

# **How do intermediaries experience their role in facilitating communication for vulnerable defendants?**

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**This thesis is submitted as partial fulfilment of the requirements for the award of the degree of Doctor of Criminal Justice of the University of Portsmouth**

# Abstract

Vulnerable people, such as children and people with learning disabilities may have difficulties with comprehension when asked certain complex questions during interview at the police station or during cross-examination at court. One support measure, available through statute to vulnerable witnesses, but not defendants as yet, is the role of the intermediary. The intermediary was introduced through legislation to facilitate communication with the vulnerable witness but has more recently also been tasked, on occasion by judges, under common law, to facilitate communication with the vulnerable defendant. There has been no previous research on the role of intermediaries undertaking defendant cases and this thesis fills that gap.

In this research, interviews have been conducted with six intermediaries to gain an insight into how they experienced this new role with defendants. The data has been analysed using Interpretative Phenomenological Analysis. Each participant's insight has been individually analysed and valued in its own right. Additionally, the six interviews were subsequently examined to assess if there were any general emerging themes.

It was found that three themes emerged. Firstly, and most significant, intermediaries appeared to be trying to make sense of their developing identities as professionals in the courtroom and this theme is conceptualised through Social Identity Complexity theory. Secondly, some intermediaries appeared to be minimising the offender's alleged criminal behaviour and it was found that the theory of Cognitive Dissonance offers an explanation for this behaviour. Finally, attachment and detachment with the offender have been examined, as intermediaries working with defendants have been found to experience a sense of loss when the defendant is convicted and removed to the cells.

Recommendations are made including the requirement for additional training for intermediaries to understand the underlying psychological processes and conflicts they may experience when working with defendant cases. This is a new contribution to knowledge in the literature about intermediaries.

# Declaration

I confirm that, except where indicated through the proper use of citations and references, this is my own original work. Whilst registered as a candidate for the above degree, I have not been registered for any other research award. The results and conclusions embodied in this thesis are the work of the named candidate and have not been submitted for any other academic award.

Signed:

Brendan O'Mahony  
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# Contents

Abstract	2
Declaration	3
Acknowledgements	4
Contents	5
List of Tables	9
List of Figures	10
Abbreviations	11
Dissemination through peer reviewed journals	12
<b>Chapter 1- Vulnerable witnesses, defendants and the intermediary function</b>	
1.1. Introduction	13
1.2. Thesis structure	13
1.3. The Witness Intermediary Role	15
1.4. Developing the intermediary role to include vulnerable defendants	17
1.5. The Northern Ireland Intermediary Scheme	19
1.6. Achieving Best Evidence	19
1.7. Vulnerability and the legislation in England and Wales	20
1.8. Suggestibility, Compliance and Acquiescence	24
1.9. Children as witnesses	25
1.10. Witnesses and suspects with a learning disabilities	28
1.11. Comprehension difficulties at court	31
1.12. The needs of vulnerable witnesses with a mental disorder	32
1.13. Investigative interviewing	34
1.14. Special Measures including the intermediary function	36

1.15.	Offender Pathway for vulnerable defendants	37
1.16.	Chapter Conclusion	39

## **Chapter 2 - Methodology**

2.1.	Assessing the options through reflection	42
2.2.	Ontological and epistemological position	43
2.3.	Choosing the methodology and ethical considerations	44
2.4.	Interpretative Phenomenological Analysis (IPA)	48
2.5.	Semi-structured interview	51
2.6.	Participants	51
2.7.	Conducting IPA analysis	52
2.8.	Chapter Conclusion	55

## **Chapter 3- Data Analysis**

3.1.	Participant 1	56
3.2.	Participant 2	66
3.3.	Participant 3	78
3.4.	Participant 4	85
3.5.	Participant 5	98
3.6.	Participant 6	105
3.7.	Chapter Conclusion	115

## **Chapter 4 – Discussion**

4.1.	Emerging issues	119
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4.2.	Theme 1 – Focus on developing professional identities	120
4.3.	Stereotyping, prejudice and intergroup relations	121
4.4.	Social identity complexity	123
4.5.	Theme 2 – Focus on minimising offender behaviour and cognitive dissonance	130
4.6.	Theme 3 – Focus on emotional attachment to the offender	133
4.7.	Chapter Conclusion	135

## **Chapter 5 – Conclusions**

5.1.	How this research relates to previous findings	137
5.2.	Research Findings: Main Points	137
5.3.	Limitations of this research	140
5.4.	Recommendations for policy and practice	141
5.5.	Chapter Conclusion	145

## **Chapter 6 – Reflections on my journey as a researching professional**

### **Appendices**

Appendix 1	Participant Information Sheet	157
Appendix 2	Participant Consent Form	159
Appendix 3	Semi-Structured Interview Schedule	160
Appendix 4	Professional background of Registered Intermediaries	163
Appendix 5	Participant Demographics	164
Appendix 6	Brief case details	165
Appendix 7	MAXQDA printout	166

Appendix 8      Invitation to Law Society House, Belfast      169

**References**      170

# List of Tables

Table 3.1 Superordinate themes from Participant 1	57
Table 3.2 Superordinate themes from Participant 2	66
Table 3.3 Superordinate themes from Participant 3	78
Table 3.4 Superordinate themes from Participant 4	86
Table 3.5 Superordinate themes from Participant 5	98
Table 3.6 Superordinate themes from Participant 6	106
Table 3.7 Comparison of themes emerging from the six participant interviews	115
Table 3.8 Within transcript superordinate themes and integrative overarching themes	117
Table 4.1 Theme 1 - Focus on Developing Professional Identities	119
Table 4.2 Theme 2 - Focus on Minimising Offender Behaviour	120
Table 4.3 Theme 3 - Focus on Emotional Attachment to the Offender	120

# List of Figures

Social Identity Complexity: Model 1 - Envelope	126
Social Identity Complexity: Model 2 - Overlap	127
Social Identity Complexity: Model 3 - Independent	128
Social Identity Complexity: Model 4 - Equals	129

# Abbreviations

AA	Appropriate Adult
ACPO	Association of Chief Police Officers
CJA	Coroners and Justice Act 2009
RI	Registered Intermediary
IPA	Interpretative Phenomenological Analysis
NPIA	National Policing Improvement Agency
PACE	Police and Criminal Evidence Act 1984
YJCE	Youth Justice and Criminal Evidence Act 1999

## **Statement about the use of Gender Pronouns in this thesis:**

A large proportion of Registered Intermediaries in England and Wales are female and it was anticipated that there would be a greater number of females represented in the purposive sample for this research. Therefore, in order to protect the anonymity of any male participant it was decided to omit identifying each participant by gender. Initially, the research findings were written up using the generic *s/he his/ her* format but this made the reading of the text difficult. Having considered psychology publication guidelines (American Psychological Association, 2010; British Psychological Society, 2004) I made the decision to adopt the framework used in the criminal law in England and Wales, which by default uses the male pronoun. This seems appropriate as this professional doctorate is in the field of criminal justice. Significantly, this measure was chosen purely to afford anonymity to all participants and not to undermine the response of the female participants in this research. This adopted position is aimed at balancing the need for participant anonymity with the need to eliminate sexist bias in the use of language and I am aware of my responsibilities as a registered psychologist.

## Dissemination through peer reviewed journals

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 trial – the role of the intermediary. *Journal of Learning Disabilities and Offending Behaviour*, **3**, 2, 77-84

O'Mahony, B.M., Milne, R., & Grant, T. (2012). To challenge or not to challenge? Best practice when interviewing vulnerable suspects. *Policing: A Journal of Policy and Practice*, **6**, 3, 301-313

O'Mahony, B.M., Smith, K., & Milne, R. (2011). The early identification of vulnerable witnesses prior to an investigative interview. *The British Journal of Forensic Practice*, **13**, 2, 114- 123

These journal articles have been used during the development of an online resource for lawyers

<http://blogs.city.ac.uk/advocategateway/intermediaries/>

# **Chapter 1- Vulnerable witnesses, defendants and the intermediary function.**

## 1.1. Introduction

This thesis examines the role of intermediaries who are tasked with facilitating communication with vulnerable defendants as they stand trial in the criminal courts in England and Wales. This research fulfils the criteria of a professional doctorate because the author is engaged in work as an intermediary and has undertaken work with vulnerable defendants. The author is also a practising forensic psychologist and some issues arising from this professional background are discussed in the thesis. This thesis is important because there has been no previous research in England and Wales on this intermediary function and yet, legislation has been passed, albeit yet to be implemented, to formalise the provision of intermediaries to vulnerable defendants in England and Wales. To date, intermediaries have been allocated to vulnerable defendants on an ad hoc basis by judges. This thesis examines how defendant intermediaries experience their role and the findings will enhance our understanding of their role and inform training and policy issues. Therefore, the main research question is ‘How do intermediaries experience their role when allocated to defendant cases?’ A subsidiary research question is ‘What are the policy and training implications of allocating intermediaries to vulnerable defendants?’

## 1.2. Thesis structure

In order to understand the role of intermediaries as specified in the legislation it is important to contextualise how they differ from other professionals in the criminal justice system as the intermediary function is additional to their core professional training. Additionally, whilst there is a dearth of academic literature on the role of intermediaries, particularly so with defendant intermediaries, it is important to consider the evolving role of intermediaries in the context of the

academic literature on vulnerable victims and witnesses. The remainder of Chapter 1 focuses on these issues.

Chapter 2 examines the methodology used in this research and explains how Interpretative Phenomenological Analysis was used to analyse the qualitative data in Chapter 3. This thesis is structured in a way that may not be familiar to psychologists in that the main body of literature is used to set the context of why intermediaries are essential for vulnerable persons. However, Chapter 4 refers to separate bodies of psychological literature to that found in Chapter 1 in order to embed the findings from this research in the academic literature. Chapter 5 draws conclusions from this research and makes recommendations for additional research and also policy considerations. Chapter 6 is written as a reflective chapter where the first person is used to reflect on the doctoral journey and this differs from most psychology based research documents where the third person is used throughout when writing up the research. Significantly, this reflective chapter is a core chapter in this thesis and not an appendix, as it evidences how *I* have developed as a researching practitioner throughout the entire period of doctoral registration.

Following an introduction to the role of intermediaries, Chapter 1 examines the psychological literature that has informed the development of the appropriate questioning of vulnerable persons. Historically, this body of literature increased when the police practice of investigative interviewing was examined in the early 1990s and the research findings have been extended and applied to the questioning of witnesses in court. Whilst this thesis focuses on the experiences of the intermediaries rather than the vulnerable persons it is necessary to understand the literature of how the intermediary role has developed prior to collecting data about their experiences. The psychological literature provides an overview of the term *vulnerability* which was found to be a key issue in this research. It then examines interviewing in the context of child development and then subsequently, the interviewing of other vulnerable groups such as those with a learning disability, mental illness and other mental disorders. Having placed the issues of cognitive development and impaired cognitive functioning in context, it then explores the adversarial criminal justice system as found in England

and Wales and examines the competing demands of prosecuting and convicting offenders, whilst at the same time, putting in place safeguards so that innocent people are not convicted.

The use of metaphor has previously been used to describe the adversarial criminal justice system as being trials “fought by opposing sides” where “the judge and jury acted as arbiters rather than inquisitors” and this metaphor highlights why vulnerable persons might require additional support at court (Rock, 1993, p. 31). The investigation of crimes where vulnerable witnesses and suspects are interviewed by the police will then be examined and the guidance on best practice where those vulnerable persons may later provide testimony in the criminal courts as victims or defendants analysed. Notably, although this thesis focuses on defendants it will draw on the research evidence base about vulnerable witnesses and will demonstrate how this research has informed the developing practice of providing additional support for defendants.

### 1.3. The Witness Intermediary role

In England and Wales Registered Intermediaries are trained professionals with backgrounds such as psychology, speech and language therapy, social work, nursing and teaching (O'Mahony, 2010, p. 2). Critically, the intermediary 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. Currently, there are approximately 130 active registered intermediaries operating in England and Wales (Personal Communication, Jason Connolly, Project Officer, Ministry of Justice, February 2011). Each intermediary must only accept a referral to assess a vulnerable person who has needs within their particular skill set. Notably, the Registered 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, 2011b, p. 10).

Registered 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. 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 in 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, p. 375) 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 Policing Improvement Agency – Specialist Operations Centre. A matching service exists where the skills and location of intermediaries are matched with the referral (O'Mahony, 2010, p. 3). Ideally the intermediary completes a full assessment of the witness prior to the investigative interview and has the opportunity to liaise with external providers so that a comprehensive report of the witness's needs can be completed should the witness need to attend court. 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 must intervene when necessary if complex questions are asked or if the agreed 'ground rules' 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 the 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. Incredibly, 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. There are opportunities, through using mock jurors, to assess the impact that the presence of an intermediary with a witness may have on jurors, but such research has not yet been conducted.

#### 1.4. Developing the Intermediary role to include vulnerable defendants

A body of 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. The research also reflected that the failure to identify vulnerable suspects was in part due to the lack of screening mechanisms (Jacobson, 2008, p. 28). Jacobson (2008) concluded that some of the Special Measures that are available to vulnerable witnesses should be made available to vulnerable suspects as well, specifically the provision of Registered Intermediaries to facilitate communication and guidance on interviewing (Jacobson, 2008, p. 36). This theme was later examined (O'Mahony, 2010, p. 4) and comments raised that the function of the Registered Intermediary role within the police suspect interview would 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.

As stated earlier in this chapter, 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, p. 7). This practice was visible prior to the introduction of Section 104 of the Coroners and Justice Act (CJA, 2009), yet to be implemented in England and Wales, which made provision for an intermediary to be present when the defendant gives oral evidence at court (O'Mahony et al., 2011). In these circumstances the intermediary would conduct

an assessment of the vulnerable defendant and write a report for the court, as they would for the vulnerable witness. 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. Therefore, the intermediaries interviewed for this research had no formal guidance on how to undertake the role with vulnerable defendants.

Whilst the impending introduction of S104 Criminal and Justice Act 2009 has been helpful it has also been criticised for its limitations (Hoyano, 2010). Hoyano has 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 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. There is a current gap in the literature about the measures available to vulnerable defendants providing oral testimony at court and this thesis has begun to address this knowledge deficit.

Notably, practices have changed in England and Wales as this doctorate research has developed 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 doctorate 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 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. For ease of reading throughout the remainder of this thesis the term

intermediary has been adopted on occasions to be used interchangeably for witness or defendant intermediaries.

#### 1.5. The Northern Ireland Intermediary scheme

In April 2013, a new Registered Intermediary scheme will be piloted in Northern Ireland and this scheme will differ to the scheme in England and Wales in one fundamental way: Northern Ireland Registered Intermediaries will be available to support the communication needs of a vulnerable suspect during the police investigative interview as well as during the oral evidence of a vulnerable defendant at court. Notably, in Northern Ireland the legislation does not provide for the Registered Intermediary to be present throughout the trial but an extension of the Appropriate Adult Scheme, the *Mindwise Linked-In Project*, is being piloted in Belfast to support the vulnerable defendant from when they leave the police station until the trial. This support is limited to defendants aged 15-25 (Department of Justice, 2012). The Project worker currently provides support to the vulnerable defendant in court by sitting in the public area but Northern Ireland Registered Intermediaries have been given guidance that they may recommend an appropriately trained worker, such as a Linked-In project worker to support the vulnerable defendant during the trial (Personal communication, January 2013, Norma Dempster, Department of Justice).

#### 1.6. Achieving Best Evidence

The term *Achieving Best Evidence* refers to a guidance manual (Ministry of Justice, 2011a) and is usually associated with the interviewing of vulnerable witnesses but this study has examined the extent to which it also applies to vulnerable suspects and defendants. The focus of this research was about the support that was needed, in terms of facilitating communication at court, for vulnerable persons who were charged with criminal offences. Of course, by the time they enter the courtroom they will have already been interviewed by the police as a suspect for a criminal offence and this

chapter will provide an overview of the evidence base that has led to measures being introduced to support the vulnerable suspect whilst at the police station so that a miscarriage of justice is avoided.

In the last fifteen years there appears to have been a constant ‘tug of war’ between those parties representing vulnerable victims and those representing vulnerable suspects so that equity of justice is practiced in England and Wales. For example, when the Memorandum of Good Practice (Home Office, 1992) was published which gave practical advice on the best interviewing practice for child witnesses, reviewers commented that the criminal justice system “was generally biased towards protecting the rights of the defendant” (Marchant & Page, 1997, p. 77). Yet, currently there are suggestions by Hoyano (2010) that vulnerable defendants with learning and communication difficulties are on trial without necessarily understanding the proceedings, even if they have been assessed as fit to plead at court. Evidence of such communication difficulties will be highlighted in this current research.

Child intermediaries are available in other jurisdictions such as Western Australia and South Africa but these schemes do not operate in the same way as the Witness Intermediary Scheme in England and Wales (Richards, 2009). For example in South Africa, intermediaries check that every question is developmentally appropriate during cross examination, and it is the intermediary who asks the child the question on behalf of the lawyer (Caruso & Cross, 2012; Davies, Hanna, Henderson, & Hand, 2011; Jackson, 2003; Matthias & Zaal, 2011).

### 1.7. Vulnerability and the legislation

Whilst the Appropriate Adult scheme was introduced to protect vulnerable persons in the police station, until recently there were no safeguards within the courtroom to protect the vulnerable defendant from psychological pressure. Vulnerability can be defined in terms of social, emotional, cognitive, situational and physiological factors (Gudjonsson, 2003, p. 125) and the investigating officer must be alert to the fact that it may occur in witness or suspect interviews. A vulnerable witness may unintentionally provide a misleading statement if inappropriate questioning is used. Any

combination of these factors may increase the chance that an innocent individual may confess to a crime that they did not commit and these factors will be examined in the next section of this chapter. In terms of chronology, the legislation applicable to the interviewing of vulnerable suspects was laid down in Parliament prior to legislation introducing good practice guidelines for interviewing vulnerable witnesses. In the 1980s and 1990s major changes were implemented in England and Wales, largely in response to miscarriages of justice (Gudjonsson, 2003, p. 55). Firstly the Fisher inquiry (Fisher, 1977) followed by the setting up of a Royal Commission on Criminal Procedure, led in turn to a piece of legislation named the Police and Criminal Evidence Act (PACE) 1984 (Home Office, 2005). The implementation of the latter legislation in January 1986 appears to have changed the manner in which police investigations were carried out, particularly in terms of reducing manipulation during police suspect interviews (Gudjonsson, 2003, p. 55). These miscarriages of justice have highlighted the vulnerability of certain individuals with impaired levels of cognitive functioning that may be susceptible to psychological influence and pressure when accused of committing a crime (See for example, *R v Paris, Abdullahi and Miller*, 1993, 97 Cr.App.R, 99).

A narrow definition of psychological vulnerability as applied to the criminal justice system was included in The Police and Criminal Evidence Act 1984 where various categories of persons were identified as requiring special procedural guidelines if they came into contact with the police and the wider criminal justice system. The Police and Criminal Evidence Act 1984 (PACE) Codes of Practice, were especially useful when examining the guidance in place in England and Wales for interviewing vulnerable suspects. Annex 'E' Code 'C' summarises the provisions relating to mentally disordered and otherwise mentally vulnerable people (Home Office, 2005, p. 128).

If an officer has any suspicion, or is told in good faith, that a person of any age may be mentally disordered or otherwise mentally vulnerable, in the absence of clear evidence to dispel that suspicion, the person shall be treated as such for the purposes of this Code.

(Home Office, 2005, p. 128)

The Code of practice then defined how the term 'mentally vulnerable' should be applied:

To any detainee who, because of their mental state or capacity, may not understand the significance of what is said, of questions or of their replies.

(Home Office, 2005, p. 128)

It would seem that older adults would sometimes be covered under the umbrella heading of ‘mentally vulnerable’, for example if they experienced excessive anxiety whilst being interviewed as a police suspect. According to Code ‘C’ of the Codes of Practice ‘mental disorder’ is defined by the Mental Health Act 1983, as “mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind” (Home Office, 2005). This definition is now obsolete and ‘mental disorder’ is currently defined as “any disorder of the mind” in the Mental Health Act (1983) (as amended by the Mental Health Act, 2007), and could include vulnerable persons with personality disorder, attention deficit hyperactivity disorder (ADHD), as well as many other mental illnesses such as psychosis, severe anxiety and mood disorders. These mental health issues are also covered by the legislation relating to intermediaries and this will be reviewed later in this chapter.

Code ‘C’ of PACE (Home Office, 2005) which focuses on the detention, treatment and questioning of persons by police officers, advises investigators that a juvenile or a person who is mentally disordered or otherwise mentally vulnerable must not be interviewed regarding any suspected criminal activity in the absence of an Appropriate Adult (AA). The codes specifically inform the Appropriate Adult that they should not act merely as an observer during the police interview but must actively engage in advising the interviewee, observe the conduct of the interview and facilitate communication with the person being interviewed (Code ‘C’, 11.17). The role of facilitating communication by the AA is similar to what might be expected from an intermediary during a witness interview or during court proceedings.

The role of the Appropriate Adult is regarded as a safeguard to ensure that interrogative pressure is minimised and that interviewers act fairly in obtaining any confession evidence (Medford, Gudjonsson, & Pearse, 2003). Research on the Appropriate Adult scheme however, has found that although Appropriate Adults do not seem to actively engage in facilitating communication with vulnerable persons, their presence does affect the police interview in three other ways. Firstly, in the

case of adults, there is a greater chance that a legal representative will be called. Secondly, it appeared that less interrogative pressure was used by the interviewing officer if an appropriate adult was present. Thirdly, the legal representative appeared to be more actively involved in the interview if the Appropriate Adult was present (Medford et al., 2003, p. 253).

What about the views of vulnerable suspects themselves? Leggett, Goodman and Dinani (2007) asked 15 people with a learning disability that had been arrested and interviewed by the police about their views on the process. Eleven of the fifteen participants reported that an Appropriate Adult was present during the police interview although seven of these participants opined that the Appropriate Adult had no active involvement in the interview in terms of facilitating communication. Interestingly, to date there has been no research conducted about the efficacy of intermediaries intervening during police interviews to facilitate communication, although an assumption is made that they do intervene.

Gudjonsson, Clare, Rutter, and Pearse (1993) conducted a study trying to identify vulnerable suspects in police custody. It was found that many of the suspects had low IQ scores with almost 9% of the sample attaining an IQ score of less than 70 and an additional 42% having an IQ score of between 70 and 79. These figures indicate that approximately one third of the sample assessed by Gudjonsson et al. (1993) could be described as having impaired levels of cognitive functioning for the purposes of police interviewing and would therefore require that an AA was appropriately qualified and skilled to facilitate communication.

If significant levels of cognitive impairment (IQ less than 70) are found together with impaired levels of adaptive social functioning then, if apparent prior to the age of 18, an individual is classed as having a learning disability. Learning disability is defined as a significantly reduced ability to understand new or complex information, to learn new skills (impaired intelligence), with; a reduced ability to cope independently (impaired social functioning); which started before adulthood, with a lasting effect on development (Department of Health, 2001, p. 14). The term learning disability is also known by other terms including intellectual disability. It excludes persons who have specific learning difficulties such as dyslexia and dyspraxia (Department of Health, 2010, p. 7). It also excludes

persons with high functioning autism who would not present with impaired intelligence. The latter group would however be covered by legislation in terms of their mental disorder.

Herrington and Roberts (2012) have argued that it is not the role of the police to attempt the diagnosis of mental illness or learning disability in the police station. They argue that the police service has neither the time nor the clinical skills required for such diagnoses. However, alternative views do exist and a screening tool to identify learning disabilities, originally developed for other purposes in the health service, is being trialled in the criminal justice system (McKenzie & Paxton, 2006). This is an interesting area of development in terms of identifying vulnerable persons who are police suspects or defendants at trial but it is not the core issue for this current piece of research. The current research focuses on the vulnerable individual once they have been identified. In the next section the psychological literature that underpins the difficulties of certain questioning styles is examined and intermediaries need to be aware of these issues when fulfilling their role.

### 1.8. Suggestibility, Compliance and Acquiescence

The concepts of suggestibility, compliance and acquiescence are equally important when examining the questions that are put to vulnerable witnesses and vulnerable defendants at court. Research has demonstrated that interviewers need to be cautious when interviewing vulnerable persons to ensure the integrity of the information gained as the vulnerable witness may be prone to misunderstanding questions or trying to please persons in authority (Gudjonsson & Pearse, 2011; Ridley, Gabbert, & La Rooy, 2013). Psychological vulnerabilities are however best understood as potential risk factors rather than as definite precursors to the provision of unreliable testimony (Gudjonsson, 2010, p. 166). Therefore, vulnerable suspects and defendants can be questioned about alleged offending behaviour provided that systems are in place to protect them from psychological influence. Interrogative suggestibility has been defined as “the extent to which, within a closed social interaction, people come to accept messages communicated during formal questioning, as a result of which their behavioural response is affected” (Gudjonsson & Clark, 1986, p. 84). Therefore, it is an internal response from the

person being interviewed. In terms of this current research such responses could be influenced in the court room as easily as in the police station and the availability of an intermediary to facilitate communication should be helpful in reducing the risk of compliance and acquiescence.

Compliance differs from suggestibility in that it does not require an acceptance by the interviewee of the request made by the interviewer (Gudjonsson, 2003, p. 370). For example, an interviewee may comply with a request to provide an account in order to leave the police station as quickly as possible, even though they are aware that they are not providing an accurate record of events (O'Mahony et al., 2011). Research has found that suggestibility and compliance may be complex overlapping constructs with compliance dependant on personality factors such as avoidance coping, whereas suggestibility probably involves both personality and intellectual factors (Gudjonsson, 1990). However Gudjonsson believes that acquiescence, where a vulnerable person may answer a question in the affirmative, as they think that is what the questioner is looking for, is more likely a construct based on intellectual and educational ability rather than personality factors. In the next section it will be demonstrated how the psychological literature has informed police practices in interviewing children and this in turn informs intermediaries about their role working with young people who are witnesses or defendants.

### 1.9. Children as Witnesses

Society recognises that children are vulnerable in terms of their emotional and psychological development and this section examines how they are also susceptible to difficulties when questioned inappropriately by adults. This section on children is pertinent to defendant cases because there is case law relating to vulnerable young defendants who have had difficulties obtaining the services of an intermediary in England and Wales (See for example, *R. On the application of C v Sevenoaks Youth Court* [2009] EWHC 3088 (Admin); *R. On the application of AS v Great Yarmouth Youth Court* [2011] EWHC 2059). It is also known that high levels of speech, language and communication difficulties are found in many young offenders located in custodial settings (Bryan, 2004; Bryan,

Freer, & Furlong, 2007; McNamara, 2012). Reviewing the literature about young witnesses is helpful in understanding the needs of young offenders.

Research has found that children have difficulties understanding legal language and court procedures (Flin, Stevenson, & Davies, 1989). As will be shown later in this chapter, children under the age of 18 are eligible through the legislation to be assessed to see if a Registered Intermediary might improve their communication. There have been many experimental studies which have investigated the variables of age and intelligence in terms of how they impact on the reliability of children's eyewitness testimony, and initial findings suggested that children were unreliable and more suggestible than adult witnesses (Dent, 1991, p. 138). One particular finding was that three participant groups (children with mental disabilities, children with normal intelligence, and adults) were found to have a similar level of recall accuracy when minimal or moderate levels of prompting were used, such as in providing a free narrative. However, when specific types of questions were asked, it was found that the three participant groups differed significantly in their ability to accurately recall information (Dent, 1991, p. 144). The findings showed that adults were the most accurate, followed by children with normal intelligence and then children with mental disabilities. Importantly, the study identified that so long as children were interviewed by skilled investigators, they could produce accurate recall as effectively as adults and this finding also has implications for the giving of oral evidence during cross-examination at court. In a further study it was found that free recall provided the most accurate recollection of events, followed by an open-ended (non-leading) style of questioning (Dent, 1992, p. 8). Therefore, research has demonstrated that children are vulnerable to certain questioning styles and they may produce misleading information if not questioned appropriately.

