes which are disclosable to the defence. Other matters which should be dealt with in the initial contact between the Registered Intermediary and the police officer include:

- Clarification of a shared understanding of the role of the Registered Intermediary.
- Contact details of the officer (including the most effective way to get through to them especially when they are on leave) and of the CPS lawyer and paralegal.
- Details of the witness (name, gender, address, date of birth, main carer, involvement with other agencies, first language, family members/other carers, etc).
- Vulnerability of the witness.
- Arrangements for the Registered Intermediary assessment (where, when, general and/or specific facilities available, who else will be present, etc).
- Consents obtained for the Registered Intermediary assessment and to obtain personal information from other sources.
- Any risks to the Registered Intermediary, witness or others present.
- Agreement as to who will be the responsible third party present at the Registered Intermediary assessment.

1.40 Although the police officer and the Registered Intermediary should not discuss the evidence in the case, the officer should also disclose enough information about the offence to assist the Registered Intermediary in their task, e.g., if there is an allegation of familial
sexual abuse the Registered Intermediary would wish to avoid asking the witness about particular family members during the assessment. The allegation and the evidence should not be discussed during the assessment.

1.41 It is useful for both the Registered Intermediary and the officer to discuss their knowledge of the Witness Intermediary Scheme and any experience in using Registered Intermediaries so that each is clear about the role of the other. The officer should have already obtained consent from the witness and/or their parent or guardian for the Registered Intermediary to make any necessary enquires (e.g., teachers, doctors, specialists) and for relevant reports to be provided. If this has not been done then the Registered Intermediary will need to obtain that consent as he/she should inform the witness and/or their parent or guardian that these third party reports may be referred to in their court report which will subsequently be seen by the prosecution and disclosed to the defence. Sample consent forms are available for Registered Intermediaries to download from the Registered Intermediary On-line forum.

The Registered Intermediary assessment of the witness

1.42 The purpose of the assessment is for the Registered Intermediary to ascertain the witness's communication abilities and needs, so that they may:

   i. Indicate whether or not the witness has the ability to communicate their evidence and, if so,

   ii. Indicate whether the use of an Registered Intermediary is likely to improve the quality (completeness, coherence and accuracy) of the witness's evidence and

   iii. Make recommendations as to special measures to enable the best communication with the witness.

1.43 Note that the Registered Intermediary is not assessing a witness as they would in their professional roles but purely to see if the witness would be able to give evidence at a police interview and at court.

1.44 If the Registered Intermediary concludes that they do not have the appropriate specialism for the witness's particular communication needs, they must contact the Matching Service as soon as possible so that another Registered Intermediary may be sought.

1.45 The method of carrying out the assessment, the length of time required to do so, the venue for the assessment and the number of occasions which are necessary to complete the assessment are all dependant on the requirements (communication abilities and needs) of the particular witness. The essential task is to establish how best to communicate with the witness; the Registered Intermediary does not have to assess the witness's ability to understand truth and lies nor is it the Registered Intermediary's role to assess whether the witness's recollection is truthful or accurate. However, if requested, advice on how best to do this can be given to the officer-in-charge.

1.46 The assessment must take place in the presence of a responsible third party, who must not be another lay witness in the case. This is because there must be another person
who is able to observe the meeting and if needed give an independent account of what happened. Whenever possible, the responsible third party ought to be the interviewing officer. This enables the officer to gain significant first-hand experience of the witness’s communication needs prior to conducting the ABE interview. The interaction of the Registered Intermediary and the witness can be extremely valuable for the interviewing officer to observe.

1.47 A witness supporter may also be present. The supporter, who must not themselves be a lay witness in the case, may be a parent, sibling, carer, care worker, social worker, citizen advocate or other volunteer advocate. The primary role of a witness supporter is to provide emotional support to the witness. The Registered Intermediary and the officer should discuss in advance exactly who should be present at the assessment and the role of staff when assessments are conducted in care homes and hospitals.

1.48 Although the Registered Intermediary must keep a note of what happened in the assessment, it is not necessary to record the meeting or to make a verbatim note. Although there is no requirement that an assessment is recorded, sometimes this has taken place. Such a recording would be disclosable to the defence – disclosure is a matter for the CPS, which has statutory responsibilities in this area. The Registered Intermediary should not be left alone with the witness at any stage of the assessment meeting.

1.49 The Registered Intermediary should explain to the officer in advance that it may not be possible to conduct the interview on the same day as the assessment: the witness may be too tired after the assessment and/or a further assessment session may be required. If an officer needs to interview a witness as a matter of urgency (e.g., because of custody time limits), and before a Registered Intermediary is available, then they are obliged to record the reasons for this and to notify the Crown Prosecution Service.

1.50 Following the assessment the Registered Intermediary must pass on their findings to the officer including any conclusion that the witness does not require the assistance of a Registered Intermediary or that the witness is unlikely to be able to give evidence even with the assistance of a Registered Intermediary. If the interview takes place the same day then this report can be done orally. If the interview takes place on a subsequent day then the Registered Intermediary should write their findings in a preliminary report.

Assessment of defence witnesses

1.51 The assessment of a defence witness follows the same principles. A third party, in this case most likely the solicitor, must be present. The preliminary report is addressed to the defence solicitor who interviews the defence witness.

The Registered Intermediary assisting the police interview of the prosecution witness

1.52 A primary task of the Registered Intermediary’s preliminary report to the officer is how best to plan the interview. Discussions between the interviewing officer and the Registered Intermediary will include:
• How to check the witness understands what is going to happen / is happening in the interview.

• Deciding on the most effective method and style of questioning as well as the vocabulary to be used or avoided and the form of questions to be used or avoided.

• Agreeing the most effective way to set up the interview room (e.g., position and nature of seating, the position of microphones and video cameras).

• How to use communication aids or props if necessary.

• The frequency and duration of breaks.

• Any other circumstances relating to the understanding and health needs of the witness.

1.53 It is important that the officer realises that the Registered Intermediary is not a second interviewing officer; the Registered Intermediary in turn must appreciate that the officer has conduct of and manages the interview. There should be an understanding between them about roles and how the Registered Intermediary will indicate a wish to intervene to facilitate better communication for instance whether this will be verbally or by a hand signal.

1.54 There may be other people involved in the interviewing of the witness such as a social worker. One of the matters which the Registered Intermediary may need to deal with is how many people ought to be in the interview room with the witness if this may affect the issues of communication.

1.55 The role of the Registered Intermediary in interview must be transparent; that is, both the interviewing officer and anyone who watches the recording must be able to see and hear the whole communication exchange between Registered Intermediary and witness. It should be agreed in advance what the Registered Intermediary will do if the officer needs to leave the room since the Registered Intermediary needs a responsible third party to be present at all times.

1.56 Section 29(5) of the YJCE Act requires the Registered Intermediary to take the Registered Intermediary oath or declaration before the interview commences. The Registered Intermediary should explain this beforehand to the witness. The wording of the oath is:

“I solemnly, sincerely and truly declare that I will well and faithfully communicate questions and answers and make true explanation of all matters and things as shall be required of me according to the best of my skill and understanding.”

1.57 Where practical, the oath or declaration should be taken in the witness’s presence and it is important to explain, simply, to the witness after reading the oath, what it means. This is also useful for the jury too.
1.58 Prior to the interview the Registered Intermediary and the interviewing officer should have time to verbally plan the interview with the Registered Intermediary highlighting appropriate strategies / additional visual and concrete aides, language to avoid and ways of communicating between the witness and the interviewing officer.

Registered Intermediary and the interviewing officer during the interview

1.59 During the interview the Registered Intermediary will communicate the questions to the witness in such a way as to facilitate understanding. It may be necessary to intervene if the question for example is too long or to ask the officer to check the witness understands a particular word or concept. The Registered Intermediary may also help to settle and to focus the witness. During breaks the interviewing officer and Registered Intermediary may discuss any communication issues that have arisen and anticipate what might be a problem in the next section, and the Registered Intermediary will advise further at this point.

1.60 The Registered Intermediary may assist the witness in other aspects of the investigation such as procedures for identification of a suspect or if the police need to explain to the witness why a case will not be proceeding. However, they must not take part in any clinical decision-making such as between professionals who wish to develop a care plan in respect of a witness. The Registered Intermediary must be conscious throughout that their role in facilitating communication is entirely different from the clinical role they may have in their day-to-day job.

Defence witnesses

1.61 In the case of defence witnesses, the above sequence is similar. However it is the defence solicitor who would identify the fact that the witness may need assistance from a Registered Intermediary, obtains the necessary consents, obtains the referral and acts as a third party in the assessment. However, this role could also be taken by someone else who is independent from the case, such as a social worker who is not a witness in the case, and conducts the interview with the witness. The Registered Intermediary’s role and duties in such a case are the same. The Registered Intermediary’s involvement in the interview must be transparent to anyone viewing the recording.

