

FACILITATING COMMUNICATION FOR VULNERABLE WITNESSES IN THE JUSTICE SYSTEM

ADULTS WITH ACQUIRED COMMUNICATION DISORDERS GIVING EVIDENCE IN
THE CRIMINAL JUSTICE SYSTEM ENGLAND, WALES AND NORTHERN IRELAND

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Communication Disabilities Access Canada

THIS PRESENTATION WILL:

- Share my experience of working as a Registered Intermediary (RI) in England and Wales.
- Focus on adults with acquired communication disorders and communication disability.
- Present 6 case studies.
- Describe and illustrate a practical approach to communication assessment, facilitation and reporting at key stages of the process.

CONTENTS

- What am I?
- Process
- Relevant stages of the process
- Reports and alchemy
- Case studies
- Communicating the impact
- References
- Questions and answers

WHAT AM I?

'Intermediaries are a creature of statute. The Youth Justice & Criminal Evidence Act 1999 (YJCEA '99) provided for a range of 'special measures' for cases involving vulnerable and intimidated witnesses. The intention of Parliament was to allow them to give their best evidence in court. The use of intermediaries is one of those special measures.'

DEFINED AS

'An intermediary may be defined as a person who facilitates two-way communication between the witness 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 the defence solicitor and a defence witness.'

WHAT I AM NOT

- The RI is not a witness supporter, counsellor or legal advisor.
- The RI is not an appropriate adult.
- The RI is not an expert witness.
- The RI is not an interpreter.

WHAT IS MY RESPONSIBILITY?

'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.'

HOW DO I ACHIEVE MY RESPONSIBILITY?

There are many things the RI needs to do to carry out and achieve their role and all of their responsibilities.

For this presentation we are looking at

- Assessment
- Facilitation
- Reporting

and how they all work together.

THE PROCESS (JUST A LITTLE BIT...)

- This presentation is NOT about the process.
- It's important for you to know the key stages of the process because it sets the context.
- Understanding the context helps to understand the freedoms and constraints when assessing and facilitating communication.
- The context allows us protect the process.

KEY STAGES

- Assessment
- Interim reporting and planning for the police interview
- Police interview
- Court report
- Evidence giving

THE PURPOSE OF THE ASSESSMENT

The purpose of the assessment is:

- "...for the RI to ascertain the witness's communication abilities and needs, so that the RI may:
- Indicate whether or not the witness has **demonstrated** the ability to communicate their evidence and if so **how**.
- Indicate whether the use of an RI is likely to improve the quality (completeness, coherence and accuracy) of the witness's evidence.
- Advise the police officer and advocates on the most effective way of communicating questions to the witness.
- Make recommendations as to special measures and other adjustments to enable the most effective communication with the witness'.

THE ASSESSMENT

"I'm always looking for things that are so incredibly present that they become invisible."

Douglas Coupland

HEADING OUT...



CASE STUDY NO 1. MISS R.

- **Background :** Miss R suffered a stroke (left MCA infarct with a midline shift) with cranioplasty during the surgical repair of a traumatic transection of the left carotid and left internal jugular.
- **Date of assessment:** 26 days post trauma.
- **Location of assessment:** Neurological rehabilitation unit.
- **Number of assessments:** 4
- **Total time:** 11.5 hours
- **Period of assessment:** 16 days

MISS R

- The first assessment was an informal meeting with Miss R and the police officers, who would be the interviewing team. Neither of the officers had met Miss R before, but had been told by various medical staff that she couldn't talk, was only just well enough to be spoken to and they didn't think she could give evidence in court...
- The assessment started by meeting with the officers in the hospital café to talk about how they imagined the interview would go, how long it would take, how confident they felt and what their expectations were.
- Neither of the officers had ever met a person with a communication disability or disorder, but nevertheless wanted to do the best interview possible and were prepared to modify their usual practice to achieve this.
- So that was the first part of the assessment achieved – assessing the officers communication style and potential for change.

MISS R

- Then we met with Miss R's mother and Aunt who were very upset and tearful. They told me that Miss R has no previous communication disorder. Miss R had worked as an accountant, was always enthusiastic to learn new things and was a non-stop talker.
- Mum and Aunt also said that Miss R could understand everything, could communicate very well and although the ward said she didn't have a reliable yes and no, it was because they didn't know how to talk to her properly. If only they had more time...
- At this point the officers looked cheered up and much encouraged.

