

Developing a professional identity in a new work environment: The views of defendant intermediaries working in the criminal courts.

British Journal of Forensic Practice (in press).

Brendan O'Mahony¹, Jane Creaton³, Kevin Smith² & Rebecca Milne³

¹ CJS Psychology, Diss, UK

² Specialist Operations Centre,

National Crime Agency, Wyboston, UK

³Centre of Forensic Interviewing,

Institute of Criminal Justice Studies

University of Portsmouth, UK

Address correspondence to:

Brendan O'Mahony

info@cjspsychology.com

Introduction: The witness intermediary role

An intermediary facilitates communication between a vulnerable witness and a police officer or lawyer in the criminal justice system. This role is crucial to ensure that vulnerable witnesses are enabled to give their best evidence at court. In England and Wales Registered Intermediaries are trained professionals with a range of backgrounds such as psychology, speech and language therapy, social work, mental health nursing, occupational therapy and teaching (O'Mahony, 2010). Critically, the intermediary's role is an impartial one and they do not work for the police or the defence, but rather, they are officers of the court. They attend a short training course (5 days) arranged by the Ministry of Justice where they receive instruction about the adversarial criminal justice system as found in England and Wales. They practice, and are assessed in, their ability to intervene if and when necessary during a mock cross-examination of a vulnerable witness. Crucially, intermediaries bring with them to the intermediary role the skill set to comprehensively assess the communication strengths and limitations of a vulnerable person. In 2011 there were approximately 130 active registered intermediaries operating in England and Wales (Personal Communication, Jason Connolly, Project Officer, Ministry of Justice, February 2011). This figure is not static and between February 2013 and August 2013 it has been reported that the average number of intermediaries on the register was 105 with an average of 83 being available at any one time to accept new cases (Cooper, 2014). Each intermediary must only accept a referral to assess a vulnerable person who has needs within their particular skill set. Notably, the intermediary is *not* a witness supporter, an Appropriate Adult, an interpreter, or an expert witness whilst undertaking the specific duties as an intermediary (Ministry of Justice, 2011).

Intermediaries were introduced by Section 29 of the Youth Justice and Criminal Evidence (YJCE) Act 1999. They are available to enable "complete, coherent and accurate" communication to take place at the investigative interview and / or at criminal court (Ministry

of Justice, 2011, p. 6). Intermediaries are approved by the court and are allowed to explain questions to the witness, re-phrasing them if necessary without changing the meaning of the question (Plotnikoff & Woolfson, 2007). The Witness Intermediary Scheme was implemented between February 2004 and June 2005 in Merseyside, West Midlands, Thames Valley, South Wales, Norfolk and Devon and Cornwall. The scheme was evaluated between March 2004 and March 2006 and it was subsequently rolled out to all 43 police areas in England and Wales (Plotnikoff & Woolfson, 2007). Defendants can arguably be categorised as potential witnesses, even if they clearly are not victims (McEwan, 2009) but the Special Measures introduced through the YJCE Act 1999 were intended solely for use with vulnerable witnesses and specifically excluded vulnerable defendants. The findings from the evaluation showed that there were a number of reported benefits to the scheme, including increasing access to justice for vulnerable witnesses and informing the police and the courts of appropriate questioning styles (Plotnikoff & Woolfson, 2007).

Referrals to the Witness Intermediary Scheme are currently made by the investigating officer prior to conducting an investigative interview. Having identified the witness as being a vulnerable witness, the officer makes contact with the National Crime Agency – Specialist Operations Centre. A matching service exists where the skills and location of intermediaries are matched with the referral (O'Mahony, 2010). Ideally the intermediary completes a full assessment of the witness prior to the investigative interview and has the opportunity to liaise with external professionals such as school teachers or psychiatrists so that a comprehensive report of the witness's needs can be completed should the witness need to attend court. The intermediary advises the police interviewer of appropriate ways to communicate with the vulnerable person and intervenes if necessary during the interview to facilitate communication. At court the intermediary will accompany the vulnerable witness in the witness box or in the separate live link room. The intermediary will facilitate communication

between counsel and the witness and should intervene when necessary if complex questions are asked or if the agreed 'ground rules', which are bespoke per vulnerable witness and based on the intermediary's recommendations about communication, are not adhered to (O'Mahony, 2010).

Nonetheless, the actual practices of the intermediaries have not been critically assessed either legally or academically in terms of their interventions during police interviews or at court with the exception of one study which examined, through mock interview and court transcripts, how intermediaries and lawyers may differ in their opinion of what constitutes a leading question (Krahenbuhl, 2011). It is not known how consistent intermediaries are at intervening when facilitating communication with vulnerable witnesses. Neither is it known what impact the presence of an intermediary may have on juror decision making at court, whether the intermediary is with a prosecution or defence witness. In addition, there is also a current gap in the literature about the measures available to vulnerable defendants providing oral testimony at court and this paper has begun to address this knowledge deficit. In this study the views of Registered Intermediaries who have undertaken cases with defendants were canvassed and analysed qualitatively.

