

Experiences of a Communication Intermediary in England and Wales

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Registered Intermediary

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Communication Disabilities Access Canada

What we will cover

- Intermediary assessment
- Investigative interview
- Report writing
- Pre-trial
- Trial
- Case studies

The intermediary role - a special measure

- The intermediary assesses the vulnerable witness or defendant and then advises members of the Justice System (police, barristers, judges) how to pose questions in order that the witness is able to understand what is being asked. The intermediary is able to offer a range of strategies including communication aides in order that the witness can understand and respond as effectively as possible.

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Special Measures

- Other special measures are:
- No wigs and gowns
- Pre-recorded evidence in chief
- Pre-recorded cross examination
- Giving evidence over live link or behind screens
- Aids to communication

An Intermediary is NOT

- An interpreter
- A sign language interpreter
- An appropriate adult or mentor
- An expert witness
- Part of the Witness Service or support person
- An advocate

In England and Wales conditions / disabilities/vulnerabilities include

- Mental Health problems
- Brain Injury
- Dementia
- Learning disability
- Autism / Asperger Syndrome / ADHD
- Physical Disability
- Down Syndrome
- Hearing Impairment
- The typically developing child
- Neurological disability

How does it work: Initial Contact

- The police contact the National Crime Agency and complete a Request for Service form
- NCA matches appropriate CI to the witness
- The CI contacts the Officer in the Case
- Discusses referral and what is required

The process continued

- CI asks whether there are relevant medical or educational reports
- Asks what interests the witness has
- The officer and CI go to meet the witness together
- That may be at home, school, care home or video interview suite or wherever the witness is comfortable

What intermediaries do

- We assess the communicative ability to take part initially in a video recorded interview
- It is important for interviewing officer to be present while the witness is assessed
- We should never be alone with the witness

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What the intermediary assesses - 1

- Understanding and use of language which will be required during an interview or trial
- Understanding of question words where, what, who, why, when and how
- Telling a story in the recent and distant past
- Positional words and direction

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Assessment 2

- Knowledge of time and sequencing / temporal ability before/after/first/last/ days/months



- Feelings and emotions

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Assessment 3

- Whether a witness can respond appropriately to, for example:
- Questions which lead or encourage compliance or agreement such as “Do you agree” or ‘Mummy told you to say this, didn’ t she?’
- Questions which confuse because of length or complicated vocabulary

Assessment 4

- Negatives or double negatives such as “You said you didn’ t like Mark, didn’ t you?”
- Questions asked after a preamble
- Questions which begin or end with “Do you remember?”

Assessment - 5

- Gesture, facial expression, body language
- What additional communication aids are required to support communication which include props, time lines, anxiety charts, body maps, talking mats and i pads
- Which aids are needed to help concentration and to ease anxiety

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Drawing and representing

As a key part of the assessment we look at a the witnesses ability to draw people and places.