After the ABE interview

1.62 Following the ABE interview the Registered Intermediary writes a report for the court (see also Part 2 Report Writing: guidance, template and checklist) to set out the witness’s background, what the Registered Intermediary discovered about the witness’s communication needs and abilities through their assessment and practical suggestions on how he / she can best be questioned by the court. It also needs to include why the quality of the evidence given by the witness would be improved by use of a Registered Intermediary and why the Registered Intermediary has the necessary skills to meet the particular communication needs of the witness. In respect of defendants, the Registered Intermediary would produce a similar report arising out of the assessment meeting.

1.63 The Registered Intermediary who assisted the witness at interview should, whenever possible, continue to act for the witness at trial. Where, for any reason, this is not possible
there must be a ‘handover’ process between the interview Registered Intermediary and the trial Registered Intermediary. However close to the trial date the handover is arranged for, the trial Registered Intermediary must meet with and assess the witness and establish rapport. They must also write their own report as above even if it goes no further than to adopt what the interview Registered Intermediary has said. The reason is that the trial Registered Intermediary must be able to justify their interventions on the basis of what they personally have learned about the witness through the assessment and what they have recommended, not what someone else observed, said or recommended.

1.64 It is important that the Registered Intermediary keeps checking on the status of the case and their involvement in it. Some cases may take time to come to trial and although the Registered Intermediary should be informed by the End-User, it is possible that he / she may be contacted shortly before a trial or, in the worst case scenario, on the day of the trial itself. It is recommended that the Registered Intermediary also makes regular contact with the CPS to ensure that trial dates have not been re-arranged without them being informed.

1.65 It should be noted that the Registered Intermediary’s assessment report for court is attached to the application for special measures which is seen by the defence and that may therefore govern whether certain private information about the witness is included (see below the section on report writing, paragraph 2.28). No part of a report should be given to the jury.

1.66 The report is a ‘free-standing document’. It is not an exhibit and the Registered Intermediary is not a witness: this may need to be explained when officers ask the Registered Intermediary to make a witness statement on an MG11 in which they exhibit the report. The answer to that is that it is not necessary.

Late or post-ABE interview referrals

1.67 If the referral is sought after the ABE interview has taken place, or after a written witness statement has been taken from the witness, the Registered Intermediary should not watch the recording or read the statement prior to carrying out the assessment. This protects the integrity and credibility of the Registered Intermediary by ensuring that the initial assessment conclusions are based on what the Registered Intermediary has discovered from the witness assessment and the other usual enquiries from teachers, carers, etc. which may be made. In addition, the Registered Intermediary must be confident that they are able to facilitate communication with the witness based solely on their initial, direct involvement with the witness.

1.68 Following the assessment the Registered Intermediary may watch the recording, subject to the consent of the witness. This should be clearly noted and documented in their report. The Registered Intermediary should refer expressly to any additional observations as a result of watching the recording. It may be helpful to add this as an addendum or cross-refer in the report to the addendum under subject headings. It is a matter for the police and

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14 It should be noted that the Matching Service often receives requests for Registered Intermediaries for court cases a number of weeks, or even months, before the trial commences and in circumstances where the police have not used a Registered Intermediary during the investigative interview.
the CPS to decide whether or not to conduct a second ABE interview with the Registered Intermediary. If there is a second interview, then the Registered Intermediary should plan with and advise the officer in the same way as they would have done in the case of a first ABE interview. They should not however engage in an analysis of what ‘went wrong’ the first time.

1.69 The reasons for the late referral may be that the communication needs of the witness or defendant were not recognised at an early stage, or have developed further recently, or those dealing with the case were unaware of the Witness Intermediary Scheme or of its availability. Although each witness must be assessed in their own right, it is important to recognise that the experience of giving evidence at trial and of being cross examined from the live link room is very different from open, narrative questioning at an ABE interview.

1.70 In practice the NPIA may decline to accept a referral if it is too close to the trial date and the Registered Intermediary would not have sufficient time to assess the witness and to write their report.

1.71 In instances where the original Registered Intermediary is unable to attend the trial and another Registered Intermediary has to take their place, a handover between them and the new Registered Intermediary must be conducted with the former receiving all the relevant papers. The new Registered Intermediary must assess the witness themselves because in due course they will be assisting the witness (and helping the court) based on what they themselves have concluded about the witness’s needs. They must also therefore write their own report upon which the ground rules hearing should be based, though they are free to adopt the conclusions of the first Registered Intermediary if they agree with them.

The application for special measures

1.72 The procedure for the application for special measures under section 29 is set out in the Criminal Procedure Rules (CPR) 2010, Part 29. This is dealt with by the CPS who make the application to the court. The CPS is obliged to fulfil the procedural requirements in respect of prosecution witnesses; defence solicitors are so obliged in the case of defence witnesses. The party applying must apply in writing ‘as soon as reasonably practicable and in any event not more than 14 days after the defendant pleads not guilty’, although the court may permit a late application. The applicant must ‘attach any other material on which the applicant relies’ [CPR29.10 (g)] which in the case of an intermediary means the intermediary’s report. This is specifically referred to in the Application for Special Measures Direction, Part F (‘Attach any relevant report including an intermediary’s assessment if available’). The application includes ‘admitting video recorded evidence’ (that is, the ABE interview, whether or not an intermediary took part) and questioning a witness through an intermediary’. It is envisaged that such applications should be heard at pre-trial hearings in the magistrates’ court and considered at the plea and case management hearing (PCMH) in the crown court which is when the defendant enters a plea to the indictment. An application for an intermediary to assist a defendant throughout the trial should be made in advance of trial.
1.73 Special measures are not ‘agreed’. They are court orders which are binding on all parties until the order is varied or discharged which is normally because of a change in circumstances.

1.74 CPR 29.3 requires the applicant to serve the application on the court officer and ‘each other party’. If the other party wishes to make a representation about the application then they must serve ‘the representations’ on the court officer and ‘each other party’ not more than 14 days after service of the application (CPR 29.13). If there is an indication that the application will be opposed then the Registered Intermediary should be asked to attend the application hearing which may be the PCMH in order to assist the court in reaching its decision. The Registered Intermediary should not be excluded from the hearing but should instead be involved and where appropriate asked to explain further their findings and recommendations. There is no need for a Registered Intermediary to attend an unopposed application. Guidance for the judiciary on the JSB Intranet states: If the application is contested then the Registered Intermediary should be asked to attend in order to assist the court with any queries. As such, the Registered Intermediary must be in court during the hearing. The contested oral application should not take place in their absence.

1.75 Applications should be made in good time and certainly before the day of the trial itself. Applications made on the day of trial seriously undermine the ability of the witness to give best evidence.

1.76 Although the witness should never be promised in advance of the special measures application that they will be assisted by a Registered Intermediary, they may find that difficult to understand and they may become distressed when they discover that the application has been refused just before they are due to give evidence.

1.77 Defence counsel may have insufficient time to prepare their cross-examination in line with the recommendations in the report. This impacts on their ability to fulfil their professional obligations to their lay client and may increase the likelihood that the witness will be asked inappropriate questions. It inhibits the ability to timetable the witness’s evidence since their communication difficulties will not be before the court prior to the start of the trial.

1.78 Those considering an application for special measures should bring to the court’s attention the effect on the quality of the eligible witness’ evidence of having the assistance of a Registered Intermediary. Each application should be based on the needs of the particular witness or defendant and not on the court’s experience with others who may have suffered from comparable difficulties or offence type.

1.79 In the case of a vulnerable defendant the court must, in addition, have regard to any need for the assistance of an intermediary to assist the defendant in understanding the court process. This may include the evidence of other witnesses and submissions made by the advocates during court proceedings or during the course of the trial, facilitating communication between the defendant and their legal representatives and any other procedural matters that will support the defendant giving their best evidence and the facilitation of a fair trial.
Pre-trial

1.80 The Registered Intermediary should accompany the witness if possible to the court familiarisation visit.

1.81 Two further timetabling matters need to be considered prior to trial:

1. **Watching the recording for memory refreshing purposes.** Witnesses are entitled to refresh their memory by viewing the recording ahead of being cross-examined and traditionally, witnesses watch the recorded interview at the same time as the jury. This enables the court to observe any reaction the witness might have when watching the interview, such as a spontaneous comment. ABE guidance points out that viewing the interview ahead of time in more informal surroundings helps some witnesses familiarise themselves with seeing their own image on screen and makes it more likely that they will concentrate on giving evidence (section 5.50). Witnesses may prefer to see the interview at least a day before to prepare themselves and to reduce the stress of giving evidence on the day. The witness may lose concentration or become distressed during the interview. The viewing could take place on the court familiarisation visit but not if the witness is already too distracted by the experience of being in the court building. If the witness watches the interview at any stage other than when the jury is watching it then someone, but not the Registered Intermediary, must make a note of any reaction they have. The Registered Intermediary must not in any way coach the witness during this process - coaching means influencing the content of their evidence in any way.