Developing the Intermediary role to include vulnerable defendants

Following the introduction of the witness intermediary scheme, research began to emerge about the needs of police suspects with learning disabilities (Jacobson, 2008). Jacobson (2008) reported that there were difficulties within the police station where police officers were tasked with identifying vulnerable suspects in order to request Appropriate Adults and thus comply with the PACE Codes of Practice. There was a failure to identify vulnerable suspects which was in part due to the lack of screening mechanisms (Jacobson, 2008).

Jacobson (2008) concluded that some of the Special Measures that are available to vulnerable witnesses should also be made available to vulnerable suspects; specifically, the provision of Registered Intermediaries to facilitate communication and give guidance on communication strategies. However, the function of the Registered Intermediary role within the police suspect interview could clash with the provision of the Appropriate Adult as outlined in PACE 1984 and these roles would need to be examined in detail in order to determine how best to support the vulnerable suspect during the police interview (O'Mahony, 2010). The Appropriate Adult can be a caregiver, for example, a parent, and is entitled to give advice and assistance to the vulnerable suspect. The Appropriate Adult does not need to be registered, or indeed trained and their role is limited to the police interview; they are not permitted to facilitate communication at court. The vulnerable suspect can also consult privately with the Appropriate Adult. Intermediaries on the other hand should be qualified communication specialists, not known to the vulnerable person in a private capacity, and their role is purely to facilitate communication. They must not be left alone with the vulnerable suspect as their professional duty as an impartial person in the proceedings could be compromised if any disclosure about the evidence was made. The efficacy of the Appropriate Adult system has been under discussion for some time (Medford, Gudjonsson, & Pearse, 2003).

Some courts have used their 'inherent jurisdiction' in common law, and requested an intermediary to be present when a vulnerable defendant is on trial at court (Cooper & Wurtzel, 2013; O'Mahony, Smith, & Milne, 2011). This practice was visible prior to the introduction of Section 104 of the Coroners and Justice Act (CJA, 2009) which introduced legislation permitting vulnerable defendants to have access to an intermediary during oral testimony at court. However, this legislation is yet to be implemented in England and Wales (O'Mahony et al., 2011). The court should also refer to the Criminal Practice Directions ([2013] EWCA Crim 1631, 3F) which provide guidelines for the use of intermediaries tasked

with facilitating communication with vulnerable witnesses and defendants at court. The Criminal Practice Directions advise that the court is required to ‘take every reasonable step’ to facilitate the participation of any person including the defendant. Intermediaries have been used in cases where the defendant has a diagnosis of intellectual disability or a mental disorder, which are conditions that may impair receptive and expressive communication. Young defendants under the age of 18 may also have the benefit of an intermediary if they have been assessed as having communication skills lower than might be required in a criminal court setting. In these circumstances, if a communication need has been identified by the legal representative and if an intermediary has been located (there is no national register for defendant intermediaries), the intermediary would conduct an assessment of the vulnerable defendant and write a report for the court, as they would for the vulnerable witness. The intermediary may recommend that the vulnerable person requires communication support within legal meetings both prior to and during a criminal trial, as well as support with communication throughout the trial. However, intermediary training, policies and procedures are only valid for Registered Intermediaries working with vulnerable witnesses and do not apply to intermediaries working with vulnerable defendants. The absence of any accredited training for intermediaries who work with defendants is probably due to the absence of any policy and procedural guidance on their use in this context. It seems likely that the absence of any policy and procedural guidance is due to the fact that intermediaries are currently only being used for defendants under common law and it is difficult to develop policies and procedures for this context due to the shifting nature of common law.

Whilst the introduction of S104 Coroners and Justice Act 2009 has been helpful it has also been criticised for its limitations (Hoyano, 2010). Hoyano (2010) argued that if a defendant is assessed as requiring an intermediary whilst providing testimony, then the defendant surely

requires additional support in the dock throughout the criminal trial. Further evidence of this requirement has been provided in a case study where a vulnerable defendant had access to an intermediary at court (O'Mahony, 2012). In some circumstances a vulnerable defendant may be assessed by expert witnesses as fit to stand trial so long as they have access to an intermediary at court. However, intermediaries have found on occasion that the defendant's difficulties at court cannot properly be addressed by the intermediary role and the court is then left in a quandary as to how to manage the case. For example, where a defendant is assessed by experts as fit to stand trial so long as an intermediary is assigned, but the subsequent intermediary assessment finds that the intermediary cannot facilitate the communication as the vulnerable person's communication needs are too complex (Law Commission, 2014).

