

# **NDA Independent Advice Paper on the use of intermediaries in the Irish justice system**

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National Disability Authority

## **Executive Summary**

This paper sets out the National Disability Authority's advice towards implementing a model of supports for persons with disabilities who have communication difficulties, building on research and practice in other jurisdictions, and also further to discussion with a wide range of stakeholders in the Irish justice system.

The proposed approach would enable the provision of accommodation to people who may have communication difficulties affecting their ability to give evidence and to communicate with officials at different stages of the Irish justice system. Such barriers need to be addressed to enable Ireland to comply with duties in the UN Convention on the Rights of Persons with Disabilities (UNCRPD) to ensure persons with disabilities can access the justice system. The NDA advises that this accommodation could be best delivered through the use of intermediaries, where the scope and application of same would be set out in an agreed programme and procedures.

The primary goal of the proposed approach is to enable the justice system to secure the best evidence possible from people who may have communication difficulties through the use of registered intermediaries, while also affording them the right to do so, and to be treated as equal citizens. If victims of crime are not able to be interviewed, or give a full and accurate account of events, it can make it more difficult to investigate crimes and manage cases in court. If an individual accused of a crime is not supported to give their version of events, a miscarriage of justice may take place. In some instances, criminal behaviour may go unchallenged or the rights of the accused may not be fully upheld – neither scenario is appropriate in a modern justice system.

The proposed policy approach has regard to existing legislation, policy and practice, and the gaps that exist in those for all people with communication difficulties, be they victims of crime, witnesses or accused persons. It also has regard to evidence of intermediary practice, benefits of same and the further duties on the State arising from the UNCRPD which it has signed and ratified. The Convention reinforces the provisions of the International Covenant on Civil & Political Rights (ICCPR) and the European Convention on Human Rights (ECHR).

The NDA advises that, based on feedback at a round-table hosted by the NDA in 2019, the proposed policy approach is likely to be widely supported by the various stakeholders in the justice system who would encounter such a service. At that event, representatives from An Garda Síochána, the Law Society, the Bar Council, the Courts Service, the judiciary, the Office of the Director of Public Prosecutions and the University of Limerick agreed that the use of intermediaries

is critical to ensuring equal access to justice for persons with disabilities and/or communication difficulties.

A registered intermediary is a professional with specialist skills in communication, coming from backgrounds such as speech and language therapy and social work. In other jurisdictions, their role is to facilitate communication during the police investigation and at trial between a person with significant communication deficits (which may be on account of a disability, age or other factor) and others in the justice system, and that is the role the NDA advises they could hold in this jurisdiction. The intermediaries would be recruited through a public campaign, and placed on a central register for ease of access.

In order to promote and regulate the use of intermediaries, and based on evidence from Northern Ireland and other jurisdictions, the NDA advises that a Registered Intermediary Scheme be piloted in the Irish criminal justice system in the first instance, before being implemented on a national scale. This method would allow for the identification of difficulties and solutions, and also refinements and improvements to be identified to support a wider rollout. The pilot project could be implemented, monitored and evaluated by a steering group, on which representatives of key stakeholders could sit.

The NDA advises that, based on evidence from other jurisdictions, the Department of Justice and Equality would be the most appropriate body to have ownership and oversight of both the pilot project and the Registered Intermediaries scheme. The Department of Justice and Equality is the department with responsibility for the implementation of the relevant pieces of legislation, as well as responsibility for the civil and criminal justice systems. It is also tasked with ensuring the effective implementation of provisions in the UNCRPD which fall within its remit, including Article 13. Finally, it is the department with the strongest connections to many of the stakeholders who will be tasked with implementing the policy, such as An Garda Síochána, the Courts Service and the Office of the Director of Public Prosecutors, and is therefore in a position to bring all stakeholders together to achieve a coordinated approach to putting such a scheme in place.