Subsequently, Dent and Newton (1994) discussed the difference between conducting a clinical interview and an evidential interview in terms of the different aims and focus. They reported that whereas a clinical interview is 'child focused' the evidential interview at that time was very much focused on the gathering of evidence that would be admissible in the criminal court (Dent & Newton, 1994, p. 182). Specifically, the child-centred interview would consider child developmental issues, such as language ability and level of cognitive functioning, from the outset of an interview. Indeed

this requirement was emphasised in the Memorandum of Good Practice (Home Office, 1992) and it was anticipated that police officers and social workers would have this knowledge. However, early research implied that there was less apparent knowledge of child development issues held by professionals working within the court (Butler, 1997, p. 36). Therefore, if the professionals tasked with eliciting accurate information from children are unaware of the developmental needs of children they cannot question them appropriately and that is why a thorough assessment made by an intermediary is so important.

Experimental research has informed investigative interviewing practice and the way that children's evidence is examined in the courtroom (Lamb, Hershkowitz, Orbach, & Esplin, 2008). One study revealed that 75% of children aged between 5 and 13 who had made allegations of sexual abuse made at least one change to their earlier testimony when cross-examined in court (Zajac, Gross, & Hayne, 2003). In another study, it was shown that children aged 5 or 6 years old regularly changed their earlier statements about a staged event when questioned in a similar manner to a cross-examination (Zajac & Hayne, 2003, p. 4). Importantly, it was shown that children were as likely to change an earlier correct response as to change an earlier inaccurate response and additionally older children were found to make as many changes as younger children (Zajac et al., 2003). So, research clearly demonstrates the importance of understanding child development, specifically their communication skills, in order to appropriately question them within the police interview and at court (Lamb et al., 2008, pp. 20-23). Importantly, whilst children may reach the milestones of development at a broadly similar chronological age it cannot be assumed that a child has attained a certain level of cognitive development without conducting an individual assessment. Having ascertained that children are vulnerable to inappropriate questioning due to their level of cognitive developmental it might be anticipated that adults with impaired cognitive functioning are also likely to be vulnerable to such questioning and indeed this is the case. In the next section the literature on learning disabilities will be explored but firstly the term learning disability will be examined in further detail.

### 1.10. Witnesses and suspects with Learning Disabilities

Vulnerable witnesses who have learning disabilities may access a Registered Intermediary. The terminology 'Mild' learning disabilities is a psychiatric label referring to persons with an IQ level of approximately 50-55 to 70 (DSM-IV-TR, 2000, p. 49), where the mean score of the population would be 100 (Kaufman & Lichtenberger, 1999, p. 8). There are other levels of learning disability, namely, Moderate (IQ level 35-40 to 50-55), Severe (IQ level 20-25 to 35-40) and Profound (IQ level below 20 or 25) (DSM-IV-TR, 2000, p. 49). It has been reported that persons with a learning disability have been historically viewed as unreliable witnesses in the same way that children have (Perlman, Ericson, Esses, & Isaacs, 1994, p. 171). Perlman et al. (1994) found that persons with a mild learning disability provided fewer pieces of correct information than the control group who did not have a learning disability, although the two groups did not differ significantly in the amount of incorrect details provided. The participants with a learning disability were found to obtain lower scores in their answers to non-leading short answer questions than the control group. Importantly, it was also found that the participants with a learning disability were equally able to provide "quite accurate and salient" information about the core elements of the event (Perlman et al., 1994, p. 185). The cognitive interview, which is described later in this chapter, can be used with adults with 'Mild' learning disabilities (Milne, Clare, & Bull, 1999). Generally, the lower the level of IQ, the more difficulties an individual will have in comprehending information. Additionally, the process of recalling information can often prove problematic for a person with a learning disability. Bull (1995) noted that the reason for these difficulties was because they take longer to encode information that they observe and to store that information compared to persons in the general population. People with a moderate level of learning disability as defined by the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR, 2000), therefore those with a measured IQ score in the range of 35-40 to 50-55, have been reported to be able to provide an accurate account of events that they have observed as long as they are questioned appropriately (Kebbell & Hatton, 1999).

Research has demonstrated that adults with impaired cognitive functioning may have comprehension difficulties which may be exacerbated when having to understand legal terminology. In one study 49

residents in two private residential homes were potential witnesses to a criminal offence. All 49 had an intellectual disability, which ranged from mild to severe in level. The participants were assessed using the Wechsler Adult Intelligence Scale (WAIS-R) (Wechsler, 1981), the Gudjonsson Suggestibility Scale (Gudjonsson, 1997) and a test of acquiescence. Their understanding of the meaning of 'truth', 'lie' and of the oath was also assessed. It was found that none of the participants were able to explain all the elements of the oath, whilst 20% of the participants had a basic understanding in that they were able to tell the difference between a truth and a lie. Out of the eight participants with an IQ score in the range 60-82, six were able to understand the oath. It is also known that police suspects have difficulties in understanding the police caution (Fenner, Gudjonsson, & Clare, 2002). These findings should alert criminal justice practitioners to the difficulties that they may encounter when interviewing vulnerable persons with impaired levels of cognitive functioning.

A person with a learning disability may not always be identified by the police because they may have a relatively high level of social functioning which may mask cognitive deficits (Sanders, Creaton, Bird, & Weber, 1996). Criminal justice forms, for example, the MG11 witness statement has provision to identify if the witness requires Special Measures, but there is no guidance provided to the interviewer on how to make this judgement (Hall, 2007, p. 39). Sanders et al. (1996) also reported that some of the measures available to children at that time would be helpful if a vulnerable adult with a learning disability were to attend court, for example giving evidence-in-chief via a video-recorded interview. It was clear from this study that ideas were being formulated that some of the research findings from experimental studies on interviewing, using children as participants, could be applied to the vulnerable adult population. In terms of police suspects it is equally difficult to identify individuals with a learning disability and there is a need for increased training and education for all professionals working within the criminal justice system (Hayes, 2007, p. 149; O'Mahony et al., 2011).

One way of trying to gauge the prevalence of persons presenting at the police station with a learning disability is to examine the number of persons presenting with a learning disability further on down the criminal justice route. The prevalence rate of prisoners who have a learning disability and are

detained in prison has been reported using one study of inmates at HMP Liverpool (Hayes, Shackell, Mottram, & Lancaster, 2007). They found that in a sample of 140 prisoners, 7.1% achieved standard IQ scores below 70 and a further 23.6% were in the 70-79 (Borderline) range of intellectual functioning. Of particular note is that the authors reported “45.3% of the sample had communication scores of <70, implying that their understanding of the highly verbalised context of the court room would be seriously compromised (Hayes et al., 2007, p. 165). The research did not identify how many of these prisoners had been offered additional support when they entered the criminal justice system. Whilst the study based on one prison may not be indicative of all prisons in England and Wales it is suggestive that many persons who enter the criminal justice system will have an impaired level of cognitive functioning.

If a person with a learning disability is charged with a criminal offence then they are likely to encounter unfamiliar legal terminology in the courtroom. In one Canadian study (Ericson & Perlman, 2001) participants were asked to provide their understanding of 34 legal terms. It was found that those persons with a learning disability were less likely to have a full conceptual understanding of the legal terminology although there were limitations to the study in that the control group was made up of university students. Equally important, it was found that the scores for the persons with a learning disability demonstrated heterogeneity which is indicative that individual assessments are required when assessing the needs of vulnerable persons with a learning disability (Ericson & Perlman, 2001, p. 539). Interestingly, it was also found that some participants with a learning disability had a good understanding of what were considered to be more difficult terms, for example, ‘adjourn’ and ‘perjury’, but struggled to correctly define terms such as ‘arrest’ and ‘victim’ and the authors noted that assumptions of level of comprehension should not be made based on the assessment of some words only (Ericson & Perlman, 2001, p. 539). Whilst the study was carried out in the Canadian jurisdiction the findings are clearly relevant in England and Wales in terms of preparing witnesses for the language that they will encounter at court. The next section explores how certain types of questions can be problematic for vulnerable interviewees.

### 1.11. Comprehension difficulties at court

Registered Intermediaries are trained to understand how complex language can cause comprehension difficulties for vulnerable persons and they are permitted to advise the court on how to best question the vulnerable person. Intermediaries are also permitted to intervene at court if complex questions are asked by counsel. Research has examined how court procedures impact on the testimony of witnesses with a learning disability (Kebbell, Hatton, & Johnson, 2000, 2004; O'Kelly, Kebbell, & Hatton, 2003; Wheatcroft & Wagstaff, 2003). The adversarial system operating in England and Wales uses evidence-in-chief and evidence under cross-examination (Kebbell et al., 2004, p. 25). The cross-examination follows on from the evidence in chief and is reported to have “many features that may impair accuracy” (Kebbell et al., 2004, p. 25). Court transcripts of 32 control cases were matched with 16 transcripts from witnesses with a learning disability. These transcripts were analysed and it was found that there were few differences between the way that lawyers examined the witnesses with a learning disability and those without learning disabilities. Particularly difficult question types such as multiple questions, negative questions and double negatives were found in equal measure in each sample and it is known that such question types are difficult for persons with a learning disability (Kebbell et al., 2000). We also know that tag questions, such as “you were there, weren't you?” are difficult to comprehend by some vulnerable persons, especially when asked by a person in an authoritative position (Blankenship & Craig, 2007; Harres, 1998; Walker, 2005). Further research has found that there were no significant differences in the number of interventions made by the judge with witnesses with or without learning disabilities when complex language was used in the courts (O'Kelly et al., 2003, p. 237). It has been noted that this is very surprising given that persons with learning disabilities have difficulties with abstract thinking (e.g. times, dates and numbers) in addition to understanding complex vocabulary and sentence structures (Kebbell et al., 2004, p. 25). This research emphasises the need for the use of intermediaries in the courtroom.

In an attempt to unpack what is actually being reported in the academic literature some caution has been urged when comparing the findings from different studies. It has been reported that different researchers are labelling question types differently (Oxburgh, Myklebust, & Grant, 2010). For

example, it was found that there are discrepancies over definitions as to what constitutes an ‘open’ and ‘closed’ question and it has been suggested that psychologists work in close collaboration with linguists when trying to categorise the different types of questions that may be asked in an investigative interview (Oxburgh et al., 2010, p. 49). This approach is consistent with the employment of Speech and Language therapists as intermediaries which will be examined later in this chapter. Indeed there have been qualitative studies that have examined the investigative interview from a language and discourse perspective (Benneworth, 2009; Carter, 2009). Caution is also urged when analysing research that has been recently published as it can be reliant on data sets that are up to thirteen years old (Krahenbuhl, Blades, & Westcott, 2010, p. 479) and which were recorded prior to the most recent guidance for police interviewing (Ministry of Justice, 2011a). In the next section mental disorder will be examined in its wider context but it will be demonstrated that careful consideration to questioning styles must also be at the forefront of the interviewers mind whilst preparing for an investigative interview.

#### 1.12. The needs of vulnerable witnesses with a Mental Disorder

Vulnerable witnesses who have a mental disorder are eligible for support from an intermediary. Whilst only intermediaries who have training and experience in mental health care should be allocated to such a vulnerable person it is often the case that persons have comorbid conditions and whilst an initial referral may be for a speech, language or communication difficulty, or learning disability, the intermediary may subsequently discover that the vulnerable person has additional mental health needs.

There is a dearth of literature that examines how the investigative interview at the police station and cross-examination at court are conducted when the witness or suspect has a mental disorder, such as a mental illness (O'Mahony et al., 2011). One study has examined the prevalence rates of both mental illness and intellectual disability in the Magistrates Courts in New South Wales, Australia but this study focused on examining mental illness in a population that also had learning disabilities (Vanny,

Levy, Greenberg, & Hayes, 2009). The authors noted that research on the prevalence rates of accused persons with the dual diagnosis was sparse but the findings speculated on how the identification of vulnerable persons may assist in diverting the accused away from the criminal justice system, rather than identifying how to assist those with mental illness who appear as defendants in the criminal courts. Later in this chapter the subject of diverting suspected vulnerable offenders from the criminal justice system will again be discussed.

Many people with Asperger's can be misunderstood and have their intentions misinterpreted (Paterson, 2007, p. 54). This is because persons with Asperger's are likely to present with normal intellectual functioning, their difficulties with abstract thinking may not be immediately apparent to those questioning them (Browning & Caulfield, 2011, p. 175). There have been two studies that have examined interviewing practices with persons with an autistic spectrum condition. In one study 26 individuals with high functioning autism and 27 controls were assessed on measures of interrogative suggestibility and compliance (North, Russell, & Gudjonsson, 2008). It was found that individuals with autism did not differ significantly from people in the general population of similar intellect in terms of yielding to misleading questions or changing answers. However, individuals did score significantly higher than controls on the measure of compliance (North et al., 2008, p. 330). The second study examined the use of the cognitive interview with witnesses with autism spectrum disorder (Maras & Bowler, 2010). In this study 26 adults with autism were matched with 26 controls and the participants viewed a 50 second video recording of a staged crime and were subsequently interviewed with either a Structured Interview or Cognitive Interview. The findings reported that the witnesses with autism were as accurate as the control group when interviewed with the Structured Interview. However, when interviewed using the Cognitive Interview, persons with autism were found to report more incorrect details, specifically the details relating to persons and actions (Maras & Bowler, 2010).

When mental disorder is considered in its wider context it also includes persons with ADHD and personality disorders and research has been conducted to evaluate how these disorders may affect false confessions within the police station (Gudjonsson, Sigurdsson, Einarsson, & Bragason, 2010, p.

723). It was found that whilst antisocial personality disorder and ADHD are significantly associated with false confessions that a specific element of ADHD, inattention, was a more powerful predictor of false confessions than hyperactivity / impulsivity or antisocial personality disorder (Gudjonsson et al., 2010, p. 723). Notably, antisocial personality disorder was the only personality disorder examined in that particular study and there is no published research that examines the effect of these disorders on the communication abilities of defendants in criminal courts. The UK Adult ADHD Network has identified that persons with ADHD may require the services of an Appropriate Adult during a police suspect interview (Young et al., 2011). If this is the case then there is no logical reason why an accused vulnerable person with ADHD should not require support while providing testimony to the court. In the next section the term investigative interviewing is examined.

### 1.13. Investigative Interviewing

It is difficult to understand the literature about the interviewing of vulnerable suspects without also understanding the literature about witness interviewing as they have both developed at a similar time. It is currently the position in England and Wales that vulnerable police suspects do not have access to a Registered Intermediary. However, when an intermediary has been allocated to a vulnerable defendant at court the intermediary is permitted to view the police investigative interview to examine how the vulnerable person managed questioning at that earlier stage in the criminal justice process. The intermediary may note particular questions that may be problematic if used again at court and may wish to supplement their written report with recommendations based on their observations from the investigative interview.

The goal of the investigative interview has changed in England and Wales during the last two decades (Shawyer, Milne, & Bull, 2009, p. 24). After PACE (1984) was introduced in England and Wales a relatively short time elapsed before the national roll-out of the use of audio-recorded interviews. This for the first time allowed researchers to gain access to what went on during the course of a police interview. Baldwin (1993) conducted one of the first large scale studies of police interviewing and

concluded that investigators should become evidence gatherers rather than focusing purely on trying to persuade a person to provide a confession. Nevertheless, police interviews with suspects are still difficult to access by researchers (Soukara, Bull, Vrij, Turner, & Cherryman, 2009, p. 493)

Meanwhile in the USA the Cognitive Interview was developed as a memory-enhancing technique to be used by persons charged with carrying out investigative interviews (Fisher & Geiselman, 1992). The Cognitive Interview was developed from the psychological literature that examined memory retrieval and appropriate questioning styles and sought to deliver a method for investigators to utilise that would encourage witnesses to recreate the physical and emotional factors (context) that were in place when they stored the memory of an event (Fisher & Geiselman, 1992). The interviewer now encouraged interviewees to 'report everything', to have multiple retrieval attempts and this style of interviewing acknowledged that memory retrieval is a search process. The Enhanced Cognitive Interview was borne out of field research where it was observed that police officers required a more structured approach to interviewing.

The cognitive interviewing model was introduced in England and Wales in 1993 as part of a package to train all police officers in investigative interviewing (Milne & Bull, 1999). One of the functions of the interviewer within a cognitive interview is to assist the cooperative witness to provide as much accurate information as is possible (Dando & Milne, 2009, p. 149). Of course the information that is recalled is a record of "a person's experiences of events and not a record of the events themselves" (Griffiths & Milne, 2010, p. 72). Even so, it is imperative that the interviewer uses techniques that are evidence-based and less likely to alter the interviewees' recollection of events, but rather enhance their recall. For example, it has been found that police officers have used haphazard and inappropriate questioning styles in some investigative interviews (Clarke & Milne, 2001). Such questioning would be extremely difficult for a vulnerable person to understand if they had sequencing difficulties and they may be vulnerable to suggestibility and compliance in such an interview. Similarly, such questioning would be equally problematic in the courtroom for many vulnerable witnesses and intermediaries are tasked with advising the courts about appropriate questioning styles.

It is for these reasons that an Appropriate Adult should be present during the police interview with suspects and the intermediary present should the defendant choose to give testimony at court. Should a defendant elect to give evidence at court they are treated, in effect, as a witness and therefore it is useful for intermediaries working with defendants to understand the academic literature relating to witnesses. As has been discussed already in this chapter, the Police and Criminal Evidence Act (1984) put in place procedures that had to be adhered to by the police in terms of protecting the rights of vulnerable suspects. In the next section an outline is provided of the legislation that is in place to support vulnerable witnesses who provide testimony to the police and the courts. This legislation sought to enhance the experience of the vulnerable witness after they had provided their statement to the police.

#### 1.14. Special Measures including the intermediary function

The Youth Justice and Criminal Evidence Act (1999) introduced a number of special measures to assist vulnerable witnesses to present their evidence to the police and the courts (Cooke & Davies, 2001; Hall, 2007, p. 33). The main function of the introduction of these measures was to enable the vulnerable witness to improve the quality of their testimony in terms of completeness, coherence and accuracy (Cooke & Davies, 2001; Hall, 2007). The measures were identified as: the use of screens to protect the witness from seeing the accused in the courtroom; the use of a live-link to enable the witness to give their evidence in real time via a CCTV system in another room; the exclusion of members of the press and public from the courtroom; the removal of wigs and gowns by judges and barristers; the provision of video evidence-in chief prior to the court case; the use of an intermediary to facilitate communication; aids to communication and; video-recorded cross-examination (yet to be implemented) (Cooke & Davies, 2001, pp. 84-85).

The Special Measures were intended for specific groups of vulnerable and intimidated witnesses and for transparency the full definition of the groups is provided below:

All witnesses aged under 18 years

Any other witness whose quality of their evidence is likely to be diminished because they:

Have a mental disorder or learning disability; or

Have a physical disability or physical disorder

(Ministry of Justice, 2012)

So, between The Police and Criminal Evidence Act (PACE) (1984) and The Youth Justice and Criminal Evidence Act (YJCE) (1999) it is evident that the legislation has identified young people (McEwan, 2009, p. 373), and those with mental disorders and learning disabilities (McEwan, 2009, p. 374) as vulnerable in terms of entering the criminal justice system as either witnesses (YJCE Act 1999) or suspects (PACE 1984). It is these groups of vulnerable persons, as defined by the legislation that are of interest in this thesis rather than persons who are vulnerable in terms of life adversity or situational factors (Drake, 2010). This decision was made as the data collected as part of this thesis was dependent on the vulnerable persons meeting the eligibility criteria for an intermediary, which as stated, is defined by law. Intimidated witnesses are not eligible for the assistance of an intermediary.

#### 1.15. Offender Pathway for Vulnerable Defendants

If the various agencies within the criminal justice system are unaware that a police suspect or defendant is vulnerable through either a learning disability or a mental disorder then the risk of disadvantage and the potential for a miscarriage of justice increases (Loucks, 2007). It has been argued that justice for victims and witnesses can be hindered if offenders with a mild learning disability are assisted to avoid entering the criminal justice system by constructing their behaviour as 'challenging' rather than criminal (Jones & Talbot, 2010, p. 3). Opponents to this viewpoint have argued that the vulnerable offender should be diverted away from the criminal justice system at the earliest opportunity (Talbot, 2008, p. 72). This may have serious consequences if the vulnerable defendant were to be subject to detention under the Mental Health Act 1983, without having been given the opportunity to testify at court. The provision of the intermediary for vulnerable defendants

should, in theory, allow the vulnerable defendant to testify in court, if advised to do so by counsel, without the fear that they will be deprived of the opportunity to express themselves fully.

However, once again, the use of intermediaries with defendants is emerging without any research having been conducted to see how the decision-making of jurors is affected (O'Mahony, 2010). It is not known how the 'impartiality' of the intermediary role is perceived by jurors and neither is it known how the intermediary manages their independence when spending lengthy periods of time with vulnerable defendants and their legal teams. The practice has emerged where intermediaries have been asked by the trial judge to facilitate communication throughout a criminal trial, necessitating that they are seated in the dock next to a defendant throughout the trial (O'Mahony, 2012).

This doctoral research commenced at a time when the Government in England and Wales had commissioned an independent review "to determine to what extent offenders with mental health problems or learning disabilities could be diverted from prison to other services" (Bradley, 2009, p. 4). For example, special court dates could be set aside to manage suspected mental health cases where trained members of the judiciary would sit and where enhanced psychiatric support would be available at the court. Additionally, as this doctorate has proceeded, the Law Commission has commenced a consultation about the concept of 'fitness to plead' in the criminal courts (Rogers, Blackwood, Farnham, Pickup, & Watts, 2009; The Law Commission, 2011). Currently, the legal test for 'unfitness to plead' relies on criteria known as *Pritchard (1836)*, and the accused is assessed in terms of their ability to plead to the indictment, to understand the course of the proceedings, to instruct a lawyer, to challenge a juror, and finally, to understand the evidence. If the accused evidences an inability to meet any of these criteria then the court may deem them to be unfit to plead (The Law Commission, 2011, p. 28). The current consultation is examining whether the *Pritchard* criteria are too reliant on the assessment of cognitive impairment, and whether the current system is limiting in terms of the number of people with a mental illness who are deemed to be unfit to plead as was found by Rogers et al. (2009). Given the limited numbers of defendants who are deemed unfit to plead then it is essential that research is conducted to see how the intermediary role functions in facilitating communication for vulnerable defendants.

This doctoral research has continued under the parameters of the current legal system operating within England and Wales where vulnerable defendants continue to find themselves attending criminal courts where they may on occasions be asked to provide witness testimony. If an intermediary has been allocated to attend the trial of a defendant then it is assumed that the defendant has already been assessed by psychiatrists as being fit to attend court and enter a plea. It does however seem rather contradictory that a defendant can have been assessed as having a level of cognitive functioning that enables them to understand the court proceedings and yet the judge specifies that an intermediary should be present throughout the trial in order to facilitate communication and therefore, ensure that the defendant understands the proceedings. Additionally, one would anticipate that the intermediary function of facilitating communication with a vulnerable defendant who presents with mental illness is absolutely necessary, given the understanding that the current assessment of fitness to plead may be particularly poor at identifying persons with mental illness who require support at court.

#### 1.16. Chapter Conclusion

In order to understand the role of the intermediary and the environment in which they work it has been essential to review the literature about the types of vulnerable defendants that they may work with and the difficulties that may present in terms of speech, language and communication difficulties. Without understanding these issues it would be very difficult to make sense of the experiences the participants narrate in the data collected for this thesis. Having an understanding of the literature is also essential in making sense of the recommendations made in Chapter 5 of the thesis and the reflections outlined in Chapter 6. Whilst there is now a collective body of research about the appropriate questioning of vulnerable persons, primarily in police interviews, but also including questioning at court, there has been no research to date examining the intermediary function working with vulnerable defendants and this thesis has started to fill the gap in knowledge.

Whilst writing this chapter it has become evident that there are different models available to structure and present the material. For example, a chronological model may work through the literature from

the days of miscarriages of justice, through to the research on police interviewing practices and then refer to the development of legislation to protect vulnerable suspects in police detention. This may then be supplemented by information on the legislation that provides Special Measures for vulnerable witnesses and the fact that similar measures for vulnerable defendants have yet to be implemented. This model would of course highlight at the end of the chapter the gap that is addressed in this thesis, namely the historic lack of provision of communication support to vulnerable defendants at court and the recent cases where intermediaries have been allocated to such cases. However, this model would also leave the reader wanting to know more about intermediaries and their function much earlier in the chapter and so the decision was made to introduce the material about intermediaries first as this is the critical issue that this research has addressed. Towards the end of the chapter the full remit of the intermediary, in terms of the types of vulnerability that they can assist, are documented as found in the legislation and it was envisaged that this would make more sense after examining the literature on the comprehension difficulties that vulnerable persons may present with. The return to the legislation which introduced the intermediary role, towards the end of Chapter 1, functions as a means to anchor the reader once again about the central theme of intermediaries in this thesis.

If the court wants to establish the facts then it is in its best interests to question all witnesses, including defendants, in the most appropriate way. The psychological literature developed over the last two decades has enhanced practitioners' knowledge of best practice in the questioning of vulnerable persons but it seems that many barristers lack the knowledge and / or the skill to appropriately question vulnerable persons. An alternative position is that barristers are trained to choose not to adopt appropriate questioning techniques at court as it does not suit the function of their task. For example, barristers tasked with cross-examining a witness are trained to lead and control, which are methods that are unfair to vulnerable witnesses.

It would seem that legislating for a vulnerable defendant to have access to an intermediary at court is an issue of equity of service to ensure that a fair trial takes place. Importantly, it gives a vulnerable person the right to testify at court knowing that support is in place to help them understand questions

and to convey their answer. It appears that this is the practice that will be piloted in Northern Ireland from April 2013.

In England and Wales, some judges believe that vulnerable defendants require additional support with communication throughout the trial and not just whilst they provide their testimony and they have used common law powers to enable some defendants to access an intermediary throughout the trial. This has resulted in an ad hoc system developing in England and Wales which seems at odds with an ideology of equity of service delivery on offer to vulnerable defendants. Significantly, this development has taken place without any research having been conducted to identify the benefits to the vulnerable defendant, or indeed any benefits or costs to the practice of fair justice in the criminal court. For example, this chapter illustrates the fact that intermediaries undertaking the role with vulnerable defendants have no policies, guidelines or indeed training on how to undertake this function and it is not known how it may impact on the impartiality of their role at court. This thesis begins to address this gap in knowledge.

This research has enabled new data to be collected in order to examine the role of intermediaries working with defendants at court. It provides an original examination of the role of the intermediary as it has been applied to the context of vulnerable defendants. To date, there has been no research conducted to examine this new dynamic and therefore this applied research has created new knowledge through original research and it has advanced the understanding for academics and practitioners in how the new role is developing in practice.

The following chapter examines the research methodology chosen for this research and it will become apparent that I have adopted the first person when describing my decision-making throughout Chapter 2. The aim of this research is to examine how intermediaries experience their role with vulnerable defendants and to assess how the findings might impact on future training and policy decisions for the use of intermediaries with vulnerable defendants.

## Chapter 2 - Methodology

### 2.1. Assessing the options through reflection

It was apparent from the early stages of this research that there would be problems in identifying many participants who had engaged in the intermediary role in defendant cases, as the numbers would be low due to the fact that the primary focus for all intermediaries was working with vulnerable witnesses and victims. In Part 1 of this professional doctorate I had conducted a scoping exercise of intermediary questions about the use of Registered Intermediaries with defendants by examining the correspondence between Registered Intermediaries who were discussing topics on the intermediary web-based support discussion site, the *Smartsite* (since renamed as RIO in 2011). The decision to examine this discussion site was made having reflected that the material was authentic, credible, timely and representative of intermediaries' comments (J. Scott, 1990). I conducted four unstructured interviews with intermediaries at that time and I subsequently noted that the early data collected focused heavily on procedural issues such as training requirements, scheduling diaries and remuneration policies and it lacked depth in the underlying psychological process issues.

On examination it was apparent that very few intermediaries had accepted referrals for cases where defendants required an intermediary and this factor informed my decision making process that a purposive sample would be required for the current research when there was such a small pool of potential participants (Holloway, 2005, p. 110). It therefore became relevant for me to consider using a qualitative research design rather than a quantitative design. During my early reflections on this research I considered how I could broaden the potential participant pool and I considered collecting data from professionals who used intermediaries and were involved in the trial process. I will explain how my decision-making evolved on this position as I continued to reflect on the best methodology.