In order to understand why intermediaries are being allocated to vulnerable defendants, the literature on the needs of vulnerable witnesses requires examination, in particular the literature that evidences how vulnerable persons should be questioned during interview and cross-examination at court (Kebbell, Hatton, & Johnson, 2004). Notably, practices have changed in England and Wales and the Ministry of Justice ceased to allocate Registered Intermediaries to act for vulnerable defendants in June 2011 and this decision was made due to resourcing issues (Personal communication, Jason Connolly, Ministry of Justice). The data for this research had been collected at this point. Since that date, the courts, using the judge's inherent jurisdiction, are required to locate a suitably qualified person to act as an intermediary, and rather confusingly the term *non-registered intermediary* is now used to describe persons undertaking this role with defendants (Ministry of Justice, 2012). These defendant intermediaries may or may not be Registered (witness) Intermediaries and it is the responsibility of any person putting themselves forward as an intermediary for a defendant to satisfy the court that they are suitably skilled and qualified.

Methodology

Interpretative Phenomenological Analysis (IPA) is a methodology concerned with examining in detail a participant's perception of an event that they have experienced, at a cognitive and affective level. IPA is becoming more established in psychology even though it is a relatively young qualitative approach (Smith, 2004). Essentially, it has been described by its founder as having the crucial elements of providing an epistemological position (phenomenology) as well as guidelines for conducting the research (Smith, 2004). IPA has been used extensively in the area of health psychology and in recent years it has also been found in research in the criminal justice field. For example, IPA has been used to analyse the accounts of men with learning disabilities and offending behaviour (Isherwood, Burns, Naylor, & Read, 2007), with the analysis of the accounts of internet sex offenders (Winder & Gough, 2010), and with exploring criminogenic need (Duff, 2010).

IPA uses a phenomenological approach which is a "legitimate form of science" (Giorgi & Giorgi, 2008, p. 26). Giorgi and Giorgi (2008) argue that phenomenology is an approach that attempts to keep a specific experience in context as opposed to try and experimentally identify and control the variables in which such an experience occurs. Specifically, phenomenology seeks to apply a psychological meaning to an individual experience. However, IPA also advances the position that the researcher must make sense of the individual participants' accounts and is therefore interpretative in nature. As Smith (2004, p40) states, "the participant is trying to make sense of their personal and social world: the researcher is trying to make sense of the participant trying to make sense of their personal and social world". The function of the interpretative analysis is to examine the descriptive text and consider it in relation to social, cultural and theoretical perspectives (Larkin, Watts, & Clifton, 2006). Therefore at this level the researcher is examining the interview transcript

with the task of contemplating “what it means” for the participant in this particular case (Larkin et al., 2006, p. 104).

This research gained ethical approval through the University of Portsmouth. It was apparent from the early stages that there would be problems in identifying many participants who had engaged in the intermediary role in defendant cases, as the numbers at that time were low due to the fact that the primary focus for all intermediaries was working with vulnerable witnesses and victims. Having obtained consent from the individuals, the contact details of a number of Registered Intermediaries who had accepted referrals for defendant cases between the dates of March 2010 and December 2010 inclusive were provided to the researcher by the witness intermediary matching team. Contact was made with this purposive sample of intermediaries to discuss the research and in order to provide copies of the research information sheet. Six Registered Intermediaries agreed to participate and importantly, were available for a face-to-face research interview. Five participants were qualified Speech and Language Therapists having been in practice for many years (Range: 15 years to 40 years experience) and one participant was trained in another profession. The profession of the sixth participant has been withheld as it is felt that disclosing it may compromise participant confidentiality as there are a smaller number of intermediaries with this professional background. Likewise, the gender of each participant was collected but because of the low numbers of male intermediaries this information has also been withheld.

Each participant was experienced as a Registered Intermediary having undertaken between 20 and 80 cases with witnesses. The minimum time spent as a Registered Intermediary was three years (two participants). Three participants had been Registered Intermediaries for more than five years. One participant had worked with four separate defendant cases, two with two defendant cases, and the remaining two participants had worked with just the one case that they were discussing for the research interview. Prior to working as an intermediary none of

the participants had previously worked with defendants or in custodial settings with convicted prisoners.

In order to fully capture the details of each semi-structured interview permission was sought from participants to make an audio-recording of the interview using a digital recording device. Each participant was interviewed by the same interviewer (first author of this paper) on one occasion and the interviews ranged between 49 minutes and 75 minutes. The interviews were conducted as close in time as possible to when the participant had experienced the defendant case so that a descriptive account could be obtained whilst the event was fresh in the participant's memory. Contemporaneous notes were also made during the interview. The interviews were transcribed and then analysis of the data was undertaken separately for each of the six participants, followed by an overview to see if there were any themes that emerged across the participants. During the entire process of analysis the researcher used bracketing and reflecting techniques in order to minimise the effect of preconceptions when analysing the data (Holloway, 2005).