2. **When the witness should give evidence.** It is common for witnesses to be asked to attend crown court at 10 am and then to wait for some hours before they are called into court or even to come back the next day, having been kept waiting until 4 pm\(^{15}\). The Registered Intermediary should point out in their report if, for example, the witness needs to give evidence first thing in the morning and to explain the consequences (fatigue, restlessness, effect of medication (e.g. epilepsy) etc.) if they do not. This should be conveyed to the CPS who can liaise with the appropriate court officers.

1.82 The Registered Intermediary is not a witness supporter; however, they may learn things about the witness (e.g., personal care issues) which impact on their experience at court and the Registered Intermediary should convey these things to the Witness Service, and CPS or defence solicitors, so that they can make suitable arrangements. It would also be appropriate to explain the witness’s difficulties to the Witness Service, and the witness or their guardian should be told of this occurring.

At court

1.83 The prosecution or defence bear the responsibility of informing the Registered Intermediary.

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\(^{15}\) Research suggests that even short delays are likely to increase stress and anxiety for the witness and may even lead to the refusing to give evidence at all, see ‘Tell Me What’s Happening’, P. Cooper, (2009).
Intermediary of the case listing and the likely date of the case to ensure they remain available. As far as possible the dates on which the Registered Intermediary will be needed should be accurately estimated in advance. The Registered Intermediary should be proactive when it comes to keeping in touch with the person who is commissioning their services – the police officer in the case or the CPS paralegal or the defence solicitor. It is important to check that a special measures application has been successfully made and to ensure that they have received accurate information about this.

1.84 When the Registered Intermediary arrives at court they should make themselves known to the court usher, Witness Service, to the officer-in-charge of the case (OIC) and, as appropriate, to the trial advocate. They should bring spare, clean copies of their court report. Registered Intermediaries have also been supplied with a pack of useful documents to take to court (available for Registered Intermediaries via their on-line forum) which includes a copy of the Judicial Studies Board (referred to as the ‘JSB’) guidance to judges, Bar Council guidance for barristers on the conduct of a trial with intermediaries, the Crown Court Bench Book chapter on Registered Intermediaries, and a copy of the case of R v Barker [2010] EWCA Crim 4.

1.85 In either the magistrates’ court or the Youth court, the Registered Intermediary should be involved in the Case Management Hearing to discuss their involvement in respect of the witness or defendant, during court proceedings. At the Crown Court, or where a trial takes place in the magistrates’ court or the Youth Court, before the trial commences there must be a ‘ground rules’ hearing – see footnote 8 – between the Registered Intermediary, the judge (or magistrates) and the advocates together, to discuss the Registered Intermediary’s involvement in respect of a witness or of a defendant who is being assisted throughout the trial. This is essential for good trial management. The requirement appears in the guidance to the judiciary on the JSB Intranet and in the guidance to barristers which can be found on http://www.barcouncil.org.uk/guidance/SpecMeasuresGuidance/. It further appears in the Notes for Guidance in the Application for a Special Measures Direction, Part F: ‘Judicial Studies Board and Bar Council guidance requires that, before the witness gives evidence, the court, the advocates and the Registered Intermediary should discuss “ground rules” for the conduct of the questioning’.

1.86 The Registered Intermediary must think of all the practical aspects of the witness’ evidence: seating, how to signal an intervention, what to do if breaks are needed, vocabulary, style of questioning (e. g., the use of leading or ‘tag’ questions), type of questions, etc. All of this should be covered already in the written report for court; however, the Registered Intermediary should mention any practical step that should be taken even if it is not in the report. The Registered Intermediary should recall that advocates are not used to having rules imposed which restrict the way they question witnesses and the advocates may say ‘but I have always done it this way’. However, it is the needs of this particular witness which should prevail.

1.87 A ground rules hearing in respect of a Registered Intermediary who is assisting a defendant throughout the trial should take place before the trial begins. A ground rules hearing in respect of a Registered Intermediary who only assists the defendant when giving evidence need only take place once the defendant has indicated on advice that they will give evidence.
1.88 During crown court proceedings the jury should not be told the contents of any ground rules hearing or the contents of the report. It contains matters which might not arise in the event.

1.89 The judge should explain the role of the Registered Intermediary to the jury. The Registered Intermediary must take the Registered Intermediary oath or declaration – see paragraph 1.52 for this – before evidence begins (or before they begin to act for a defendant). This is required by Criminal Procedures Rule 29.7. The court should normally have a copy of the oath but many Registered Intermediaries have found it helpful to carry a small, laminated copy with them in addition to a prepared statement of their role.

1.90 The Registered Intermediary may take the oath in the court room before joining the witness. During Crown Court proceedings, the Registered Intermediary may also be asked to summarise their qualifications and training for the jury. During proceedings in the magistrates’ court and the Youth court, the Registered Intermediary will be required to explain their status and qualifications to the bench (District Judge or magistrate). The judge is likely to want to explain to the jury what the witness’ difficulty is and how this would impact on their evidence. If so, the Registered Intermediary should assist here so that the jury is given an accurate picture.

1.91 The Registered Intermediary’s role during evidence must be transparent. Throughout the evidence the Registered Intermediary should be in view of the jury or magistrates so that their interaction with the witness is clear. If evidence is being given from a live link room, a plasma screen is preferable. The Registered Intermediary needs to be able to monitor the witness’ reactions.

1.92 The Registered Intermediary should not be alone with the witness / defendant at any time. There should always be a responsible third party present. Difficulties can arise in particular when the Registered Intermediary is in the live link room if the third party needs to leave temporarily. It is the Registered Intermediary’s responsibility to make sure they are not left alone with the witness/defendant at any point.

1.93 The audio systems and camera linking the court with the live link room do not always pick up everything that happens. It is the Registered Intermediary’s duty to bring to the court’s attention anything which is said or done in the live link room which the court may not have clearly heard.

1.94 The Registered Intermediary should intervene as soon as possible when they feel that an intervention is required, for example if the question might be too complicated for the witness or if it contains words which the witness may not understand. There is a question of balance and judgment which needs to be resolved on the spot on the basis of the knowledge the intermediary has gained about the witness. The questioning should flow if possible. A major purpose of the report and of the ground rules hearing is that the advocate is so well-informed as to the witness’s communication needs that intervention by the Registered Intermediary is not necessary.

1.95 The Registered Intermediary’s interventions should be based on their report and the justification for their intervention grounded in the recommendations of the report which the court has accepted as part of the ground rules hearing. Although matters may arise
spontaneously at trial, as many of the difficulties which the witness may encounter should be anticipated and flagged-up in the report. In most cases it will be sufficient for the Registered Intermediary to flag-up the difficulty inherent in the question after which the advocate will rephrase it. Judges have developed the practice that if the advocate is unable to ask the question appropriately after two or three attempts then the Registered Intermediary will be invited to put the question to the witness. Whether or how this will happen is the kind of issue which is fully aired in the ground rules hearing.

1.96 The advocate must be given an opportunity to rephrase the question before the Registered Intermediary is asked to phrase the question differently. A Registered Intermediary’s intervention is not analogous to an objection in law by an advocate. It should be resolved there and then, in Crown Court trials, without the jury retiring.

1.97 All parties should realise that when a witness is asked an inappropriate question they can become distressed because they realise that they are unable to answer it and therefore feel that they are not assisting a court. Other witness may on being asked a question they cannot understand retreat to answers such as ‘don’t know’ or ‘yeah’ which the defence may wish the jury to take on face value even though they are not in fact indicating agreement with the advocate. The Registered Intermediary needs to be alert to this and to the issues which arise if the advocate persistently asks inappropriate questions. If there is such a fundamental problem during a Crown Court trial and if no one else takes the initiative then the Registered Intermediary may say to the judge ‘there is a matter which would best be dealt with in the absence of the jury’ which is ‘code language’ for asking the judge to send the jury out of court without disclosing to the jury what the problem is. Once the jury has retired the problem in questioning can be fully and freely aired between the judge, the Registered Intermediary and the advocates.

REGISTERED INTERMEDIARY DUTIES WHILST AT COURT

1.98 Below is a checklist of Registered Intermediary duties whilst at court:

- A Registered Intermediary owes their first responsibility to the court.

- They should confirm their understanding of their duties and set out their oath or affirmation at the start of the interview and at trial.