## 2.2. Ontological and Epistemological position

In the early stages of this professional doctorate as a researcher-practitioner I spent considerable time reflecting on my position as a scientist-practitioner and I reflected on the factors from my professional training in psychology which had influenced the way that research was valued by many peers and evaluated in terms of its scientific rigour. Specifically, my reflective practice during the early stages of this doctorate led me to challenge the necessity for the use of the paradigm approach of 'positivism', where general laws are formulated based on observation and experiment (Holloway, 2005, p. 294), to be adopted without question when formulating research questions. As a scientist-practitioner I had valued the hypothetico-deductive model of science where hypotheses could be tested and conclusions drawn about experimental effects (Hughes, 1997, p. 60).

An alternative paradigm approach, namely 'Interpretivism' offered the opportunity to focus on individual experiences and to make sense of their reality (Holloway, 2005, p. 292) and this theoretical perspective has guided me through the final stages of this doctoral research and I adopted this approach not only as part of professional and academic development but specifically because it suited the nature of this piece of research where I wanted to examine the individually constructed world of the participants. I wanted to minimise the distance between myself as the researcher and the participants and to avoid 'hiding behind the cloak of alleged neutrality' which is often the preferred methodology in the sciences where the research is written up in the third person to neutralise the input of the researcher (Fine, Weis, Weseen, & Wong, 2000, p. 109). Significantly, by adopting this research design I am accepting that the interviews I conducted reflect the (subjective) perceptions of the participants rather than any objective observation of the events (Giorgi & Giorgi, 2008, p. 48). In the next section I will explain my decision-making processes in terms of choosing the most appropriate methodology for this research.

### 2.3. Choosing the methodology and ethical considerations

Having made the decision to conduct a qualitative study I was faced with a choice of methodologies by which I could collect and analyse data. I initially considered using Grounded Theory (Glaser & Strauss, 1967) because this particular design would allow me to choose a general research question to explore the role of intermediaries working on defendant cases and to develop a theoretical analysis from the data (Charmaz, 2008, p. 82). After careful consideration I decided against using Grounded Theory because I considered that I would not be able to find sufficient numbers of participants to develop any themes that may emerge in early interviews. Having decided against Grounded Theory I explored the research methodologies that other researchers had employed in the arena of the criminal courts and as a result of this exercise I considered ethnography. At this stage I decided to use ethnography as it seemed a suitable methodology to collect rich data from the courtroom environment where I could immerse myself in the proceedings by sitting in the public gallery and make contemporaneous notes of my observations (Emerson, Fretz, & Shaw, 1995; Hammersley & Atkinson, 2007; Van Maanen, 1988). Specifically, I was very interested in collecting data of a ‘thick description’ where descriptive accounts of meanings in social interactions could be examined (Geertz, 1973)

Ethnography had been successfully used in a previous study to examine witnesses and professionals in a Crown Court setting (Rock, 1993) and I gave careful consideration to this approach. The initial aim of this doctoral research was to gain an inside perspective on a court case where an intermediary was allocated to work with a defendant on trial. The unstructured approach of ethnography would allow me, the researcher, to “follow the data” and involves dynamic decision-making skills as the research proceeds (Sharkey & Larsen, 2005, p. 169). It would also allow me some flexibility in terms of the chosen epistemology as ethnographers may choose interpretative or positivism paradigms as a means of analysis (Sharkey & Larsen, 2005, p. 170). Given the reflective nature of the professional doctorate it seemed that ethnography would allow a reflexive approach in order to make sense of the ongoing data collection. The ethnographer commences the study with some broader questions which can be refined as the study develops (Sharkey & Larsen, 2005, p. 172). One aspect of the research was

becoming very clear to me at this point: Given the exploratory nature of this research and the anticipated limited numbers of participants, it was essential that I chose a methodology that enabled me to have a broad research question. I frequently had to remind myself that whilst the participant pool was restricted, this piece of research was of such importance in advancing the academic and practitioner body of knowledge that I needed to persist with the most appropriate methodology and acknowledge any limitations of my choice. At this stage I was still considering how to increase the potential pool of participants by collecting data from other professionals and by immersing myself in a Crown court trial, it seemed to offer the potential to increase the pool of participants.

As a practising Registered Intermediary I had access to contacts at the Ministry of Justice and I sought approval from the Better Trials Unit, a department which is responsible for the recruitment of intermediaries, and for maintaining a register of practising intermediaries. Prior to commencing this research I also sought approval from the Witness Intermediary Scheme Matching Service, which is located at the National Policing Improvement Agency (NPIA).

An initial ethics application was approved by the Academic Ethics Committee at the University of Portsmouth to commence research on the basis that I would interview Registered Intermediaries, vulnerable defendants with a learning disability (my area of professional practice), prosecution and defence counsel, and other professionals linked to the criminal trial. However, it soon became apparent to me that a sample reliant on defendants with a learning disability was too restrictive as there were limited opportunities to locate trials where an intermediary was facilitating communication with an offender with a learning disability. A second submission was approved by the university Ethics Committee, where the participant group was extended to include vulnerable defendants who were under the age of 18 as well as vulnerable defendants who had a diagnosis of mental illness, as determined by the Mental Health Act, 1983 (as amended in 2007). This wider participant pool accorded with section 104 of the Coroner's and Justice Act 2009.

As the research commenced it became apparent that due to the limited number of trials held annually in England and Wales where a Registered Intermediary was allocated to a vulnerable defendant that it

was unlikely that an opportunity would arise where it was possible to achieve informed consent from all parties in a trial in order to carry out an ethnography using a 'case-study' approach at one trial. Attempts were made to attend one trial held at Sevenoaks Youth Court but the District Judge did not consider it "appropriate" for me to attend as a researcher-practitioner (Personal Communication, 28.01.10). It is known that difficulties gaining access to research environments is one of the problems with choosing an ethnography design (Sharkey & Larsen, 2005, p. 173).

I re-examined the focus of this research and decided to place much greater emphasis on my role as researcher - practitioner and the access that was available to me, specifically to the pool of Registered Intermediaries. This decision led me to reflect on additional ethical issues. There was a limited pool of participants available to interview and there was a likelihood that I may have known these participants professionally, at least by name. I had to reflect on how I might manage the disclosure during interview of poor practice by participants and I sought guidance from the British Society of Criminology's Code of Ethics for researchers when deciding on the limits of confidentiality (British Society of Criminology, 2006; Silverman, 2005). I made the decision, and informed the research participants, that I would only be required to divulge information to third parties if I had a legal obligation to do so, such as in the event that I was informed of abuse towards vulnerable persons.

Whilst conducting research there is an imbalance of power between the researcher and the participants which is known as ethical positioning (Harvey, 2008; Noaks & Wincup, 2004). Indeed, when conducting qualitative research with participants that are known to the researcher there can be pressure to step outside the researcher role in to the role of colleague or friend (Noaks & Wincup, 2004, p. 50). I was particularly aware of this during the preparation stages of this research because I was aware that intermediaries had knowledge that I had acted as an intermediary in a number of defendant cases previously. I considered that I could attempt to counter this perceived imbalance by reassuring each participant that I continually reflected on my own professional practice as an intermediary and that I continued to learn from each experience. I also had to make it clear at the time of conducting the interviews that my role was purely that of researcher.

I discovered quite early on in this research that even though an intermediary had been allocated to a defendant case it did not necessarily mean that the case went to trial, or even if it did go to trial that the defendant would give evidence. I therefore had to anticipate a range of scenarios as to the exact nature of the intermediary involvement in each case. For example, in a number of cases the judge had requested that the intermediary be made available throughout the trial, rather than just being present when / if the defendant provided oral testimony.

I redefined the research in terms of gaining qualitative data from a small purposive sample of participants, who had already engaged in the role of intermediary with a vulnerable defendant and who could be interviewed about their experiences. This change in direction required me to re-evaluate the research methodology as ethnography was no longer an appropriate means of achieving my data collection. At this stage in the research design it was also envisaged that the vulnerable defendants could be interviewed, following the guidance of the Research Ethics Committee (12.03.10, Personal Communication):

I would strongly urge that the interviewer uses a neutral setting to interview the defendant, does not conduct the interview straight after the proceedings and puts in place clear guidance for the defendant that this is nothing to do with the proceedings. The interviewee should also be offered the opportunity to be accompanied by a 'friend'. There should be some statement in the ethical review which says that should the interviewee become distressed that the interview will be stopped and appropriate medical support sought for the defendant. Nor should the interview take place until the trial and sentencing are concluded – this could be seen as biasing the process.

I decided at this stage to exclude counsel and other professionals involved in the trial from participating in the research interviews and to focus in detail on a specific number of case studies where intermediaries had worked with vulnerable defendants. After further consideration I decided to narrow the focus of the study even further by choosing not to interview vulnerable defendants and to focus my interviews entirely on intermediaries. I made this final decision having carefully considered both the ethical position of interviewing a defendant post-trial, and also the practicalities of locating the vulnerable defendants should they have been convicted and imprisoned following a criminal trial. Even if a defendant had been found not-guilty at trial it still would have posed logistical problems in locating a vulnerable defendant and a responsible third party to conduct a research interview. I had to

frequently consider the logistics of researching this matter when potential participants were dispersed throughout England and Wales.

Having honed the research to focus entirely on intermediaries, I then re-considered research methodologies and I considered how I could still collect the rich data discussed by Geertz (1973) whilst employing a different methodology. I found the answer when I examined Interpretative Phenomenological Analysis.

#### 2.4. Interpretative Phenomenological Analysis (IPA)

Interpretative Phenomenological Analysis (IPA) is becoming established in psychology even though it is a relatively young qualitative approach (Smith, 2004, p. 39). 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, p. 40). 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, p 28) 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”.

IPA has the characteristic feature of being idiographic (Smith, 2004, p. 39). Smith (2004) advances the argument that IPA is idiographic because a detailed examination of one interview transcript must be arranged before moving on to a second case. Further, themes which may emerge are only analysed across all the cases after each individual case is explored fully (Smith, 2004, p. 41). IPA is inductive and therefore does not test hypotheses; rather a general research question is developed and this lends itself to an exploratory subject where there is limited academic knowledge. This method allows the researcher to gain insight from the 'experts' in the field, namely the research participants (Reid, Flowers, & Larkin, 2005, p. 20). An IPA study should be written up so that each individual's account is fully explored and that any emerging themes across cases are analysed separately. Critically, in order to achieve a meaningful study, sample sizes are small, with many samples having five participants (Smith, 2004, p. 42). Larger sample sizes do not lead to the conclusion that better research has been conducted (Smith, Flowers, & Larkin, 2009, p. 52).

The use of IPA encourages the researcher to refrain from adopting experimental hypotheses at the outset of the research, but rather to allow topics and themes to emerge during an analysis (Smith, 2004, p. 43). Further, IPA can advance psychological knowledge by "interrogating and illuminating existing research" (Smith, 2004, p. 43). The findings from each analysis are examined in relation to the wider body of psychological research. Importantly, inferences from the individual case to the more general 'persons' are made cautiously but the researcher can make interpretations that "discuss meaning, cognition, affect and action" (Reid et al., 2005, p. 20). The interview transcripts are "rigorously and systematically" analysed to see how the world is viewed both through the interpretation of the experience by the participant and subsequently by the researcher (Reid et al., 2005, p. 20). Significantly, the reported findings are subjective and are not disseminated as facts as may be the case in positivist research findings. However, the findings must have credibility with supervisors and with readers of the research and must be grounded in the data from the research (Reid et al., 2005, p. 20). IPA is idiographic, inductive and interrogative (Smith, 2004, p. 41). Therefore, the first case is initially examined at a descriptive level before being analysed at a deeper interpretative level. The researcher does not begin to examine the second case until the examination of the first case

is complete. This pattern continues through the subsequent cases. It is only when all the individual cases have been examined singularly that the researcher attempts an analysis across the cases where the themes that emerged in the individual cases are examined for similarities and differences across the other cases (Smith, 2004, p. 41). Many qualitative methodologies enable an inductive approach to the research as opposed to a deductive approach and IPA is no different. This flexibility means that the researcher does not necessarily anticipate themes that may emerge during the research and the researcher does not therefore adopt hypotheses to be tested. Smith (2004) argues that it is essential that IPA makes a contribution to the psychological literature and that the interrogation of the cases analysed should be discussed in relation to psychological literature. Finally, IPA requires that the researcher-practitioner continually reflects on their participation in the study and this factor has influenced my decision to write a reflective chapter about my experience as a researching professional (Chapter 6).

The small research sample lends itself to an in-depth qualitative analysis and IPA was identified as appropriate in this research design because it offered the opportunity to explore the detailed accounts of how intermediaries were making sense of their personal and social worlds in the courtroom (Smith & Osborn, 2008, p. 53). Being aware that interviews were commonly used to collect data in qualitative studies I then confirmed that this method would be the best approach in IPA, specifically questioning whether it was the best method to fit my philosophy of research and epistemological approach (Taylor, 2005, p. 40). I found that it was entirely appropriate for phenomenological research where the researcher seeks to understand the lived experience of the interviewee (Taylor, 2005, p. 47). I then examined the various types of interview to see which was the most suitable for this research and I found that semi-structured interviews were favoured in IPA studies (Smith & Osborn, 2008, p. 57). The following section explains how I developed the semi-structured interview for this research.

## 2.5. Semi –structured Interview

I developed a semi-structured interview schedule (See Appendix 3) in order to focus my research in terms of sentence structure and to enable me as the interviewer to be so familiar with the structure and content of the interview schedule that I could give fuller attention to the research participant during subsequent interviews (Smith & Osborn, 2008, p. 53). Heeding the advice of Smith and Osborn (2008, p 61), I developed the semi-structured interview schedule whilst acknowledging that as a research practitioner I was bringing preconceived ideas to this process. Initially, I considered the broad range of issues to be covered in the interview and I identified these as being the involvement of the intermediary prior to trial, during trial and after the trial. These areas would be logically structured in this way but I also identified that the principles of investigative interviewing, and free narrative, could also be utilised by me when conducting the research interviews (Milne & Bull, 1999).

Specifically, the interview questions were designed to be open and to encourage a free narrative, without the need for prompting and the method of “funnelling” was adopted where more general answers could be probed later for specific information if this was thought to be helpful in fully understanding a participant’s experience (Smith & Osborn, 2008, p. 62). However, I developed some probing and prompting questions in order to add depth to the interviews, if required. I also developed Information and Consent forms (Appendices 1 and 2) so that potential participants were fully aware of the aims of the research and could make an informed choice as to participation. I then sought assistance from the staff employed by the NPIA who formed the Registered Intermediary Matching Team who agreed to advise me on each occasion that they matched a Registered Intermediary to a defendant case in England and Wales. In the next section I explain how participants were selected for this research.

## 2.6. Participants

There are currently 130 Registered Intermediaries, of whom approximately 100 are active and available at any one time to be matched to a new case (see Appendix 4 for professional backgrounds

of RIs). I was notified by the NPIA of the contact details of approximately eight Registered Intermediaries who had accepted referrals for defendant cases between the dates of March 2010 and December 2010 inclusive. I made contact 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 (See Appendix 5 for Participant Demographics). Likewise, the gender of each participant was collected but because there are very few male intermediaries this information has also been withheld.

Each participant was experienced as an intermediary having undertaken between 20 and 80 cases with witnesses. 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. In order to fully capture the details of each interview I decided to seek permission from participants to make an audio-recording of the interview using a digital recording device. I also made some contemporaneous notes as I listened to each participant and I noted any observations in a separate research diary as soon as practicable after completing each interview. In the next section I describe how I ensured that I had accurate transcriptions of each interview in order to commence data analysis.

## 2.7. Conducting IPA analysis

I made a decision at the outset that it was not feasible for me as a researching practitioner to complete the data transcription of each audio interview due to my commitments as a forensic psychologist and

Registered Intermediary. I decided to engage a professional transcription agency that satisfied me that my interview data would be treated with total confidentiality and stored under the Data Protection Act 1998 guidelines. I submitted each audio interview for transcription at the earliest opportunity following the actual interview. On receipt of each transcribed interview I listened to the audio account to ensure that the transcription had been completed accurately. I also made written notes on the transcript if there were lengthy pauses or other occurrences that I felt had not been captured by the audio transcribers. I then examined the transcript on a line by line basis to try and understand the cognitions and affect of the participant (Larkin, Watts, & Clifton, 2006).

Prior to commencing the analysis of the first interview transcription I had attended training in the use of software used in the analysis of qualitative data, in particular MAXQDA (Lewins & Silver, 2007). The transcript of the interview can be uploaded into the software package and the text can be annotated through the use of codes and memos. I began the first stage of analysis of the first interview by making notes in memo format about my initial thoughts about what the participant was conveying in the interview. Initially I found the clinical look of the emerging data analysis to be appealing but after a period of time I found myself becoming detached from the data as the memos that I was creating were not visible at all times. It was possible to access and list the memos that I had created but on reflection I found this too distancing from the text. One advantage of the MAXQDA software was that it timed and dated the memos as I created them and I could track my thinking processes in terms of chronology with the software (See Appendix 7). I found that the memo facility on the software package was of more importance on this IPA project in the early stages of analysis than the colour coding of segments of text and I made the decision to revert to the original paper text transcriptions to annotate the text as a result of immersing myself in the text. However, I did upload all of the interview transcripts to the MAXQDA software prior to commencing annotation as I found the line count in the margin useful when I printed the documents.

There is no prescriptive way in which IPA must be conducted and flexibility and innovation are encouraged when developing the analysis (Smith et al., 2009, p. 79). The researcher focuses on the content and the complexity of meanings in the data (Smith & Osborn, 2008, p. 66). I also noticed

early on that some of my probing questions were somewhat leading and complex in spite of the preparation that I had made prior to commencing interviews. I reflected on this issue prior to commencing the second interview to see how I could redress the matter and I decided that I couldn't be too prescriptive in the probing questions I prepared as I did not know what an interviewee would narrate in terms of their cognitions and affect. I decided that I would have to monitor my questions and continue to reflect on my actions as I continued with the research (Schon, 1983).

While one is attempting to capture and do justice to the meanings of the respondents to learn about their mental and social world, those meanings are not transparently available – they must be obtained through a sustained engagement with the text and a process of interpretation (Smith & Osborn, 2008, p. 66).

The function of the interpretative analysis is to examine the descriptive text and consider it in relation to social, cultural and theoretical perspectives (Larkin et al., 2006, p. 104). 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). For example, when making the initial analysis of the transcript for Participant 1, I reflected on what it meant to the interviewee who stated that they needed to feel ‘respectable when attending a solicitor’s office’ (see Memo 17, Appendix 7).

In the next chapter I present the findings of the data analysis in a format that initially introduces the participant and the case outline before then providing a table of superordinate themes that I have identified from the interview transcription. This table assists the reader by providing an overview of what I found from the analysis. I then demonstrate in additional tables how I developed these themes by immersing myself in the interview transcript. When examining these additional tables it is important to commence by reading the column headed ‘Original Transcript’ in the centre of the page. Then, moving to the right hand column, the exploratory comments that I made when analysing the interview transcript are found. Finally, the emergent themes are identified in the left hand column of the table. This method of mapping how I think the themes fit together has been recommended by IPA researchers (Smith et al., 2009, pp. 92-96).

## 2.8. Chapter Conclusion

This chapter has provided an overview of the decision-making processes that I have undertaken as I developed the research proposal. It has highlighted that a level of fluid thinking was required as the project developed and that each development had to be examined in terms of its impact on ethical considerations, data collection and data analysis. The use of Interpretative Phenomenological Analysis was chosen as the best means of answering the research question and this decision was influenced by the purposive nature of the research sample. However, I acknowledged a risk when choosing this methodology that it might be difficult to encourage participants to discuss their experiences at a cognitive and emotional level as describing feelings related to being in a court environment working with a vulnerable defendant may be harder to elucidate than the feelings of experiencing pain or another health related issue as is often the case analysed in IPA research.

Essential to IPA is the requirement to listen to each person's voice and for this reason I have made the decision to include a lengthy qualitative overview of each participant's interview transcript in Chapter Three. Whilst the qualitative data in Chapter 3 may appear relatively long it is still only a small sample of the data collected during the course of this research (See Appendix 6).

## Chapter 3- Data Analysis

**Participant 1-** ‘a bit like a fish out of water’

### Case Outline

The case involved a 21 year old male defendant who had been charged with a sexual offence that appears to have gone to trial at the youth court. The defendant was vulnerable because he had difficulties formulating cohesive sentences and he had intelligibility problems, specifically his expressive communication was unclear.

### The interview

I initially struggled with getting to the cognitive and affective levels of the experiences narrated by Participant 1 (P1). Early in the interview P1 was describing a journey which I initially thought related to the journey of the new experience of being an intermediary for a defendant case. However it transpired after some probing that the journey being described was at face level, a pragmatic account of travelling through unfamiliar parts of London to a solicitor’s office to conduct the initial assessment. On closer examination though it seems that some of the metaphors used early in the interview, for example, “the unknownness of it” (Line 80), “I was aware of feeling a bit like a fish out of water” (Line 106) seemed to apply to the journey of professional development throughout the whole trial.

As the interview progressed I gained the sense that P1 was continually trying to make sense of the experience and engaging in self-reflection and that this might have been the first opportunity that P1 had been provided with to analyse the role of the intermediary in this particular case. The following table provides a list of superordinate themes that I have labelled having closely interacted with the interview transcript and interpreted the data using IPA.

Table 3.1 Superordinate themes from Participant 1

		Example
<p>1) Making sense of 'me' working in the criminal justice system as an intermediary</p> <ul style="list-style-type: none"> <li>• Role</li> <li>• Confidence</li> <li>• Impartiality</li> </ul>	Line 568	She (barrister) was then asking me my opinion as to whether or not they should push to go to appeal, whatever that meant, and I found myself amused that I was being asked (laughs) for an opinion, as the mere intermediary.
<p>2) Minimising the index offence</p> <ul style="list-style-type: none"> <li>• Developing an internal hierarchy of offending behaviours</li> </ul>	Line 651	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 –
<p>3) Making sense of the courts</p> <ul style="list-style-type: none"> <li>• Adversarial justice system and how it can impede effective communication for vulnerable people</li> </ul>	Line 663	Well, it really begs to me questions about the whole legal system really. Why barristers need to be so hell-bent on asking *tag questions?

\*Tag questions make a statement and then add a short question, for example, 'it is dark, isn't it?' (Blankenship & Craig, 2007; Harres, 1998; Walker, 2005)

**Participant 1**

<b>Emergent Themes</b>	<b>Original Transcript</b>	<b>Exploratory Comments</b>
Minimising the offending behaviour	<p>I: you were saying...</p> <p>P1:Um there was a clear offence, and that was obviously something that could be taken to court, but it seemed to me mixed up with a whole load of social issues (Line 4)</p>	<p>Contrast this comment with the comment made towards the end of the interview. Was there REALLY a clear offence in the eyes of the interviewee?</p>
Minimising the offending behaviour	<p>I: Okay. Do you know what the clear offence was?</p> <p>P1:Just that it was a minor sexual offence (Line 6)</p>	<p>Whose interpretation of the offence is this? Note the word ‘minor’ Is it the RI that chooses the word ‘minor’</p>
Identity- presenting a professional image	<p>I: So what was making you uncomfortable at that stage?</p> <p>P1: Um, it might sound crazy: I felt that I needed to look respectable (Line 82)</p>	<p>Why did the intermediary feel the need to look respectable? Was it to gain self-confidence in attending a solicitor’s office? Were there issues of self-esteem here?</p>

<p>Role / Identity</p>	<p>I: You've spoken about – within that part that you've already mentioned – about being uncomfortable with the journey and stretching yourself. Have I got that right?</p> <p>P1: The thing about going to court was there was ambiguity at that time, um, as to the role of the intermediary at court, whether or not I would be needed purely for the evidence-giving or whether or not they would want me there for the duration of the trial (Line 90)</p>	<p>The 'journey' as explained later by the respondent is about the professional journey. So, there is ambiguity about the RI role. Having accepted the case, is it right that the RI is unaware of their exact role in a defendant case?</p>
<p>Sense of responsibility Lacking confidence in role</p>	<p>I: Right ...</p> <p>P1: What was unclear was – or new for me – was, um, how much I should and shouldn't say in front of the solicitors. Because they seem very, very keen to hang onto absolutely everything I said, and everything I asked, and everything I was doing... and they were taking notes whilst I was doing the interview which did make me feel uncomfortable. I spoke to one of the assistants who had come in, and I spoke to her and asked her what notes she was taking and why she was taking them and if she needed to take them, what she was going to do with them (Line 126)</p>	<p>Learning through practice but not understanding the rules of engagement</p> <p>Seeking reassurance</p>

<p>Confidence /Identity/ confusion</p>	<p>I: So, tell me about that confusion and your thoughts and feelings about that particular aspect (report writing).</p> <p>P1: I felt I had to be very clear about what my recommendations were. And that I would have to be very careful about how I put that information across to the judge and the barristers, in addition to the sorts of information I was putting across anyway-one of which did include not to use tag questions (Line 182)</p>	<p>What is being said here? Why is there a difference between writing about the needs of a witness or a defendant? Is this purely about the extra needs in the dock, or is it a thought that dealing with tag questions should be different for witnesses and suspects?</p>
<p>Confidence /Identity/ fear of looking unprofessional at court</p>	<p>I: It sounds like you had to be very, very careful with your wording?</p> <p>P1: Yes. Very, very careful (laughs).</p> <p>I: Why was it needed to be so carefully written?</p> <p>P1: Because I knew I was going to be questioned on it when I went into the courtroom, and I wanted to be absolutely sure that what I'd written, I could discuss (Line 208)</p>	<p>This would be no different with a witness report. What is the interviewee holding back on with regards to this defendant case?</p>
<p>Confidence / Role /Identity</p>	<p>P1: It was quite difficult to know just exactly how much he could...I've not sat in the dock with someone before (Line 214)</p>	<p>It seems to be the case that the RI does not know how the system works and does not fully understand the role and needs of a defendant in the dock. If this is the case can an inexperienced intermediary provide the necessary input with a defendant?</p>

<p>Confidence /Identity Drowning in responsibility in an unfamiliar role</p>	<p>I: And what did that leave you feeling then? P1: She (barrister) was representing this chap and she didn't know his story at all. That made me think there's quite a huge responsibility on the role of the intermediary at this stage because, without the intermediary, she would not be able to get his story (Line 248)</p>	<p>Is there an element of self-doubt on the part of the RI at this time when faced with the responsibility in ensuring that the defence counsel can take client instructions?</p>
<p>Gaining confidence</p>	<p>I: And how did you feel that session went with the defence barrister (pre-trial)? P1: There was definite communication successfully between the two of them. I And how did that leave you feeling, then, when you were doing that role? P1: It was a very valuable role I thought. I think the, um, defence barrister was greatly relieved as well (laughs) ... I mean she kept saying 'thank God you are here, thank God!' She was quite effusive about it (Line 294)</p>	<p>The intermediary has a positive experience pre-trial which seems to alleviate the fear of the legal system to a certain degree whilst at the same time illustrating to the intermediary the responsibility of the role.</p>
<p>Identity / impartiality/ Self-management/ self-reproach</p>	<p>I: So those feelings of needing to keep a back seat role. What was that about? P1: I think there is a temptation, or at least there was for me, a temptation not to want to intervene, more, but in the sense that I could see that he...that some of his story really. Really was going skewiff and that there possibly were things that I could have done to, um, help him stick to his story better- maybe referred him to a statement or something written, or better use of visual support, or something (Line 422)</p>	<p>It seems that it is very difficult for the RI to focus specifically on the communication aspect; a temptation to intervene to bring the defendant back to his story. How does this make the RI feel? Knowing the person is vulnerable, and yet having to remain impartial as an RI</p>