Results

The overarching theme identified in this research was one of Professional Identities. Two sub-themes were also identified: Cognitive Dissonance and Emotional Attachment to the Alleged Offender and these are also outlined in the results section. This study has identified a need for intermediaries to recognise the psychological processes and pressures involved when they either gain employment in the criminal justice system for the first time or when they change roles such as when working as an intermediary with defendants for the first time.

Table 1 Summary of issues identified by each participant that relate to the theme ‘identity’

Participant 1	Making sense of ‘me’ Role, confidence and impartiality
Participant 2	Appearance, isolation at court, role, impartiality and self-esteem
Participant 3	Self-esteem, rejection, vulnerability, anxiety, boundaries, role conflict, reconciling conflict, competing agendas
Participant 4	Assertiveness, weakened by position within the court, feeling exposed, inferiority, anxiety about how others perceive me, impartiality
Participant 5	Empowerment and disempowerment, neutrality, resilience
Participant 6	Objectivity and affiliation, role conflict, influence of previous experiences with the CJS, different facades, resilience

Whilst IPA is concerned with understanding an individual’s lived experience the results in this paper have been presented to show how some aspects of experience were shared by the participants. This was especially the case for all the participants who seemed largely unfamiliar with the whole trial process in the criminal court even though they had acted as witness intermediaries previously.

In-group and out-group positioning

When an intermediary enters the court building they are likely to find themselves reflecting on their positioning within the hierarchy of the court (see in-group theory (Tajfel, 1982). Research has demonstrated that individuals that categorise themselves as belonging to a particular group, for example male gender, are engaging in an active cognitive process of accentuating both similarities with the perceived in-group as well as differences with the perceived out-group (Tajfel, 1982). In criminal trials it is usually the case that there will only be one intermediary at the trial and therefore no peer support is available in the court building. It may be the case that the intermediary becomes aware of the differences between their role and other practitioners, for example barristers, in the court. There is evidence from one of the participants that the practice of exaggerating differences between the intermediary and the dock officer role may have occurred.

In the first example which was provided early in the participant's interview it is evident that some initial categorisations by the intermediary may have led to the use of the word 'brutal' when there is no evidence that brutality is apparent but rather the dock officers were probably constrained by their professional guidelines:

P2: Well, he (defendant) wasn't allowed anything (in court cells). And he tended to be either climbing the walls and hyped up by the time we got to court or else, um, he'd, he'd switched off completely with the boredom of it all (Line 7)

Interviewer: Right

P2: ...would have worked a lot better if he'd had a couple of slices of toast and a magazine...

Interviewer: Okay

P2: and I found it quite hard. I found that hard because I thought this is a lad who is actually at that particular point innocent. He hadn't been proved guilty (Line 19)

P2: Well they were harsh, the custody...it was brutal.

We can see here the apparent conflict that arises between professionals with different roles and responsibilities. The dock officer has rules and regulations regarding security to adhere to which may seem incomprehensible to the intermediary whose priority is facilitating communication. So, at this point in the court proceedings the intermediary may have internalised the dock officer as being part of a harsh, brutal system which may have consequences for their professional relationship, perhaps subconsciously, later in the trial. In the second example the same intermediary provides us with an insight into how having such pre-conceived ideas about court security staff could lead to seeking information to confirm the differences between the intermediary's identity and the perceived identity of the dock officers:

P2: I shouldn't have been because they should have had a ...I insisted...they wanted to put an, um, a dock officer between me and the defendant I was working with but I did scotch that one right from the beginning and I really stood my ground on that and I said no way, I'm going to sit next to them and...Oh I was fine because I'd know him by then and I ...I mean I thought there's no way I'm going to...I had to go to the court clerk and the solicitor and we had a bit of a kaffuffle over that one, but I did stand my ground. The dock officer was not a happy bunny because they had been overruled, which they didn't like. They were used to absolute control (Line 189)

This social categorisation (Grant & Hogg, 2012) may also be evident in the intermediary's relationships with other court staff such as barristers as illustrated in the following example

where the intermediary is making a comparison between their perception of how they act in court and the behaviour displayed by barristers in the courtroom:

P4(2): ...the defendant goes down for an adjournment and the jury go out...and the rest of us are left there and defence and prosecution start chatting together, you know, about life and going out and what restaurant they went to, or about the case as well. And then they go into their roles for the other stuff. But, um, they were talking quite openly about what they felt the case...how it should...the outcome of the case...and of course, you know, as an impartial intermediary, I was quite shocked by this, to see them having those...that type of chat and thinking 'oh, that's very unprofessional', making sure I kept myself zipped... I just hung around there and if they were talking about something not to do with the case, I'd try and join in and be part of it, you know. Er, not to be too much like a lemon or a gooseberry (Line 40)

Intermediaries also reflected on the development of their professional identity as they often brought a professional background from the health sector into the legal environment.