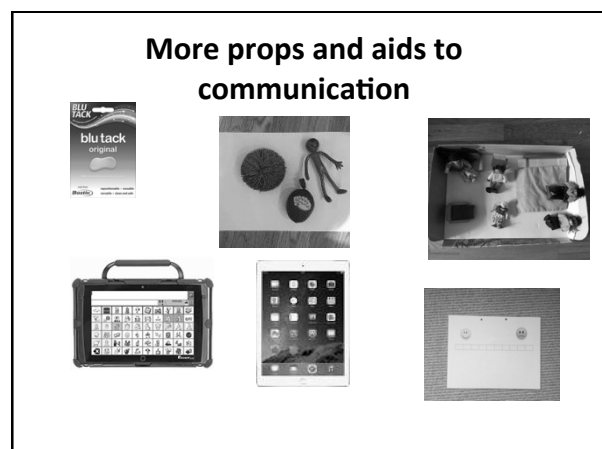
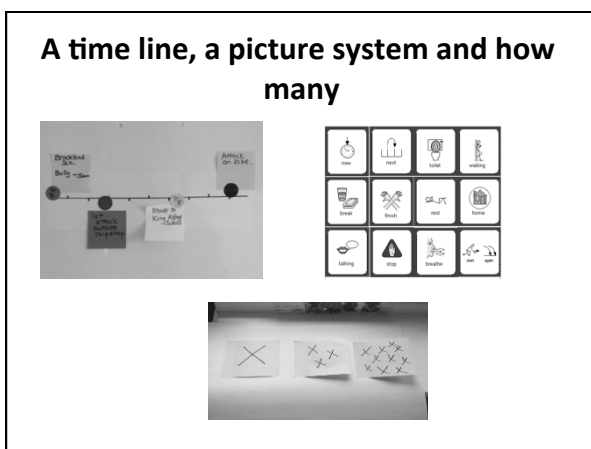
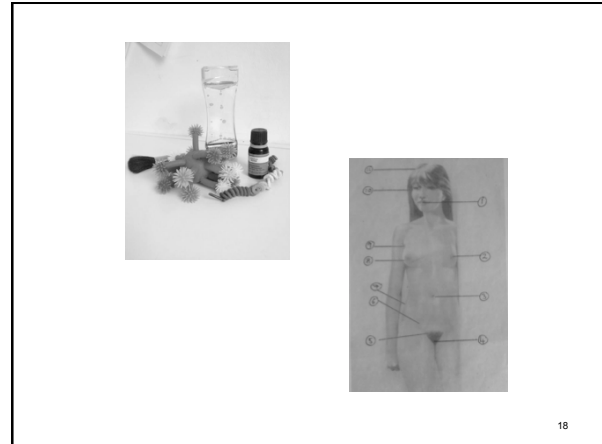
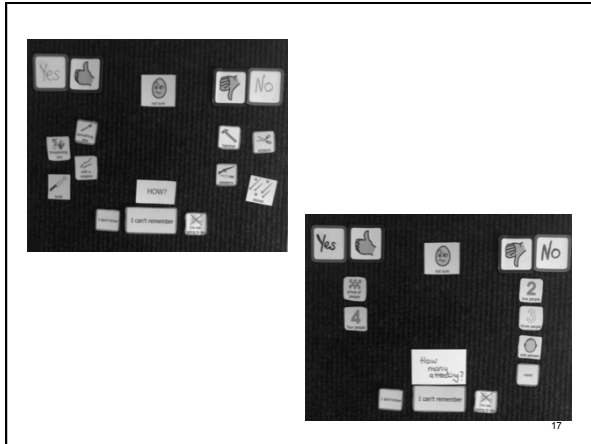


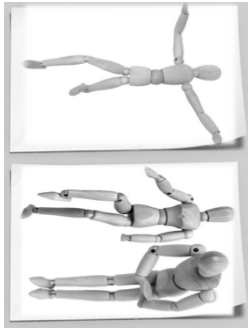
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And we think about props which might assist communication



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- **Wooden (artist) puppets**
- blank A4 sheets of paper (representing the 2 mattresses)

Props

- Examples of props and aids are introduced during the assessment but not using evidential material
- To establish which ones will elicit best evidence
- The props and aids are specific to individual witnesses or defendant's needs
- One size does NOT fit all

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Discussion and planning

- Time is then built in for discussion between interviewing officer and intermediary so that the intermediary can make suggestions for questioning and what props and visual aids might be used if we think the witness can be interviewed.



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What might be discussed

- **The preamble**
- What strategies are required to allow a witness to answer where, what, who, why, when and how
- What visual aids might help
- Strategies about how to ask questions to do with:
 - When
 - How something happened
 - How many times or how often
 - How long
- What calming materials might need to be used

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The ABE Interview

- CIs are present during the interview
- We may not need to intervene at all if preparation has been effective
- We are there to assist if requested
- We can provide the aids when requested
- We can suggest questions are rephrased if necessary or if requested
- We can suggest breaks

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Report

- The CI prepares a report for the Officer in the Case which he or she will send to the Crown Prosecution Service - our Public Prosecution Service
- It describes the witnesses strengths and weaknesses
- Identifies special measure required including the need for an intermediary at trial

Pre-trial

CPS and Police apply to the court for special measures. Judge agrees to presence of CI while the witness is giving evidence

Prior to the trial the CI must:

- Re-assess witness and re-build rapport
- And write an addendum to the original report

- If the CI has not previously met the witness because CI assistance was requested after video recorded interview the CI would assess the witnesses communicative skills and then view the recording of the interview. They would then write a full report for the court.