<p>Ongoing self-reflection about the role Confidence /Identity</p>	<p>I: Mm... P1: I felt that, you know, that I really had to leave him to it, and leave everybody else to sort out when the communication went wrong, and then just be at hand to um, assist, if anyone needed it. Does that make sense? (Line 424)</p>	<p>Surely the RI job is to be alert to communication difficulties and to alert others when this happens? In this context the RI seems to be trying to justify a lack of intervention due to perhaps lacking in confidence in this defendant case.</p>
<p>Need to belong / Identity</p>	<p>I: Actually sat around the table? Right, Okay, so how was that experience for you? P1: For the summing up and for the sentencing we were in the youth court so we weren't in a dock at all. It was quite bizarre really. I didn't know who everyone was and I ...whereas when I had been in the dock, I didn't feel like I needed to be introduced to everyone (Line 474)</p>	<p>Identity at this table. Do I belong here?</p>
<p>Minimising offending behaviour Coping strategies: detachment Identity</p>	<p>I: I'm not sure how I would feel if it was a very serious murder or sexual offence, and working with the defendant. I'm not sure, I just don't know. I did work with a child – a 14 year old girl – a little while back, and she had a really gruesome story to tell. Just having to hear the stuff that she was talking about, and I don't know...I just don't know how I would feel actually, if it was the other way around. I don't...I hope I would remain professional. I mean, what happened with that, with the material I was doing with the girl I was just talking about, is that I felt remarkably detached from the whole situation, and my focus was very, very much on the communication. Because you have to concentrate... (Line 546)</p>	<p>This is an example of reflection in action by the RI. The RI questions how easy it would be to be an effective impartial officer of the court, but on reflection she realises that the sheer effort of concentrating on the vulnerable person's communication needs assists as a coping mechanism for remaining detached</p>

<p>More opportunity to form a relationship and become partisan?</p>	<p>I: Okay, so picking up on that – were there any differences in dealing with this defendant case, and dealing with other cases or witnesses, in terms of cognitive demands?</p> <p>P1: In my experience, I found the whole...it is much more intense with the defendant, and you're going through every step of the way with them (Line 556)</p>	<p>Does this level of intensity make it more difficult to maintain a level of impartiality?</p>
<p>Role Conflict</p>	<p>I: Right</p> <p>P1: And it's possible to get caught up in everybody's story, because you're talking to barristers, you're talking to whoever's involved with him (defendant) at the time. And there are lots of dilemmas right the way through the trial, you know, 'which way should we play this?', 'the witness has just said that, what's your response?' you know. There are a lot of dilemmas for everybody, um, throughout the duration of the trial (Line 560)</p>	<p>Who is 'we'? Does 'we' equal non-partisan?</p>
<p>Identity</p>	<p>P1: She (barrister) was then asking me my opinion as to whether or not they should push to go to appeal, whatever that meant, and I found myself amused that I was being asked (laughs) for an opinion, as the mere intermediary. But at the same time I could see how easy it would be to, you know, say "oh, well, you know, he did say that" and "I think, you know, I'm not sure but he did..." I could see how easy it would be to get caught up in the ins and outs of it and at the end somebody could say "well the intermediary said 'X'. (Line 568)</p>	<p>The enormity of the task seems to have struck the intermediary and this respondent appears to be reflecting on the difficulty of maintaining boundaries</p>
<p>Identity</p>	<p>P1: She (barrister) was then asking me my opinion as to whether or not they should push to go to appeal, whatever that meant, and I found myself amused that I was being asked (laughs) for an opinion, as the mere intermediary. But at the same time I could see how easy it would be to, you know, say "oh, well, you know, he did say that" and "I think, you know, I'm not sure but he did..." I could see how easy it would be to get caught up in the ins and outs of it and at the end somebody could say "well the intermediary said 'X'. (Line 568)</p>	<p>Why does the RI use the term "mere" here? Does this signify feeling inferior to the legal professional or more generally how the RI thinks how the role is perceived by the criminal justice system?</p>
<p>Minimising offending behaviour</p>	<p>P1: She (barrister) was then asking me my opinion as to whether or not they should push to go to appeal, whatever that meant, and I found myself amused that I was being asked (laughs) for an opinion, as the mere intermediary. But at the same time I could see how easy it would be to, you know, say "oh, well, you know, he did say that" and "I think, you know, I'm not sure but he did..." I could see how easy it would be to get caught up in the ins and outs of it and at the end somebody could say "well the intermediary said 'X'. (Line 568)</p>	<p>Why does the RI use the term "mere" here? Does this signify feeling inferior to the legal professional or more generally how the RI thinks how the role is perceived by the criminal justice system?</p>
<p>Social-constructionism</p>	<p>P1: She (barrister) was then asking me my opinion as to whether or not they should push to go to appeal, whatever that meant, and I found myself amused that I was being asked (laughs) for an opinion, as the mere intermediary. But at the same time I could see how easy it would be to, you know, say "oh, well, you know, he did say that" and "I think, you know, I'm not sure but he did..." I could see how easy it would be to get caught up in the ins and outs of it and at the end somebody could say "well the intermediary said 'X'. (Line 568)</p>	<p>Why does the RI use the term "mere" here? Does this signify feeling inferior to the legal professional or more generally how the RI thinks how the role is perceived by the criminal justice system?</p>

<p>Identity</p> <p>Cognitive Dissonance</p>	<p>I: Yeah, impartiality...</p> <p>P1: This was...I don't feel that I can possibly...in a way, I feel, now, how important it is to be impartial, and how it's difficult to not be impartial, because it's such a complex story. 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 – which I've already half-described to you. It was about, you know, rotten families and bullying, and all sorts of issues going on. And to think I could possibly make a comment about this person, in the context of everything else that was going on, would be very, very naive of me, I think (Line 651)</p>	<p>There appears to be confusion in the message here. The RI asserts how much they want to be impartial, how impartial in fact they were in this particular case, and then provides evidence to suggest that the impartiality may have been compromised by the RI expressing an opinion about the environment in which the defendant lived and its impact on the defendant's actions RI reflection on the role of RI.</p>
<p>Minimising offending behaviour</p> <p>Trying to make sense of the CJS</p>	<p>I: But you have feelings though? About whether that was the right or the wrong...and about the impact that it might have on his life?</p> <p>P1: Possibly I can say, what a shame that his life is like that, really. But then that's a comment on society, not a comment, you know...for me, what it makes me think about is what a court is for, you know, what is this system that I have become part of by doing the intermediary work?...that's what it makes me think about (Line 659)</p>	<p>Perhaps the RI is feeling partly to blame for being party to a trial where a troubled vulnerable defendant has been convicted. Would the RI rather not be part of this system now that the RI knows what is involved and how one magistrate can change the path of a person's life?</p>

<p>Minimising offending behaviour</p>	<p>I: Tell me; just tell me something more about that ‘what have I become part of in this system’ what are your thoughts on that?</p> <p>P1: Well, it really begs to me questions about the whole legal system really. Why barristers need to be so hell-bent on asking tag questions? What is the whole purpose of a Magistrate’s court? I mean, what is the purpose of the Crown court? I look at the jury and I now think “oh, thank goodness there is twelve people there, phew, at least that’s twelve opinions. How on earth did they manage to get twelve people? Is that really a good number in a court? I hope so, you know. If I ever get to court, please let it be in front of a jury (laughs) (Line 663)</p>	<p>It seems like the RI has made a judgement here: It was ridiculous to take this vulnerable defendant to trial for such a minor offence.</p>
<p>Making sense of courts and jury numbers</p>	<p>I: So, it’s raised more thoughts in your mind about...</p> <p>P1: ...and about society in general really. And just, you know, what a small part, really, the intermediary role is.</p>	<p>The use of ‘hell-bent’ indicates that the intermediary believes this is tactical</p>
<p>Role / identity</p>	<p>I: about raising all those wider issues for you...</p>	<p>Internal conflict; making sense of the role. Significant role or not?</p>
<p>Broader CJS issues</p>	<p>P1: I think it’s just honed it more, looking at the defendant ...and then seeing, what seems to be such a minor sexual offence case, take up so much time. And actually, there is a much bigger story there, it’s just...I feel completely incapable of saying whether or not it was right or wrong. I mean on the surface, taking somebody to court because they pinched someone’s bum sounds absolutely ridiculous. Maybe it was, maybe it wasn’t, I really have no idea (Line 677)</p>	<p>Whilst the RI states that they have no idea about whether this case should have gone to court, it does seem quite clear that they have formed the opinion that the case was not suitable for court.</p>

**Participant 2** – ‘and that was the first time I had been in a prison’

Case Outline

In this case the intermediary describes the progress of the case from his initial assessment of the defendant in a prison setting, to attending trial at Crown court and sitting in the dock alongside the vulnerable defendant. The defendant had ADHD and very poor concentration and was under the age of 18 at the time of the trial. The intermediary found the assessment at prison to be relatively straightforward but seemed to struggle with the strict regime at court that disallowed the young defendant to have access to activities that might have reduced his boredom.

Table 3.2 Superordinate themes from Participant 2

		Example
Identity <ul style="list-style-type: none"> <li>• appearance</li> <li>• isolation at court</li> <li>• role</li> <li>• impartiality</li> <li>• self-esteem</li> </ul>	Line 359	So, I mean it wasn't...I didn't feel unvalued. I felt part of the team. But I, I ...it did feel slightly isolated in the sense that I wasn't part of the team that was trying to get him off, I wasn't part of the team that was trying to get him convicted. I was, I was on my own in that I had...my job was to make sure he understood. So it felt a little isolated. But I definitely felt part of the court and part of the drama.
Minimising Offending behaviour <ul style="list-style-type: none"> <li>• Hierarchy of criminal behaviour</li> </ul>	Line 3	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
Emotional attachment	Line 162	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...

**Participant 2**

<b>Emergent Themes</b>	<b>Original Transcript</b>	<b>Exploratory Comments</b>
<p>Minimising offence</p> <p>Pre-conceived ideas about prisons – prejudices?</p> <p>Working in a new environment - prison</p>	<p>I: ...Start wherever you like on that case about the defendant case and as best as you can just be as descriptive as you can about your thoughts and feelings as you were going through the process.</p> <p>P2: ...and that was the first time I had been in prison. Um, actually that, that was a lot better than I thought... it was really easy to get in and out...everyone was really helpful and we were given space and a room...Um, it... he was... I was quite shocked by the um, prison. 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 (Line 3)</p>	<p>Contradictory comments about the prison? The intermediary appears to have anticipated some hurdles in completing an initial assessment in the prison but these difficulties did not materialise. Does the intermediary hold internalised stereotypes and beliefs about the prison service and subsequently assign the negative thoughts about the criminal charges to the prison rather than to the defendant / CPS. Or has the intermediary mis-selected the word 'prison' here and maybe meant to say criminal justice system?</p>

The defendant is ok	<p>I: Mm.  P2: ...and he was very easy to assess. He was co-operative and very helpful and I didn't...you know, that was very straightforward (line 5)</p>	<p>By describing the defendant in this manner, does it re-inforce for the intermediary that the defendant 'can't be a murderer'</p>
Poor vulnerable defendant	<p>I: Mm.  P2: Well, he 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)</p> <p>I: Right  P2: ...would have worked a lot better if he'd had a couple of slices of toast and a magazine...</p> <p>I: 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)</p> <p>P2: Well they were harsh, the custody...it was brutal.</p>	<p>The RI used negative descriptive terms to describe staff working in the court custody area and seemed to be reflecting on how uncaring the criminal justice system is when contrasted with the RI's own values which clearly focused on the needs of the individual, in this case a vulnerable defendant</p>
Minimising the offending behaviour.	<p>I: Right...  P2: ...next door and everybody was...it was very tense in the cells. Um, they obviously had a lot of quite difficult people there and my...I mean he's was just 18. He looked about 15 (Line 37)</p>	<p>The word 'my' followed by the 'he' is indicative that the intermediary is defining the boundaries of impartiality but indicate that the boundary can be easily breached. Also age = innocence?</p>

<p>Minimising the offence</p> <p>Making sense of criminal law and the adversarial criminal justice system</p>	<p>I: Right...</p> <p>P2: ...and then he'd missed his evening meal. I mean it, it...for the defendant I felt it, it was, it was hard, and I think for my own self, I, I was...I thought this is a civilised country, this is a young boy with learning difficulties, lots of other problems, and I think what kept going through my mind is that actually our justice system is supposed to see him as innocent...but I felt he was being punished very harshly for something nobody proved he had...done. And in actual fact, because it was joint enterprise and the charge was murder, and he hadn't murdered anybody, you know (Line 57)</p>	<p>This man is vulnerable therefore he can't have committed a dreadful crime.</p> <p>Reflection on the bigger picture: much wider than on the actual intermediary role at court.</p>
<p>Not understanding risk assessments and Gaoler's function</p>	<p>P2: I mean I talked to the, um, barrister about it and the solicitor but I mean they said there was absolutely no way we could smuggle him a Mars bar. You know, I mean you can't even get a paperclip into the cells, never mind a Mars bar (laughs) (Line 67)</p>	<p>The 'Caring Professions' background is at odds with security and risk assessments. Note the use of 'we' and the effect on a non-partisan role!</p>
<p>Role conflict between the intermediary function and the function of a 'caring professional'</p> <p>Irreconcilable differences between 'caring' and risk and security.</p>	<p>P2: I mean having established that we couldn't...that there was no way we were gonna be rustling up a slice of toast, you know [laughs]. Just, just don't go there with those...great big beefy sort of people [laughs]. Wouldn't like to meet any of them on a dark night, you know. They did actually tell me, one of them, you'd never do my job, she said, you're too soft [laughs] So...but, but they were okay, they were okay once they got to know me. I mean they were alright, you know. But they were very, very harsh regime down there. Um, I, I, I think, you know, once we got past the sort of, you know, haven't you got a toaster out the back somewhere you could make a slice of toast for thing...and I realised how it worked and you know, you just have to go with it (Line 69)</p>	<p>They were Ok...once they got to know ME. Therefore 'they' are the problem, I am not the problem.</p>

<p>Disempowerment Depersonalisation Impact on self-esteem</p>	<p>P2: I think you just accept it as much as...um, I mean the defendant accepted it. You know, he, he, he'd been in that environment for nine months and he just knew that there was absolutely no way you had any rights, you had, you know, you, you had nothing...you know, you had to sit when you were told to sit, stand when you were told to stand. Um, I mean it was like the worst possible sort of boarding school (Line 71)</p>	<p>Is it possible that this experience at court for the intermediary is now reminding the intermediary of negative experiences at school when s/he felt disempowered?</p>
<p>Hierarchy of criminals</p>	<p>P2: But the treatment at the court cells was very, very...he was suddenly in an adult environment...with very...with people...there was at least one chap there who was obviously very, very disturbed. So you were really sort of hardened criminals who'd...done dreadful crimes (Line 93)</p>	<p>The RI now appears to have positioned the court security staff as the “bad guys” and the defendant as the “good guy”, a position maintained by the RI throughout the research interview</p> <p>Early on in the interview the RI already believes that this particular offender is low down on the typology of murderers. It seems that the RI has associated murder and murderers as being visibly “disturbed” and that such visible disturbance made them hardened and this image clearly did not apply to the vulnerable defendant in this case. Is this a coping mechanism for the RI?</p>

<p>Professional isolation at court</p> <p>Attachment issues</p>	<p>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. Um, he was obviously a young man who had never been nurtured in any sort of sense. He was obviously a very damaged young person (Line 119)</p>	<p>The RI presents a sense of feeling alone in the function as an RI where other professionals don't appear to acknowledge the basic needs of the vulnerable defendant. So the intermediary has to reconcile why this damaged young person appears to be denied some of his basic needs such as food when he is hungry. The negative description of the court security staff seems to convey an attitude of feeling ostracised along with the defendant. Could this lead to collusion?</p>
<p>Shared societal duty to address these issues of damaged children</p>	<p>I: Mm</p> <p>P2: ...who had a very damaged life. Um, and I think, you know, it was a case of ...I think sometimes, you know, had...I didn't have very much time alone with him, um, so it wasn't...er, but I mean I could imagine...I think what goes through your mind is all sorts of things we could have done and might do in the future to actually try and sort of...I was going to use the word 'rescue' but sort of...some sort of redemption, you know, to turning away. You know, you think we...I.is, is...I thought a lot about is there a better way in the criminal justice system (Line 121)</p>	<p>Again, note the use of the collective 'we', but on this occasion it seems to refer to wider society rather than the intermediary and the defendant.</p>

<p>Impartiality</p>	<p>P2: Um, so I was surprised it was murder. I'd...I learnt a lot about that. Because to me nobody's ...they set out to have a bit of fun, it was 3 o'clock in the morning, um, they were all high on drink and drugs, all of them. I mean there were great gangs of kids on the street, you could see it. A scuffle broke over...it took 6 seconds, the whole thing from start to finish on CCTV. And what really shocked me was that the lad I was with had definitely not caused the death, although he had aimed a punch, but it was absolutely clear that that didn't kill him (Line 137)</p>	<p>The RI appears to minimise the defendant's role in the murder by using the words "fun" and "scuffle" to describe the intentions of the defendants on the evening of the murder even though the RI has just acknowledged that it was a violent scuffle and that it was aggressive</p>
<p>Minimising offending</p>	<p>P2: ...life with a minimum term. A kid with learning difficulties, behaviour issues, you know, not had a chance in life, and he gets years for being part of a scuffle where somebody else aimed a kick...that happened to kill somebody. Don't think I'm terribly proud of the criminal justice system (Line 155)</p>	<p>The intermediary feels passionately about the inappropriateness of this person being taken to court. Perhaps a diversionary court procedure would have been better suited?</p>
<p>Emotional attachment</p>	<p>I: Okay  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...(Line 162)</p>	<p>Notice the apparent conflict for having formed an emotional attachment to the defendant and the 'making this ok' because the barrister has the same feelings. Surely, these feelings must impede the non-partisan intermediary function?</p>

<p>Emotional attachment</p>	<p>I: Right...</p> <p>P2: ...I mean I've been in the witness box and things before and, you know, you get a bit...get slightly tense about it but it's fine, and it was really interesting. I was...started off I was fine, but I actually found I was really shocked at how...stress is the wrong word, but I became...I felt pressure and the tension of the case very much and the very worst bits were the verdict. I actually felt I was going thud, thud, thud. Now whether I was sitting...I was sitting between the two defendants (Line 181)</p>	<p>The intermediary has become one with the defendant now and the verdict seems to be as relevant for the intermediary as it is for the defendant.</p>
<p>Emotional attachment</p>	<p>I: Right...</p> <p>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 kafuffle 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)</p>	<p>The intermediary becomes very assertive at this point. Is this a reaction to having witnessed the total disempowerment of the defendant and this is an attempt to rectify the power imbalance rather than a need to facilitate communication?</p>

Eroding impartiality	<p>P2: The other lad, who was a nasty bit of work, he had about 10 previous convictions, but the lad who kicked was actually a nice boy....Um, but, um, he got 16 years and it was ridiculous, ridiculous number of sentences. But it was very, very tense. You know, very, very tense (Line 193)</p>	<p>The RI adopts this position of minimising the offending behaviour even though the RI knows that the defendant has a number of previous convictions for drugs, violence and assault. Do these cognitions impact on ability to act in a non-partisan role?</p> <p>The words ‘very, very tense’ indicate how emotionally involved in the verdict the intermediary has become.</p>
<p>Identity Non-partisan Cognitive Dissonance</p>	<p>P2: ...although there had been people in and out for the four weeks (of the trial) the verdict was announced and all these people piled into the court and I, I did feel very exposed, particularly with all the press there and everything</p> <p>I: You say you were exposed. What was your concern at that, that time being in the dock?</p> <p>P2: I was trying to do...I was determined to be utterly professional the whole time...(Line 223)</p>	<p>At the close of the trial it is as if the intermediary identity is re-established in bounded form. Exposed? This could be a metaphor for recognising that emotional attachment had taken place during the trial.</p>

<p>Hierarchy of criminals</p>	<p>P2: And I ...and being...utterly, um...my natural instinct when you're with a group of lads like that in the dock is to sort of ge...ge...you know, be nice to them, say... (Line 237)</p>	<p>The use of 'lads' here seems to minimise the offence.</p>
<p>Professional belonging / isolation In-group / out-group</p>	<p>P2: So, I mean it wasn't...I didn't feel unvalued. I felt part of the team. But I, I ...it did feel slightly isolated in the sense that I wasn't part of the team that was trying to get him off, I wasn't part of the team that was trying to get him convicted. I was, I was on my own in that I had...my job was to make sure he understood. So it felt a little isolated. But I definitely felt part of the court and part of the drama. But I wasn't part o...and quite rightly. I think that was right. I shouldn't feel part of the defence...or part of the prosecution. You're not... and I certainly wasn't part of the dock team...(Line 372)</p>	<p>The intermediary is at pains to point out the RI impartiality at the time of the actual trial and it is clear that the RI felt alone at some points during the trial</p> <p>It is interesting that there is more emphasis about certainly not being part of the dock team. Did the intermediary have an internal hierarchy of professionals at court?</p>

<p>Crossing boundaries from non-partisan to partisan</p>	<p>P2: I did say to the solicitor, I said I think...cos they asked me what he thought the jury were thinking, you know, just off the record, and I said I thought if they knew him they would be more sympathetic. (Line 481)</p>	<p>However, this impartiality is perhaps called into question with this comment</p>
<p>Hierarchy of offending</p>	<p>P2: I, I mean I think, I think some of my feelings and reflections are because of that particular defendant. I mean I think if I'd had somebody sort of an axe wielding psychotic person it would have been different, but I think the fact it...he was young, very vulnerable... (Line 535)</p>	<p>The intermediary seems to invoke a rigid schema of what a murderer looks like and this gives us an opportunity to see why the RI is struggling to come to terms with these young men being convicted as murderers</p>
<p>Portraying a professional image at court. Hiding emotions at court.</p>	<p>P2: ...and misunderstood youth who hadn't...and I think the fact he'd never had a chance in life, I think...um, I actually found out...I mean I'm telling you about it but at the time I needed to be very professional...and keep those sort of feelings...you know away. I felt very sad at the end. I felt sad at the verdict and sad at the sentence. (Line 537)</p>	<p>This ongoing internal conflict about holding personal opinions without distracting from the impartial role of being an intermediary is again raised in the latter stages of the interview by the intermediary who initially</p>
<p>Wider societal issues</p>		<p>describes cognitions and then the emotions felt by the RI</p>

<p>Acknowledging the role of emotions in intermediary work</p>	<p>The police cheered. Not, not sort of aloud. But the family of the lad that was murdered, they were over the moon, and that was a difficult moment for me, cos you're used to being on the prosecution side...and actually a conviction you feel it's actually been a success....it was really interesting being on the other side where the police were all shaking each other's hands outside...but when you're working you keep those feelings behind...but it doesn't mean to say they don't...they're not there (Line 551)</p>	<p>Divided loyalties. How does this fit with a non-partisan intermediary role? Significantly, the intermediary insightfully recognises that in the professional role the RI has to keep these emotions hidden. Is it possible to maintain this role without leaking how you feel through non-verbal communication?</p>
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**Participant 3**

<b>Emergent Themes</b>	<b>Original Transcript</b>	<b>Exploratory Comments</b>
<p>Managing anxieties Maintaining boundaries</p>	<p>P3: Um, I arrived before the defendant, um, and he, he, the solicitor, showed me...talked to me a little tiny bit about the case...and I actually made it very clear that I shouldn't know about the case, so I managed actually to s...stop him after a while, but not before he had actually shown me a couple of photographs of somebody with a, a...it was a very, very severely bruised face and so on, which I found later actually related to a, a second case that I wasn't involved with. The minute I was shown these photographs I suggested that he put all of that away, that actually we were non-partisan, we really weren't supposed to know anything about the case until after we'd assessed the individual (Line 10).</p>	<p>The use of the language “a little tiny bit” in the early part of the excerpt appears to be the intermediary’s attempt to minimise, in his mind, the amount of information that he was exposed to; this exposure to information seems to cause him to feel uncomfortable. Later on in the same excerpt a sense of relief is felt when he describes how the photographs that he had viewed were not actually related to the case he was involved in. From the outset the intermediary reported how he managed angst about remaining non-partisan by demonstrating how he attempted to use assertiveness to instil boundaries when he met the defence lawyer</p>

<p>Self-esteem, rejection and professional identity issues</p>	<p>I: What is going on in your mind at that time?</p> <p>P3: ...Um, well one, one feeling was I've not had...you know, in all the cases I've done so far this is the first one where I've had somebody who really doesn't want to engage and I'm...you know, after all my years of experience I'm used to actually being user friendly and I certainly am not remotely threatening and I don't think I'm patronising either, so it was a bit of a shock to find that there was somebody who, who...it seemed odd that he was not keen to engage with me...I suppose I felt a bit, um, rejected by him because I'm so used to being helpful...and, and, er, er, and sort of my efforts appreciated (Line 34)</p>	<p>This feeling of rejection is quite powerful at the early stages of solicitor and defendant contact to an intermediary who is learning the role of acting in defendant cases.</p>
<p>Self-esteem, professional identity</p>	<p>P3: Um, and if I'm honest, I felt slightly embarrassed that, you know, the receptionist was seeing this lad going in and out and, and so I was sort of mildly embarrassed that it was going in an un...unorthodox way (Line 36)</p> <p>I: What was that embarrassment about then?</p> <p>P3: I suppose slightly, slightly embarrassed that, that, er, that that I perhaps wasn't user friendly enough for him to be...to feel reassured I suppose (Line 40)</p>	<p>Is this feeling of self-doubt due to the new role of assessing a defendant in unfamiliar territory such as in the solicitor's office?</p>

<p>Professional identity</p> <p>Exerting a professional image at court</p> <p>Intermediary vulnerabilities</p>	<p>I: So those thoughts about the challenge? What was going on there that you....</p> <p>P3: Um, I wondered whether when we got to trial I was going to be able to persuade this young man to stay in the building let alone in the court room. Um, and I suppose I was thinking to myself well, if, if I'm with a... with this young man via video-link and he does at the trial what he's done to me saying, er, I'm not listening to these questions, I'm going, and he walks out, how foolish will I look with this um, you know, court usher or whoever sat there with me and me saying well, actually I didn't manage to persuade him to come back into the assessment room so maybe we've lost him here too. I did feel a bit anxious about that (Line 53)</p>	<p>The intermediary too has vulnerabilities. Vulnerabilities about looking foolish later on at court in front of court staff if it is not possible to 'manage' the vulnerable defendant</p>
<p>Competing professional agendas</p>	<p>P3: Now at the time – this is another thought that I had – I realised that of course, er, defence are eager to show a vulnerable defendant as being as vulnerable as possible and that perhaps he was thinking to himself 'oh, well, that's good that the intermediary suggested a video link because that'll show just how vulnerable this young man is that he needs this special, extra special feature. But I was confident in myself as to w...you know, that it, that it was a decision that I'd made rather than that he had asked for (Line 64)</p>	<p>The intermediary asserts his decision-making role may have suited the defence agenda but ultimately it was made in the best interests of the defendant's communication needs.</p> <p>The intermediary is gaining a sense of the complexities at court that need to be understood by the uninitiated.</p> <p>The intermediary demonstrates a sense of 'pride' that it was an intermediary decision and seems keen to establish that the barrister hadn't compromised the non-partisan role of the intermediary</p>

<p>Making sense of the workings of the court. Fitting in to this new environment</p>	<p>P3: Well, I suppose in all the cases that I've done so far I've learnt that, um, there are many agendas and er, and that actually, um, it's not for me to sit in judgement over those agendas really. You know, obviously prosecution or defence have a case to make and I need to remain sort of dispassionate really. Um, so I try really, really hard not to actually make too much of my own kind of, you know...it, er...of course naturally you can't, you can't help but, um, have some feelings like when you're, you know, you're with a four year old who's had his head bashed in you can't help but think God, if that was my four year old how I ...would feel. But I try really, really hard, really hard not to make any judgements about...cos it's a game isn't it really (laughs) (Line 76)</p>	<p>Stressing the conscious effort that is required to remain non-judgemental seems incongruous with the laughter at the end of the statement. Stating that the process is a 'game' is in itself a judgement.</p>
<p>Establishing credibility at court  Acceptance by other professionals 'I belong'</p>	<p>P3: Um, I quite enjoy being in court, I have to say. Um, almost without exception. I, I have quite enjoyed the sense of right, well, you know, this is, this is my moment and I'm in charge of my little bit of this, I'm going to...you know, I'm well prepared, I'm going to do my best and I'm going to do exactly this...what they said on our training, which is, you know, if we accept you it'll be because you're able to be assertive and articulate (Line 117)</p>	<p>The intermediary appears to exude a sense of confidence here which contrasts somewhat with the anxieties that are often littered throughout the transcript. Thorough preparation appears to assist this intermediary as a coping strategy and we gain a sense that 'failure' is not an option. What would failure mean to this individual? What measures are in place to support him?</p>

<p>Acceptance</p> <p>Proving my worth to others</p>	<p>P3: And I didn't even get through what I was going to say but the judge said, 'you've convinced me' so I felt quite valued at that point. I felt quite chuffed that I'd wrestled with this business (Line 121)</p>	<p>The choice of the word 'wrestled' reinforces the idea that attending court in this role can be anxiety provoking</p>
<p>Impartiality</p> <p>Vulnerability</p>	<p>P3: I do my absolute utmost never to overstep that role of...that impartial role cos I'm really scared of somebody sort of suggesting that I'm, you know, befriending or coaching and so on" (Line 147)</p>	<p>The use 'scared' is a powerful choice of word here. We gain a sense of the intermediary's vulnerability.</p>
<p>Role conflict.</p> <p>Communication only but no emotional support allowed</p>	<p>P3: I'm...I don't know whether I'm unnecessarily anxious about the Registered Intermediary scheme being so new and all these cases being every one of them so different...be very careful about the code of conduct and so on. I, I just am desperate to do things sort of by the book and not get, get caught out...but all the time I was thinking I'm not befriending these people, I'm not a friend of these people, this, you know, this is a, this is a client, or rather the solicitor is a client and um, I don't want anybody in this court to s...to, to perceive me as, as being anything other than absolutely, er, um, impartial (Line 151)</p>	<p>Linked to the issue of the non-partisan approach is how an intermediary, who is usually from a health professionals or other caring profession is directed to focus specifically on facilitating communication and to strictly avoid engaging in other functions such as witness / defendant support.</p>

<p>Identity conflict</p> <p>Feeling OK within myself</p> <p>Self-esteem</p>	<p>P3: Um, er, and I never expressed any views ab...about, um, how (the defendant) might be feeling that day or what had happened or anything. That's a funny, that's a funny experience to have. 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. You know, you know, you've done...you're doing much better than you did yesterday or, you know, er, little steps and all this sort of thing, but actually you, you know, you are there to support and facilitate but at the same time you are not a friend and you mustn't give them the impression that you're a friend (Line 157)</p> <p>P3: I thought a great deal about it in the...and, and and what makes me feel okay with it is the fact that the legal system previously obviously hasn't served vulnerable witnesses and defendants very well and by doing what I do I'm enabling the process to be fairer. (Line 159)</p>	<p>The intermediary in this case gives us insight into how he feels about restricting his role to facilitating communication only when throughout his professional career his role is much wider as an enabler. The intermediary described how he reconciles this conflict between the roles. It seems like the intermediary has an ongoing conflict between his personal values and his professional values, where he is a thoughtful, supportive individual, and a separate code of conduct as an intermediary where he cannot display the warmth that is so natural to him. The only way that the intermediary can make any sense of this conflict is to acknowledge that he is having a positive impact on the manner in which vulnerable persons are treated with the criminal justice system.</p>
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**Participant 4-** ‘I felt less strong (in the dock) than when I’ve been in the court’

This participant provided accounts of two separate cases where he had acted as an intermediary for vulnerable defendants.