Wearing more than one professional hat

One of the strongest voices emerging from all 6 participants in this current research is the potential conflict in roles between that of a professional from a health or caring background and that required when undertaking the impartial role of a defendant intermediary. The following selected excerpts from participant interviews illustrate this point:

P2: There was nobody else really apart from me there who was interested in his well-being. I mean it wasn't entirely my role but I did feel that he would communicate a lot better and understand a lot better if he was sort of looked after a little bit (Line 119)

P3: The, the um...when throughout your own career you've been an enabler and a facilitator and someone who reassures and someone who, er, you know, sort of tries, tries to say it'll be alright. You know. You're doing really well (Line 157)

P4 (2): But you actually just want that person to be functioning as well as they can, given the horrible situation. And you have some part to play in that directly and the other part is just as a fellow human being, you know, sitting beside someone...And of course you can't in either respect (witness or defendant case) put your arm around them and comfort them, but with the witness, they've got support people...But of course with this...with the defendant, you can't do anything, they are just grabbed and taken downstairs again. (Line 89)

P6: I think...I think...I think it's just in a very kind of pragmatic way, you know, and you know, you...I think you develop this skill as a professional, you, you have a kind of almost neutral kind of exterior, professional exterior, which...which you show this facade and then...and then the stuff that goes on behind that, you deal with separately, you know, as...and you see it as a distinct kind of professional issue. And I do...I do think it is, er, a skill that (allied health) professionals develop, you know, whether you're working with, I don't know, cancer patients...or vulnerable people with learning disabilities...you have a kind of exterior which you show and...and which is pragmatic, and which ticks all the kind of professional boxes. But you also have a kind of...a side which is, you know, very human as well and which connects with people. Um and sometimes that comes through, you know (Line 103)

In addition to making sense of their new role within the environment of the court, the intermediaries also reflected on their perceptions of working with the (alleged) offender population.

Making sense of the alleged offender's behaviour – Cognitive dissonance

Cognitive dissonance theory relates to the mismatch of new information to the information that we already hold as an established belief (Ask, Reinhard, Marksteiner, & Granhag, 2011; Festinger, 1957). If the intermediary, usually from a healthcare background, holds an entrenched belief that a vulnerable person is usually a victim rather than an offender then it is more difficult to rationalize that a vulnerable person can also commit a violent or sexual offence. This theme was identified as being prevalent in four out of the six participant's accounts. In the first two excerpts the intermediaries appear to be making excuses for the actions of the alleged offenders; excuses that hold no defence in law for committing a criminal act:

P1: This was a story not just about bum-pinching, it was about a story of um, a young man mixing with the wrong people, in the wrong place, at the wrong time – as far as I can see...um, about drugs, about alcohol, about, um, a lousy community set-up.

P6: She told a story which was just...just...er...just a tragic, tragic story really, and um, basically what...she'd told, er, a story which was kind of full of...of her own abuse and victimisation...her mum threw her out because of the changes in her behaviour.

In the next excerpt the intermediary is trying to make sense of the legal concept of 'joint enterprise'. In doing so the intermediary appears to have formed the opinion that the

defendant is innocent of the crime he has been charged with as he did not inflict the fatal blow, albeit he was present at the scene.

P2: I think one of the things that quite shocked me all the way through the whole thing...the charge was murder and I think one of the things that I'd been aware of is that it was very evident that the, um, young man I was working with had not murdered anybody at all. It was, um, joint enterprise.

In the following excerpt we see how the intermediary has gone so far as to doubt the veracity of the complainant's account:

P4: There was no force...no imprisonment or anything and then, you know, these things, er supposedly happened.

If the intermediary is trying to make sense of the evidence against a vulnerable defendant and in doing so forms an opinion about the alleged offender's innocence then this is likely to increase the level of emotional attachment that they have towards the defendant. It may also have serious consequences about the intermediary's perceived impartiality in the courtroom and their ability to remain neutral during cross-examination. Emotional attachment and loss was highlighted as a theme in this research too.

Emotional Attachment to the alleged offender

Two of the intermediaries that have worked with vulnerable defendants reported a sense of loss when a trial concluded, particularly when a defendant was convicted and imprisoned.

This is perhaps not surprising if an attachment develops earlier on in the trial as was narrated by one participant:

P2: I think my feelings for this particular defendant was that I actually felt really sorry for him. You know, I think one of the barristers obviously had very similar feelings to me, that we were all being....at court we were very professional about it....

It is perhaps a natural consequence when working with a vulnerable person that a certain level of professional attachment will develop and this likelihood increases for the intermediary involved in a lengthy criminal trial with a vulnerable defendant. The intermediary will need to prepare both themselves and the vulnerable defendant for the ending that will inevitably come, perhaps abruptly, regardless of the trial outcome. In the following excerpt it is clear that the intermediary was not ready for the ending of the professional relationship and we gain a real sense of emotion from the words used to convey how the loss occurred:

P4: he just disappeared, you know, he just disappeared, um, from my side. Um, he went down.