Pre- trial preparation

- Intermediary visits court pre trial with witness, police and witness service
- Intermediary prepares a booklet tailor made for witness
- During pre trial visit to court the witness practices and prepares over live link using non-evidential questions

A book for Saffy



Rules for talking

- **The CI uses a visual aid if necessary**



Memory refreshing

- The CI is present if necessary while the witness watches their video recorded interview to refresh their memory.
- This session is sometimes video recorded for the sake of transparency in case the witness discloses further evidence while they are watching

The trial



In the Crown Court.



In the magistrates' court.

Intermediaries at trial

- The intermediary is present during a Hearing which is called a Ground Rules Hearing in England and Wales when the trial procedure and intermediary recommendations are agreed by all parties
- This Hearing is a recent addition to the criminal justice procedure in England and Wales

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The court discusses and the Judge then rules about various issues including:

- The procedure to be followed during the trial such as the order of the trial
- When the vulnerable witness should be cross examined
- The CI recommendations
- Any props or aids which should be used

CI recommendations

Include

- No long complicated preambles
- No tagged questions
- No 'Do you remember?'
- No long multi part questions
- No negatives
- Begin the questions with Do, Did, Who and What

Before trial begins

- In England and Wales the CI is available to look at cross examination questions and to advise how they might be amended in order for the witness to give complete, consistent and accurate evidence
- The CI is present during cross examination with the witness in a live link room or court room sometimes behind a screen
- A remote link is sometimes used

Trial

A live link room



Procedure

- We sit beside the witness in the live link or court room
- If the Ground Rules Hearing has gone well we may not have to intervene
- We use strategies and communication aids to enable the witness or defendant to answer questions during cross examination
- That might include all those strategies which we found appropriate during assessment and interview

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Interventions

We do intervene if we think that the witness will not understand the questions. (I always intervene before the question is answered)

- or if the witness needs a break or is distressed
- or the court has misheard the response made by the witness
- or props and aids are requested by the court as agreed during the Ground Rules Hearing

In the live link room

- We are not alone if we are with the witness in the live link room
- The court usher is often present and a member of the witness service
- I intervene by saying to either the judge or advocate as agreed beforehand that the witness needs a break or does not understand

examples of cases.....



Case study 1 - Lawrence

- Age 15 at assessment
- ASD, gender identity issues
- Emotionally volatile
- Attended a specialist provision where he had access to clinical psychology and speech and language therapy input and teaching in small groups
- Alleged offence took place in a cafe after closing time

Lawrence 2

- I assessed his language, communication and observed his emotional state and the affect it might have on his ability to answer questions
- He was able to use fluent language which disguised an underlying difficulty in understanding fully what was being said
- I was present during interview
- I wrote a report which was sent to the CPS with all the other evidential material by police

Lawrence 3

- Many months later a Section 28 Hearing was fixed at a Crown Court and that was recorded so it could be played during the trial
- Section 28 is pre recorded cross examination
- I met Lawrence again who was by now 16 to re-establish rapport and wrote a second longer report with recommendations for the trial

Lawrence 4

- I worked with defence counsel via email and then the Judge in the court room to amend the cross examination questions so that Lawrence would understand what he was asked
- I have to be careful not to affect defence counsel's ability to put his case

Lawrence 5

- A long Ground Rules Hearing took place in the court room where trial procedure and CI recommendations were discussed
- I was present in the live link room while Lawrence was cross examined
- There were times when he did not understand what was implied in the questions and the court did not understand his reply
- I was able to assist to clarify

Lawrence 6

- The trial itself took place some months later but Lawrence did not have to be present because his evidence had been pre-recorded.
- Both recorded investigative interview and cross examination videos were played to the jury during the trial

Case study 2

- A profoundly deaf man, 40yrs old, had witnessed a gang-related murder. The witness has not learned formal sign language and communicated using a combination of some signing and his own system of gesture.

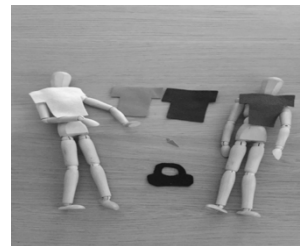
Case study 2 continued

- He had 2 interviews with the support of a Lip-speaker and a social worker for the deaf. Although it is clear he knows some detail, number of people, clothing, place etc. the police have not been able to gain a clear picture and an CI assessment was requested
- The assessment showed that the Lip-speaker was able to communicate with the witness more easily than a stranger and had been used in all interviews.