#### Case Outline 1

The first case involved facilitating communication for a male in his 30s who had been charged with unlawful sexual activity with a child. The defendant changed his plea to guilty before a trial had commenced and the intermediary described his initial assessment of the offender and his subsequent attendance at Crown court for sentencing. The intermediary stated that the defendant had learning disabilities and had been assessed as having a reading age and comprehension age of somewhere in the region of a child aged between six and eight.

#### Case Outline 2

In this case an 18 year old male with learning difficulties had been charged with rape. The intermediary held the initial assessment on site at a prison and then attended a 4 day trial at the Crown court where he sat with the defendant in the dock throughout the trial. The defendant did not give oral evidence at his trial.

Table 3.4 Superordinate themes from Participant 4

		Example
<p>Identity</p> <ul style="list-style-type: none"> <li>• Assertiveness</li> <li>• Weakened by position within court</li> <li>• Feeling exposed</li> <li>• Inferiority</li> <li>• Anxiety about how others perceive me</li> <li>• impartiality</li> </ul>	Line 52	So, yes it was my second time in the dock in a month, um, but it's a horrible feeling because, er, because I mean just that thing of being, you know, that you're the sort of, um, dangerous person or something. All the glass and the custody officer...But I actually felt less, um, I felt personally, um, less strong than when I've been in the court, in the body of the court or in the witness box
<p>Loss / Bereavement</p> <ul style="list-style-type: none"> <li>• Emotional attachment</li> </ul>	Line 66	he just disappeared, you know, he just disappeared, um, from my side. Um, he went down
<p>Minimising Offending behaviour</p>	Line 78	there was no force...no imprisonment or anything and then, you know, these things, er supposedly happened

**Participant 4 Case 1**

<b>Emergent Themes</b>	<b>Original Transcript</b>	<b>Exploratory Comments</b>
Assertiveness	<p>I: There are a couple of points that you have mentioned. One about the transcript from the police interview when he (the defendant) was interviewed and about the summary points.</p> <p>P4: So...and I thought that wasn't very, um, for me, it was like okay well I want to know exactly what was said, because I want to see what the defendant said. I want to pick up, you know, because I'm looking at it as a document, where I want to pick up, is he, um, using language in a ...you know, is he using...is he picking up on an ambiguity there, is he responding to an ambiguity or is he using words that, um, actually he doesn't know what they mean. But when you précis something and say someone said this, you've got no idea whether it's what they've actually said (Line 12)</p>	<p>The intermediary appears to be establishing his position in the criminal justice system by outlining his suspicions about the contents of court documents, not suggesting that the documents are compiled maliciously, but rather suggesting that it needs a professional to view the précis of the documents in order to see if they are indeed as accurate an account of a video interview as they indicate.</p>

<p>Stepping outside of routine practice</p>	<p>I: Where did the assessment take place?  P4: The solicitor asked if I had anywhere (suitable) and I said no. I then said ‘could it take place in the police station or your office?’ Her office was too small and she said she’d rather it didn’t take place in the police station. Of course with hindsight perhaps that wasn’t very tactful of me given that he was a defendant. But of course my mindset was slightly on prosecution witnesses where it happens a lot. I won’t suggest that in future. I think that was sort of just inexperience of working with defendants, certain things I was still, um, going along the prosecution path (Line 22)</p>	<p>Experiential learning is taking place. The intermediary reflects throughout the interview about his inexperience in working with defendants compared to his usual work with prosecution witnesses and he frequently chooses the word “witness” first, before correcting himself to use the term defendant.</p>
<p>Inclusion</p>	<p>P4: And the defence counsel came and I have to say had more conversation and I don’t know if this is part of the legal setup, it’s something I meant to check out afterwards, but I know that barristers have said on the prosecution side, um, ‘I can’t really talk with you much’. They (prosecution) come and introduce themselves but they don’t talk much. Whereas this defence counsel came and spent over half an hour with us before the proceedings started. Which was great for me because I felt much more in the loop with, you know, what was going on (Line 26)</p>	<p>It is evident that this intermediary often feels that the intermediary role at court can often leave the intermediary feeling out of the loop, especially in prosecution cases. We gain a sense of relief, almost surprise, that the intermediary has a greater involvement when working on a defendant case.</p>
<p>Witness schema</p>	<p>I: So, you’re in that room making observations but were you required to facilitate communication there?  P4: I did because I mean he was very...he (barrister) had a good rapport with, er, the witness, um, with the defendant (Line 40)</p>	<p>Again we see the ‘witness’ schema at the forefront rather than the defendant</p>

<p>Weakened by positioning within court</p> <p>Identity. Who am I?</p> <p>Am I dangerous?</p> <p>Feeling disempowered</p>	<p>I: Tell me about that then (the dock)?</p> <p>P4: I've never been in the dock before. Um, well actually that is not true; I have because there was the other case that I'll talk about. It was still horrible. So, yes it was my second time in the dock in a month, um, but it's a horrible feeling because, er, because I mean just that thing of being, you know, that you're the sort of, um, dangerous person or something.</p> <p>All the glass and the custody officer...so it was a rather horrible feeling although I knew that I was privileged and okay, it still felt...it brought up, you know, senses of...you just feel...but I actually felt less, um, I felt personally, um, less strong than when I've been in the court, in the body of the court or in the witness box (Line 52)</p>	<p>The intermediary uses the word "horrible" on three occasions to describe how vulnerable he was feeling in the dock and there is a sense of him "feeling exposed" by the phrase "all the glass" which whilst containing him is also putting him on show. At the same time the juxtaposition appears of him feeling ignored in his professional capacity by his perceived distance from the judge.</p>
<p>Disempowerment in dock</p>	<p>P4: I also felt it was much harder on a sort of more professional level; it was harder to, um, intervene because they don't look at you...it's like this physical distance which feels greater than the physical distance of the, um, video link room which I'm sort of much more used to...I sort of...I had to leap up rather than just speak to get a sort of movement plus voice (Line 52)</p>	<p>The intermediary seems to be differentiating between the personal feelings (horrible in the dock) and the professional issues causing difficulties in gaining the judge's attention.</p>

<p>Loss /bereavement Shock</p>	<p>I: So at some point the sentence is given. How did that go and you're sat there in the dock? P4: He (judge) said 'I have no choice but to send you to prison, find you...send you to prison. And I was really quite shocked, if that had been me I would have, er, as the defendant my heart...yeah everything would have ticked because I thought listening to it quite objectively that he was going to go for the treatment programme and a supervision order and stuff. So I was shocked and I looked at the witness and he...he was like and I said, 'do you know what the judge has said?' And he said 'prison?' like that? And he absolutely, he couldn't emotionally take it onboard. You could just see his whole self crumble. Then the security guard...he (defendant) just disappeared, you know, he just disappeared, um, from my side. Um, he went down. But it was...it was, um, it was quite a shock that the judge had made it seem so much like he was going along...I don't know if it was his idea of giving a measured judgement but it was a very misleading thing and...yeah, and quite a shock (Line 66)</p>	<p>There is a possibility that this is exactly how the intermediary is also feeling (his whole self crumble and in shock) at that moment and he goes on to describe his experience as the defendant is taken to the cells. It is possible to feel the intermediary's sense of loss in addition to his isolation as he is left alone in the dock.</p>
<p>Emotional attachment</p>	<p>I: Quite a shock for you? P4: Yeah it was a shock. I was shocked because it was, um, seemed to be so countered to what he'd been saying, so I was shocked at that level. But I was also emotionally shocked, um, because this was the, um, first case where actually the person was found guilty and you know, sort of suddenly disappeared. And there was that very strange thing where they just go and you (Line 68)</p>	

<p>Minimising offending behaviour</p>	<p>P4: go back to his house, there was no force...no imprisonment or anything and then, you know, these things, er supposedly happened (Line 78)</p>	<p>As the interview progresses the intermediary is really talking at the affective level as he tries to make sense of the whole case and there is even a suggestion that he minimises the defendant's actions in order to make sense of the situation when he chooses the word "supposedly" even though at this point the defendant had pleaded guilty to the offences.</p>
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<p>Minimising offending behaviour</p> <p>Hierarchy of defendants</p> <p>Challenging stereotypes about internalised defendant schemas</p>	<p>P4: And the other party is the...you can feel if you're going to step out in your totally impartial and objective intermediary role, you can think, you know, what scum to have done that sort of thing...but he had his vulner...he...because he had the learning difficulties I feel that his behaviour was in some way mitigated in terms of his judgement and ability to see things right and wrong. Therefore I didn't have the same horror thing for him as I might have for the perpetrator of something where my...I'm working for the prosecution, where there is no indication that the witness...the defendant has any mitigating circumstances you know (Line 78)</p>	<p>The intermediary provides a lengthy concluding paragraph to this interview where he continues to work through his feelings, demonstrating how difficult the process is when he describes the process of describing his thoughts as being 'inarticulate'. The intermediary also describes how he copes with working with defendants with vulnerabilities, who he clearly differentiates from defendants without such vulnerabilities. There is a sense that the intermediary has previously supported vulnerable witnesses and had an implicit cognition that the guilty defendant was a bad person, but now having experienced working with the vulnerable defendant he appears to be realising that actually, maybe all defendants aren't bad.</p>
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<b>Participant 4 Case 2</b>		
Outside my comfort zone	P4 (2): Um, yeah. I was a bit...it was just not very nice, going into prison. Er, it's got that sort of impartial, everyone is a potential criminal, if not a criminal, and that's the way they sort of look at you, despite the fact that I'd been down on the register as solicitor. I felt...I felt a bit like an innocent abroad really (Line 11)	The intermediary seems surprised that even a solicitor gets treated in this way. We gain a sense of how far this intermediary has stepped outside his comfort zone.
Validation of role	P4 (2): It certainly worked and I felt quite pleased. I felt that it was a validation of me being there because I know that I did it in a way that the barrister wouldn't have got round to doing (Line 25)	The intermediary feels a need to prove their value to the barrister. Is the intermediary in awe of the barrister?
Power and disempowerment	P4(2): I couldn't get into the dock without the security...this thing of feeling very much, you're shut off from it all, but you're also, you're definitely, you're in with the baddies, sort of feeling. They just...it's a very powerful presence. And made more so once the jury was there actually. The jury made it feel very real and very much like...you realise the power that they have and the responsibility, and it was incredibly solemn...(Line 36)	We gain a sense of the intermediary's isolation in the dock and the imbalance of power. It seems like the intermediary is feeling the disempowerment of the defendant.

<p>Establishing the rules of the relationship</p>	<p>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)</p>	<p>The intermediary is trying to make sense of the different rules that apply to counsel which are just so inappropriate for an intermediary.</p> <p>The intermediary chooses the word ‘gooseberry’ which is similar to what might be heard from a single person feeling like a spare part when socialising with a couple on a date and this gives us the insight that the intermediary feels like an outsider...but at the time desperately wants to belong.</p>
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<p>Inferiority / identity</p> <p>Isolation</p>	<p>P4 (2): In a way you are redundant to them (counsel). They don't really care about you, the counsel, unless she wanted me for, you know, for going and talking to the defendant. Because you're not really on their level, I think. They see themselves rather sort of higher...I was carrying all my stuff around with me. And I did actually feel like 'Oh I want to go to Witness Service. That's where I live as an intermediary (laughs) and you know, you don't have any of that sort of nice cocoon, and tea and coffee made for you, or make your own, you know, all that stuff. So it was quite odd, just being out on this, er, rather chilly limb, in the court (Line 44)</p>	<p>The intermediary seems to be expressing the feeling that it is the barristers that see themselves as "higher" but it is not clear if the intermediary is talking in terms of intellect or in terms of their function at the court. The 'rather chilly limb' indicates the coldness of the isolation that this intermediary is battling against.</p>
<p>Anxiety about how others perceive me</p> <p>Impartiality in conflict with a caring role</p>	<p>P4(2): I got less, um anxious about having to, um, proactively sort of give him (defendant) every single bit of information... it's an interesting one isn't it, I mean, again we're impartial but it mattered to me that he behaved in the dock. Now I didn't want him to leap up and say "That's a load of crap" or, um, "hey you posh people..." um, you know...I didn't want him...well would it reflect on me? I don't know. Maybe in some subliminal way, but I actually wanted him to have the best chance, I suppose. I didn't want him to do himself, um, a sort of disfavour really... (Line 86)</p>	<p>The intermediary goes on to describe his anxieties about his role in the dock and he provides some information about how he is concerned that any negative behaviour by the defendant in the dock would somehow reflect negatively on him as an intermediary.</p>

<p>Identity / loss</p> <p>Conflict between the caring professionals and the non-partisan intermediary role</p>	<p>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)</p>	<p>The intermediary then seems to identify for himself what his internal conflict is about and states that prosecution witnesses have support at court whereas defendants do not</p>
<p>Minimising offending behaviour</p> <p>Cognitive dissonance</p>	<p>P4 (2): I mean this lad, he's eighteen years old. He's lived by his wits. He's had a...quite a rough life. He's not a bad lad; he's not hardened, sort of...he's actually quite an innocent in some ways, but trying to be clever beyond his means...his abilities (Line 92)</p>	<p>The natural compassion of the intermediary towards the vulnerable defendant again becomes evident. The choice of the word 'lad' softens the image. But we see that the intermediary is trying to make sense of the defendant and there is conflict between the phrase 'he's not hardened' and the subsequent 'sort of'.</p>
<p>Innocence in the court room</p> <p>Naivety about personality / manipulative behaviour</p>	<p>P4 (2) : And it was just this quite endearing, you know, human thing, that it mattered to him what he looked like because he wanted them (the jury) to see him looking better, because it might...he might make a better impression (Line 93)</p>	<p>We gain a sense of the intermediary's innocence here when describing this behaviour as 'endearing' when it is quite probably manipulative behaviour</p>

<p>Power and disempowerment</p> <p>Conflict between human nature of the caring professional and intermediary Impartiality</p> <p>Emotional attachment</p> <p>Humanity</p>	<p>P4 (2): It's that bit when they say, um, they get him (defendant) to stand up for the sentencing. And the judge said, um, can the intermediary also stand up please? So I had to stand up as well.</p> <p>I: The judge has asked you to stand up. How did you feel?</p> <p>P4 (2) So, um, but it made me feel like it was me as well, you know, that the verdict was coming on me as well in a way. I mean, obviously not, but you get a sense of the drama of what the defendant has to do in the court. And the whole thing is so solemn in these...you know, it is a very solemn process and that's right. But it, er, I think it was only by being in the court with the defendant for the whole thing that I got the sense of really how, um, powerful it is. It is a very powerful process...um and they said "not Guilty". And he just went "Ohhh thank you!" like that. And he sort of absolutely...and I felt...I mean, I had...you know, my heart was really going, and um, yeah I suppose I felt a sort of relief as well. You know he's been found not guilty. So I felt quite moved for him....(Line 117)</p> <p>P4 (2) And I felt quite, er, um, I felt a bit quivery actually at what had happened (Line 120)</p> <p>P4 (2) Oh I talked to his sister first because she'd come for the last day. She just put her arms round me and said 'thank you, thank you' which I thought, 'oh, that's just not appropriate' or something and I thought, 'oh sod it', you know, he's not guilty, so it's okay for him...for her to say thank you (Line 121)</p>	<p>When the defendant is waiting for the verdict the intermediary reports that he too felt the tension of the wait and it is at this point that the intermediary seems to disclose how difficult it is to remain impartial having been sat with the defendant throughout the trial. This situation seems to have been exacerbated when the judge requested the intermediary to stand up in the dock with the defendant when the jury read out the verdict.</p> <p>It seems to be the physical touching that snaps the intermediary back into non-partisan mode.</p> <p>Making it 'ok'. Cognitive dissonance</p>
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**Participant 5-** ‘You’re sort of marched from A to B and you don’t quite understand the whole circumstances of it’

Case Outline

The defendant in this case was on remand in prison when the intermediary visited him. The defendant’s communication needs were not readily obvious to a casual observer but were very significant on being assessed. The intermediary commented that the defendant had lived his life to date without anybody really noticing that he has difficulties actually understanding what people are saying. His expressive communication was assessed as average. On this occasion, the intermediary was not present when the verdict was announced at court due to other commitments.

Table 3.5 Superordinate themes from Participant 5

		Example
Identity <ul style="list-style-type: none"> <li>• Empowerment / disempowerment</li> <li>• Neutrality</li> <li>• Resilience</li> </ul>	Line 34	But I also wasn’t given the opportunity to really explain why I was there, it was sort of very much what’s happening on the Monday morning and then had loads of legal argument that had lasted most of the morning and into the afternoon. So it was getting reasonably late on the Monday when they decided “oh yes” they better have this meeting (with the intermediary) (Line 34)
Environment <ul style="list-style-type: none"> <li>• Isolation</li> <li>• Dock</li> </ul>	Line 50	I think it’s just strange because there’s quite a lot of glass panelling, um, and I actually at times found it reasonably difficult to actually understand...I had to concentrate quite hard to understand what people were saying because they were a little distance away from you and because you don’t necessarily get them face on, you get a side view; then you actually have to concentrate really quite hard to fully understand what they’re saying. I think it feels like a strange environment and it’s sort of strange the dock officer...

**Participant 5**

<b>Emergent Themes</b>	<b>Original Transcript</b>	<b>Exploratory Comments</b>
An alien environment	P5: I think it's just a bit strange because everyone has different roles and it's all sort of locked doors and you never quite know who you're seeing or where you're going to. You're sort of marched from A to B and you don't quite understand the whole circumstances of it."(Line 10)	The intermediary has described an environment that is alien to him where he is reliant on others to assist his progress. The use of the word "marched" gives the impression that the intermediary was almost depersonalised within the prison grounds and we gain the sense that the intermediary feels a sense of vulnerability in this novel environment.
Intermediary and new environment	P5: (At Ground Rules hearing) I had some concerns as well about the fact that this chap needs to...the defendant needs to look at people's faces to understand them, but obviously they sit at the back of the court. That's not possible and we agreed that that's not possible to change because the dock's at the back of the court and it's how it is really (Line 30)	Whilst the word 'concerns' is indicative that P5 is working at the affective level here I found it difficult to get beyond initial feelings about a procedural issue. In fact this was quite an issue throughout this particular interview.

<p>Listen to me. I'm here! I am not an afterthought!</p>	<p>P5: It felt that no-one really knew why I was there; the judge was very welcoming but (he) didn't know why I was there. But I also wasn't given the opportunity to really explain why I was there, it was sort of very much what's happening on the Monday morning and then had loads of legal argument that had lasted most of the morning and into the afternoon. So it was getting reasonably late on the Monday when they decided "oh yes" they better have this meeting (with the intermediary) (Line 34)</p>	<p>Note that the intermediary speaks in the third person here with 'It felt' rather than 'I felt'. When the intermediary attended court on the date of the trial a discussion took place between the intermediary and the judge and counsel about the particular needs of the vulnerable defendant. The intermediary gives us insight into how he feels attending court.</p>
<p>Feeling disempowered</p>	<p>P5: Um, so there wasn't an awful lot of opportunity for me to say what was happening and I really did want to say what my role was because part of the legal argument discussion was the fact that because an intermediary wasn't used with the defendant when he was in custody with the police, for the initial police interviews, the police weren't allowed to show, or the CPS weren't allowed to show those tapes.....and I was dying to say "well actually, it's very hard because intermediaries aren't used in that early stage" and (I wanted) to give them more background information but it wasn't appropriate for me to say that. But I wasn't given the opportunity to do that (Line 34)</p>	<p>The intermediary appears to have felt rather excluded, on the sidelines, where it is evident that he could have contributed to the discussion had he been invited earlier. We gain an insight into the controlled way in which the courtroom works and the intermediary is not used to being excluded due to procedural rules.</p>

<p>Establishing my role and empowering myself</p>	<p>I: and you are there as an intermediary to facilitate communication?  P5: Yeah, I mean I suppose you have to make a decision about how much detail to go into. And I chose to give him a sort of summary and I gave him probably less information about that because my feeling was it was less important that he understood absolutely all the ins and outs if it, because...well I'm not legally trained, he's not legally trained and basically it's a legal argument...(Line 44)</p>	<p>Again note the use of 'you' rather than 'I' in the first sentence.</p>
<p>Making sense of the new working environment, the restrictions that it entails and the different roles in the dock</p>	<p>P5: I think it's just strange because there's quite a lot of glass panelling, um, and I actually at times found it reasonably difficult to actually understand...I had to concentrate quite hard to understand what people were saying because they were a little distance away from you and because you don't necessarily get them face on, you get a side view; then you actually have to concentrate really quite hard to fully understand what they're saying. I think it feels like a strange environment and it's sort of strange the dock officer. We had a couple of dock officers, one was really friendly and really helpful and one was really awful really, well really just very unfriendly and not very approachable. But I mean that's fine, that's their role isn't it? They're not there to be friends, um, but... (Line 50)</p>	<p>We are then offered the intermediary's thoughts about his perspective of the courtroom from the dock and we gain a sense of the different approaches of dock officers and how they may affect the experience of those seated in the dock.</p> <p>The intermediary seems to be trying to make sense of the dock officer's role and we gain a sense by his questioning, that he is not totally convinced that some dock officers should be unfriendly and unapproachable.</p>

<p>Decision-making as part of my role</p>	<p>P5: ...the first couple of days when he (defendant) was in court he actually wasn't really badly distracted, he actually concentrated really quite well. So um, we did have a bit more further discussion with the barrister and I didn't feel strongly that it should be in a separate room (live-link) for any reason. So he gave evidence in the dock (Line 66)</p> <p>I: so he actually gave evidence...from the witness stand?</p> <p>P5: He did. I was standing sort of next to him (Line 76)</p> <p>P5: He (defendant) struggled with very long complex information. So counsel might have said "right you're standing here....You're looking over here, what would you have seen here? And it was like too much information or "you've got your back to us at the cash point and you're doing this, that and the other and it was just like too much. So we had to break it down to, you know, here this is happening, this is happening, then what happened and he kind of was okay once he kind of got clued into where we were really. (Line 82)</p> <p>I: And when you are there at that time, what was your sense of being there, stood there next to the defendant in front of the jury and in the courtroom?</p> <p>P5: Um, it does feel strange and sometimes it's very hard to know how much to intervene because you can lose your chance to intervene then and there and if you don't intervene then you've lost it. (Line 84)</p>	<p>The word 'dock' is indicative that the intermediary is unfamiliar with the environment as the defendant would usually give evidence from the witness stand.</p> <p>The intermediary stood with the defendant whilst he gave evidence from the witness stand and we are given a real working example of how the intermediary was able to facilitate communication when the defendant was asked to look at maps and photographs</p> <p>The intermediary explains how he makes clinical judgements about when to intervene. Yet again it is difficult to reach the affective level though.</p>
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<p>Being resilient in the face of some adversity</p>	<p>I: So how did that leave you feeling then?</p> <p>P5: So, I felt a bit...I don't think it affected what I did...well it certainly didn't affect what happened afterwards. It just made me think well I'll just continue intervening and, you know, the relationship, I've got...my responsibility is to the court it's not to the prosecution or to the defence. You know, I've had to keep neutral and that's his way of coping, that's their way of coping with it and if he doesn't want to admit this chap's (defendant) got communication problems fair enough. I'm sure he's doing it, I'm sure he had an ulterior motive of trying to be pally with the defendant but that's kind of how it was (Line 90)</p>	<p>Again, it is difficult to reach the affective level. We do gain a sense of the background thinking going on for the intermediary and how he remains resilient in completing his task as intermediary</p>
<p>Maintaining impartiality</p>	<p>I: So when the judge has supported your intervention what does that feel like?</p> <p>P5: Yeah, I mean that was quite nice that he had supported it and he'd, you know, supplied an alternative description...um, so yes that's...I suppose it's nice but again it's trying to keep that neutrality there isn't it...(Line 94)</p>	<p>A sense of being valued?</p>
<p>Relationships versus neutrality. Can they co-exist?</p>	<p>I: So were you aware when you were there of that sense of neutrality? You mentioned it a few times...</p> <p>P5: Er, I mean I was aware that I was trying to do it, I don't think I found it easy because you're affiliated with the defence team as such in that you know them; they know you. Whereas the prosecution, you don't have that opportunity really...and the police, there were quite a few police officers, again the police officers they sort of see you as belonging more to the defence. I did try and sit in the middle of the court when I was in the court and not in the dock, but I think they will have seen me as belonging more to the defence side of things."(Line 96)</p>	<p>The intermediary mentions the word "neutrality" when describing his role as an intermediary and describes how it can be difficult to portray impartiality to the court.</p>

<p>Resilience</p>	<p>P5: Yeah, I don't know really. I think it kind of improved during the week because certainly the police officers initially have been quite hostile as the CPS chap was. And they did. Did change, and...</p> <p>I: Hostile to whom?</p> <p>P5: Hostile...well kind of towards me. I mean the CPS chap was definitely very hostile because he felt that he should have got his own intermediary, you know, and I should have been an expert witness presumably in his eyes and he should have had an expert witness against me. So he definitely didn't approve of me being there in any form. (Line 104)</p>	<p>So, here we have the intermediary in a new role, trying to do his best at supporting a vulnerable defendant, being mindful all the time of being non-partisan. And yet, the intermediary is picking up signs of hostility from the prosecution.</p>
<p>Maintaining impartiality leads to a sense of not belonging in this new environment</p>	<p>P5: I suppose it's kind of hard because when you're sitting outside the court it's kind of where do you sit. Because what kept happening in court...courts are scheduled at ten aren't they, there have been things happening in the court beforehand, so you ended up turning up at ten but then the court case actually didn't start until quarter to eleven. You end up having to sit somewhere, um, and there weren't that many chairs, so you ended up sitting but where do you sit, um, and who do you sit with? And to start with, you know, I sat with the defence but after...But it does feel strange, that they (counsel) have sort of got a robing room and they didn't want me to go into the robing room, so I ended up just sort of being a bit homeless [laughs]. But it's a strange situation. It's sort of strange because normally if you're with the witness you've got sort of witness support and you've got a room and it's much more straightforward, you kind of know where you are going and you know the set-up, whereas here it's not so straightforward. (Line 106)</p>	<p>The neutrality theme emerges again when the intermediary tries to position himself within the court and the various areas that the court staff regularly retreat to during breaks in proceedings. A sense of a feeling isolated seems to be occurring on the part of the intermediary.</p>

**Participant 6** – ‘I probably kind of situated myself next to her.’

Case Outline

In this case the 22 year old defendant had a diagnosis of paranoid schizophrenia. The intermediary was introduced to the defendant at the solicitor’s premises. The defendant had first experienced symptoms of schizophrenia at the age of 17 at a time when she was studying for ‘A ‘levels. The defendant informed the intermediary that in the subsequent years she had misused substances and been sexually exploited. The defendant experienced auditory hallucinations in the form of third person abusive comments and this subsequently could affect her attention and concentration on questions asked of her at court. The defendant was on bail and the intermediary attended court only on the day that the vulnerable defendant was giving testimony. The intermediary was not present when the guilty verdict was announced by the jury foreman.