To ensure effectiveness and parity in respect of accessing justice, three minor legislative amendments would be required to the Criminal Evidence Act 1992 to cover the various elements of the national scheme. However, the NDA advises that the pilot be established and rolled out as an administrative scheme while the legislative amendments are being progressed.

It is also advised to amend S.I. No. 199/1987- Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987, Section 22(1) in order to delete inappropriate and outdated language. However,

it is important to note that the language used does not preclude the use of an intermediary.

To summarise, the NDA advises that:

- A regulated approach to providing accommodation to persons with communication difficulties when giving evidence, that is in line with both Ireland's international obligations and examples of good practice in other jurisdictions, is needed.
- This accommodation should come in the form of a Registered Intermediaries Scheme
- This Scheme should be available to witnesses, victims and accused persons who may be in need of support, due to their communication difficulties, to give better evidence, at all stages of the criminal justice system, including in Garda stations and in court settings.
- A pilot scheme would enable the development and testing of an approach appropriate to the Irish justice system and we advise that the design and implementation of the pilot would be led by the Department of Justice and Equality. The pilot will include the delivery of training for intermediaries recruited to take part.
- A steering group should be established to oversee the pilot project and consider the learning of same for a national scheme.
- Minor legislative amendments are necessary to allow a national scheme to effectively operate and to come into line with appropriate language and Ireland's obligations. However, a pilot may be progressed on an administrative scheme basis prior to those amendments.

This paper sets out the relevant considerations for both a pilot project and a national Registered Intermediaries Scheme. While a pilot should be carried out in the first instance, in order to tease out issues that may arise, the NDA advises that it should be seen as just one part of the longer journey towards a national scheme.

## **Introduction**

The National Disability Authority (NDA) is an independent statutory body with a duty to provide information and evidence-informed advice to Government and officials in the public sector on disability matters, and to promote Universal Design. The NDA has a specific duty to advise the Minister for Justice and Equality and this paper is particularly relevant to criminal justice matters and supports for citizen engagement with same.

This paper aims to provide advice on means of establishing necessary supports to address the barriers faced by persons with disabilities who have communications difficulties where they are engaging with the justice system, beyond the reasonable accommodations that may already be deployed. These supports should be available at all stages of the justice system, from providing a statement to An Garda Síochána to meeting with solicitors to giving evidence in court.

While certain special measures are provided for in legislation, and exist in practice, there is no standardised approach for such a support in the Irish justice system, and as a result of this, persons with disabilities (who are already likely to be overrepresented in the population taken into custody each year<sup>1</sup>) will continue to encounter barriers in respect of communicating statements, evidence and responses to questions.

In particular, the NDA advises the need for a specific accommodation programme where communication is supported by qualified persons i.e. Registered Intermediaries. A registered intermediary is a professional with specialist skills in communication, typically coming from backgrounds such as speech and language therapy and social work. Where operated in other jurisdictions, they are required to pass accredited training, are bound by a Code of Practice and Code of Ethics and are subject to a complaints procedure.<sup>2</sup> Their function is to facilitate communication during the police investigation and at trial between a person with significant communication deficits (which can be on account of a disability, age or other factor) and others in the justice system. A registered intermediary is different to an advocate, whose role is to work closely with an individual to support them to voice their will and preferences, and to intervene where an individual is not able to. The role of a registered intermediate is not to advocate or intervene on behalf of the individual, but to ensure communication methods being used are appropriate to the person's needs.

The NDA advises that the programme should allow for an intermediary's involvement from as early as the Garda Station stage of an investigation in order to fully test and demonstrate the value and potential of the scheme, and in order to ensure that appropriate access to justice is made available from the very first stage. If a person with communication difficulties is accused of a crime and is not accommodated at the Garda Station stage, he/she may commit to a position or give an inaccurate account of events, without fully understanding the consequences of doing so, and this will affect the subsequent justice process.

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<sup>1</sup> National Disability Authority (2019) **Submission to the Garda Inspectorate on Custody Arrangements.**

<sup>2</sup> Working definition taken from the Northern Ireland Registered Intermediaries Schemes Pilot Project Post-Project Review (January 2015), page 5, paragraph 2.