- They will not discuss any aspect of the case or of the witness’ testimony with the witness.

- They will communicate questions put to the witness by the court or legal representatives as accurately as possible, in a way that facilitates the witness’ understanding.

- They will communicate the witness’ answers to questions to the court as accurately as possible.
• Where they provide any explanation of a question to the witness they will inform the court what the explanation was and why it was given.

• They will communicate the witness’ reply to a question as given, however irrelevant or illogical it appears. It will be for the court to seek clarification from the Registered Intermediary if necessary as to possible reasons for the response and whether the question could be re-phrased to permit a more logical or relevant response.

• They will seek clarification from the court of any questions that they have not understood before putting the question to the witness in the form the court wishes. Such clarification should relate to matters of understanding and comprehension and not any legal issues or purpose.

• They will not interrupt legal representatives unless there is an urgent need to seek clarification or to indicate that the witness has not understood something.

• They will not hypothesise as to the intentions or motives of the witness.

• They will not anticipate the intention of the questioner.

• They will not alter the question put or answer given in the first instance but will offer an alternative form of the question if required to facilitate understanding.

• They will not alter the precise nature or thrust of questions put to the witness or the witness’ answers, for the purpose of shielding or protecting them.

• They will not unnecessarily impede or obstruct the pace and flow of court proceedings.

• They will follow the directions of the court as instructed by the judge or magistrate and will respond to the directions and requests when required to do so.

• They will not engage in private conversation with the witness during the giving of evidence or in any way distract the witness from attending to the court process.

• They will address the court through the judge or magistrate at all times unless invited to respond to others in the court directly by the magistrate or judge (which should be resolved during the ground rules hearing).

• They will conduct themselves in a manner which is consistent with their role as a Registered Intermediary and in accordance with the Registered Intermediary Codes of Practice and Ethics – see part 3 for these.

• They will make use of appropriate pauses and breaks in the court process to raise any matters of concern affecting the quality of the witness’ evidence or when necessary bring matters of immediate concern to the attention of the court at the time they occur.
• They must not discuss any evidential aspect of the case with the witness on any future occasion.

OTHER SOURCES OF SUPPORT FOR WITNESSES

1.99 The Registered Intermediary is not a witness supporter but they should be aware that there are organisations which do support witnesses. The Registered Intermediary should pass on to them any appropriate or relevant information which would assist them in helping the witness.

Interpreters.

1.100 Interpreters may be used where the witness does not have a sufficient command of English to communicate with the police, the legal teams and/or the court. Interpreters are tasked to provide an accurate transfer of meaning from one language to another without adding to the question or answer. They must not explain the questions to the witness nor explain the witness’ answers. They are, however, allowed by their code of conduct to intervene to ask for clarification, accommodation of the interpreting process and to alert all the parties to possible misunderstandings and missed cultural references. They will then interpret any subsequent explanations. A Registered Intermediary may have to deal with an interpreter if the witness’s first language is not English.

British Sign Language (BSL).

1.101 The role of BSL interpreters is similar except that they are using signing as the language of interpretation particularly for those for whom BSL is their first language. There are deaf Registered Intermediaries who use BSL with the witness but who also need a BSL interpreter to convey the words to the court.

Expert witnesses.

1.102 An expert witness is someone who is called by either the prosecution or the defence because they have specialist knowledge or experience which is outside that of the court. An example is a consultant psychologist. They are called in order to assist the court and do so by giving opinion evidence on a relevant issue, for example if there is an issue as to whether the witness is competent to give evidence. Registered Intermediaries should not be used as expert witnesses in cases even though they possess professional training and experience in particular fields. Someone who happens to be a Registered Intermediary may appear as an expert witness in a trial in their own capacity but not in a case in which they are also appearing as a Registered Intermediary.

The Witness Service.

1.103 The Witness Service offers information, including pre-trial visits and emotional support, to all witnesses before and during hearings (this does not include defendants). The service is available both to prosecution and to defence witnesses. The pre-trial visit (the ‘court familiarisation visit’) involves a visit to the court room, during which the witness will be
shown the court and have the roles and responsibilities of those involved with court proceedings explained. The Witness Service can also put witnesses in touch with other agencies who can help. If the Registered Intermediary has become aware of aspects of the witness’ care which may require arrangements to be made at court they should inform the Witness Service, and CPS or defence solicitors, who will then make those arrangements.

**Victim Support.**

1.104 Victim Support is a national charity which provides help and support for victims, witnesses and their families whether or not there is a court process. The Witness Service is part of Victim Support.

**The National Society for the Prevention of Cruelty to Children’s (NSPCC) Young Witness Service.**

1.105 Witnesses under the age of 18 can receive support before and during their appearance as a witness which includes familiarisation with the court process and physical and emotional support of young witnesses at all stages of the legal process. Young witness support schemes are also operated by Local Criminal Justice Boards and the Witness Service. Support is provided through the use of guided activities and materials in the Young Witness Pack as well as dealing with questions and concerns and being present at court to support the young witness. This role is distinct from the role which certain NSPCC workers may take as part of the joint investigative teams, working alongside the social services and police.

**Safeguarding**

1.106 There may be occasions when a Registered Intermediary wishes to share concerns about a vulnerable witness because s/he thinks that the vulnerable witness may be at risk of significant harm, for instance if they were to return to their home environment or if they did not get access to necessary support services.

1.107 The Registered Intermediary who is considering sharing ‘safeguarding’ concerns with a relevant agency / agencies, such as social services or the police, should consult the guidance ‘Information Sharing - Guidance for Practitioners and Managers’ (Oct 2008), the link to which is as follows:

http://www.dcsf.gov.uk/everychildmatters/strategy/deliveringservices1/informationsharing/informationsharing/

1.108 If the Registered Intermediary decides to share “safeguarding” concerns they should make the relevant agency/ies aware of their concerns verbally and follow this up in writing. If the Registered Intermediary requires advice regarding a policing matter they can call the NPIA Specialist Operations Centre.

1.109 The Registered Intermediary should keep a clear record of what they have done (including if s/he decides not to share information) and the reasons why.
1.110 For more general information about the safeguarding of children see: http://www.education.gov.uk and for general information about the safeguarding of vulnerable adults see: http://www.dh.gov.uk.
2.1 Having completed an assessment of the witness and having gathered relevant information from all available sources, a Registered Intermediary will be required to write a report for the court about the communication needs of the witness.

2.2 The effectiveness of the Registered Intermediary at the pre-trial hearing PCMH, the ground rules hearing and the trial is dependent on the quality of the assessment and the written report for court. In order to perform their function well at court, the Registered Intermediary needs to be confident about the assessment, conclusions and recommendations in their report.

2.3 This section contains advice about a Registered Intermediary’s full, written report for the court. This is not the same as a preliminary report which a Registered Intermediary may provide to the police officer after the initial Registered Intermediary assessment but before the ABE interview. A preliminary report may be written or oral but it is not the same as the report for court which comes at a later stage.

2.4 The report for the court will be used in two main ways:

1. It will be taken into consideration by the prosecution, defence and the court when the application for special measures is made; and

2. It will advise the prosecution and defence (in particular the advocates) and the magistrates/judge about how best to communicate with the witness at the trial.

2.5 The report for court should be set out in a way that assists the parties and the magistrates/judge. It should be clear and concise. Most judges and advocates have had little or no training on developmentally appropriate questioning or how to communicate with vulnerable witnesses hence the need for clear and well-explained, impartial advice from the Registered Intermediary in the case.

2.6 This section suggests a structure for the report and gives a checklist for the written style, formatting and content. However, the content of any report should be adapted as necessary to suit the particular case.

2.7 Once completed, the Registered Intermediary should send the report to the person who commissioned it, i.e. the CPS paralegal if it is about a prosecution witness or the defence solicitors if it is about a defence witness or the defendant. The CPS paralegal/defence solicitor is then responsible for serving the report i.e. circulating the report to the parties and the court.

2.8 The structure of a full court report follows.
Suggested structure of the full court report

Front page

Contents page and page numbers

Section 1: Summary of Registered Intermediary’s qualifications and experience

Section 2: Background, instructions and chronology

Section 3: Summary of conclusions and recommendations

Section 4: Witness assessment

4.1 General observations
4.2 Attention and listening skills
4.3 Auditory comprehension/understanding of spoken language
4.4 Spoken expression (expressive language)
4.5 Speech sound intelligibility
4.6 Reading and writing ability
4.7 Non-verbal communication
4.8 View of witness/defendant on being assisted by a Registered Intermediary
4.9 Other relevant information, i.e. social, health, medical background, level of education and development, emotional state, etc.