MISS. R

- I insisted on meeting Miss. R at her bedside and took a few moments to observe her through a window. When one officer and I approached Miss. R looked happy to see us. We went to the 'quiet room' and waited for the nurses to bring Miss R down in her wheelchair.
- I let the officer talk freely to Miss. R to start with. Towards the end of our session I asked a few questions.
- We then met with the Speech & Language Therapist (SLT) and I studied the medical and therapy notes.
- The results of the initial assessment were:

CLINICAL PRESENTATION

- Possible right sided hemianopia or neglect
- Dense hemiparesis (right side)
- Receptive & expressive dysphasia
- Acquired dyslexia
- Oral and verbal dyspraxia
- Dysarthria – flaccid
- Emotional lability
- Chronic neurological pain affecting the surgical area and causing severe headaches

COMMUNICATION

- Spontaneous 'thumbs up' to **yes**
- Highly unreliable **yes / no** response
- High default rate to **yes**
- Simultaneous non verbal language and verbal output were poorly and inconsistently related
- Unintelligible speech, even for single words
- Persistent in attempts to communicate single messages
- High levels of frustration
- Emotional response to failure
- Two very bewildered police officers

COMMUNICATION

- It's easy to assess lack of ability and what is not likely to be useful
- Knowing the structure and format of the interview is important. Knowing what is required at evidence giving is crucial

This is what I took from the assessment to build on further:

- Comprehension at 2 word level but bridging 3 word level
- Starting to read single words and improving fast
- Reliable head turn and eye gaze on request
- Reliable gesture with emphatic scale for **I don't know**
- Strong communication drive – active, engaged and persistent.

THE ASSESSMENT CONTINUED AND TIME WAITS FOR NO INTERMEDIARY...

The assessments were reasonably spaced, but Miss. R improved rapidly and small changes in her ability were evident. Planning without contingency for the assessments was pointless. However, not all changes were useful for the interview or would be useful giving evidence in court. These are some of the areas I assessed, looking for ways that Miss. R could **demonstrate** her ability.

- Remember, the assessment is not for diagnosis, therapeutic potential, therapy planning or rehabilitation. Nor is it to demonstrate a **lack of ability** to the officers.
- Each assessment activity was discussed with the officers and linked to its useful purpose during the interview (and evidence giving in court).

ASSESSMENT

- Reliability of comprehension: single spoken and written words (single spoken word to object and picture matching and picture to object and written word matching, highly familiar and less familiar etc.)
- How many targets in the field
- Ability to sequence 2 or more picture cards
- Ability to internally select a reliable yes and no
- Ability and reliability of a head turn or eye gaze to indicate yes or no
- Reliability of NOT using 'thumbs up'
- Reliability of using 'thumbs up'
- Drawing
- Spelling
- Using objects e.g. dolls
- Question types (open, closed choice and closed)

HIGHLIGHTS FROM THE SUMMARY OF RECOMMENDATIONS FOR INTERVIEW

The interim report is a summary of ability and advises of how to best communicate with a witness. My role is to facilitate that communication if needed, through helping the police plan the interview and during the interview itself.

- **Word level** - Use sentences that have 2 information carrying words (ICW) only. The sheep is running has 2 ICWs.
- **Context and support** - It is essential to establish the context. Using a single written word and a picture together will help to establish the context. The context is: **the circumstances that form the setting for an event, statement, or idea, and in terms of which it can be fully understood.**

HIGHLIGHTS FROM THE SUMMARY OF RECOMMENDATIONS FOR INTERVIEW

- **Support understanding with:** Single written words – write down single words if they help to anchor your communication. Pictures – match pictures to written words for maximum support. Thumbs up and thumbs down – Miss R understands and spontaneously uses this signal.
- **Matching** (use Dycem mat surface) – Miss R is able to match single written words to up to 4 objects or pictures. Miss can manage a choice of 2 written words. The written words should be given to Miss R so that she can place them against the objects / pictures independently.
- **AVOID Yes/No questions.** – Miss R is unreliable in expressing yes/no **ON DEMAND** due to difficulties at the planning stage of expressed language. This is NOT because Miss R does not know the difference in meaning between yes and no. Miss R demonstrates understanding the meaning and the difference between the meanings in her spontaneous communication.