In the next excerpt another intermediary, having reflected on the ending of the relationship, considers that it is not appropriate for a caring professional to just walk away without formally ending a professional relationship as is found between an intermediary and a defendant:

P6: I'm a human being and I can't just walk...I can't just do something like that (intermediary role) with somebody and then just walk out and never see them again, that's just...that's just wrong.

Discussion

It is critical that professionals embarking on the role of a defendant intermediary are made aware of the three themes identified in the results section namely: Professional Identities; Cognitive Dissonance; and Emotional Attachment to the Alleged Offender. Even if they have previously acted as an intermediary for a vulnerable witness they may experience a range of different cognitions and emotions when engaged in a lengthy trial with an alleged offender. For example, when working as a witness intermediary they are likely to be liaising with the witness support team at court which may serve to limit any feelings of isolation as a professional in the unfamiliar environment of the court building. When an individual embarks on a role in a new environment they encounter an uncertain place in which they have to learn the rules of how they and others behave in that context (Grant & Hogg, 2012). It is essential that intermediaries are supported in understanding their developing identity as they embark on working as an intermediary for a defendant. If they do not understand the nature of changing identities there may be consequences in terms of perceived person-environment fit which in turn may lead to frustration and a reluctance to engage in the role (Furnham & Walsh, 2001). As the intermediary scheme continues to evolve and there is a high demand for intermediaries (Cooper, 2014) we would expect that the numbers of intermediaries on the national register would have increased rather than decreased in recent years. There is no published data outlining the reasons that intermediaries cite for leaving the intermediary register. It may be the case that they find that, even after receiving training about the adversarial system, they do not 'fit' in the courtroom environment and the additional psychological demands that the role places on them influences their decision to leave; however we do not know. Certain preferences in cognitive styles can also impact on how the individual perceives their fit, or misfit, to the environment in which they operate. For

example, some people prefer structured, well-defined environments whereas others are more comfortable in changing environments (Cools, Van den Broeck, & Bouckenooghe, 2009). Intermediaries are a relatively recent introduction to the criminal justice system and therefore will be attending the courtroom where they are obliged to interact with other professional groups, for example barristers, who are well established in that environment. Analysis of the interview transcripts for this research has identified that intermediaries have reflected on the relationships that they have with these other professionals in the court room and this reflection empowers them to become agents of change rather than victims of change (Hotho, 2008). It is evident that intermediaries have also reflected on their professional relationship with vulnerable defendants and expressed how difficult it can be when the relationship ends. We might expect this issue to be exacerbated for the vulnerable defendant when they lose their communication support, particularly if they are given a custodial sentence.

Social Identity Complexity recognises that individuals may have more than one identity and therefore it might be expected that the individual may perceive some degree of overlap between the various 'hats' that they may wear (Roccas & Brewer, 2002). By understanding these multiple social identities the individual is more likely to understand the nature of the relationships that they have with others (Roccas & Brewer, 2002). Therefore, it seems possible that by extending the concept of Social Identity Complexity to incorporate professional identities it may assist in understanding at least some of the issues raised by participants in this current research. All six participants demonstrated having an awareness of different identities, at least at a subconscious level, but we gain a sense that they experience some confusion about the expectations of the different roles. To a certain extent it appears that the social and professional context in which these differing identities co-exist are non-convergent and therefore cause internal conflict (Roccas & Brewer, 2002). For example, a professional from a healthcare background may be used to reassuring and supporting a

vulnerable person or making sure that they have activities to engage in or snacks to eat between meals. If a new role prohibits such niceties for security or procedural reasons, and the intermediary could be perceived by the court as partisan and supporting an individual, then conflict may arise between the established role, for example Speech and Language Therapist, and the new intermediary role. It is possible that there may be occasional conflict between the two sets of professional codes of conduct too. For example, avoiding being left alone with the vulnerable person in order to appear non-partisan, when there is no-one else around to address their wider emotional and social needs.

Conclusion and recommendations

Previous research (Kebbell et al., 2004; Zajac & Hayne, 2003) has advanced our understanding of how vulnerable persons can communicate evidence to the courts as long as measures are put in place to support their communication needs. One of these communication needs is having access to an intermediary to facilitate communication between the person asking the questions and the vulnerable person who has to comprehend the question and express an answer that the court can understand.

Whilst the focus of previous literature has been on vulnerable witnesses and has been primarily undertaken through experimental research, this paper has extended the knowledge base by evaluating the experiences of those intermediaries tasked with facilitating communication at court with vulnerable defendants. Critically, this research has found that intermediaries need to understand their evolving professional identity and their affect and cognitions in order to provide the non-partisan service that they are required to fulfil. Intermediaries currently appear to be struggling to understand their merging and converging identities as health and care professionals and intermediaries. They are operating in a

somewhat alien environment without structure or guidance and these conditions mean that the intermediary's effectiveness may be compromised. It is feasible to predict that without fully understanding these issues, especially when engaged for lengthy periods with the vulnerable person as can be the case with vulnerable defendants, that the integrity of the non-partisan approach may be called into question. Additionally, the intermediary will not be working to their full potential because of the cognitive load they are engaged in when working out their role.