Section 5: Conclusions and recommendations for special measures

5.1 Conclusions
5.2 Recommendations on communication and questioning
5.3 Other recommendations/special measures
5.4 Plea and Case Management Hearing (‘PCMH’)
5.5 Pre-trial meeting to set the Ground Rules

Registered Intermediary Declaration

Appendices

Appendix 1: CV of the Registered Intermediary
Appendix 2: Description of the role of a Registered Intermediary
Appendix 3: Notes on communication aids
Appendix 4: How to give feedback
Front page of the full court report

R v [Name of defendant/s]

Case reference number:

Registered Intermediary Report and Recommendations on Special Measures
in respect of [Name of witness]

Report prepared at the request of
[Name and address]

Author: [Registered Intermediary name]
Registered Intermediary Registration Number: [Number]

[Date]

Confidential Report

This report is confidential and is intended only for the parties and the court in this case. It should not be disclosed outside these proceedings without the permission of the court. This report is for advice only and is not evidence in the case.
Contents page

2.9 For any report longer than ten pages, including the front page, it is also advisable to have a contents page with page numbers to help the parties and the judge find their way around the report. All reports should be page numbered whatever their length.

Section 1: Summary of Registered Intermediary qualifications and experience

2.10 The Registered Intermediary should set out, usually in one or two paragraphs, their qualifications and experience relevant to the particular case. The Registered Intermediary can indicate that their full CV is set out in Appendix 1.

Section 2: Background, instructions and chronology

2.11 This section should succinctly explain who contacted the Registered Intermediary and why and the key facts and dates including the name of the witness, their date of birth and the dates of the referral, the intermediary assessment/s (which ordinarily takes places before the ABE interview), the ABE interview and the PCMH (if known).

2.22 This section should also set out clearly what questions this report seeks to address. For example the report might say

“I have been asked:

1. To indicate whether [name of witness/defendant] has the ability to communicate to give evidence in court in this case, and if so

2. To indicate whether the use of an intermediary is likely to improve the quality (completeness, coherence and accuracy) of the evidence given by [name of witness/defendant], and

3. To make recommendations as to special measures to enable the best communication with [name of the witness/defendant]

My role as a Registered Intermediary is to assist communication with a witness and to assist a witness to communicate with others. I am not instructed as an expert witness. I cannot give an opinion on the accuracy of a witness’s recall of the facts in this case nor can I give an opinion on whether a witness is telling the truth in his / her evidence.

My role is limited to providing assistance to facilitate communication before trial and during the witness’ evidence and advising how this can best be achieved.”
Section 3: Summary of conclusions and recommendations

2.23 Normally this section would be no more than two to three paragraphs long and should provide the reader with a quick overview of what the report says.

Section 4: Witness assessment

2.24 It is important that this section gives details of the facts upon which the Registered Intermediary has based their conclusions. The report sub-headings below are suggestions only and may not be suitable in all cases:

4.1 General observations
4.2 Attention and listening skills
4.3 Auditory comprehension/understanding of spoken language
4.4 Spoken expression (expressive language)
4.5 Speech sound intelligibility
4.6 Reading and writing ability
4.7 Non-verbal communication
4.8 View of witness on being assisted by an intermediary
4.9 Other relevant information, i.e. social, health, medical background, level of education and development, emotional state, etc.

2.25 Each Registered Intermediary should approach the assessment in the way they feel is most appropriate. There is no rule to say how the assessment should be carried out or what it should consist of. The Registered Intermediary decides the best way to carry out the assessment in that particular case and the report should reflect that assessment.

2.26 It is not necessary to include full clinical test results. In some cases the Registered Intermediary may want to include test results or partial test results in an appendix because it will help the reader to understand the communication issues. In most cases, though, this is not required and a summary of the assessment results in the main body of the report will be sufficient.

2.27 Registered Intermediaries should not attempt to assess the witness’s understanding of truth and lies but they should be ready to advise the police officer and / or the court how best to communicate these concepts to the witness so that the interviewing police officer / the judge may assess the witness’s understanding.

2.28 This section should also make reference to other information that the Registered Intermediary has relied on for their assessment. Others who may be able to provide relevant information for the assessment might include family members, foster parents, nursery workers, early years service workers, school teachers and teaching assistants, special educational needs co-ordinators, key workers or assistants, social workers, psychologists, doctors, nurses, therapists, police officers etc. If information in the report comes from other sources, the report should make it clear what the information is and who it comes from. All sources of information relied on, whether written or oral, should be listed with the date of the report or conversation. However, the Registered Intermediary should seek consent to
include information from a third party’s report if it has not already been gained by the police (as per paragraph 1.40). In the ordinary course of events it should not be necessary to attach a copy of the third party’s report to the Registered Intermediary’s report.

2.29 It should be noted that the Registered Intermediary’s court report is attached to the application for special measures and that these are served on the defence. The Registered Intermediary should therefore only include personal confidential information in so far as it is necessary for their report and must not include information which could further identify or endanger the witness, for instance details that would identify the location (place of residence, name of school, etc) of a witness. The effect of this is, for example, that they should simply refer to obtaining information from a child witness’s school rather than naming the school and the person from whom they obtained that information.

2.30 Information or reports about a witness should be stored securely along with the rest of the Registered Intermediary’s notes in compliance with guidance on storage and disposal of case notes and papers, i.e. in accordance with the provisions of the Data Protection Act 1998.

Section 5: Conclusions and recommendations for special measures

5.1 Conclusions

2.31 This section of the report should address the issues that the Registered Intermediary has been asked to address as set out earlier in the written report. For example the conclusions will address whether the witness has the ability to give evidence in court in this case, and if so whether the use of a Registered Intermediary is likely to improve the completeness / coherence / accuracy of the evidence given.

2.32 The report should then go on to make recommendations which improve the quality of evidence from the witness.

5.2 Recommendations on communication and questioning

2.33 The report should provide detailed recommendations to the advocates and the judges on what to say and do when communicating with the witness/defendant. These recommendations are likely to become the focus of the discussions between the judge, the Registered Intermediary and counsel at the Ground Rules hearing.

2.34 The recommendations should clearly tie in with the assessment findings. For example a recommendation that there should be no use of leading questions would refer back to the part of the witness assessment that showed use of leading questions would be detrimental to clear communication / give rise to meaningless answers.

2.35 The report should make detailed recommendations as to how questions should be put to the witness. For instance, there might be recommendations on: pace of questioning, prefacing questions with the name of the witness, allowing the witness to process the question and formulate their answer, chronology of topics, whether questions about certain
times should be linked to events, length of questions, avoiding inferences, idioms, double negatives, tag questions, leading questions, etc.

2.36 The report should give examples to illustrate in practical terms what is meant by a particular recommendation. For example, if the recommendation is to “avoid tag questions” the report should give an example of a tag question and then also give an example of how the question should be put avoiding the use of a tag.

2.37 The recommendations about questioning techniques should be as specific as possible. For example, rather than simply saying that the witness needs “frequent, short breaks”, the report should explain how often the breaks should occur, whether snacks should be on hand, how long the breaks should last, etc.

2.38 Where possible, the report should give the questioner practical tips and strategies. For example, if the assessment established that the witness has a language-processing delay and a recommendation is to allow the witness sufficient time to answer, the report might suggest that the questioner counts up to five in their head after the question has been asked and before saying anything else.

2.39 The report may refer to words used successfully in interview. The report should also address special vocabulary if the witness / defendant uses idiosyncratic language for certain body parts. The report should set out the special word/s so that the questioner may use them.

2.40 The report should also indicate what, if anything, will indicate that the witness / defendant is becoming confused so that the questioner can be alert to this. The report should state how the intermediary will indicate if there needs to be a break in the questioning.

2.41 The report should set out what the Registered Intermediary will do to draw the court’s attention to a communication issue should it arise. The report may also set out how the witness will indicate if s/he has a question or concern e.g. raising a red card.

2.42 The recommendations should address what, if any, communication aids should be used (for example symbols, charts, pictures, etc) and how they should be used. Further detailed guidance may be set out in an appendix as necessary.

2.43 Mode of delivery may also be addressed in the report; for example, the recommendations might include advice to the questioner to indicate if they are about to change the topic, or advice to avoid using a particular tone of voice.

2.44 The report may also make suggestions regarding witness preparation in so far as it is relevant to the witness’s communication needs. Registered Intermediaries should note that witness preparation is the responsibility of the Witness Service however where necessary the Registered Intermediary may be present to assist with communication. All witness preparation must adhere to the guidelines set out by the Court of Appeal in *R v Momodou* [2005] EWCA Crim 177 and must not in any circumstances involve coaching the witness.
The report may make recommendations as to the appropriate time and venue for the witness to watch the recording of their ABE interview/s. Registered Intermediaries should note that, although it is often the practice, a vulnerable witness need not watch the recording of their ABE interview/s at the same time it is played in court as evidence. The important thing is that the witness has had a recent opportunity to refresh their memory by watching it and that they are available for cross-examination once the recording has been played as their evidence in chief.