TIME TO TALK ABOUT THE REPORT FOR COURT

“This report, by its very length, defends itself against the risk of being read.”

Winston Churchill

ALSO WORTH KNOWING....

“Opinion has caused more trouble on this little earth than plagues or earthquakes.”

Voltaire

ALCHEMY

- Converting the assessment findings and interim report into recommendations for court.
- Now we understand the need for robust assessment and demonstrable communication ability (oops, I'll do better next time...)
- Why do they differ?
- I want to help you, can't we just talk?
- Questions in advance please!

Interim report • Support understanding with: Single written words – write down single words if they help to anchor your communication. Pictures – match pictures to written words for maximum support. Thumbs up and thumbs down – Miss. R. understands and spontaneously uses this signal. • Context and support - It is essential to establish the context. Using a single written word and a picture together will help to establish the context. The context is: the circumstances that form the setting for an event, statement, or idea, and in terms of which it can be fully understood.	Court report <table> <tr> <td> Comprehension Miss R has a severe impairment in understanding spoken and written language. Miss R is able to understand simple grammar in short 2-3 ICW sentences. The consistency and accuracy of Miss R's understanding is improved when single written words, objects or pictures are used to strengthen the context and support spoken input. </td><td> What to do: • Use simple grammar in short sentences. Sentences that contain only one part (e.g. "Where was it?" and not "Where was X and why did he give it to you?") are short and help to keep language simple. • Avoid unnecessary complexity (e.g. "The scarf the book is on is blue" is more easily understood as 2 short sentences e.g. "The scarf is blue. The book is on the scarf". • It is <u>essential</u> to establish the context. Using a single written word, picture, drawing and objects together or a combination of these will help to establish the context and <u>support</u> understanding. (see below section d). The context is: the circumstances that form the setting for an event, statement, or idea, and in terms of which it can be fully understood. </td></tr> </table>	Comprehension Miss R has a severe impairment in understanding spoken and written language. Miss R is able to understand simple grammar in short 2-3 ICW sentences. The consistency and accuracy of Miss R's understanding is improved when single written words, objects or pictures are used to strengthen the context and support spoken input.	What to do: • Use simple grammar in short sentences. Sentences that contain only one part (e.g. "Where was it?" and not "Where was X and why did he give it to you?") are short and help to keep language simple. • Avoid unnecessary complexity (e.g. "The scarf the book is on is blue" is more easily understood as 2 short sentences e.g. "The scarf is blue. The book is on the scarf". • It is <u>essential</u> to establish the context. Using a single written word, picture, drawing and objects together or a combination of these will help to establish the context and <u>support</u> understanding. (see below section d). The context is: the circumstances that form the setting for an event, statement, or idea, and in terms of which it can be fully understood.
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FORMAL? MS. P AND MR. M 'The RI conducts the assessment. There is no set procedure or template for this. The form and content of the assessment will depend on the witness's communication needs and on the RI's professional specialism. In practice RI's have developed their own methods based on the fact that the purpose of the exercise is to ascertain how the witness can answer questions from those who need to question them about the alleged offence.' In a moment I'm going to take highlights from Ms. P and Mr. M to illustrate the need for flexibility in assessment.
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• FIRST – comprehension spoken single word to object. • FIRST – comprehension written single word to object. • FIRST – comprehension written instructions with increasing complexity. • FIRST – expression single word. • FIRST – expression description of object function. • FIRST – expression picture description/narrative. • Linguistic concepts. Screen • Semantic relations. Yes/No response. • One – four word level. Yes/No screen. • Activity 1. Accuracy of questions – spoken comprehension. Yes/No ability. • Activity 2. Accuracy of statements – spoken comprehension. Yes/No ability. • Activity 10. Inference – spoken comprehension. Inclusive and exclusive. • Activity 11. Immediate recall of information – auditory attention, comprehension & memory. • Sequencing – Colorcards 3, 6 & 8 step. • Activity 7. Inference – spoken comprehension. Context clues. • Activity 24. Critical thought – situational content & deducing logical answers. • Activity 36. Idioms – figurative language. • Activity 37. Proverbs – figurative language. • "Make an X". Responding true or false to a statement. • Prepositions – picture, in/on/under/next to.