Table 3.6 Superordinate themes from Participant 6

		Example
<p>Identity</p> <ul style="list-style-type: none"> <li>• Objectivity and affiliation</li> <li>• Role conflict</li> <li>• Emotional attachment</li> <li>• Influence of previous experiences in CJS</li> <li>• Different facades</li> <li>• Resilience</li> </ul>	Line 184	<p>You just have to adopt this kind of, you know, this is...this is...it's not my thing, you know, I can feel like this but this is not...this is nothing...if she said that, that's it, it's her evidence, it's not for me to...I can think about it and I can...I can...I can wish she'd said something different, but you just have to manage that yourself, you know, you have to recognise that this is...I recognise this and...I recognise this feeling, but this is not in my remit, so I'm not going to do anything with it.</p>
<p>Minimising offender behaviour</p>	Line 29	<p>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</p>
<p>Loss</p> <ul style="list-style-type: none"> <li>• Saying goodbye</li> </ul>	Line 276	<p>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</p>

**Participant 6**

<b>Emergent Themes</b>	<b>Original Transcript</b>	<b>Exploratory Comments</b>
Emotional attachment to defendant	<p>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 (Line 29)</p>	<p>The intermediary is already displaying a sense of emotional attachment to this defendant during the early stages of assessment. Is this not another way of minimising the offending behaviour?</p>
Negative feelings about adversarial justice	<p>P6: So rather than being the kind of victim, who had been raped, she was arrested along with the boyfriend in terms of coercing children into sexual behaviour, something like that. (Line 29)</p> <p>I: What sort of feelings does that invoke in you at that time?</p> <p>P6: It evokes feelings of, you know, this is not...this is not...it's so unjust, you know, it' so unfair, you know, that this ...this girl has been through so much. (Line 35)</p>	<p>From the outset in this interview the intermediary provided an account about the defendant's vulnerability and about the injustice of how this "victim" was on trial in an unjust criminal justice system.</p>

<p>Objectivity &amp; affiliation</p> <p>Forming emotional attachments with clients</p>	<p>P6: And so, you know, I...you know, I felt, um...I felt very sorry for her, you know, and...and I thought she'd had a very rough deal and a...and a ...and a terrible background. So...you know, and this is...this is part...part of being an intermediary is, you know, you're objective, you're not on anybody's side and...but I think, you know, whoever you work with, it's very natural to kind of have an affiliation with, and...so, you know, rightly or wrongly, I probably kind of situated myself next to her (defendant) almost as a kind of, um...just because...because of the terrible story she'd got, I think (Line 39)</p>	<p>The intermediary offers transparency when disclosing his feelings about the defendant and about the difficult role in remaining objective in the capacity of intermediary. 'Situated myself next to her' is perhaps an easier way for this intermediary to acknowledge this emotional attachment.</p>
<p>Role conflict</p>	<p>I: So, er, about that assessment stage. Are there any other thoughts and feelings that are involved there?</p> <p>P6: Um (pause)...I think the overwhelming feeling I came out with when I left (the assessment) was that I really...I wanted to help her, you know, I really wanted to...to...to help this woman, you know, and...and give to her...it's almost like another line of protection, just to give her some form of protection. I feel quite protective of her, um, that I wanted to put measures in place that would...would give her the best chance she's got of not being found guilty, basically which again, I know is kind of stepping outside the remit, but I...I had a strong feeling that...that this was not fair, you know (Line 95)</p>	<p>The intermediary is being really insightful in portraying the conflict that exists between the roles of caring professional and non-partisan intermediary at court.</p>

<p>Occupational and personal personas</p>	<p>I: How do you manage those feelings?</p> <p>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)</p>	<p>Is it possible to maintain this 'professional' exterior when you have become emotionally attached to someone's difficulties? The intermediary states that he has developed this skill of managing the conflict, but do we actually see evidence of this? The phrase 'sometimes comes through' suggests otherwise.</p>
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<p>Impartiality</p> <p>Emotional attachment</p> <p>Remaining non-partisan</p>	<p>I: Is it possible, do you think to have that ...that wall between you as an intermediary and not...you know, to distance yourself from your professional background to come in and do that assessment?</p> <p>P6 (laughs)...yeah, yeah, I don't think you can separate it that much to be honest. I remember the training and I just couldn't get my head around it, the intermediary training, in that, er, they were kind of like, look, you're not...you're not doing a mental health assessment, it's not a mental health assessment. And I said, well, yes it is, because that's the thing that's impacting on the communication, so you're doing a communication assessment which is based on a mental health assessment because you want to know if people are hallucinating or if they're paranoid about judges. ..But I don't...er, unless you're, you know, really cold, I don't think you can...can be...remain completely objective and neutral, you know, er...and I don't mean that clouds the work that you're doing, but as...as a person behind...behind the...the facade, I don't think you can remain completely objective and neutral, then I think that's...that's very difficult to do, I think. (Line 107)</p>	<p>In order to make further sense of the intermediary's apparent dilemma about maintaining objectivity in this role he discusses the training undertaken as an intermediary and how the rule book does not necessarily translate into practice when you are a caring professional</p>
<p>Managing internal conflict between expectations of professional roles</p>	<p>P6: Also interesting I think was the solicitor; I think she had a similar opinion to me. You could tell she had got a kind of, empathy for her. She certainly, she certainly wasn't in this kind of cold lawyer mode, she was quite down to earth woman, and I think, er felt quite strongly for her and wanted to, again, had this kind of feeling of wanting to help her...there was nothing kind of grand about her (lawyer) which you get with some solicitors...(Line 115)</p>	<p>By aligning himself alongside this particular lawyer, who is not 'cold' 'or grand' as the intermediary perceives a lot lawyers to be, allows the intermediary to manage this internal conflict between roles.</p>

<p>Managing role conflict</p> <p>Impartiality</p> <p>The formality of this environment</p> <p>Trickery</p> <p>Emotions</p>	<p>P6: Er, it's very, um, stressful, you know, it's...er, you...you kind of feel the weight of...of the formality around you, and you feel the weight of the questions that she's (defendant) being asked...you know, being in the dock and being asked questions, and seeing the kind of way in which questions are being phrased and put, er, it's...it's difficult. And when...and again, that kind of neutral exterior (earlier referred to as the facade), even...when she was asked a question, if she contradicted herself or said something which I thought, that's not going to look good, you kind of...you kind of wince and think, oh no, you shouldn't have said that, you shouldn't have said that, you know. So it's feeling as like you're neutral but no, come on, come on, you're kind of hoping that...that she'll give the answers which...which are not going to give people a bad impression of her, you know, which is difficult. So, yeah, it's...it's quite...it's quite an emotional thing to do, I think, you know, for that amount of time as well...(Line 128)</p>	<p>There appears to be a conflicting message emerging from the intermediary who is clearly aware of the practice guidelines that the intermediary must remain impartial.</p> <p>The intermediary appears to have this ongoing struggle with what is the professional "facade", therefore impartiality, and the reality of the thoughts and feelings that are taking place beneath this facade.</p>
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<p>Acknowledging emotions and then managing them</p>	<p>I: When you've got those thoughts (not wanting the defendant to contradict themselves giving evidence) how do you manage that as an intermediary?  P6: You just have to adopt this kind of, you know, this is...this is...it's not my thing, you know, I can feel like this but this is not...this is nothing...if she said that, that's it, it's her evidence, it's not for me to...I can think about it and I can...I can...I can wish she'd said something different, but you just have to manage that yourself, you know, you have to recognise that this is...I recognise this and...I recognise this feeling, but this is not in my remit, so I'm not going to do anything with it. Um, but I mean, there were moments when I...I...I interjected and suggested, look, we need...she needs a break, you know, she's not...she's not following the question, um, she's just...I think, you know, she may be just nodding and agreeing and not listening properly (Line 184)</p>	<p>The intermediary later describes how such conflict is managed and subsequently provides some insight and advice about how new intermediaries might manage such internal conflict.</p> <p>Is it possible that the intermediary's judgement about intervening can be compromised by the emotions he is feeling?</p>
<p>Saying good-bye Emotional attachment</p>	<p>P6: Um, which again is quite difficult, really, because you kind of...you go in and you do all this work and...and you go through this quite traumatic emotional experience with somebody and then just walk away and, you know, you're not even...I think you're not even supposed to see them outside of the courtroom when you leave, you know, just say goodbye or anything, which is a bit weird really (Line 236)</p>	<p>It is clear that this intermediary finds it quite a struggle to understand the 'cold' rules of engagement and disengagement that are required for this role at court.</p>

<p>Role conflict neutrality emotional attachment Resilience</p>	<p>I: How do you move on in terms of...in terms of dealing with the feelings that arise? P6: Um, I'm quite emotionally resilient ...um, you just become, er, more emotionally detached I think so you...you...you acknowledge what the feelings are, you may discuss it with colleagues, and then you move on from it and you recognise them for what they are, um, and you don't let it, as far as possible, cloud your actual job and your interaction as an intermediary, you know, it remains hidden and discussed elsewhere. Because you...I don't know, you just...er, it's a very emotional kind of place the courtroom is, and if you think you're just helping somebody, whether they are the defendant in this case, or the victim, it just feels like you're...I don't know, some...almost a bit of protection, that's what it feels like (Line 270)</p>	<p>The intermediary clearly demonstrates the textbook answer here in how to remain emotionally detached but it seems that putting theory into practice is actually far more difficult.</p>
<p>Emotional detachment Saying goodbye Closure Compromising the non-partisan role The broader Criminal Justice System</p>	<p>P6: I don't think I interjected when I shouldn't have done or anything like that, because of the way I felt about her (defendant). Um, but I don't know...I mean, I didn't just leave (the court building), I didn't just walk out and think, right where is she because I had better avoid her. You know, I went up to her and I said, you know...I probably won't see you again but I hope it goes alright and, you know, whether...and that's clearly not neutral, saying I hope it goes alright because [laughs] you know, that's saying, you know, I hope you get off with it. Um, so things like that but, you know, sorry, 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...So, you know, I do, I did have kind of inappropriate intermediary thoughts about...about the...the kind of lack of justice, you know, and this stupid system that we've got, really. (Line 276)</p>	<p>This intermediary acknowledges the role conflict that an allied health professional has when engaging in a role that requires a detached emotional approach and a focus on communication without emotional support.</p>

Hidden agendas	<p>P6: She was probably perceived by the jury to be more vulnerable than she would have been without an intermediary. I mean, the judge said, you know, the intermediary helps, er, vulnerable people, mental health problems, learning disabilities, etc, to er communicate, so straightaway it's like well, who is this person, why...why does this person need this? So I think that does flag up to the jury that this person is in some way, er, vulnerable. Whether that goes in her favour or not is another question, I think. I think my gut feeling is that juries are probably naturally more sympathetic to people with learning disabilities (than other mental disorders)...Having sat on a jury, you can imagine those kinds of discussions going on (Line 316)</p>	<p>Here, the intermediary informs us that it is difficult to disentangle your core beliefs and personal experiences about the justice system when you find yourself working in this environment.</p>
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## Chapter Summary

**Table 3.7 Comparison of themes emerging from the six participant interviews**

Similarities and differences

Participant 1	Participant 2	Participant 3	Participant 4	Participant 5	Participant 6
Identity Making sense of 'me' working in the criminal justice system as an intermediary <ul style="list-style-type: none"> <li>• Role</li> <li>• Confidence</li> <li>• Impartiality</li> </ul>	Identity <ul style="list-style-type: none"> <li>• appearance</li> <li>• isolation at court</li> <li>• role</li> <li>• impartiality</li> <li>• self-esteem</li> </ul>	Identity <ul style="list-style-type: none"> <li>• Impartiality</li> <li>• Self-esteem</li> <li>• Rejection</li> <li>• Vulnerability</li> <li>• Anxiety</li> <li>• Boundaries</li> <li>• Role conflict</li> <li>• Reconciling conflict</li> <li>• Competing agenda</li> </ul>	Identity <ul style="list-style-type: none"> <li>• Assertiveness</li> <li>• Weakened by position within court</li> <li>• Feeling exposed</li> <li>• Inferiority</li> <li>• Anxiety about how others perceive me</li> <li>• impartiality</li> </ul>	Identity <ul style="list-style-type: none"> <li>• Empowerment / disempowerment</li> <li>• Neutrality</li> <li>• Resilience</li> </ul>	Identity <ul style="list-style-type: none"> <li>• Objectivity and affiliation</li> <li>• Role conflict</li> <li>• Influence of previous experiences in CJS</li> <li>• Different facades</li> <li>• Resilience</li> </ul>

<b>Participant 1</b>	<b>Participant 2</b>	<b>Participant 3</b>	<b>Participant 4</b>	<b>Participant 5</b>	<b>Participant 6</b>
Minimising the index offence <ul style="list-style-type: none"> <li>• Developing an internal hierarchy of offending behaviours</li> </ul>	Minimising Offending behaviour <ul style="list-style-type: none"> <li>• Hierarchy of criminal behaviour</li> </ul>		Minimising Offending behaviour		Minimising offender behaviour
Making sense of the courts Adversarial justice system and how it can impede effective communication for vulnerable people	Emotional attachment	Making sense of courts <ul style="list-style-type: none"> <li>• Different agendas in the courtroom</li> </ul>	Loss / Bereavement Emotional attachment	Environment <ul style="list-style-type: none"> <li>• Isolation</li> <li>• Dock</li> </ul>	Emotional attachment  Loss <ul style="list-style-type: none"> <li>• Saying goodbye</li> </ul>

**Table 3.8 Within transcript superordinate themes and integrative overarching themes**

Overarching theme	Participant 1	Participant 2	Participant 3	Participant 4	Participant 5	Participant 6
<b>1) Professional Identities</b>	<p>Making sense of 'me' working in the criminal justice system</p> <ul style="list-style-type: none"> <li>• Role</li> <li>• Confidence</li> <li>• impartiality</li> </ul>	<p>Identity</p> <ul style="list-style-type: none"> <li>• appearance</li> <li>• isolation at court</li> <li>• role</li> <li>• impartiality</li> <li>• self-esteem</li> </ul>	<p>Identity</p> <ul style="list-style-type: none"> <li>• impartiality</li> <li>• self-esteem</li> <li>• rejection</li> <li>• vulnerability</li> <li>• anxiety</li> <li>• boundaries</li> <li>• role conflict</li> <li>• reconciling conflict</li> <li>• competing agenda</li> </ul>	<p>Identity</p> <ul style="list-style-type: none"> <li>• Assertiveness</li> <li>• Weakened by position within court</li> <li>• Feeling exposed</li> <li>• Inferiority</li> <li>• Anxiety about how others perceive me</li> <li>• impartiality</li> </ul>	<p>Identity</p> <ul style="list-style-type: none"> <li>• Empowerment/ Disempowerment</li> <li>• Neutrality</li> <li>• Resilience</li> </ul>	<p>Identity</p> <ul style="list-style-type: none"> <li>• Objectivity &amp; affiliation</li> <li>• Role conflict</li> <li>• Different facades</li> <li>• Resilience</li> </ul>

<p>2)</p> <p><b>Minimising Behaviour</b></p>	<p>Minimising the index offence</p> <ul style="list-style-type: none"> <li>• Developing an internal hierarchy of offending behaviours</li> </ul>	<p>Minimising offending behaviour</p> <ul style="list-style-type: none"> <li>• Hierarchy of criminal behaviour</li> </ul>		<p>Minimising offending behaviour</p>		<p>Minimising offender behaviour</p>
<p>3)</p> <p><b>Emotional Attachment</b></p>		<p>Emotional attachment</p>		<p>Loss / Bereavement</p> <ul style="list-style-type: none"> <li>• Emotional attachment</li> </ul>		<p>Loss</p> <ul style="list-style-type: none"> <li>• Saying goodbye</li> </ul>
<p><b>Other themes</b></p>	<p>Making sense of the courts</p> <ul style="list-style-type: none"> <li>• Adversarial justice system and how it can impede effective communication</li> </ul>		<p>Making sense of the courts</p> <ul style="list-style-type: none"> <li>• Different agendas in the courtroom</li> </ul>		<p>Environment</p> <ul style="list-style-type: none"> <li>• Isolation</li> <li>• Dock</li> </ul>	

## Chapter 4 – Discussion

### 4.1. Emerging Themes

The following tables summarise three superordinate themes that capture the main reflections of the participants in this study. Theme 1 – Professional Identities - is the strongest theme and was found to apply to all six participants. This is perhaps not surprising as it has previously been stated that identity is a theme that frequently emerges in qualitative research and in IPA (Smith, 2004, p. 49). Theme 2 (Minimising Behaviour) and Theme 3 (Emotional Attachment) were found to apply to at least half of the participants and will therefore also be examined in this discussion chapter. In addition environmental factors, such as the location of the dock within the courtroom and the nomadic, somewhat isolating existence of the intermediary within the court building were raised but not in sufficient numbers to warrant further discussion in this particular piece of research.

Table 4.1

#### Theme 1 – Focus on Developing Professional Identities

	Theme Present	Theme Not Present
Participant 1	✓	
Participant 2	✓	
Participant 3	✓	
Participant 4	✓	
Participant 5	✓	
Participant 6	✓	

## Theme 2 – Focus on Minimising Offender Behaviour

	Theme Present	Theme Not Present
Participant 1	✓	
Participant 2	✓	
Participant 3		✓
Participant 4	✓	
Participant 5		✓
Participant 6	✓	

## Theme 3 – Focus on Emotional Attachment to the Offender

	Theme Present	Theme Not Present
Participant 1		✓
Participant 2	✓	
Participant 3		✓
Participant 4	✓	
Participant 5		✓
Participant 6	✓	

### 4.2. Theme 1 – Focus on Developing Professional Identities

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, p. 538). It is essential that intermediaries are supported in understanding their developing identity as they embark on working as an intermediary. 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, p. 187). 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, & Bouckenoghe, 2009, p. 170). The history of intermediaries was outlined in the first

chapter of this thesis and it was stated that they 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, pp. 721-722).

Identity theory is located in sociological, psychological and social-psychological literature and it is not possible to provide an overview of all of the literature from these disciplines in this thesis. As a psychologist I have made the decision to focus on the social-psychological theories found in the literature to assist in gaining an understanding of how defendant intermediaries conceptualise their developing professional identity. Firstly, relevant theories and concepts have been identified to explain the participants' understanding of their identity.

#### 4.3. Stereotyping, prejudice and intergroup relations

When an intermediary enters the court building they are likely to find themselves reflecting on their positioning within the hierarchy of the court. This is not surprising given what the literature states about stereotyping and its impact on intergroup relations. Social psychologists have identified that the formation of in-groups, such as identifying with the female gender role as a reference group, may in turn lead to the development of out-groups, in the case of gender roles, the male gender (Allport, 1954, p. 33). Subsequently, research has demonstrated that individuals that categorise themselves as belonging to a particular group 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, p. 21). In the following examples taken from the current research there is evidence that the practice of exaggerating differences between the intermediary and the dock officer role has occurred.

In the first example which was provided earlier 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)

I: Right

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

I: 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.

So, at this point in the court proceedings the intermediary may have internalised the dock officers as being brutal 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 pre-conceived ideas about court security staff could lead to seeking information to confirm the differences between the intermediaries 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 may also be evident in the intermediaries' 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)

#### 4.4. Social Identity Complexity

The intermediaries who work on cases with vulnerable defendants are professionals who have received formal training in occupations such as speech and language therapy or psychology (See Appendix 8 for a list of occupations). Additionally, at the time that the data was collected for this research all of the intermediaries allocated to defendant cases were trained as witness intermediaries. Hypothetically if 100 intermediaries were placed in a large room then observers may see different groupings emerge. The males may speak with the males, the speech therapists with other speech therapists and those intermediaries who have undertaken defendant cases may find that common denominator as a means of grouping together. Therefore, a picture emerges where not all intermediaries necessarily share the same identity. Some may specialise in mental illness cases rather than language disorders. It is not too difficult to envisage how competitiveness may emerge between different groups of intermediaries depending on the value placed upon their particular work. The earlier discussion about intergroup relations may be relevant in these circumstances in attempting to understand the dynamics of such a hypothetical situation. But what happens when an intermediary

attends court when they usually find themselves as a sole intermediary in a somewhat unfamiliar environment?

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, p. 88). 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, p. 88). 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.

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)

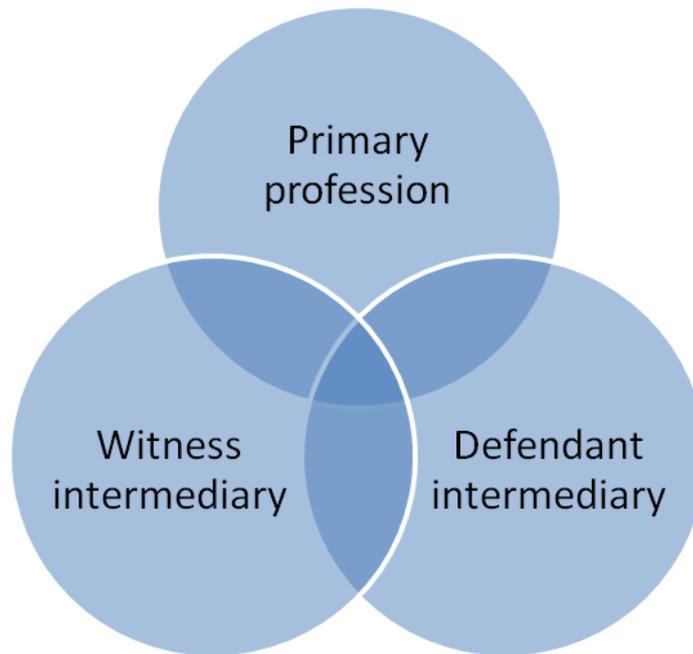
The four excerpts above illustrate the conflicts that the intermediaries have when undertaking their duties as defendant intermediaries. All six participants demonstrated having an awareness of different identities, at least at a subconscious level but we gain a sense that they experience some confusion 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, p. 89).

There are various models that may assist intermediaries to understand the multiple identities that they have in their professional roles and certain models may be helpful to intermediaries in managing conflicting thoughts and feelings. In the first example, Model 1, the professional background of the intermediary envelops the role of witness intermediary which in turn subsumes the role of defendant intermediary, the latter of which they will have undertaken very few cases. In this model it may be difficult to distinguish the boundaries between the roles of, for example, psychologist (which underpins everything else) and witness and defendant intermediary and this may be the least helpful model to adopt. Model 2 attempts to separate the identities to a certain extent but there is still potential for boundary conflict although to a lesser extent than found in Model 1.

## Model 1 -Envelope

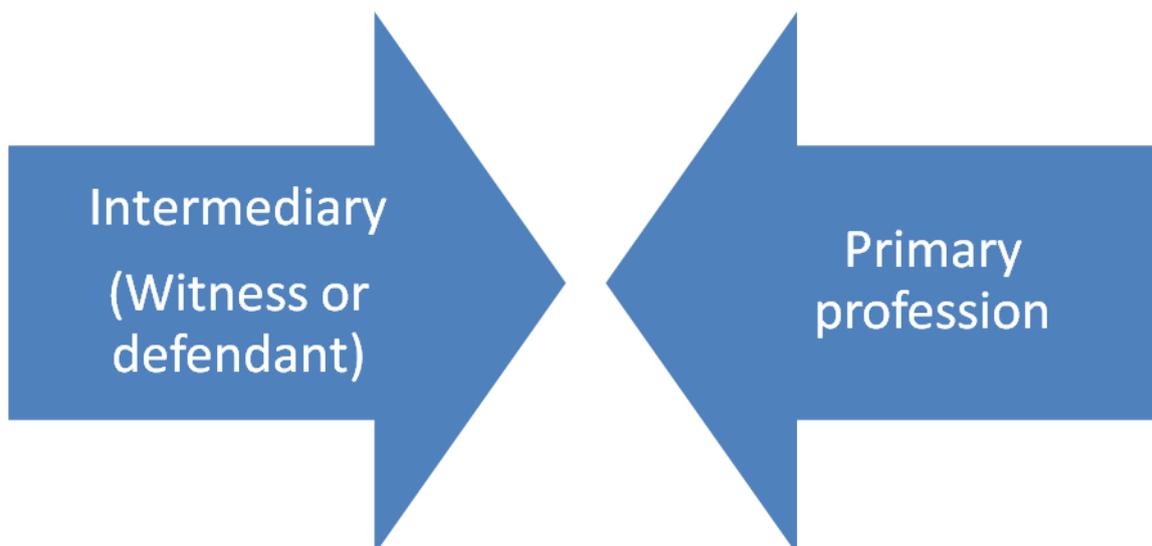


## Model 2 - Overlap



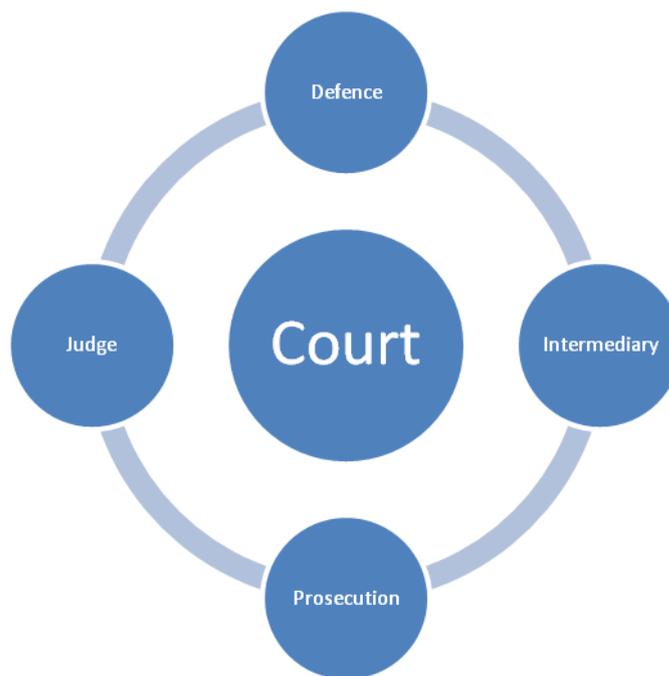
In Model 3 the identities are separated to give a visual representation of the differing roles and whilst the professional background of, for example, 'psychologist' is important to having the role of intermediary it is portrayed as an entirely different role rather than one that either envelopes or overlaps the intermediary duties. Each role is given equal importance but visually they are separate entities. The experiences gained in each role can lead to continued professional development in the other role and this concrete representation of identities may assist intermediaries to maintain professional boundaries as is a fundamental requirement of the role. This model may assist the intermediary to resolve the inconsistencies that may present on occasion between the seemingly incompatible values between the differing professional identities (Roccas & Brewer, 2002, p. 91). However, this model also suggests that the two discrete professions may be on a collision course at some point.