The NDA advises that, under the United Nations Convention on the Rights of Persons with Disabilities (UNCPRD) and other international obligations in respect of equality, the use of intermediaries should be accessible to victims, witnesses and persons accused of a crime. In other jurisdictions, this support is only offered to the two former cohorts. However, the NDA does not believe that this satisfies a State Party's obligations under the Convention, which itself does not distinguish between victims and witnesses with disabilities, and accused persons with disabilities.

Evidence from other jurisdictions highlight many positives achieved through the standardisation of similar schemes. In Northern Ireland, there was clear evidence that the Registered Intermediaries Scheme gave vulnerable people a voice, protection and the access to justice to which they are entitled. In England and Wales, six 'pathfinder projects' implementing the special measure of an intermediary were carried out in 2004/05. Key findings from these projects stated that "almost all those who encountered the work of intermediaries in pathfinder cases expressed a positive opinion of their experience and provided specific examples of their contributions. There were a number of reported emerging benefits, including the potential to: assist in bringing offenders to justice; increase access to justice; contribute to cost savings; assist in identifying witness needs; and inform appropriate interviewing and questioning techniques."<sup>3</sup>

In Ireland, while a small number of cases have seen the ad hoc use of an intermediary there is a need to explore how a standardised support programme could operate on a national basis. A national programme of Registered Intermediaries would provide a means for a person with communication difficulties to receive accommodation to allow him or her to interact effectively with the justice system at every stage relevant, in turn affording that person an equal footing before the law. Such a programme would be in line with national legislation already enacted, as well as Ireland's obligations under the UNCPRD. In this regard it is noted that Ireland is due to deliver its first report to the UN Committee in relation to its progress in implementing the Convention in 2020. Article 13 is particularly relevant, as set out below, and as civil and political right requires more immediate implementation.

Article 13 (Access to Justice) of the UNCPRD requires the provisions of procedural accommodations and states that,

- I. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of

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<sup>3</sup> Plotnikoff, Joyce and Woolfson, Richard (2007) The 'Go-Between': evaluation of intermediary pathfinder projects

<http://embed.policyreview.tv/media/documents/11.%20gillian%20harrison%20summary.pdf>

procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

The Committee on the Rights of Persons with Disabilities frequently comments on the “lack of procedural and age-appropriate accommodations” in judicial proceedings for persons with disabilities when examining States Parties in its Concluding Observations.<sup>4</sup> While the Committee has not explicitly mentioned the use of intermediaries, it has recommended interpretation and different forms of communication repeatedly.

A Registered Intermediaries scheme would be a key enabler in meeting such duties, noting that Article 13 is considered an article that warrants immediate focus. This is because equality before the law is also a civil and political right under the International Covenant on Civil & Political Rights (ICCPR). Article 14 of this Covenant (which Ireland ratified in 1989) and which also extends to persons with disabilities states that

“All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”.

Article 14.3 of ICCPR goes on to say that

“In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the

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<sup>4</sup> Concluding Observations on the initial report of Norway, 7 May 2019; Concluding Observations on the combined second and third periodic reports of Spain, 13 May 2019; Concluding Observations on the initial report of Luxembourg, 10 October 2017; Concluding Observations on the initial report of Canada, 8 May 2017.

assistance of an interpreter if he cannot understand or speak the language used in court.”

Article 14 of the ICCPR echoes Article 6 of the European Convention on Human Rights, which Ireland ratified in 1953 and which states that everyone has the right have the free assistance of an interpreter if he cannot understand or speak the language used in court”. The NDA advises that a person with communication difficulties may not have the capacity to understand the language used in court, and should therefore be accommodated by way of ‘interpretation’ in order to have access to justice. This accommodation can be delivered through an intermediary.

