



The Intermediary

News from the Witness Intermediary Scheme

Welcome to the sixth edition of The Intermediary newsletter.

Well it is certainly a busy time of the year for a lot of us as we have now entered the holiday season. Thank you all so much for keeping us updated of all your holiday and busy times, its certainly helped us when matching requests to available RIs. However, if you have any holiday or trial dates outstanding, please let us know and don't forget to give us your next available date to take on cases.

This will be the last newsletter from me for a while, as most of you are aware, I will be leaving shortly to start my maternity leave.

Is there anything you would like to see in the next newsletter? What do you find useful or interesting? Do you have any good news stories, or information you would like to

share that you would like to see published in

future newsletters, please email us at wit@soca.x.gsi.gov.uk and if you have any queries/questions please contact us on 0845 000 5463

Look forward to speaking to you soon!

Rachel Surkitt
Editor of The Intermediary

What's inside?

- Update from the MoJ
- City Law School - Team Work in Progress
- CPD update from Sally Jones
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Extra Special Measures

Ruth Marchant of Triangle

Extra Special Measures

In my time as an intermediary I have requested a number of 'extra' special measures and these have always been agreed without difficulty, including quiet calming play materials, an emergency toilet symbol, playdough, sand and a bike (for a particularly wild four year old). I have also had an usher in the livelink room agree to put a cushion over his face every time a six year old said a rude word during cross examination.

However I recently naively requested a new special measure without realising quite how 'extra special' it was.

A four year old was sexually assaulted by a nursery worker. She was just five at trial, and really struggled when we practiced livelink pretrial. Even with additional practice on skype she found it very difficult.

I wrote an addendum report before the ground rules hearing suggesting an alternative approach (names have been changed):

Hannah's communication (both receptively and expressively) is at its most effective when she is face to face with the person she is communicating with. Livelink disrupts this and she is less likely to use or attend to gesture or use facial expressions. Would it be possible for counsel to come to the livelink to question Hannah, using the cameras to remain live to the judge and the court? The court would still view Hannah across livelink, but she would be communicating with counsel face to face. The judge could still monitor and intervene via livelink.

It seemed like a sensible idea to me, but the initial reaction from both counsel was quiet horror and both said it had not been done before and certainly could not be done. I was baffled by this until David explained to me that counsel likes to be able to see the reaction of the jury during the cross examination. With support from Penny, David, Kev, Joyce and Jason I stuck to my guns. Jason could not find a precedent but encouraged me to make the request directly to the judge. David helpfully advised as follows:

The crucial thing, especially here, is that the jury sees the witness and her demeanour, but there isn't any rule that the jury needs to see counsel's face and demeanour. I imagine it will have an effect on the style of advocacy: cross examination is based on there being physical space between advocate and witness; counsel will not be used to being so close to the witness, especially to a child.

After some discussion at the ground rules hearing, and much consulting of Archbold and calling of CPS advisers, at the judge's direction I worked with the court usher and prosecuting and defence counsel to try out different arrangements of chairs and cameras in the livelink room to 'see what might be possible'. The judge then ruled that the arrangement could go ahead on the basis that the livelink room is effectively an extension of the court. That evening I emailed David Penny and Joyce as follows:

Well we had a practice (with no child) and much reorganising of chairs and camera angles. I am in the middle and we have a table for counsel's papers, the child's drawings, the rules and photos and her fiddly toys. I am a little bit scared myself.

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Everyone was very encouraging and Penny responded:

Not to put the wind up you more but this is REALLY mega. More Ground Breaking than Ground Rule...

The following day Hannah was questioned by counsel in the livelink room and she was able to attend fully and to respond to questions. It felt very different to cross examination over livelink and I did not need to intervene as much as I usually do. As well as the direct impact of face to face communication, many other barriers were removed - eg counsel was sharing the visual resources (photos, drawings) with Hannah rather than attempting to share them with her on screen. She particularly liked 'sharing' her rules with the questioners:



No guessing



If I get it wrong, tell me



If you don't know, tell me

The defendant was found guilty.

I have long felt like the little boy in the emperor's new clothes when it comes to livelink as it seems to be universally accepted as a 'good thing', yet I find it very disruptive of communication. This is especially so with young children, because they rely so heavily on non-verbal communication both to understand and be understood. Livelink disrupts this in many ways. Even with guidance and practice, the quality of young children's communication almost invariably deteriorates across live link:

- Many young children are confused by the idea of speaking to a TV
- Some children ask to turn the TV off, or down, or to mute the sound or switch channels and watch CBeebies instead
- Many children stop using their face and hands to support their communication once using livelink
- They may also stop attending to the gestures and facial expressions of the questioner; some simply turn away from the screen altogether
- Even when taught that they can see and be seen (by practice questions that prompt gesture, for example) many children don't sustain this understanding
- Shared attention eg to visual resources is severely disrupted and often impossible (eg if counsel holds up a visual aid in court the child may not understand how to respond to this 'But I'm not in his tele?')
- There is commonly a slight time lag between sound and image which creates further confusion
- The child can often hear their words in the court room just after they have said them which can be distracting ('who is that other girl talking on the TV?')

Young children are still learning to avert their gaze to enable them to retrieve information from memory and this is again disrupted by livelink.

In my experience, young children are at their most effective as communicators (both receptively and expressively) when face to face with the person they are communicating with. The introduction of section 28 would offer a potential opportunity to locate the questioners in the same room as the child at pre-recorded cross examination (as well as at trial) and I have asked that this can be given consideration as an option for very young children. I would welcome any feedback or thoughts.

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