### **Model 3 - Independent**



Impartiality is emphasised in Model 4 by the neutrally positioned central position of the court with the various professional bodies on the outside, each one distinct from the other. Model 4 also establishes the position that the intermediary has equal status to other professionals within the courtroom and that their professional obligation is to the court and not to any particular party. However, Model 4 works on the basis that the intermediary has analysed Models 1, 2 and 3 and is comfortable with how the discrete roles of intermediary and professional background merge and converge.

### **Model 4 - Equals**



#### 4.5. Theme 2 – Focus on Minimising Offender Behaviour and Cognitive Dissonance

This theme was identified as being prevalent in four out of the six participants' accounts.

Whilst examining this theme I have had to carefully reflect on my professional background as a forensic psychologist, in particular my completion of risk assessments, where I am tasked with evidencing whether offenders are minimising their offending behaviour. When initially analysing the data I thought I had found similarities between the manner in which many offenders make excuses for their behaviour and the way in which intermediaries appeared to be minimising the defendants' offending behaviour. In order to explore these initial considerations on my part I have examined the literature on two psychological concepts, namely cognitive distortions and cognitive dissonance, to see if either of these concepts can offer an explanation as to how some intermediaries are thinking in relation to the criminal charges faced by defendants.

Psychologists have developed the concept of cognitive distortion in an effort to make sense of how child sex offenders rationalise their offending behaviour (Abel, Becker, & Cunningham-Rathner, 1984; Friestad, 2012; Howitt & Sheldon, 2007). Howitt and Sheldon (2007, pp 470-471) offer three alternative views as to what a cognitive distortion is. The three views range from a set of beliefs generated by an offender to manage the guilt of sexually offending against a child, rationalisation to justify offending behaviour through minimisation and denial of offending behaviour, to a range of distorted experiences encountered by the offender since early childhood. In fact cognitive distortions have perhaps been better described as thoughts that are conducive to offending, whatever their aetiology (Howitt & Sheldon, 2007, p. 481) It is clear from unpacking the concept of cognitive distortions, that what I initially thought I might be encountering was in fact not cognitive distortions at all and that I was being erroneously influenced by my experiences of assessing and treating offenders. This concept clearly does not apply at all to the thinking of intermediaries who appear to be excusing behaviour and demonstrates the importance of bracketing professional experience when undertaking analysis as a researcher.

Cognitive dissonance theory on the other hand 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). The research findings outlined in Chapter 3 of this thesis illustrate this idea particularly when the healthcare background of the intermediary is considered alongside the vulnerability of the defendants that they have assessed for trial. Theoretically, if an intermediary holds an entrenched belief that a vulnerable person is a victim then it is more difficult to rationalize that the same individual can also commit a violent or sexual offence. The following excerpts are taken from the qualitative data identified previously in Chapter 3:

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.

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

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

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

At first sight all of the above excerpts appear to illustrate how the information about an alleged criminal offence, which comes to the attention of the intermediary only after they have assessed the offender's vulnerability, causes the internal conflict that can be referred to as trivialization (Ask et al., 2011, p. 291). It is this apparent trivialization of the alleged offending behaviour that is found in at least two of the participants' accounts in this current research (P2 and P4). However, the comments by Participant 1 and Participant 6 seem to differ, in that they are examining the social context of the alleged offender's crime rather than the alleged crime itself. It is possible that this trivialization,

certainly as found in the accounts of Participant 2 and Participant 4, serves as a function of coping for intermediaries. Undoubtedly, the nature of the intermediary role in listening to the alleged offence account during a trial is an emotionally distressing role.

Research from the field of nursing has found that emotional conflict within the nursing profession leads to cognitive dissonance between workplace related cognitions and personal cognitions (Mackintosh, 2007, p. 984). By understanding this dissonance, intermediaries should be able to understand how, to an outsider, it may be viewed as a partisan approach, when their job is to be non-partisan; rather than as a means of understanding conflicting thoughts in the head of a caring professional tasked with listening to distressing evidence against a vulnerable offender and ultimately serving the function of a coping mechanism. If cognitive dissonance is not the factor here, then intermediaries need to consider what other factors may be influencing their cognitions about excusing the actions of alleged offenders. Perhaps the intermediaries have an internal set of beliefs about the functioning of the criminal justice system that prejudices their role as a non-partisan intermediary.

At another level cognitive dissonance also appears to have been occurring during the actual interviews with participants in this research. Whilst talking about their experiences as defendant intermediaries it became evident that some participants had difficulty rationalising their actions or omissions with what they knew they should have been doing. For example, in the following excerpt it is evident that the intermediary is attempting to rationalise his positioning behind the defendant when the defendant was giving evidence and this mismatch of information only appears when discussing the occurrence:

P1: I did stand behind him (defendant), but I was...I could see, I could see everybody.

Likewise, the following statement seems to be totally at odds with how the intermediary should work at court and the intermediary appears to be trying to make sense of his actions during the interview by asking the rhetorical question, 'does that make sense?'

P1: ...I felt that I, you know, that I really had to leave him to it, and leave everybody else to sort out when the communication went wrong, and then just be at hand to, um, assist, if anyone needed it. Does that make sense?

In the following excerpt the participant who had earlier in the interview stated ‘I was determined to be utterly professional the whole time’ subsequently disclosed the following act under the auspices of dealing with a communication issue after the barrister had left the room:

P2: I said ‘do you remember on the CCTV what jacket you were wearing?’ ‘Oh, it’s the same one: I ain’t got no other jacket. I’m cold.’ I said ‘the jury will think bad of you...we learnt the phrase to say to him: the jury will think bad of you...so, um..in the end I got one of the (dock officers) and said to him ‘whatever you do, will you make sure he doesn’t wear that jacket. I said counsel doesn’t want him to.’

This appears to be an instance where the boundary between facilitating communication and crossing the boundary of impartiality may have taken place but the event is rationalised by the intermediary as being one of communication.

In this third and final example it becomes evident how easy it is to rationalise one’s thinking when trying to make sense of the intermediary role. In this instance it seems that the mismatch of information relates to the intermediary’s personal beliefs and how they are mismatched with the professional role of intermediary. The throw away comment ‘I know is *kind of* (my emphasis) stepping outside the remit’ alongside the pauses demonstrates how easy it is to distort ones thinking and become non-partisan:

P6: I feel quite protective of her, um, that I wanted to put measures in place that would...would give her the best chance she’d got of...of, er...of not being found guilty, basically, which again, I know is kind of stepping outside the remit (of the intermediary role)...

#### 4.6. Theme 3 – Focus on Emotional Attachment to the Offender

Two of the intermediaries that have worked with vulnerable defendant cases in England and Wales report a sense of loss when a trial concludes, particularly when a defendant is 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. 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 first 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

The secondary intermediary, perhaps having considered 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

It is not within the confines of this study to elaborate too much on the ending of this relationship but readers may be interested in comparing the ending of the intermediary – defendant relationship with the ending of the client-therapist relationship found in other settings. Due to the circumstances of attending a criminal trial a number of issues such as personality presentation and attachment style should inform how the defendant intermediary prepares both themselves and the defendant for the ending of the relationship and the literature from the counselling and psychotherapy area might assist with this task (Hersh, 2010; Knox, Adrians, Everson, Hess, & Hill, 2011; Rutishauser & Rovers, 2010). Whilst this phenomenon was not reported by all six participants, I have included this section on attachments and relationships as it is something that I have experienced as an intermediary during

the period in which I conducted this research and I have reflected on my own related cognitions in the reflective chapter at the end of this thesis.

Significantly, I would argue that it is an institutional abuse by the criminal justice system to provide the services of an intermediary to a vulnerable defendant at trial, and then to withdraw the intermediary service abruptly on conviction and to send the vulnerable defendant to the cells without access to a replacement communication professional. It is well documented that many prisoners are at their most vulnerable on first entering the custodial setting (Liebling, 2006; McHugh, Towl, & Snow, 2002). This vulnerability must disproportionately affect the defendants who have communication needs requiring intermediary intervention at trial. Many vulnerable defendants are likely to have experienced repeated patterns of change in their lives and are particularly vulnerable to repeated feelings of having been abandoned. Any degree of impaired cognitive functioning or maladaptive personality traits is likely to cause misunderstanding on their part as to why they cannot have continued access to a communication professional. It is essential that they do not internalise the ending of the intermediary service as a further abandonment. Intermediaries should make it a priority to prepare the vulnerable defendant for the ending of the intermediary service.

#### 4.7. Chapter Conclusion

In this chapter three emerging themes from the data have been examined which now may be more correctly identified as developing professional identities; trivialising offender behaviour and emotional attachment and detachment to the offender. Four visual models have been outlined to offer a conceptualisation of how the professional may manage the integration of the developing professional identity of the intermediary. There is however some 'bleed' into the other identified emerging themes as well and it seems likely that the intermediary firstly needs to understand their developing professional identity before examining cognitive dissonance and attachment issues.

One of the difficulties in this chapter has been choosing suitable excerpts from the interview transcripts to illustrate the points being made without taking the points out of context. For example,

the excerpt from Participant 6 used to illustrate cognitive dissonance at the end of section 4.5, if taken out of context, could be very undermining of the intermediary function and could be seized upon by any group lobbying against the use of intermediaries. Instead, it would be more usefully used as a learning point to assist intermediaries to understand their thinking as they engage in this new role.

The following chapter will examine how this thesis has enhanced our understanding of the experiences of intermediaries undertaking defendant cases.

# Chapter 5 – Conclusions

## 5.1. How this research relates to previous research

Previous research has advanced our understanding of how vulnerable persons can communicate evidence to the courts so 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 thesis has extended the knowledge base by evaluating the experiences of those intermediaries tasked with facilitating communication at court with vulnerable defendants. Therefore, this research is novel in both its research methodology using IPA and its research participants. Critically, this research has found that intermediaries need to understand their evolving professional identity and their cognitions in order to provide the non-partisan service that they are required to fulfil. The evidence obtained from this research indicates that 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 intermediaries' 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.

## 5.2. Research findings: main points

The main finding from this research was that intermediaries undertaking defendant cases are still developing a sense of professional identity. They are not attending court in the capacity of an expert

witness testifying from the knowledge they have from their professional training. Rather, they are attending court as an intermediary, a role where it is essential that they have a professional background, but at the same time where they are provided with a new title and given an additional code of conduct and ethics to work with. As noted in Chapter 1 though, intermediaries allocated to defendant cases in England and Wales do not have these codes of practice and receive no additional training in order to work with defendants.

The title 'non-registered' intermediary offers no guidance or structure to the professional undertaking this function. It is at this interface that some confusion has developed and the data collected for this thesis has informed us that intermediaries are trying to understand this complex professional identity as part of their professional reflective practice. Even if the intermediary allocated to a vulnerable defendant gains the recognition of being a Registered Intermediary, as was the case for the participants in this research, they still need support in trying to understand their altered identity whilst at court.

A second finding from this study is that some intermediaries working with defendants appear to have experienced some cognitive dissonance when working with vulnerable persons who have been accused of committing serious crimes. Some intermediaries appear to manage this dissonance by minimising or trivialising the offending behaviour and I have suggested that this may function as a coping mechanism when the intermediary is placed in the stressful environment of the dock. It has also been found that during interviews for this research, intermediaries on occasion appeared to have a mismatch between either their personal beliefs and the professional beliefs required of an intermediary, or indeed between their knowledge of the intermediary function and their actions or omissions whilst undertaking the role.

Thirdly, this research has identified that two individuals have had difficulty with the abrupt endings that occur when a defendant is either jailed or is released from the court after a not-guilty verdict. Having established a relationship with the vulnerable defendant over a number of days, this relationship is abruptly ended. It is recommended that intermediaries prepare themselves and the

defendant for the ending of this relationship and whilst it is acknowledged that it is uncomfortable for the intermediary when the relationship ends, it can be hypothesised that the ending of the relationship for the defendant must be highly distressing once they are convicted and sent to the cells. This would be a very interesting piece of research to determine the coping strategies employed, either adaptive or maladaptive, by the vulnerable defendant post sentence. Additionally analysis of the exit strategies employed by intermediaries could be examined.

I have adopted a qualitative design for this research and therefore throughout the entire research process I have been mindful of always keeping the individual voices of the six participants at the forefront of my thinking. For this reason I have incorporated the voices as a major part of Chapter Three in the main thesis rather than place the voices in the appendices. Whilst I have generated three themes that apply to more than one individual and I have embedded those themes in the academic literature I have been mindful of maintaining the essence of each participant's individual experiences. To lose those individual cognitions and emotions, would, I feel, lessen the impact of the research design and minimise the individual experiences that each participant has reflected on and shared with me. For example, a theme that was unique to Participant Three was *anxiety* and I want to acknowledge that this was a pertinent emotion for this intermediary. When interviewing Participant Five I found it very difficult to reach the affective level, even though I utilised a number of probing questions that I had prepared.

On reflection, I recognise that part of the role and experience of being a researcher is to acknowledge individual differences and to respect each participant's contribution to the research. By including excerpts from Participant Five's account in the main body of the text I am acknowledging that this participant's voice is as important as the other participants. I have also made a conscious attempt to frequently understand this research in terms of vulnerability, a thread that was evident throughout the literature review in Chapter One, and a theme that re-emerged in a different form when interpreting the interpretations of the participants. Intermediaries have their own vulnerabilities when engaging in this new role and proper guidance and support would help to alleviate these feelings, allowing the intermediaries to expend all their energy on the role they are paid to undertake.

Finally in this section, this research has also identified the disempowering nature of being positioned in the dock for the defendant intermediary. If the professional feels disempowered in the dock then there are serious implications for the adversarial criminal justice system if it is found that the dock environment further disempowers vulnerable defendants in their trial when they are innocent until proved guilty. Additional research is needed in this area.

### 5.3. Limitations of this research

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. Whilst IPA has a strength in that it enabled interviews to be taken with a number of intermediaries who had engaged in cases in different courts in England and Wales, it does not allow for the triangulation of findings as the original planned ethnography might have done. For example, if one complete trial had been examined the perspectives of the defendant, lawyers and the judge could be obtained to see if they matched the perception of the intermediary.

The research is also limited in that the six participants in this research were already qualified as Registered Intermediaries prior to undertaking the role of defendant intermediary. This means that intermediaries, who have not undertaken any additional 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.

Non-registered intermediaries may tell a different story, if interviewed, about how they conceptualise their role and it is possible to investigate this as there are a number of communication professionals currently undertaking intermediary duties with vulnerable defendants who have not been trained by the Ministry of Justice. Of course, the level of disadvantage depends on their familiarity with the criminal justice system as they may be professionals regularly undertaking Expert Witness duties at court and who therefore should have an understanding of the requirement to act for the court rather than either party instructing them. However, it is also possible that recent graduates who have skills in

language and communication assessments are undertaking the non-registered intermediary role without sufficient knowledge of the adversarial criminal justice system. The current unregulated system for defendants exposes the intermediary scheme to allegations of poor practice which in turn may reflect on Registered Intermediaries.

A further limitation of this study is that it has examined cases where the vulnerable defendant was either a young person, had learning disabilities or mental health problems but there was no case identified where the vulnerable defendant had a physical disorder such as having a tracheotomy. It is not known if vulnerable persons with a physical communication disorder may invoke similar thoughts and emotions as those expressed by participants in this research.

The data has been analysed using IPA and whilst every effort has been made to bracket my preconceived ideas I must accept that, my interpretation, of participants' interpretations of their experiences, will undoubtedly be prejudiced to some degree by my own core professional training as a forensic psychologist and by my experiences as a defendant intermediary. The research findings may have been made more robust if I had the opportunity to review the material with some of the participants to establish if they agreed with or challenged my interpretations (Fox, Martin, & Green, 2007, p. 156). Of course such a procedure assumes that the participant would welcome such an analysis and I would then have to establish a protocol for writing up any disagreements, much as I would when completing a clinical formulation with a client in the field of psychology. Such a critical analysis can of course take place after the thesis has been submitted and would indeed be welcomed.

#### 5.4. Recommendations for policy and practice

Registered Intermediaries currently receive training for their role as witness intermediaries. They receive no additional training to undertake cases as non-registered intermediaries with defendant cases. 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 Intermediary database but of course the courts can legitimately complain to the Ministry of Justice if malpractice or poor practice is highlighted.

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 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: understanding professional identities; how cognitive dissonance can affect the non-partisan approach; ending relationships. This training would also be relevant to other groups operating in the criminal justice sector such as Appropriate Adults and interpreters.

The current focus of training for Registered Intermediaries is based entirely on legal issues to the exclusion of psychological issues. 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. A full discussion of the complexities of mental disorder, including personality disorders is beyond the scope of this research but it is also recommended that intermediaries allocated to defendant cases are made aware through training of the various personality disorders where manipulative behaviour may be used by the defendant as a means of compromising the integrity of the intermediary. Personality disorder may not always be identified as a presenting condition when a case

is matched to an intermediary and therefore intermediaries without adequate training in mental disorders may be inappropriately matched to some cases.

Some of these research findings have already been incorporated into the training delivered to the new pool of Registered Intermediaries who will operate in Northern Ireland from April 2013. However, to date, these findings have not been acknowledged in the Practice Guidelines for Registered Intermediaries in London, or in Northern Ireland, and it is recommended that an additional section be written for this purpose and included in the guidelines. Whilst it is unlikely that policy and guidance will be made available until the legislation is implemented, it is hoped that policy makers and those responsible for developing training courses will draw on the findings of this research. Policymakers and stakeholders such as the Bar Council should also consider the implications highlighted in these findings about the appropriateness of having untrained intermediaries undertaking defendant cases. Policymakers should also examine the issue of legal privilege and document how it applies to intermediaries undertaking defendant cases. It is not helpful to assume that legal privilege applies to the intermediary function just because one can't envisage an alternative scenario.

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 evaluation of the Northern Ireland scheme should assist with this task to see if the defendant's communication needs throughout the trial are addressed by a third party organisation.

On a practical level there are implications about the resources required to establish a defendant intermediary scheme in England and Wales. The current ad hoc system of locating and funding an intermediary for a defendant case is somewhat of a postcode lottery and does not offer parity of access to all vulnerable defendants. Non-registered intermediaries are unregulated by the Ministry of Justice

and can in theory demand their own terms and conditions although in practice the Legal Service Commission and HM Courts will usually only adhere to the recognised RI terms and conditions. The current system is unfair and causes additional anxiety to those persons undertaking defendant cases as non-registered intermediaries. This heightened level of anxiety was illustrated in one of the participant's accounts in this research. In the case of *Cox* (2012) the trial judge had directed that an intermediary should be made available to support the defendant's communication needs but no suitably qualified intermediary could be found in the required timeframe (Cooper & Wurtzel, 2013, p. 16). This scenario resulted in the court having to make adjustments to the communication at court as if an intermediary were there but to date no-one has assessed the trial transcript to ascertain how successful the lawyers were at simplifying the language and sentence structure used in that trial.

If judges are to request that an intermediary is present throughout the trial then this has enormous resource issues in terms of finding suitably qualified professionals with the availability to undertake the role. Realistically, intermediaries undertaking the role with defendants and attending the whole trial would either have to be self-employed or employed by HM Courts Service as it is unlikely that employers would release professionals for the lengthy periods required at court for trials of serious offences.

Alternatively, if intermediaries are required to attend the trial only when and if the defendant elects to give oral testimony then the trial process needs to be analysed to determine at what point the defendant's communication needs are assessed by the intermediary to avoid last minute assessments being undertaken in the court cells. It is unfeasible to expect HM Courts to be able to locate a suitably qualified intermediary on the evening prior to the defendant giving evidence at court. If such a late referral was made and a suitable intermediary was available such a late matching would undermine the integrity of the scheme in ensuring that the defendant is able to give their best evidence; the intermediary would not have sufficient time to complete a communication assessment and make recommendations to the court based on a full analysis of that assessment. Indeed, it would be preferable as a minimum requirement that the court requests an intermediary assessment of a vulnerable defendant prior to the commencement of the trial and that the court agrees a date when the

defendant is likely to give evidence so that the intermediary can be available. This of course requires strict timetabling by the court which is often problematic.

Finally in this section, a secondary finding from this research has been the problems associated with the communication needs of vulnerable persons in police suspect interviews. Whilst the safeguard of the Appropriate Adult in police interviews is supposed to assist the suspect with communication difficulties, there are clear examples that this may not always be the case and it is clear that Appropriate Adults do not have to be professionals trained in communication issues when appointed to the role. Policy makers in England and Wales need to review the PACE Codes of Practice to see if there is a role for the Registered Intermediary within the police suspect interview, and if so, how this might work in practice with the Appropriate Adult Scheme. Once again, an analysis of the pilot Registered Intermediary scheme in Northern Ireland should assist with this task.

## 5.5. Chapter Conclusion

This chapter has made recommendations as to how the original knowledge gained from this research might be applied to policy and training for defendant intermediaries. Undertaking the role of defendant intermediary appears to place additional pressures on the intermediary and this is especially the case if the intermediary is allocated to assist the defendant's communication throughout the trial, including sitting in the dock and attending all legal meetings with the defendant and the lawyer. There is the potential that such prolonged contact with a defendant may undermine the impartiality of the intermediary and it is essential that policy holders examine this issue as part of any exercise to see how a defendant scheme might be implemented in England and Wales.

It has been suggested that additional training about the psychological processes underlying the defendant intermediary role may address any concerns that policymakers may have about the lengthy period that intermediaries may spend with defendants. It may be the case that fully trained professional intermediaries undertaking this function throughout the trial are better equipped at managing boundaries than volunteers or other support workers. Consideration also needs to be given

to the confusion that may be caused to the vulnerable defendant if too many individuals are allocated to their case as they may not comprehend the subtleties of the different roles.

The aspect of legal privilege as it applies to intermediaries needs to be formally examined and documented to assist intermediaries in understanding their role. It may also assist support workers from other agencies if they are required to undertake communication facilitation with lawyers in the legal meetings that occur frequently throughout lengthy criminal trials. This latter situation is likely to arise if it is decided that intermediaries should only be present when the defendant gives oral evidence.

In Chapter Six I reflect on my experience as a researching practitioner. I identify how I believe that I have achieved ‘doctorateness’ and therefore attained the standard required to be awarded a doctorate degree. I also highlight concerns about the lack of experimental research to date examining how jurors perceive the role of intermediaries.

## Chapter 6 – My journey as a researching professional

The components of ‘doctorateness’ have been identified and explored (Trafford & Leshem, 2008, p. 38). They have argued that doctorateness can only be achieved when a number of component parts are synergised. These identified components appear to have been utilised to write the learning outcomes for my own doctoral programme and from the outset of this research I have sought to meet these outcomes. Having listed these learning outcomes I will then provide additional examples of how I have met them through my reflections on the entire period of doctorate studies.

### Learning Outcomes – Doctorate in Criminal Justice (DCrimJ)

- 1) Create and interpret new knowledge, through original research or other advanced scholarship, of a quality to satisfy peer review, extend the forefront of the discipline, and merit publication.
- 2) Demonstrate the systematic acquisition and understanding of a substantial body of knowledge which is at the forefront of academic research or professional practice in criminal justice.
- 3) Critically evaluate current assumptions in criminal justice and accepted practice with my own area of professional practice.
- 4) Conceptualise, design and implement a project for the generation of new knowledge, applications or understanding at the forefront of criminal justice.
- 5) Provide innovative and authoritative solutions to unforeseen problems and adjust the project design where appropriate.
- 6) To use a range of applicable techniques for research and advanced academic enquiry.
- 7) To communicate my ideas and conclusions clearly and effectively to a specialist audience of practitioners and academics.

Throughout this research I have been monitoring my roles as a researcher and a practitioner Registered Intermediary and reflecting how interdependent the two functions are. Additionally I have identified that my own professional identity is complicated by having a previous career as a police officer and by the fact that I take instructions as an Expert Witness for the criminal courts. When

undertaking the intermediary role I need to have an awareness of the cognitions associated with these roles as they may enhance or jeopardise my professionalism as an intermediary if I do not unpack them. For example, drawing on my experience as an Expert Witness reinforces my duty to the court and not to the instructing party. My background in policing has left me with a familiarity with the police family which may be interpreted as collusion if I am acting as an intermediary for the prosecution, but alternatively may act as a safeguard to promoting impartiality when I work as a defendant intermediary.

I have also recognised on a frequent basis that my professional training as a forensic psychologist has strongly influenced how I have historically viewed research and indeed on how it may have influenced my analysis in this research in spite of the reflective practice that I have engaged in throughout this research. In the early stages of this professional doctorate I learnt that I was strongly influenced by positivism and that such a research philosophy was admired and indeed frequently demanded in the field of psychology. Positivism is a research philosophy that relies on the claim that variables can be measured and manipulated to produce results that can be tested for validity and reliability (Hammersley & Atkinson, 2007, p. 5). I began to recognise that psychologists frequently sought to find answers that provided the “truth” to a research question.

Whilst acknowledging that some research questions are more amenable to finding such a truth I believed that a qualitative approach would suit the exploratory nature of my research and I made the decision at an early stage that I would argue the case that people’s voices were of the utmost importance in my research and that these voices may be lost if I were to adopt a statistically based empirical research design that would seek to appease mainstream academic psychologists and the peer reviewed academic journals that seek to publish such studies. In making this decision I had to accept that I would have to present a strong case to examiners as to why I had chosen a methodology that was relatively new in the field of psychology, particularly so in the forensic field. Part of the challenge for me as a researching professional was to explore if Interpretative Phenomenological Analysis could successfully be applied in the field of forensic psychology. Significantly, whilst this research doctorate is undertaken in the domain of Criminal Justice, my professional training and that

of my First Supervisor, Workplace Supervisor and External Examiner is in the field of psychology. It was extremely important to have a second supervisor with a different professional background and expertise in qualitative methodologies as applied to the broader criminal justice field to anchor this research study in the broader criminal justice field.

As I drew closer to completing this research I have returned to my reflections about the responsibilities that I have as a researcher in making my research data available in the public domain (Fox et al., 2007, p. 155). I have reflected on whether I have connected the voices of the participants back into the historic and economic situations in which they operate and I have also considered the political and economic environment in which intermediaries operate. I have considered the fact that these research findings could be used to restrict the advancement of progress in the area of providing communication support to vulnerable defendants. Policy makers should consider ways of enhancing the training and support and registration of suitably qualified professionals to undertake the facilitation of communication with vulnerable defendants and not view the issues of identity confusion and cognitive dissonance as a reason not to strive to deliver a service to vulnerable defendants.

Whilst gathering data for this research I was also gaining more experience as an intermediary taking on vulnerable defendant cases. I had already been engaging as a reflective practitioner throughout my own practitioner experiences. I had undertaken one case at the Crown Court where two vulnerable defendants were on trial for murder. I attended the trial solely to facilitate communication whilst they provided oral testimony. Nonetheless, having built rapport with them and having assessed each of their communication needs I was aware of a mixture of my emotions when I was informed that both defendants had been convicted of murder and sentenced to life imprisonment. I realised the importance of my role as an intermediary in giving the vulnerable defendant the opportunity to state their case. I also wondered how the vulnerable defendants would cope with imprisonment but ultimately I felt that I had played a crucial role in the criminal justice system in ensuring that the justice process was fair to the defendants. I can empathise with the participants who describe what appears to be a sense of loss when the defendant that they have been in close proximity is suddenly

convicted and whisked off to the cells in the court. I too have felt that sense of detachment and I feel that intermediaries who accept defendant cases should be aware of this particular emotion and prepare for it.

In another defendant case I had stood in the dock with the defendant throughout a trial where he had been charged with the offence of rape. On a daily basis I reflected on my non-partisan role and I genuinely did not form any opinion as to whether the evidence was enough to convict him. I did find it difficult “to be seen” as non-partisan by the other professionals at the court and I made it my business to engage in conversation with the police officers and the CPS in order to demonstrate that I was not working for the defence but rather that I was an officer of the court. Nevertheless I was also aware that the longer I spent with the defendant, the less I was able to depersonalise him, and I continually reflected on this delicate relationship of being impartial and yet supporting the communication needs of the vulnerable person. When the “not-guilty” verdict was announced I felt uncomfortable when he thanked me for my help and I reflected on my mixed feelings of being grateful that my assistance had been acknowledged, whilst at the same time wishing that his display of appreciation did not undermine my neutrality. Similar issues have been raised in the data that I have collected and analysed and I have incorporated my research findings into my professional practice reflections as I have progressed through the journey. Ultimately, this is how a professional doctorate impacts on professional practice.