## **Ireland’s legislation and current practice**

The NDA advises that legislation that could be used to deliver this aspect of Article 13 of the UNCRPD is currently in place. Relevant provisions can be found in Section 14 of the Criminal Evidence Act 1992, which allows for evidence to be given via an intermediary in a court context, and in Section 22 of S.I. No. 199/1987- Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987, Section 22(1), which allows for the presence of a ‘responsible adult’ during questioning in a Garda Station. At time of writing, however, there is no national standardised approach to invoking these provisions.

The EU Victims of Crime Directive, transposed into Irish law by the Criminal Justice (Victims of Crime) Act 2017, recognises the right of victims of crime to understand and to be understood in the context of criminal proceedings. The 2017 Act contains provision for special measures, including intermediaries, to achieve recognition of this right for victims of crime in Ireland. However, there has been no significant progress to date in implementing this provision. There is perception among stakeholders that this legislation lacks details regarding how, when and for what purpose intermediaries should be used.<sup>5</sup>

### **Criminal Evidence Act 1992**

The Criminal Evidence Act 1992 provides for the following important support measures for witnesses for certain offences under Part III of the Act, including:

- Use of live video link for vulnerable witnesses
- Use of intermediaries

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<sup>5</sup> COSC, Discussion Paper on Intermediaries, 2017 (not circulated).



- Recorded testimony

In addition, victims have available to them the optional use of court accompaniment through victim support services, a Garda liaison officer, and use of the witness suite within the Criminal Courts of Justice. None of these supports are aimed specifically at individuals with communication difficulties.

### **Victim Supports**

A Garda Liaison Officer, as outlined in the Victim's Charter, informs a victim about significant developments in the relevant investigation and gives them information on appropriate support services.<sup>6</sup>

Victim Support at Court (V-Sac), a volunteer service which meets the needs of victims of crime and/or their families or witnesses by ensuring that they are assisted and supported when attending for pre-trial visits and court proceedings.<sup>7</sup> The service currently operates in the Criminal Courts of Justice, Tallaght and Blanchardstown District Courts and the Eastern and South Eastern Circuit Courts, with plans to expand into the Western and Midland Circuit Courts in the next few years. In 2019, V-Sac provided free support to 1,482 victims of crime, prosecution witnesses and their family/friends. Countrywide support was provided for 629 trials/hearings, including pre-trial visits, sentencing hearings, retrials and appeals. V-Sac volunteers may give a tour of the court, inform victims and witnesses about how jury selection works and explain to them what they are

V-Sac receives referrals from An Garda Síochána, the Director of Public Prosecutions and other support services. It is funded by an annual grant received from the Commission for the Support of Victims of Crime within the Department of Justice and Equality, donations and ad-hoc Dormant Account funding. In 2019, it operated on a budget of €159,261. It has four paid employees (two full-time and two part-time) and the directors, secretary and 45 volunteers serve in a voluntary capacity.

Victim waiting rooms are available in almost all refurbished courthouses and also in a number of other courthouses. A dedicated victim suite of four rooms and a reception area is available within the Criminal Courts of Justice in Dublin, and in courthouses in several other counties. Arrangements are in place to reserve consultation rooms for victims in other venues, if required. Rooms will be

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<sup>6</sup> Victims of Crime Office, Department of Justice and Equality (2010) Victims Charter and Guide to the Criminal Justice System, page 17. <https://www.garda.ie/en/victim-services/garda-victim-service/victim-charter-2020.pdf>

<sup>7</sup> <https://www.vsac.ie/>

specially set aside for victims and vulnerable witnesses in all future projects to refurbish buildings.<sup>8</sup>

While the NDA welcomes the progression of such measures for victims and witnesses, we advise that there is still barriers for individuals with disabilities and/or communication difficulties in the absence of dedicated supports to support them to communicate evidence and to respond to questions. Any measure that is extended to these individuals appears to be done so on an ad-hoc basis, in very few cases, and with no standardised approach. In the Courts Service Annual Report 2018, it was announced that the Service had commenced the collection of statistical information in compliance with section 30 of the Criminal Justice (Victims of Crime) Act 2017. In 2018, of the special measures available to victims and witnesses, evidence was given via video link on 20 occasions, however on no occasion were intermediaries used or evidence given behind a screen, despite the theoretical availability of these measures.<sup>9</sup>

The NDA is also concerned that none of these measures are made available to accused persons with extra support needs, which does not satisfy the principle of equality discussed earlier in this paper.