Case study 2 continued

- CI was asked to provide recommendations for the interview.
- The interviewers used;
- 12 artists' mannequins with Velcro strips to attach clothing
- different coloured felt t-shirts
- a model knife and a bag
- an enlarged road map of the area
- an enlarged 'Google Earth' map of the estate showing houses and gardens
- different colour felt pens

Props



Case study 3 - Sarah

- Sarah -17 years- has a chromosomal abnormality which meant she is small in stature and has some learning disability. Attended specialist college.
- Sexual offence by step brother and she was neglected by family
- Would not initially disclose to police officer

Sarah 2

- Some months later after period in foster care CI assistance was requested
- She disclosed during a video recorded interview talking through a large teddy bear

Sarah 3 Trial - seven months later

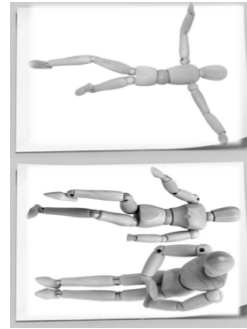
- CI re-assessed Sarah and re-established rapport
- CI wrote an addendum to the original report
- We made a court visit
- CI was present during memory refreshing
- The large teddy bear went with her to trial

- The interview was shown to the jury and after a recess the defendant pleaded guilty
- An effective investigative interview can have a significant impact on the outcome of a case

Case study 4 - Saffy

- Age: 14 year old girl
- Diagnosis: ASD and Moderate Learning Disability, educated in a special school
- Alleged offence: witness in case where her female peer's father had sexual intercourse with his daughter

Saffy - props



Props:

- Wooden (artist) puppets
- blank A4 sheets of paper (representing the 2 mattresses)
- Saffy moved one puppet over from one 'mattress' to another to show what happened

At trial

- The evidence in the investigative interview was clear
- Saffy was able to be cross examined using appropriately worded sentences without the aid of props because she had been able to illustrate so clearly in the interview what had happened

Case study 5 - Nick

- Age: 16 year old adolescent
- Diagnosis: Attachment Disorder, anger management issues, Learning Disability
- Alleged offence: Kidnap

Props: written words on Post it notes



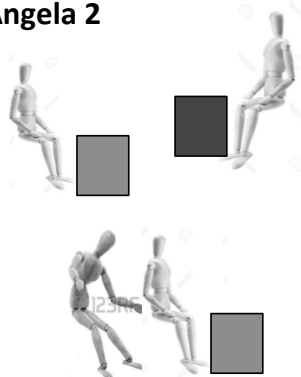
- Nick was confused about the chronology of events
- Visual representation of time → calmed him down and improved quality of evidence (i.e. complete, coherent and accurate evidence)

Case study 6- Angela

- Age: 34 years old
- Diagnosis: ASD, Borderline Personality disorder and Dyspraxia
- Alleged offence: Victim in case where adult male sexually touched her

Angela 2

- Props: tissue box, wooden puppets, pen and paper
- Spoken words did not provide sufficient detail
- Drawing positions to depict 3 dimensions failed
- Used puppets to 'show' rather than 'tell'



Case study 7 - Michael

- A case of historic abuse
- A former chorister had been abused by a priest when he was 9 – 11 years old
- As an adult Michael had been diagnosed with Motor Neurone Disease
- He was interviewed with the assistance of a CI

Michael

- The case went to trial and Michael gave evidence from a hospice using eye tracking technology assisted by a CI with specialist knowledge of that technology
- He was able to give yes and no answers
- The priest was found guilty

Case study 8 - Emma

- Age: 6 at interview
- Typically developing child
- Alleged incident :
An alcoholic mother slept while her male friend committed sexual offence against Emma

Emma 2 - Props used

Dolls house furniture
Small dolls
representing
child and grownups



Comment from a judge about the trial with Emma

“Sentence is due later this month but I know the result is of more interest to you. Seems to me that the cross examination during the trial made no difference to the jury's decision, it was based on the evidence.

Thank you

I would like to thank colleagues, Sue Osbond and Tina Pereira, for allowing me to use some of their slides and a case example.