2.45 In addition to the above narrative explanation of the recommendations, it may be helpful to include in the report a summary of the recommendations in a checklist or a table format. This can then be used as a quick reference guide at the pre-trial hearing/PCMH when the Ground Rules are being set and at the trial when the witness is giving evidence.

**Ground Rules in table format**

<table>
<thead>
<tr>
<th>Do (communication techniques to adopt)</th>
<th>Notes to assist the questioner</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Don't (techniques to avoid)</td>
<td>Notes to assist the questioner</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**5.3 Other recommendations / special measures**

2.45 As well as the above recommendations on communication and questioning of the witness, the report may also include recommendations which would enable better communication with explanations as to why. The following are suggestions only and the list is not exhaustive:

- How the oath / affirmation should be taken; for example, how many words should be read at a time for the witness to repeat.
• The timing of the witness's evidence (for example, if there is a certain time of day when communication is likely to be easier, if it is necessary to, as far as possible, avoid keeping the witness waiting at court, etc).

• Whether the witness finds it helpful that wigs and gowns are worn/not worn.

• Memory refreshing procedure.

2.46 The Registered Intermediary should indicate that the he / she should attend the hearing of a special measures application if it is opposed. This would normally be heard at the PCMH. The application ought to be made some weeks before the trial but this does not always happen and may even happen on the day that the trial begins. The report should indicate that the Registered Intermediary is willing to attend a contested hearing of an application for special measures.

2.47 The report should remind the court that there must be a Ground Rules hearing – see footnote 8 – before the witness gives evidence in order to discuss the contents of the report and how the witness can be questioned most effectively. The hearing is in effect a meeting between the Registered Intermediary, advocates and the judge in the trial and it is necessary to establish the Ground Rules for questioning the witness.

5.4 Registered Intermediary Declaration

2.48 The Registered Intermediary oath should be set out in full and be followed by the Registered Intermediary’s signature and date on which the report was signed. An original, signed copy of the report should be supplied (or sent via secure post / secure email) to the person who commissioned the report.

2.49 The oath should read:

“I solemnly, sincerely and truly declare that I will well and faithfully communicate questions and answers and make true explanation of all matters and things as shall be required of me according to the best of my skill and understanding.”

Signed

Dated

Appendices

2.50 Appendices should be used for relevant reference material that is too detailed for the main body or which would break up the flow of the main body of the report.

CV

2.51 A full CV of the Registered Intermediary should be included. It must be relevant to the case and should be no more than 2 pages in length.
Role of the Registered Intermediary

2.52 A short description of the role of the Registered Intermediary will be particularly helpful for those who do not have experience of working with a Registered Intermediary. This description should normally last no more than a half to three quarters of a page of A4. It is useful to include that the judges’ intranet sets out the Judicial Studies Board guidance for judges about trials involving Registered Intermediaries and the Bar Council has professional guidance on applications for special measures.

Communication Aids

2.53 It may be useful to explain some communication aids in an appendix. If a recommendation is for the use of a ‘bliss board’ for example, more detailed notes in the appendix will help the parties and the judge understand exactly how this will work in practice. If a picture book is to be used, this could be described in more detail with examples given of the pictures to be used. The main body of the report might invite advocates, in advance of the trial to indicate other words or ideas which could usefully be represented in the picture book, i.e. cards to help the witness say “I don’t know”, “I don’t understand”, etc.

Other appendices

2.54 An appendix should be used to set out reference material that will help the parties and the judge but which would be too detailed to include in the main body of the report.

2.55 An appendix may be used for details of assessment tests and results; that is, to set down what happened when particular tests were carried out. These should only be included if it will be useful for the parties and the judge to see them. Remember, the report is mainly going to be used to support an application for special measures and to guide the advocates and the judge on how to best communicate with the witness / defendant. It is therefore unlikely that the report needs to contain specific test results; in the event that a query did arise about a specific test result, the Registered Intermediary will have their assessment notes to refer back to.

2.56 Registered Intermediaries should include details about how to give feedback. The following wording should be used:

Appendix 4: Giving feedback about the Witness Intermediary Scheme.

‘End-Users’ will be provided with an End-User feedback form, the completion and submission of which will enable performance management information on the Witness Intermediary Scheme to be collected and assessed to see what improvements to service provision may be made.

Should End-Users wish to provide additional, more detailed feedback on the service provided by Registered Intermediaries within the Witness Intermediary Scheme they should send it by email to Ministry of Justice at jason.connolly@justice.gsi.gov.uk.

For others involved in a case, i.e. members of HMCS, the judiciary, counsel, etc, feedback on the service provided by Registered Intermediaries within the Witness
Intermediary Scheme may be provided to the Ministry of Justice at jason.connolly@justice.gsi.gov.uk.

*The End-User is the individual who, on behalf of their respective organisation, submits the Request-for-Service for the engagement of a Registered Intermediary. For victims and witnesses this will be the police and CPS for pre-trial (investigation) and trial stages of a case respectively. The End-User will be the individual, on behalf of their respective organisation, to whom the Registered Intermediary will submit their assessment report(s).

REGISTERED INTERMEDIARY REPORT WRITING CHECKLIST

2.57 Below is a checklist for Registered Intermediaries when writing reports:

- Suitable front page and contents page.
- Written in the first person.
- Suitably structured and headed/sub-headed, following the guidance above.
- One and a half line-spaced.
- Set out with wide margins.
- Printed single-sided.
- Arial font must be used.
- Font size twelve must be used.
- Written in plain English and containing no jargon.
- Written in short sentences and with short paragraphs.
- Any medical or communication abbreviations and terms used should be explained, i.e. ‘X has dysphagia. This means they have difficulty swallowing and this has an impact on their ability to physically form words.’
- Page-numbered, i.e. page 1 of 5. This should be in the bottom right-hand corner of the page.
- Paragraph-numbered., i.e. 1.1, 1.2, 1.3, etc. Sub-paragraphs should be reflected in numerical order and, if required, further divisions should be reflected in alphabetical order, i.e.
  - 1.1
    - 1.
a.

- Headed on each page with case name, number and the front page headed Registered Intermediary Report.

- Clearly summarised at the end with conclusions and recommendations (which are supported in the body of the report by assessment findings).

- Recommendations clearly set out for viewing ‘at a glance’ – a table may be used for this purpose.

- Signed under the oath.

- Dated.

- Proof-read and free of grammar, spelling and typographic errors.
Part 3 THE REGISTERED INTERMEDIARIES CODE OF PRACTICE AND THE CODE OF ETHICS

The Code of Practice for Registered Intermediaries

Definition: in this code, intermediary means any person who is registered on the national database, the Intermediary Register, as a Registered Intermediary in the criminal justice system as specified in Section 29 of the Youth Justice & Criminal Evidence Act 1999.

1. The primary responsibility of the intermediary is to enable complete, coherent and accurate communication to take place between a witness who requires special measures and the court.

2. Intermediaries must have a clear and comprehensive understanding of the responsibilities and duties of their role within the criminal justice system, including their primary responsibility to the court.

3. They must conduct themselves in a professional and courteous manner at all times.

4. They must be familiar with and observe the terms and conditions and procedures that govern their assignment.

5. They should identify the sources of advice, information and materials required in order to ensure a clear understanding of the special needs of the witness.

6. They must carry out a functional assessment of the communication needs of the witness and make an informed professional judgement of the time required to enable them to carry out the assessment satisfactorily.

7. They will use the background information provided and will meet with the witness, his or her relatives, supporter, carer or relevant professionals to acquaint themselves fully with the knowledge and understanding required to carry out the assignment successfully.

8. They must not enter discussions, give advice or express opinions concerning the evidence the witness is to present or any aspect of the case that could contaminate the evidence or lead to an allegation of rehearsing or coaching the witness.

9. They must keep the co-ordinator and other appropriate parties informed of any difficulties that may arise in the course of the assignment that may affect the prospects of best evidence being given.

10. They must hold meetings with witnesses within a time-scale agreed with the co-ordinator and in appropriate venues.

11. They must make clear the purpose of the meetings and structure meetings in a way that allows sufficient time to assess the needs of the witness and to gain the confidence and trust of the witness.
12. They must record and communicate to the co-ordinator any dissatisfaction expressed by the witness with either the intermediary or the procedure being followed.

13. They must ensure the witness is satisfied with the outcome of the assessment and understands the role of the intermediary, particularly in the context of the court appearance.