### **Intermediaries**

In respect of intermediaries, the Criminal Evidence Act 1992 states that

“(1) Where-

- (a) A person is accused of an offence to which this Part applies, and
- (b) A person under 17 years of age is giving, or is to give, evidence through a live television link,

The court may, on the application of the prosecution of the accused, if satisfied that, having regard to the age or mental condition of the witness, the interests of justice require that any questions to be put to the witness be put through an intermediary, direct that any such questions be so put.

(2) Questions put to a witness through an intermediary under this section shall be either in the words used by the questioner or so as to convey to

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<sup>8</sup> Victims of Crime Office, Department of Justice and Equality (2010) Victims Charter and Guide to the Criminal Justice System, page 31. <https://www.garda.ie/en/victim-services/garda-victim-service/victim-charter-2020.pdf>

<sup>9</sup> Courts Service (2018) Annual Report 2018, page 92  
[http://www.courts.ie/Courts.ie/library3.nsf/\(WebFiles\)/C2B4BFC1AFEC7B098025842D00473F25/\\$FILE/Courts%20Service%20Annual%20Report%202018.pdf](http://www.courts.ie/Courts.ie/library3.nsf/(WebFiles)/C2B4BFC1AFEC7B098025842D00473F25/$FILE/Courts%20Service%20Annual%20Report%202018.pdf)

the witness in a way which is appropriate to his age and mental condition the meaning of the questions being asked.

(3) An intermediary referred to in *subsection (1)* shall be appointed by the court and shall be a person who, in its opinion, is competent to act as such.

As outlined above, the legislative provision does not make clear who an intermediary could be, and support of this kind currently operates in an ad hoc manner, depending on the support networks (including voluntary organisations) available to the individual. No Rules of Court have been written to address these issues. A trial judge can grant an application for an intermediary if he or she believes that the interests of justice require that any questions to be put to the witness be put through an intermediary. Questions put to a witness in this manner shall be either in the words used by the questioner or so as to convey to the witness in a way which is appropriate to his or her age and mental condition the meaning of the questions being asked.

The Criminal Justice (Victims of Crime) Act 2017 was enacted on 5 November 2017. The Act transposes Directive 2012/29/EU into Irish law, which establishes minimum standards on the rights, support and protection of victims of crime and ensures that persons who have fallen victim to crime are recognised and treated with respect. The 2017 Act reiterates the availability of special measures, including the use of an intermediary.  
Act.

As of 2018, intermediaries had been used in two Irish court cases, both rape cases. In one case, the complainant had Downs Syndrome<sup>10</sup>, and in the other case, it was decided that the child complainant would be unable to give evidence without the help of an intermediary.<sup>11</sup> In the former case, a Registered Intermediary from Northern Ireland was used, and in the latter an intermediary from England was used (as the child gave evidence via video link from the Old Bailey in London). One participant at the NDA's Roundtable in April 2019 commented that a significant difference could be seen between the latter case, and cases where a Guardian ad Litem had been used on an ad hoc basis. He noted that the case involving the Registered Intermediary ran more smoothly and a better process for involving the individuals in question in giving evidence was

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<sup>10</sup> DPP vs FE [2015] unreported, (Hunt J) (Bill No.84/2013 Central Criminal Court) trial in Nov-Dec 2015 Downs Syndrome, adult female complainant.