This research is limited by its small sample of qualitative interviews and the findings cannot be generalised to apply to all cases between intermediaries and defendants. Nevertheless, it is valuable research because it gives policy makers and practitioners an insight into the role of experienced health and care practitioners who are tasked to work in a new and complex environment. Further research examining the perspectives of the defendant, lawyers and the judge could be obtained to see if they match the perception of the intermediary.

Registered Intermediaries currently receive training for their role as witness intermediaries. They receive no additional accredited training regarding how to undertake cases as non-registered intermediaries with defendants. Neither do they have additional codes of practice when undertaking the defendant intermediary function. If the defendant intermediary subscribes to a professional body such as the British Psychological Society or the Health and Care Professions Council then they do have a code of conduct and expectations that they will continue to undertake professional development activities. If the professional accepts a case as a defendant intermediary, on the basis of their professional training, then it is uncharted waters as to whether a court would complain to the professional body if it felt that the professional had engaged in malpractice as an intermediary. The courts cannot currently refer the complaint to the Ministry of Justice as these intermediaries are unregulated. There is even the possibility that a retired professional may undertake intermediary work with a defendant

as a non-registered intermediary, and in those circumstances the courts would have no redress in terms of making a complaint to a professional body. Retired professionals are on the Registered (witness) Intermediary database but of course the courts can legitimately complain to the Ministry of Justice if malpractice or poor practice is highlighted.

Non-registered intermediaries, who have not undertaken any additional accredited training about the adversarial justice system and the intermediary role after obtaining their initial professional qualification, may in theory be disadvantaged even more when undertaking defendant intermediary cases. Nevertheless, since this research was conducted many more vulnerable defendants have had the benefit of an intermediary at court and there is now a body of experience developing in England and Wales by non-registered intermediaries working in the private sector. These non-registered intermediaries may tell a different story, if interviewed, about how they conceptualise their role as they may be spending the majority of their professional lives engaging in practice in the criminal courts.

This research has found that it is critical that any person, registered or non-registered as an intermediary should undertake some core training to understand their evolving professional identity. This training should include the legal material already used in the training of Registered Intermediaries but should be supplemented by material addressing the issues arising from the data collected in this research. The current focus of training for Registered Intermediaries is based entirely on legal issues to the exclusion of the psychological issues of understanding the developing professional identity and relationships with a vulnerable defendant. It could be argued that professionals entering the criminal justice system should already have an understanding of these psychological concepts from their core professional training but we would argue that these issues need reinforcing in the context of working within the criminal justice system. Training should also be developed and delivered to inform all intermediaries about the intricacies of the non-partisan relationship that they have with a

defendant, which may become more evident if they are tasked with spending longer periods of time with the defendant. This training is essential if intermediaries are requested by the courts to be present throughout the trial.

Whilst s104 of the Coroners and Justice Act 2009 (defendant intermediaries) awaits implementation in England and Wales the Ministry of Justice may wish to consider the implications of this research if judges are to continue the practice of requesting an intermediary to be available throughout a trial rather than specifically whilst the defendant provides oral testimony. It is suggested that a scheme where another organisation partially fulfils this role, as is the case in Northern Ireland, be considered to allay any fears that defendant intermediaries are adopting a partisan approach. The planned evaluation of the Northern Ireland scheme (Personal correspondence, NI Department of Justice) should assist with this task to see if the defendant's communication needs throughout the trial are addressed by a third party organisation.

Implications for practice

- Health and Care professionals undertaking a new function in the criminal justice sector should receive training about the psychological processes underlying developing professional identities. Such training should reduce the cognitive load when they work in the new environment and failure to undertake this training may lead to less efficient practice.
- Gaining an understanding of their professional positioning within the court environment may assist with retention of intermediaries in this new role.
- The findings of this study may assist witness intermediaries to understand their developing professional identity as well as those intermediaries undertaking defendant cases.