14. They must conduct themselves in court in a manner that facilitates accurate and coherent communication between the witness and the court.

15. They must not change the content of what is being said or attempt to improve or elaborate what has been said. Any actions that may improve understanding without changing meaning or the sense of what is being said, such as conveying the meaning of gestures the witness may make, must be taken only with the explicit understanding and consent of the court.

16. They must disclose to the court any difficulties encountered, such as limitations in their professional experience and training, and seek the court’s guidance about action that may be taken that is consistent with best evidence.

17. They must intervene only to seek clarification from the court or to draw the court’s attention to any difficulty the witness may be experiencing in understanding what is being said or that may be distressing the witness.

18. They must respect at all times the authority and judgement of the court.

19. They must complete, at the conclusion of each assignment a monitoring and evaluation form that will contribute to efforts to improve the quality of the service.

20. They must recognise that an intermediary’s duty to the court remains paramount. They must understand the different obligations regarding disclosure of information between the prosecution and the defence legal teams and must maintain their professional integrity in relation to these different obligations.

21. They must notify the Intermediaries Registration Board immediately of any criminal investigation or proceedings against them or any other complaint or investigation into their conduct or competence.

22. They must notify the Intermediaries Registration Board of the result of any adverse Criminal Records Bureau disclosure check carried out on them. (i.e. any result where a conviction is recorded other than already disclosed to the Intermediary Registration Board).
The Code of Ethics for Registered Intermediaries

1. Definition: in this code, intermediary means any person who is registered on the national database, the Intermediary Register, as a Registered Intermediary in the criminal justice system as specified in Section 29 of the Youth Justice & Criminal Evidence Act 1999.

2. Intermediaries will consider at all times the potential for conflict of interest and the need to act in the public interest and will conduct themselves responsibly and professionally using reasonable skill and care in the performance of their duties.

3. This includes:
   - Seeking to increase their professional communication skills and knowledge and their skills as an intermediary e.g. court skills, through training and research.
   - Ensuring they have adequate and sustained professional support for their own role.
   - Safeguarding professional standards in every practicable way.
   - Offering other intermediaries reasonable and appropriate assistance.
   - Respecting the ethics and professional practice of other professions.
   - Endeavouring to the best of their ability to enable communication to be complete, coherent and accurate.
   - Only accepting work for which they are appropriately qualified and they judge to be within their professional competence.
   - Accepting only in exceptional circumstances, an assignment for which no entirely suitable intermediary is available, with such acceptance being subject to the informed consent of all parties.
   - Acknowledging and seeking to overcome in a professional manner, such as through professional advice and guidance or support networks, any unforeseen difficulties or limitations in knowledge or practice that may become apparent in the course of an assignment.
   - Promptly notifying the co-ordinator of any matter, including conflict of interest or lack of suitable qualifications and experience that may disqualify or make it undesirable for them to have continued involvement in the assignment.
   - Treating as confidential any information that may come to them in the course of their work including the fact of their having undertaken a particular assignment, although assignments may be used as evidence for continued registration but not in other (to be defined) circumstances. However, this does not preclude disclosure when legally
required to do so or when failure to disclose information could render the intermediary liable to prosecution.

- Disclosing before commencing an assignment or as soon as practicable any vested or material interest that the intermediary may have in the assignment.

- Not using any information or knowledge gained during the course of their work to benefit themselves or anyone else improperly.

- Not giving advice or offering personal opinions in relation to the evidence presented by the witness nor concerning people present during an assignment.

- Making appropriate efforts to facilitate communication between people who have differing communication and cultural characteristics

- Making all reasonable effort to be available for all meetings, hearings, trials and other appointments for which adequate notice has been given.

- Not cancelling or postponing meetings that are part of the assignment without good reason and where possible, the consent of the people concerned.

- Respecting the decisions taken by other professionals, particularly criminal justice decisions.
Part ADDITIONAL INFORMATION AND REQUIREMENTS FOR REGISTERED INTERMEDIARIES

Jason Connolly, Ministry of Justice

Governance of the Witness Intermediary Scheme (WIS)

4.1 Governance of the WIS is undertaken through the Intermediaries Registration Board (IRB) which focuses on its strategic direction, policy management and operation. It is the body that brings together the key stakeholders from across the CJS and through which the WIS policy decisions are made. Its members are responsible for representing their respective organisation on the Board and representing the Board within their organisation to ensure the WIS continues to meet the needs of those it serves in the criminal justice system.

4.2 Terms of reference for the IRB are published on the Registered Intermediary On-line forum.

Quality Assurance of Registered Intermediaries

4.3 Quality assurance and regulation and monitoring of the professional standards of Registered Intermediaries is undertaken the WIS’s Quality Assurance Board (QAB). Membership of the QAB comprises of representatives of professional and vocational organisations and subject matter experts from the Crown Prosecution Service and the National Policing Improvement Agency. Each of these individuals brings substantial and significant personal and professional experience to the QAB in the field of professional regulatory issues and maintenance and monitoring of associated standards of practice.

4.4 Terms of reference for the QAB are published on the Registered Intermediary On-line forum.

Registered Intermediary representation

4.4 The Registered Intermediary Reference Team (RIRT) is the stakeholder consultation group that represents the Registered Intermediary community to the Ministry of Justice in the development, management and governance of the WIS. A nominated individual will represent the RIRT on the IRB and represent the IRB to the RIRT to ensure the WIS continues to meet the needs of those it serves in the criminal justice system.

4.5 Terms of reference for the RIRT are published on the Registered Intermediary On-line forum.

Time commitment expected as a Registered Intermediary

4.6 Registered Intermediaries are expected to commit to a minimum of 12 days a year in the Registered Intermediary role, i.e. in direct face-to-face contact with a witness. Delivering or attending relevant training courses is an option that may be used to evidence Registered Intermediary specific Continuing Professional Development activity but is not a substitute for actually acting in the role itself.
4.7 Where Registered Intermediaries anticipate that they will be unavailable to be offered work in this role for known or extended periods of time – in effect, they are inactive – they should inform the NPIA so the national database may be updated accordingly.

**Continuing Professional Development (CPD)**

4.8 CPD is the means by which Registered Intermediaries maintain, improve and broaden their knowledge and skills and develop the professional qualities and competencies required in the discharge of their duties in this role. It is an important means by which the QAB can monitor and regulate the professional standards expected of Registered Intermediaries in the WIS and, in doing so, provide a guarantee to the IRB and WIS stakeholders of the quality of service to be expected from a Registered Intermediary. Additionally, it will help inform the development of future training and development opportunities for new and existing Registered Intermediaries.

4.9 It is a requirement of continued registration as a Registered Intermediary that an annual CPD log is submitted for review, i.e. for the period from 01 April of one year to 31 March of the following year.

4.10 Guidance on the completion of a CPD log, a template CPD log and a selection of anonymised examples of very good CPD logs are available on the Registered Intermediary On-line forum. Additionally, reminders and calling notices regarding annual submission of their CPD logs will be posted regularly on that forum and sent to Registered Intermediaries via their secure email addresses.

**Rates of remuneration for Registered Intermediaries**

4.11 Rates of remuneration for Registered Intermediaries are reviewed and agreed upon by the Remunerations Sub-Group of the IRB. This sub-group consists of End-User representatives who commission and pay for the services of Registered Intermediaries.

4.12 The rates of remuneration are published on the Registered Intermediary On-line forum.

**Invoicing and taxation**

4.13 Payment for the services of a Registered Intermediary is made through an End-User direct payment process whereby the Registered Intermediary directly invoices the End-User for their services and is paid directly by them accordingly. The Ministry of Justice does not fund the costs of Registered Intermediaries for End-Users.

4.14 Registered Intermediaries are classed as self-employed individuals (although they may be in gainful employment elsewhere and make arrangements (i.e. take annual leave) with their employer to act in this role). They are not employees of the Ministry of Justice, the NPIA or of the End-User who engages them to conduct work in the Registered Intermediary role. They are therefore under no compulsion by the Ministry of Justice or the NPIA to accept work offered to them.
4.15 Registered Intermediaries are responsible themselves for fulfilling any obligations in terms of submitting an annual self-assessment tax return to HM Revenue & Customs for any income received in this role.

Data protection regulations

4.16 Due to the nature of Registered Intermediary work, Registered Intermediaries are required to register, and maintain their registration, with the Information Commissioners Office (ICO) as Data Controllers (Tier 1 user) as they will receive information on cases that will often include personal information and details on an individual. Guidance on how to register with the ICO, and further information on its role, is provided at the following link http://www.ico.gov.uk/what_we_cover/data_protection/notification.aspx.