MS. P • 88 years old • ? dementia • Living in a care home • Loving family • Verbal communicator	MR. M • 85 years old • ?dementia • Living independently in his own home • Loving family • Verbal communicator
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FACILITATING COMMUNICATION AT INTERVIEW USING PHYSICAL RESOURCES

- The use of prepared picture boards and other case specific resources
- Pre-existing communication aids
- What about 'Talking Mats'?
- Simple measures

How can I know what I think till I see what I
say?
E.M. Forster



HOW MANY HOURS!!!!



WHERE IS MR.T?

- 57 years old
- Stroke in 2011 & 2012 (Left MCA)
- Receptive & expressive dysphasia
- Dense right sided hemiparesis
- Electric wheel chair user and elusive
- COPD, revised amputation to leg, Chronic neuropathic pain, insulin dependent diabetes, history of alcohol abuse
- Described as 'non – compliant, difficult, anti-social, aggressive, impatient...'

FACILITATION AT POLICE INTERVIEW – LIMITED OPTIONS

- Comprehension and auditory memory reliable at 2 -3 word level only
- Able to read 2 words, point at pictures and at objects near and far
- Able to say **ay**, & **yeah**, but not reliably
- Able to touch yes / no cards reliably (a tick and cross were used)
- Able to sequence up to 5 pictures
- Occasional reliable spontaneous gesture of **I don't know**
- Indicate that another person had understood incorrectly by swearing.

RESOURCES

- Paper
- Scissors (round ended ones!)
- Marker pens
- Yes/No cards
- Pre prepared : Moon and stars (night) and the sun (day), breakfast and supper. Simple line drawings.

IT'S A BIT HOT IN HERE YOUR SIR, DO YOU HAVE ANOTHER COURT?

Facilitating communication at trial by modifying the environment
Mr.A

MR.A

- Parkinson's Disease
- Straightforward assessment
- Delayed auditory processing with reduced auditory memory
- Reduced attention and concentration with heightened physical responses
- Acquired dysfluency and dysarthria
- Visual impairment
- Trial at a Magistrates Court

INDIRECT AND ENVIRONMENTAL FACILITATION IN THE COURT REPORT

Emotional management

Mr. M has a heightened physical response to emotional situations and stressful experiences. Involuntary movement is significantly increased resulting in rapid fatigue. Fatigue leads to confusion and reduces Mr. M's ability to pay attention to the speaker, to process language and reduces his auditory memory ability. This in turn impacts on and compromises Mr. M's ability to express language.

What to do:

- Allow Mr. M to stand, sit or move between the two during evidence giving.
- Please adhere to regular breaks.
- Walking up and down a corridor, doing grounding or sensory modulation activities or sitting quietly in a calm space are examples of ways Mr. M can help regulate his physical responses with the assistance of the Registered intermediary.
- Regular breaks allow Mr. M to take medications on time and to plan for a change in the medication schedule if needed.

Screens or Live link

The giving of evidence in the court room ***behind screens*** is recommended. However, at the pre trial visit the screens will be tested as they may cause the witness box to become too hot and impact on Mr. M's physical well being, in turn impacting on communication. Should this be the case then the live link is recommended.
An addendum to this report will be produced after the pre trial court visit.

COMMUNICATING THE IMPACT

The victim personal statement

Mrs. B

MRS. B

- Number of days between first assessment and day of trial: 1 year; 2 months, 6 days
- Victim personal statement taken at: 8 months, 2 weeks, 3 days
- Deterioration in communication ability
- Widget symbols

- **The Registered Intermediary Procedural Guidance Manual.** The Ministry of Justice (2015)
- **The Advocate's Gateway:** This is a widely-used website endorsed by the higher judiciary which provides free advice and toolkits for advocates and judges to assist them in cases where witnesses, parties or defendants are vulnerable. theadvocatesgateway.org

UNLESS someone like
YOU cares a whole
awful lot, NOTHING
is going to get better.
It's NOT.

GRINCH

Dr. Seuss
The Lorax by Dr. Seuss