References:

- Ask, K., Reinhard, M., Marksteiner, T., & Granhag, P. A. (2011). Elasticity in evaluations of criminal evidence: Exploring the role of cognitive dissonance. *Legal and Criminological Psychology, 16*, 289-306.
- Cools, E., Van den Broeck, H., & Bouckenooghe, D. (2009). Cognitive styles and person-environment fit: Investigating the consequences of cognitive (mis) fit. *European Journal of Work and Organizational Psychology, 18*(2), 167-198.
- Cooper, P. (2014). *Highs and Lows: The 4th Intermediary Survey*. London: Kingston University.
- Cooper, P., & Wurtzel, D. (2013). A Day Late and a Dollar Short: In Search of an Intermediary Scheme for Vulnerable Defendants in England and Wales. *Criminal Law Review*(1), 4-22.
- Duff, S. (2010). Exploring criminogenic need through victim apology letters: An interpretative phenomenological analysis. *Journal of Aggression, Conflict and Peace Research, 2*(2), 33-43.
- Festinger, L. (1957). *A theory of cognitive dissonance*. Palo Alto, Ca.: Stanford University Press.
- Furnham, A., & Walsh, J. (2001). Consequences of Person-Environment Incongruence: Absenteeism, Frustration, and Stress. *The Journal of Social Psychology, 131*(2), 187-204.
- Giorgi, A., & Giorgi, B. (2008). Phenomenology. In J. A. Smith (Ed.), *Qualitative Psychology: A Practical Guide to Research Methods*. London: SAGE.
- Grant, F., & Hogg, M. A. (2012). Self-uncertainty, social identity prominence and group identification. *Journal of Experimental Social Psychology, 48*, 538-542.
- Holloway, I. (2005). *Qualitative Research in Health care*: Open University Press.
- Hotho, S. (2008). Professional identity - product of structure, product of choice. Linking changing professional identity and changing professions. *Journal of Organizational Change Management, 21*(6), 721-742.
- Hoyano, L. C. H. (2010). Coroners and Justice Act 2009: special measures directions take two: entrenching unequal access to justice? *Criminal Law Review, 345-367*.
- Isherwood, T., Burns, M., Naylor, M., & Read, S. (2007). 'Getting into trouble': A qualitative analysis of the onset of offending in the accounts of men with learning disabilities. *The Journal of Forensic Psychiatry and Psychology, 18*(2), 221-234.
- Jacobson, J. (2008). No One Knows; Police responses to suspects with learning disabilities and learning difficulties: a review of policy and practice: Prison Reform Trust.
- Kebbell, M. R., Hatton, C., & Johnson, S. D. (2004). Witnesses with intellectual disabilities in court: What questions are asked and what influence do they have? *Legal and Criminological Psychology, 9*, 23-35.
- Krahenbuhl, S. J. (2011). Effective and Appropriate Communication with Children in Legal Proceedings According to Lawyers and Intermediaries. *Child Abuse Review, 20*(6), 407-420.
- Larkin, M., Watts, S., & Clifton, E. (2006). Giving voice and making sense in Interpretative Phenomenological Analysis. *Qualitative research in Psychology, 3*, 102-120.
- Law Commission. (2014). *Summary of The Law Commission Symposium on Unfitness To Plead*. University of Leeds.
- McEwan, J. (2009). The testimony of vulnerable victims and witnesses in criminal proceedings in the European Union. *ERA Forum, 10*, 369-386.

- Medford, S., Gudjonsson, G., & Pearse, J. (2003). The efficacy of the appropriate adult safeguard during police interviewing. *Legal and Criminological Psychology, 8*, 253-266.
- Ministry of Justice. (2011). The Registered Intermediary Procedural Guidance Manual.
- Ministry of Justice. (2012). The Registered Intermediary Procedural Guidance Manual: Victims and Witnesses Unit.
- O'Mahony, B. M. (2010). The emerging role of the Registered Intermediary with the vulnerable witness and offender: facilitating communication with the police and members of the judiciary. *British Journal of Learning Disabilities, 38*, 232-237.
- O'Mahony, B. M. (2012). Accused of murder: supporting the communication needs of a vulnerable defendant at court and at the police station. *Journal of Learning Disabilities and Offending Behaviour., 3*(2), 77-84.
- O'Mahony, B. M., Smith, K., & Milne, R. (2011). The early identification of vulnerable witnesses prior to an investigative interview. *British Journal of Forensic Practice.*
- Plotnikoff, J., & Woolfson, R. (2007). The "Go-Between": evaluation of intermediary pathfinder projects. London: Ministry of Justice.
- Roccas, S., & Brewer, M. B. (2002). Social Identity Complexity. *Personality and Social Psychology Review, 6*(2), 88-106.
- Smith, J. A. (2004). Reflecting on the development of interpretative phenomenological analysis and its contribution to qualitative research in psychology. *Qualitative research in Psychology, 1*, 39-54.
- Tajfel, H. (1982). Social Psychology of Intergroup Relations. *Annual Review Psychology, 33*, 1-39.
- Winder, B., & Gough, B. (2010). "I never touched anybody - that's my defence": A qualitative analysis of internet sex offender accounts. *Journal of Sexual Aggression, 16*(2), 125-141.
- Zajac, R., & Hayne, H. (2003). I don't think that's what really happened: the effect of cross-examination on the accuracy of children's reports. *Journal of Experimental Psychology: Applied, 9*, 187-195.