4.17 Registered Intermediaries must also ensure that they adhere to the Data Protection Act (DPA) 1998, an Act that makes provision for the regulation of the processing of information relating to individuals, including the obtaining, holding, use or disclosure of such information.

4.18 In order to adhere to the provisions of the DPA 1998 and to facilitate the safe transfer and exchange of personal information and details relating to a case, a secure email address, i.e. one that includes within its suffix .gsi, .cjsm or .pnn, must be used. Registered Intermediaries must therefore use the secure email address provided to them for this purpose. Should they have any doubts about the security of an email address to which they are requested to send information, they should confirm with the requester that it is a secure email address. Failing that, an alternative secure method of transferring and exchanging the information must be arranged.

4.19 Details of how to register for a secure email address, and any questions related to doing so, should be sought from the NPIA.

Insurance to practice in the role of a Registered Intermediary

4.20 Due to the nature of Registered Intermediary work, Registered Intermediaries are required to have, and maintain, adequate and appropriate personal indemnity insurance to practice in the Registered Intermediary role. The IRB does not specify the level of cover required although many Registered Intermediaries may already have appropriate cover through their current employer or through membership of a professional organisation. However, Registered Intermediaries are advised to check that this extends to their role as a Registered Intermediary. Alternatively, appropriate insurance can be arranged on an individual / personal basis through an independent insurance provider.

4.21 Registered Intermediaries should note that as self-employed, independent practitioners it is their individual responsibility to ensure that they have, and maintain, adequate and appropriate insurance to act in this role.

4.22 Information on this subject is available on the Registered Intermediary On-line forum.
4.23 Due to the nature of Registered Intermediary work, Registered Intermediaries are required to have and maintain current Enhanced Disclosure Criminal Records Bureau (CRB) clearance. This may be through existing CRB clearance in relation to their primary / other employment or can be applied for through accessing the following link - http://www.crb.gov.uk/using_the_website/applicant.aspx.

Complaints Policy and Procedure

4.24 The WIS is overseen by the IRB with review and regulation of professional standards conducted by its QAB. The IRB welcomes feedback on the service that Registered Intermediaries provide but should anyone be unhappy with any aspect of this service, it is important that the IRB is made aware of this.

4.25 The Victims and Witnesses Unit (VWU) at the Ministry of Justice can take action in response to both informal and formal complaints. As such, a Complaints Policy and Procedure (CPP) is in place to deal with such complaints. Complaints concerning the professional conduct of a Registered Intermediary are likely to be resolved through the formal complaint procedure. Other complaints, not relating to matters of professional conduct, can be handled through informal means. The VWU reserves the right to determine the appropriate route for each complaint.

4.26 The CPP sets out how all complaints, both informal and formal, about the professional conduct of a Registered Intermediary, or anyone associated with the Registered Intermediary profession, are to be handled.

4.27 A complaint may be brought for a number of reasons, including professional misconduct or deficient performance.

4.28 The VWU will not investigate any complaint made against a person(s) who is not a Registered Intermediary nor is associated with the Registered Intermediary profession. If the complaint concerns an issue for which other procedures exist (for example if it warrants a police investigation) then it will be dealt with under those procedures rather than as a complaint. The VWU reserves the right to report the complaint to a relevant professional body and suspend these procedures pending a resolution of the issue by that professional body.

4.29 The CPP is published on the Registered Intermediary On-line forum.
5.1 The table below shows an outline of the division of responsibility between the Victims and Witnesses Unit and the NPIA.

<table>
<thead>
<tr>
<th>Victims and Witnesses Unit</th>
<th>NPIA</th>
</tr>
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<tbody>
<tr>
<td>Overall governance and management of the Witness Intermediary Scheme.</td>
<td>Queries about the Witness Intermediary Scheme’s Matching Service in general.</td>
</tr>
<tr>
<td>Policy and strategy management and development of the Witness Intermediary Scheme.</td>
<td>Questions about the role and use of a Registered Intermediary.</td>
</tr>
<tr>
<td>Informal or formal complaints regarding a Registered Intermediary or the Matching Service.</td>
<td>Advice and support on interviewing vulnerable witnesses.</td>
</tr>
<tr>
<td>Enquiries and expressions of interest about becoming a Registered Intermediary.</td>
<td>Obtaining a Request-for-Service (RfS) for the engagement of a Registered Intermediary.</td>
</tr>
<tr>
<td>Recruitment, training, accreditation and registration of Registered Intermediaries.</td>
<td>Updates on the progress of RfSs.</td>
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<tr>
<td>Resolution of payment disputes between Registered Intermediaries and End-Users.</td>
<td>Provision of management information and performance statistics on the Witness Intermediary Scheme to the Ministry of Justice.</td>
</tr>
<tr>
<td>Management of enquiries and matters related to implementation of section 104 of the Coroners and Justice Act 2009.</td>
<td></td>
</tr>
<tr>
<td>Secretariat for the Witness Intermediary Scheme’s Intermediaries Registration Board and Quality Assurance Board.</td>
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</tr>
</tbody>
</table>

**Contact details**

5.2 Below are contact details for the Ministry of Justice and the NPIA.

- Ministry of Justice – email: jason.connolly@justice.gsi.gov.uk
- NPIA Specialist Operations Centre - call 0845 000 5463 or email soc@npia.pnn.police.uk
Websites

5.3 Below are details of useful websites related to the Witness Intermediary Scheme and Registered Intermediaries operating within it:

- **British and Irish Legal Information Institute**: Free access to case law and legislation, etc.  
  http://www.bailii.org/

- **City Law School, City University London**: The providers of Registered Intermediary initial and refresher accreditation courses. See the web-pages for free pod-casts of interviews with Registered Intermediaries and the annual Registered Intermediary survey results.  
  http://www.city.ac.uk/law/courses/continuing-professional-development/in-house-courses/intermediary-training

- **Crown Prosecution Service**: The Crown Prosecution Service is responsible for prosecuting criminal cases investigated by the police in England and Wales. Information on how the CPS apply for special measures can be found at the link below.  
  http://cps.gov.uk/legal/s_to_u/special_measures/index.html

- **Judiciary of England and Wales**: Information about the judiciary and an introduction to the justice system.  
  http://www.judiciary.gov.uk/

  The following link provides access to a Judicial College Bench Checklist for cases involving young witnesses.  

- **Ministry of Justice**: The government department with responsibility for the courts, prisons, probation services and attendance centres.  
  http://www.justice.gov.uk

  The website includes resources for witnesses to explain what it is like going to court.  
  http://moj.coionline.tv/videos/goingtocourtvideo/

  Below are links to the .pdf versions of the Young Witness Packs produced by the Ministry of Justice:

  **English**

  2. Going to Magistrates Court:  
Welsh


- **NPIA Specialist Operations Centre**: Operates and manages the Witness Intermediary Scheme’s Matching Service on behalf of the Ministry of Justice and provides vulnerable witness interview advice and support. [http://www.npia.police.uk/en/5219.htm](http://www.npia.police.uk/en/5219.htm)

- **NSPCC**: a charity working to end cruelty to children in the UK. [http://www.nspcc.org.uk](http://www.nspcc.org.uk)
  
  o The NSPCC and The Nuffield Foundation sponsored 'Measuring Up? Evaluating implementation of Government commitments to young witnesses in criminal proceedings', by Joyce Plotnikoff and Richard Woolfson (July 2009) of Lexicon Ltd is available at the following link: [http://www.nspcc.org.uk/Inform/research/Findings/measuring_up_wda66048.html](http://www.nspcc.org.uk/Inform/research/Findings/measuring_up_wda66048.html)


- **The Family Justice Council**: The Family Justice Council (FJC) is an independent public body, funded by the Ministry of Justice. It has produced guidelines on children giving evidence in family cases. [http://www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/fjc](http://www.judiciary.gov.uk/about-the-judiciary/advisory-bodies/fjc)

- **Victim Support**: The national charity giving free and confidential help to victims of crime, witnesses, their family, friends and anyone else affected across England and Wales. [http://www.victimsupport.org.uk/](http://www.victimsupport.org.uk/)

- **Voice UK**: A national charity supporting people with learning disabilities and other vulnerable people who have experienced crime or abuse. [http://www.voiceuk.org.uk/](http://www.voiceuk.org.uk/)

Useful resources

5.4 Various forms, templates, articles and other relevant documents, etc, are available for Registered Intermediaries to download from the Registered Intermediary On-line forum.
As these are often subject to revision and updating for accuracy and currency they are not included in this document.

5.5 Further to paragraph 2.57 in which Registered Intermediaries are advised to write their reports in plain English, in short sentences and with short paragraphs, the following sources are recommended for guidance on these requirements;


c. The Plain English Campaign’s website at [www.plainenglish.co.uk](http://www.plainenglish.co.uk).