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NEWCASTLE

**Improving outcomes for vulnerable offenders in the criminal justice system  
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***The use of intermediaries for young defendants:  
overcoming barriers to young people effectively participating in criminal  
court proceedings***

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## Young people experiences of the youth court?

- young defendants often do not understand legal proceedings or the language used by lawyers,
- they report feeling intimidated and isolated in court and
- may not receive a proper explanation of what has happened until after a hearing is over
- Jacobson and J Talbot *Vulnerable Defendants in the Criminal Courts: a review of provision for adults and children* (PRT, 2009)



**Key:** A Witness B Magistrates C Clerk of the court  
D Lawyers for the prosecution and the defence E Defendant  
F Parent G Youth Offending Team Worker H Usher

- young people often feel anxious and nervous before and during court proceedings,
- feel unsupported and confused throughout the proceedings.
- feel frustration that the courts seem rarely to understand the context in which their offences were committed

N Cleghorn, R Kinsella, C McNaughton Nicholls *Engaging with the views of young people with experience of the youth justice system* (Paul Hamlyn Foundation, 2011).

# ***R (on the application of D) v Camberwell Green Youth Court [2005] UKHL 4, para 56***

- “often amongst the most disadvantaged and the least able to give a good account of themselves. They lack the support and guidance of responsible parents. They lack the support of the local social services authority. They lack basic educational and literacy skills. They lack emotional and social maturity. They often have the experience of violence or other abuse within the home.”
- Baroness Hale.



# Article 6 European Convention on Human Rights

- Article 6 ECHR:

1. everyone is entitled to a fair and public hearing

2. ...

3. to defend himself in person...

to examine witnesses ...

have the free assistance of an

interpreter if he cannot understand or speak the language used in court



*R v Walls* [2011] - an intermediary is one mechanism of supporting effective participation

# Registered Intermediary

Registered intermediaries supporting witnesses	intermediaries appointed for defendants
<ul style="list-style-type: none"><li>• professionally approved,</li><li>• registered and employed by the Ministry of Justice (MoJ)</li><li>• paid by the Crown Prosecution Service or the police</li><li>• professionals - such as speech and language therapists, psychologists or teachers, and regulated by their own professional body.</li><li>• must pass a rigorous interview and</li><li>• complete a Ministry of Justice training course</li><li>• is matched to the particular witness based on expertise, location and availability by the Witness Intermediary Scheme (WIS), operated by the National Crime Agency</li></ul>	<ul style="list-style-type: none"><li>• are private sector intermediaries</li><li>• do not need to be registered by the Ministry of Justice</li><li>• No matching service</li><li>• no accreditation process for non-registered intermediaries.</li><li>• may be anyone who satisfies the court of their qualifications and suitability.</li></ul>

# Intermediaries and young people accused of criminal behaviour

- Section 104 of the Coroners and Justice Act 2009 creates a new section 33BA Youth Justice and Criminal Evidence Act 1999
- while giving testimony during ‘the examination of the accused’
- it must be necessary to enable the child defendant to participate effectively in the proceedings as a witness and also it must be established that it is in the interests of justice and a fair trial
- Not yet implemented - ‘practical and resource implications’



# *Tl v Bromley Youth Court* [2020]

- appointment of an intermediary will be rare and more so for the appointment of an intermediary for the whole trial
- Criminal Practice Directions 2015: the court ‘will *rarely* exercise its inherent powers to direct appointment of an intermediary’ ...  
‘directions to appoint an intermediary for a defendant’s evidence will thus be *rare*, but for the entire trial *extremely rare*.’



# Understanding youth vulnerability

- Fineman's vulnerability theory: points to the limitations of understanding individuals as rational independent actors
- 'examine hidden assumptions and biases folded into legal . . . practices.' M. Fineman, 'The Vulnerable Subject and the Responsive State' 60 (2010) Emory Law Journal 251, 268



- *Bouyid v Belgium* (Application no. 23380/09), Judgment of 28 September 2015
- ‘persons who are held in police custody or are even simply taken or summoned to a police station for an identity check or questioning ... and more broadly all persons under the control of the police or a similar authority, are in a situation of vulnerability.’



# Young people in contact with youth justice

- neuro-disabilities, mental health and psychiatric disorders are over-represented
- undiagnosed developmental language disorder is also highly prevalent
- much higher rates of: learning disability; post-traumatic stress disorder; attention deficit hyperactivity disorder; speech, language and communication needs and learning disabilities and language disorder



# Intermediaries

- not only facilitated communication but also helped witnesses cope with the stress of giving evidence
- ‘[a]lmost all those who encountered the work of intermediaries ... expressed a positive opinion of their experience and ... contributions’ (Plotnikoff and Woolfson 2007)
- *R v Dixon (Jordan)* [2013] EWCA Crim 465.