The issues involved here are complex and I am highlighting them and continue to reflect on them. The role of the intermediary is an impartial one and yet it is fulfilled by professionals from the caring professionals. This was brought home to me after I had collected the data for this research and I was attending court with another vulnerable defendant. At this point in time I was able to reflect on the research data that I had collected and I was already aware of the cognitions and affect that had been shared with me by the research participants. I had always considered that neutrality was fundamental to the intermediary role and yet I found myself at court which placed me in a dilemma where I reflected on my code of practice as an intermediary and my code of practice as a psychologist and I came to the conclusion that on occasions they may make different demands on me as a practitioner.

The issue that arose was that the vulnerable defendant with learning disabilities had attended court at the correct time on the first day of his trial. Having assessed him previously I was aware that he used alcohol as a maladaptive coping mechanism. I attempted to locate counsel for the case and I was advised that the trial had been postponed until after lunch.

In these circumstances I was aware that my duty as an intermediary was to avoid the vulnerable defendant as there should always be a third person present with me. However, he was vulnerable, had no accompanying adult with him, and in my opinion may well have turned to maladaptive coping strategies if the trial had not commenced as he had been informed. I also witnessed that he had difficulties with operating a coffee machine within the court building. The intermediary is not a support worker and I know that. However, ethically, I considered that it would be wrong as a psychologist to abandon this vulnerable person in these circumstances and so I discussed the situation with him, advising him that we would not discuss the court case but that we would use the opportunity to establish rapport and for me to continually assess his communication needs. This particular trial lasted eight days and I spent that time in the dock with the defendant. I also sat next to the defendant when he gave his testimony from a live-link room and I facilitated communication between him and the court. The defendant was convicted of a number of serious sexual offences against children. I was in the dock when the judge remanded him into custody and I was asked to assist the court custody staff to book the prisoner in. At the time I was reflecting on the situation that was developing in front of me. Once again I considered how this vulnerable person would cope with imprisonment.

I continue to reflect on these issues as I try to gain a sense of my involvement as a practitioner within the criminal justice system. I trained as a police officer and spent 10 years approximately in that capacity. I then spent a further year as an investigating officer on a major investigation team in which I was assigned to cases of serious sexual assaults and murders. My objectives in those days were clearly to locate offenders and put them before the courts. Subsequently I trained as a forensic psychologist in a medium secure hospital where some patients with learning disabilities had been detained under the Mental Health Act 1983 for serious offending behaviours. During my training I engaged in individual and group work interventions with these offenders and I began to reflect upon

their vulnerabilities as well as their offending behaviours. I consider that I currently have a balanced view in that offenders need rehabilitation but that their communication needs must be facilitated and treatment programmes adapted if they are placed in custody.

As part of my training as a psychologist I learnt about how offenders might minimise, justify or deny their offending behaviour through the use of cognitive distortions. Indeed any one can use distorted thinking as a means of justifying behaviour. For example, if I was watching my weight I might justify chocolate by telling myself “it’s ok, you have had a difficult day.” When analysing the data for this research I was initially surprised that some professionals trained to be intermediaries would seem to be minimising the offending behaviour of defendants appearing at court. However, on reflection it makes complete sense as a means of coping in a new environment and working with an individual who presents as highly vulnerable, that it is actually cognitive dissonance, rather than cognitive distortion that is taking place. I think that where I differ from other intermediaries is that I have a background in criminal justice both as a police officer and as psychologist who regular works with offenders and completes risk assessments. On reflection it has been extremely difficult to bracket some of my previous work history when conducting the data analysis and I can see that my role in the treatment of offenders as a psychologist has raised issues in my data analysis which are couched in terms of forensic psychology and would not be identified by a researcher from a different professional background. Having identified this fact I then have to evaluate whether that has impacted negatively on the findings of this research and I have concluded that it hasn’t. Critically, I am not attempting to persuade anyone that I have found the ‘truth’ in my data analysis. Instead, I have found ‘a truth’ with which other researchers can comment on. This truth has inevitably been shaped to some extent by my experiences and it is critical that I acknowledge this. Importantly, although I have identified some emerging themes from the data, I am adamant that each of the individual participant’s experiences must be viewed in isolation as well and that is the whole purpose for choosing IPA as the methodology.

One of the most rewarding aspects of my doctoral study has been the recognition of the wider issues in this field of study that require critical evaluation through empirical research and this reinforces that

the positivist approach to research also has its place. For example, my review of the academic literature has revealed that the intermediary scheme is in place without, in my opinion, any critical evaluation of how jurors perceive the role of the intermediary. I have found no literature to suggest that any such research has been conducted and indeed as a direct result of my doctoral research and the dissemination of my academic papers, I have recently (March 2013) been invited to collaborate with Professor Amina Memon at Royal Holloway University and Professor Penny Cooper at Kingston University in writing a proposal for a research grant to enable research to take place on this issue with mock jurors. I have reflected on whether members of the jury may perceive a defendant differently depending on whether they stand alone in the dock or have an intermediary sat beside them throughout the trial and these are the proposed experimental conditions that will hopefully be tested in future research.

Throughout this period of research I have been considering whether the intermediary should be present throughout the trial, and therefore be seated in the dock with the vulnerable person, or whether the intermediary should solely act as a facilitator of communication, should the defendant elect to give evidence at trial. It would seem easier to maintain a neutral position as an intermediary if the role is restricted primarily to the assessment of communication needs and the facilitation of communication at court if the defendant elects to give evidence. Indeed this is the position being adopted in Northern Ireland for a trial period commencing in April 2013 and it is also what is proposed by the legislation (s104 CJA 2009) yet to be implemented in England and Wales. On reflection, however aware the intermediary is of the need to remain non-partisan, it seems that some form of supportive relationship is more likely to develop if the intermediary is with the defendant throughout a trial and I have to acknowledge that there is a risk that this might impede the non-partisan role of the intermediary. There is a counter position to be argued in that the vulnerable person with communication difficulties is likely to have problems instructing counsel throughout the trial in the absence of an intermediary. However, as is the case in Northern Ireland, it is possible that another agency can fulfil this role, at least to a certain extent, such as Mindwise's *Linked In* Project (Personal Communication, Norma Dempster, January 2013; Department of Justice).

On reflection, when I commenced this professional doctorate I had not fully considered why I was embarking on the journey. I had read books about the process of studying for a PhD or a professional doctorate (Phillips & Pugh, 2005; D. Scott, Brown, Lunt, & Thorne, 2004) I knew that I wanted to advance my academic knowledge and that the intermediary role was ripe for examination and analysis. However, as I have progressed through the doctorate I have begun to realise that engaging in the process itself was as important to me as the ultimate goal in obtaining a doctorate. I have taken the opportunity to read widely around the subject of vulnerability as it applies to vulnerable persons participating in the criminal justice system. This reading has embraced witnesses and victims and not solely defendants and I have begun to explore additional issues such as vulnerability in police suspect interviews. Although I have focused on intermediaries undertaking vulnerable defendant cases at court in this research, the journey has enabled me to take a much broader view of vulnerability at all stages of the criminal justice system for both victims and suspects. Therefore, the process of participating in this doctorate has enabled me to gain confidence in researching wider issues, writing academic papers for peer review and in presenting related papers at conferences in the UK and abroad (Murray, 2005). One recent example of this is the peer reviewed paper where we discuss the limited availability of academic knowledge about how investigators can best challenge suspect accounts in investigative interviews (O'Mahony, Milne, & Grant, 2012). This paper has already been read by senior staff at ACPO level and arrangements made to address the issues within, and this demonstrates that I have reached the level of 'doctorateness' by extending the forefront of the discipline. Additionally, as a result of such dissemination I have been invited to train police officers, lawyers and intermediaries and this enables me to take my knowledge back to the practitioners in the field (See, for example, Appendix 8). Ultimately, this recognition is as rewarding as achieving a doctorate. Additionally, as a result of a peer reviewed journal article, I was invited to McGill University in Montreal to discuss my role as an intermediary.

One component of doctorateness as outlined at the beginning of this chapter was the creation and interpretation of new knowledge. I have achieved the fundamental criteria in doctorateness by identifying how professionals who enter the criminal justice system as intermediaries conceptualise

their function and identity. The criminal justice system makes the assumption that the intermediary from a caring profession can maintain an impartial position when working on a defendant case. There is an assumption that the intermediary in these circumstances is subject to legal privilege, but there is no policy or ethical guidelines on this assumption. I have reflected on the inevitability that the intermediary may be bound by their professional code of conduct (in my case as a psychologist) to have a contrary view to a legal professional about information that must remain privileged, for example issues of self-harming that custody staff should be made aware of.

Finally, vulnerability has been a key theme throughout my research and I want to end on that theme. I have found that intermediaries (and I include myself in this category) can feel vulnerable themselves as they gain the skills and knowledge to fulfil their role in the criminal justice sector. As I have been writing up this thesis I was assigned to a case with a vulnerable defendant who had significant communication and emotional difficulties. As a direct result of my research I felt more confident in my role as a practitioner in court. In this particular case I can draw an analogy about vulnerable defendants, inexperienced intermediaries, and developing researchers. I again return to my core practice as a psychologist when I identify the theory of ‘scaffolding’ and the interaction between mother and child as the child learns to develop their skills through stepping outside their comfort zone (Newson & Newson, 1977). I observed such behaviour with the vulnerable defendant in this recent case when the defendant didn’t initially inform the court about her misunderstanding of complex questions but who appeared to gain confidence by observing me informing the judge when communication difficulties arose. After some time, the defendant appeared to gain confidence and mirrored my behaviour by informing the court herself when she did not understand a question. This process of stepping outside one’s comfort zone is a natural process for the new intermediary and the developing researcher. In my case I have developed as a researcher through supervision. On reflection I have acknowledged my own vulnerability by choosing a research methodology which has stretched my learning, whilst at the same time causing me concern at times when issues did not fit my schema of how research should be undertaken and written up (from a positivist perspective). A good example of this learning was the realisation that the issues that were identified by participants required

me to engage in a fresh literature review to embed the findings in psychological literature. As a forensic psychologist who is used to writing papers in a set format this was a steep learning curve as I would normally form an experimental hypothesis based on one set of psychological literature and I would not have to examine a second (different) body of literature afterwards.

The final part of my doctorate journey will be to defend my thesis in the viva voce and I am looking forward to the opportunity to discuss how my research has enhanced the criminal justice sector's understanding of the intermediary role in England and Wales when the intermediary is allocated a defendant case. Of course, the first stage of this examination process has been the writing up of the thesis and I think that an essential piece of advice for me has been to focus on the viva from the outset (Murray, 2006; Trafford & Leshem, 2008). On successfully defending my thesis I will then continue to engage in my profession as a researching practitioner and I am excited about embracing new research projects such as the empirical study about juror perceptions highlighted earlier in this chapter.

# Appendix 1

Trial or Tribulation?-

The role of the Registered Intermediary in supporting the communication needs of the vulnerable defendant at trial.



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26<sup>th</sup> January 2010

## Participant Information Sheet – Research

You are being invited to participate in a research project which forms part of the requirement for the award of my professional doctorate; I am writing to you in my capacity as a **student/researcher** rather than in my capacity as a psychologist or Registered Intermediary. **You are under no obligation to participate** and your choice will have no impact, either positive or negative, on any working relationship we may have.

Before you decide to participate it is important for you to understand why the research is being done and what it will involve. I am planning to collect data (which will be **anonymised**) relating to the experiences of all relevant parties when a Registered Intermediary has been allocated to a vulnerable defendant who is due to appear (or has appeared) at a criminal trial. This would include interviewing anyone who **provides informed consent** and ideally may include the:

- Vulnerable defendant
- Registered Intermediary
- Defence solicitor
- Defence barrister

- Crown Prosecution barrister
- Judge
- Magistrate
- Police
- Probation

**Consent can be withdrawn at any time during the research up until the point that I have collected the data and began the analysis.** It is intended that the findings of this research can be used to improve the experience for all parties involved in cases involving vulnerable defendants. Ideally, I would like to observe all meetings both prior to, during, and after the criminal trial including assessment and legal privilege meetings. However, I fully understand that some parties in the proceedings may feel uncomfortable with the presence of a researcher in the room on some occasions.

I have received ethics approval from the University of Portsmouth to conduct this research. I will retain and securely store raw data until it has been analysed and the doctorate awarded. I will destroy raw data at that point.

My research is being supervised by Dr Becky Milne ([becky.milne@port.ac.uk](mailto:becky.milne@port.ac.uk))

You can contact me or Becky at anytime if you have any questions about this research.

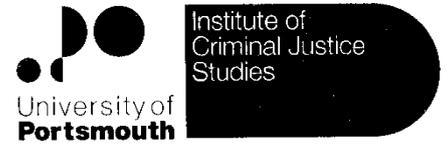
Thank you

**Brendan O'Mahony- Doctoral student ([icj70747@myport.ac.uk](mailto:icj70747@myport.ac.uk))**

# Appendix 2

Trial or Tribulation?-

The role of the Registered Intermediary in supporting the communication needs of the vulnerable defendant at trial.



26<sup>th</sup> January 2010

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## Consent Form

1) I confirm that I have read and understood the information sheet dated 26<sup>th</sup> January 2010 for the above study. I have had the opportunity to consider the information, ask questions and have had these answered satisfactorily.

Please initial here if you agree with this statement.....

2) I understand that my participation is voluntary and that I am free to withdraw at any time, without giving any reason.

Please initial here if you agree with this statement.....

3) I agree to audio recording of interviews and the use of verbatim quotes.

Please initial here if you agree with this statement.....

4) I agree to take part in the above study.

-----	-----	-----
Name of participant	Date	Signature
-----	-----	-----
Name of parent / guardian	Date	Signature
-----	-----	-----
Name of researcher	Date	Signature

## Appendix 3

Semi-structured Interview Schedule

Registered Intermediary

### **Prior to audio-recording:**

Defendant charged with:

Date of Trial:

Court:

Defendant Communication difficulties:

Defendant age:

RI Professional background:

Number of years practising:

Number of years as an RI:

Number of witness cases undertaken:

Number of defendant cases undertaken:

I am interested in YOU and YOUR experiences. Please feel free to share your thoughts and feelings about issues as you talk. There are no right or wrong answers. I may actually say very little during the interview as you get used to sharing your experience with me.

You can take your time in thinking and talking.

Can you tell me all about the recent case when you acted as an intermediary for the defendant?

#### PROMPTS

Can you tell me a bit more about that?

What do you mean by?

How did that make you feel?

Can you tell me more about your experience of sitting in the dock with the defendant? If you are comfortable in sharing, it would be helpful to know about your thoughts and feelings at the time.

Can you tell me about your experience of facilitating questions and answers during examination of evidence?

Can you tell me anything else about your experience of assessing the defendant prior to the trial?

Can you tell me anything else about the Ground Rules meeting at the court?

Having acted as an intermediary in this case, what aspects of the whole experience could be changed to make the experience better for all parties concerned in the hearing?

How do you think the defendant would have managed the experience if an intermediary was not available at the trial?

General notes taken from Smith, J.A. et al (2009). Interpretative Phenomenological Analysis: Theory, Method and Research. (p 68)

Move from descriptive to affective

From general to specific

From superficial to the disclosing

Going deeper questions:

Why?

How?

Can you tell me more about that?

Tell me what you were thinking?

How did you feel?

## Appendix 4

Professional Backgrounds of Registered Intermediaries who were *active*\* on 15.03.11

(Personal communication from Jason Connolly, Ministry of Justice, 31.03.11)

<b>Profession</b>	<b>Number on Registered Intermediary Register</b>
Psychologists	15
Occupation Therapists	8
Social Workers	0
Education Background	10
Speech and language Therapists	75
Nursing / Health	2
Other	6
<b>Total</b>	<b>116</b>

\*active means that the intermediary was actually available to take a case on that date and was not on leave

## Appendix 5

### Participant Demographics

<b>Participant</b>	<b>Gender</b>	<b>Profession</b>	<b>Number of years working as a Registered Intermediary</b>	<b>Number of witness cases undertaken</b>	<b>Number of defence cases undertaken</b>
<b>P1</b> Interview 1	*Noted but not reported	SLT**	3	20	This was first case
<b>P2</b> Interview 1	Noted but not reported	SLT	>5	40	This was first case
<b>P3</b> Interview 1	Noted but not reported	SLT	3	45	4
<b>P4</b> Interview 1 & 2	Noted but not reported	SLT	4	>50	These are first two cases
<b>P5</b> Interview 1	Noted but not reported	SLT	>5	>50	2
<b>P6</b> Interview 1	Noted but not reported	Other	>5	>50	This was first case

\*Gender of each participant was noted but not reported here to protect confidentiality

\*\*SLT = Speech and Language Therapist

## Appendix 6 – Case Details

	<b>Defendant's age</b>	<b>Court type</b>	<b>Defendant's offence type</b>	<b>Defendant's Communication difficulty</b>	<b>Interview duration and transcript word count</b>
<b>P1</b>	21	Youth	Sexual	Comprehension & intelligibility	75 minutes (12, 318 words)
<b>P2</b>	18	Crown	Murder	ADHD, Conduct disorder & LD	63 minutes (12, 158 words)
<b>P3</b>	17	Youth	Assault & Criminal Damage	LD & ADHD	71 minutes (10,012 words)
<b>P4</b> Interview 1	38	Crown	Sexual	LD	46 minutes (7218 words)
<b>P4</b> Interview 2	18	Crown	Sexual	LD	63 minutes (10,156 words)
<b>P5</b>	30	Crown	Sexual	LD	49 minutes (8383 words)
<b>P6</b>	22	Crown	Sexual	Mental Health	50 minutes (8552 words)

Total time of audio recordings: 7 hours

Total words transcribed: 68, 797

## Appendix 7

Document	Paragraph	Title	Creation date	Memo text
Int.RI	103	Memo 1	09/08/2010 16:10:00	Perhaps I shouldn't have fed the word "scared" back here!
Int.RI	107	Memo 2	09/08/2010 16:11:00	Is this a leading question? "Impact"
Int.RI	145	Memo 3	09/08/2010 16:14:00	Rather wordy question!
Int.RI	175	Memo 4	09/08/2010 16:16:00	Asking 2 different things here!
Int.RI	181	Memo 5	09/08/2010 16:17:00	again a really wordy attempt at a question!
Int.RI	189	Memo 6	09/08/2010 16:18:00	why did I say "we've got to leave that now". It is not really my place is it?
Int.RI	280	Memo 7	09/08/2010 16:33:00	"whatever my advice was at that time"
Int.RI	311	Memo 8	14/08/2010 18:48:00	assumption made by interviewer that dock was at the rear of the court
Int.RI	393	Memo 9	14/08/2010 18:55:00	a little too wordy Brendan!
Int.RI	421	Memo 10	14/08/2010 18:57:00	good probing
Int.RI	76	Memo 11	14/08/2010 20:01:00	initially thought this statement was about a personal journey but it is to do with travel to destination!
Int.RI	216	Memo 12	14/08/2010 20:11:00	or does she mean, "how I was going to cope with that?"
Int.RI	1	Memo 13	16/08/2010 18:23:00	Prior to commencing the audio recorded interview I felt that some time was required to establish rapport with the interviewee. The interviewee appeared hesitant about the rules of confidentiality and what she could discuss with me.
Int.RI	4	Memo 14	16/08/2010 18:24:00	Contrast this message with the message at the end of the interview. Was there a clear offence in the eyes of the interviewee?
Int.RI	8	Memo 15	16/08/2010 18:25:00	I wonder why the hesitancy to state this fact?
Int.RI	72	Memo 16	16/08/2010 18:29:00	So, it appears that the questions (anxieties?) relate to attending court for either witnesses or defendants as opposed to defendant cases alone
Int.RI	82	Memo 17	16/08/2010 18:30:00	Why did she need to feel respectable on this occasion? Was it to gain self-confidence in attending a solicitor's office? Were there self-esteem issues going on here?
Int.RI	84	Memo 18	16/08/2010 18:32:00	Reflections on self-identity in the community; making judgements about appearances. Them and me; I'm different, dressed nicely. How does this affect the performance of an intermediary?
Int.RI	90	Memo 19	16/08/2010 18:34:00	so, ambiguity about the role of an intermediary in a defence case. Having accepted the case, is it right that the intermediary is unsure of their role?
Int.RI	106	Memo 20	16/08/2010 18:36:00	feeling like a fish out of water...why?
Int.RI	108	Memo 21	16/08/2010 18:36:00	this perhaps insinuates a multi-cultural environment...link to crime?
Int.RI	124	Memo 22	16/08/2010 18:40:00	seems to be level of surprise at the value placed on the intermediary at the solicitor's office "hang onto absolutely everything I said". Does this intimidate the intermediary. Make her feel more unsure of herself?
Int.RI	146	Memo 23	16/08/2010 18:42:00	does this satisfy the need for professional development? The SLT now has to investigate the VP herself and formulate a

				diagnosis
Int.RI	152	Memo 24	16/08/2010 18:43:00	why was this a recurrent theme?
Int.RI	178	Memo 25	16/08/2010 18:46:00	dilemma in resolving the conflict between the assessed needs of the VP and the directions set out by the Ministry of Justice Better Trials Unit
Int.RI	182	Memo 26	16/08/2010 18:47:00	What is being said here? Why is there a difference between writing about the needs of a witness or a defendant? Is this purely about the extra needs in the dock, or is it a thought that dealing with tag questions should be different for witnesses and suspects?
Int.RI	200	Memo 27	16/08/2010 18:49:00	why the need to avoid making the VP's needs explicit in the written report?
Int.RI	208	Memo 28	16/08/2010 18:51:00	ah, but this would be no different with a witness! What is the interviewee holding back on with the defendant case?
Int.RI	212	Memo 29	16/08/2010 18:52:00	Really, if interviewee was happy stating this, why didn't she?
Int.RI	214	Memo 30	16/08/2010 18:52:00	Now this is interesting. It seems to be more of a case of not knowing how the system works and not understanding the role and needs of a defendant in the dock. If this is the case how can an inexperienced intermediary provide the necessary input?
Int.RI	216	Memo 31	16/08/2010 18:53:00	maybe "difficult to know how I was going to cope with that"
Int.RI	224	Memo 32	16/08/2010 18:54:00	why clumsily? self-deprecating?
Int.RI	246	Memo 33	16/08/2010 18:56:00	surprise at the inefficiency of the criminal justice system
Int.RI	248	Memo 34	16/08/2010 18:57:00	right, a huge responsibility. Self-doubt?
Int.RI	278	Memo 35	16/08/2010 18:59:00	key role in developing skills. The written report alone does not suffice!
Int.RI	282	Memo 36	16/08/2010 18:59:00	key skills development outside of the court room.
Int.RI	310	Memo 37	16/08/2010 19:02:00	why would this have been inappropriate? What did the RI fear happening?
Int.RI	372	Memo 38	16/08/2010 19:06:00	is there an underlying feeling of abandonment here on the part of the intermediary? "He's not interested in me anymore?" "How can he cope now when he has needed me up until now?"
Int.RI	374	Memo 39	16/08/2010 19:07:00	surely it was down to the intermediary to intervene when necessary?
Int.RI	378	Memo 40	16/08/2010 19:08:00	How could the intermediary see the defendant if she was stood behind him?
Int.RI	404	Memo 41	16/08/2010 19:10:00	so why was an intermediary required?
Int.RI	418	Memo 42	16/08/2010 19:11:00	monitoring role. this is interesting. Would the barristers have acted differently in the absence of the intermediary?
Int.RI	422	Memo 43	16/08/2010 19:12:00	need to examine this statement in great detail. Needs unpacking. It seems that it is very difficult for the intermediary to focus specifically on the communication aspect; a temptation to intervene to bring the defendant back to his story. How does this make the intermediary feel? Knowing the person is vulnerable, and yet having to remain impartial as an intermediary?
Int.RI	432	Memo 44	16/08/2010 19:15:00	communication skills going awry or his story going awry....?
Int.RI	455	Memo 45	16/08/2010 19:16:00	talked about this prior to audio recording as a means of settling the interviewee down when she gave me a broad overview of what she might be talking about
Int.RI	474	Memo 46	16/08/2010 19:18:00	identity at this table? Do I belong here?

Int.RI	522	Memo 47	16/08/2010 19:20:00	could this go awry? Is the RI qualified to simplify this legal discourse without changing its meaning?
Int.RI	544	Memo 48	16/08/2010 19:22:00	reflection on this subject matter does seem to invoke some hesitancy
Int.RI	546	Memo 49	16/08/2010 19:23:00	I HOPE I would still remain professional.... could the intermediary remain detached in a defendant case where the intermediary may be sat throughout the whole trial> This seems to be a very different scenario to a witness case.
Int.RI	556	Memo 50	16/08/2010 19:25:00	yes, so this may make a case with a serious sexual offence much more difficult to manage wouldn't it?
Int.RI	560	Memo 51	16/08/2010 19:26:00	interesting use of "we". Does this include the "impartial" intermediary?
Int.RI	564	Memo 52	16/08/2010 19:27:00	temptation to become involved outside the arena of the intermediary role. How does one refrain from getting caught up in this?
Int.RI	568	Memo 53	17/08/2010 21:08:00	as the "mere intermediary". Is this how the intermediary perceives her value within the criminal justice system?
Int.RI	591	Memo 54	17/08/2010 21:11:00	the mobile phone rang...
Int.RI	610	Memo 55	17/08/2010 21:12:00	it's difficult to know how valuable the intermediary could have been at the PSR interview if the intermediary does not understand what goes on in such an interview
Int.RI	624	Memo 56	17/08/2010 21:14:00	emphasis on extremely useful. Is this to gain confidence? Should mentoring being compulsory?
Int.RI	634	Memo 57	17/08/2010 21:16:00	learnt about working in court.....why was this so crucial for this individual?
Int.RI	646	Memo 58	17/08/2010 21:17:00	the interview had ended at this point. The interviewee then began to chat freely about issues that I thought ought to be captured on audio recording. She agreed that I could resume recording to pick up the point on impartiality. Immediately I observed that as soon as the audio recording re-commenced that the interviewee became less forthright in discussing impartiality.
Int.RI	659	Memo 59	17/08/2010 21:20:00	personal reflection on the role of the intermediary. Perhaps the intermediary is feeling partly to blame for being party to a trial where a troubled VP is convicted. Would she rather not be part of this system now that she knows what is involved and how one magistrate can change the path of a person's life?
Int.RI	663	Memo 60	17/08/2010 21:22:00	This speaks volumes about the intermediary's view of a criminal justice system where one person, the district judge, can convict a VP.
Int.RI	677	Memo 61	17/08/2010 21:24:00	seems like the intermediary has made a judgement. It was ridiculous to take this VP to trial for such a minor offence.

## Appendix 8

**TITLE:** Supporting the communication needs of vulnerable defendants

**DATE:** Tuesday 12 March 2013

**VENUE:** Lecture Hall, Law Society House, Belfast

### **DESCRIPTION:**

A range of initiatives are currently being developed and delivered to ensure that the basic rights of suspects and accused persons are protected sufficiently. A strand of this package is the development of special safeguards to protect those suspects and accused persons who are vulnerable. One such safeguard is the provision of intermediaries to assist vulnerable persons who have communication difficulties.

### **Intermediary assistance for vulnerable suspects and defendants**

In order to safeguard the fairness of proceedings, it is important that special attention is shown to suspected or accused persons who cannot participate effectively in proceedings as a witness, giving oral evidence in court owing to, for example, their age, mental health issue or learning disability.

Intermediaries, who are communication experts such as speech and language therapists and social workers, assess a vulnerable person's communication needs and provide a report for court. This report contains detailed recommendations for advocates and the judge on what to say and do when communicating with the vulnerable defendant. As well as recommendations on how questions should be put to the defendant, the intermediary may make other recommendations, which the judge can order given his inherent jurisdiction, on adjustments to the court process to assist the defendant to effectively participate in the trial.

In advance of the Registered Intermediaries Schemes pilot for vulnerable defendants and witnesses, which will commence in the Crown Court sitting in Belfast in April 2013, Brendan O'Mahony, a Forensic Psychologist and Registered Intermediary at CJS Psychology, will give a presentation on his extensive experience in England on the use of intermediaries for defendants. The Recorder of Belfast, His Honour Judge McFarland, has kindly agreed to chair this event.

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