<sup>11</sup> DPP vs NR & RN [2016] IECCC 2 (Central Criminal Court) trial in April-May 2016, 12 year child allegations against parents; intermediary nominated and used throughout trial on basis of psychological trauma to child of giving evidence against both parents of depraved abuse.

achieved. In both cases, there was a form of Ground Rules Hearing beforehand.<sup>12</sup> In the absence of dedicated Rules of Court, the Court relied on its inherent jurisdiction to conduct these preliminary hearings in each case.<sup>13</sup>

The NDA notes that the legislation described above provides for the introduction and use of intermediaries solely for victims of crime. We advise, however, that consideration needs to be given to how intermediaries can also ensure that persons accused of a crime have equal access to justice, in spite of any communication difficulties or disabilities that might apply, as this is in keeping with the principles underpinning the UN Convention on the Rights of Persons with Disabilities, and other international contained in the ICCPR and ECHR, that all persons have the right to a fair hearing. The remainder of this paper is framed in the context of considerations for accessing the justice system at any stage, and from either an accused or victim standpoint.

### **Statutory Instrument No. 119/1987- Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987**

The NDA notes that experience in other jurisdictions, as well as input at our roundtable event, suggests that maximum benefit could be derived from having intermediaries involved from the very earliest stages of a criminal justice matter, and therefore consideration to how intermediaries could be used in Garda Stations is warranted.

In respect of the use of intermediaries in Garda Síochána stations, the language of S.I. No. 119/1987, while outdated and certainly not in line with the language nor spirit of the UNCRPD, does not preclude the introduction of intermediaries at the Garda questioning stage.

The S.I. states that, in a section entitled ‘Section 22: Mentally handicapped persons’:

“The provisions of these Regulations relating to persons under the age of seventeen years shall apply, in addition to any other applicable provisions,

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<sup>12</sup> A Ground Rules Hearing is a pre-trial process that involves all parties (including an intermediary) and the judge, the fair treatment and effective participation of vulnerable defendants and vulnerable witnesses.

<sup>13</sup> Rape Crisis Network Ireland (2018) **Hearing Every Voice- Towards a New Strategy for Vulnerable Witnesses in Legal Proceedings**, page 10-11 <https://www.rcni.ie/wp-content/uploads/210807-Rape-Crisis-Network-Ireland-Hearing-Every-Voice-Report-3.pdf>

in relation to a person in custody now below that age whom the member in charge suspects or knows to be mentally handicapped.”<sup>14</sup>

It is important to note that this provision conflicts with Article 13 of the UNCRPD, which states that States Parties must provide “age-appropriate accommodations” to persons with disabilities. Under the UNCRPD, it is not acceptable to simply apply measures that are in place for children to persons with disabilities.

Section 22 goes on to state that

“In the application of Regulation 13(2)(c) to such a person [with a ‘mental handicap’], the responsible adult referred to in that provision shall, where practicable, be a person who has experience in dealing with the mentally handicapped.”<sup>15</sup>

Simply put, a person with a ‘mental handicap’ is to be treated in the same manner as a person under the age of 17. Under Section 13(2), the latter is afforded access to a ‘responsible person’ who can be present for questioning. A person with a ‘mental handicap’ is also entitled to have a ‘responsible person’ present, and the Statutory Instrument recommends that this be a person experienced in dealing with persons with such a disability. It could be argued that a Registered Intermediary is such a person.

Currently, the National Advocacy Service is often contacted by Gardaí, when a person with a disability or communication difficulties is taken into custody. However, this usually occurs where a solicitor has not yet been appointed, and the advocate’s involvement often ceases when a solicitor appears.

In one case study featured in NAS’s Annual Report 2018, an individual with both a physical and intellectual disability sought advocacy support after being charged with a serious crime. NAS supported the individual “to prepare for meetings, to attend meetings and assessments and to reflect and summarise the outcomes of discussions with [his] legal team.”<sup>16</sup> NAS also supported the individual through the trial, and linked in with probation services as part of the pre-sentencing

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<sup>14</sup> S.I. No. 199/1987- Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987, Section 22(1).

<sup>15</sup> S.I. No. 199/1987- Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987, Section 13(2)(c).

<sup>16</sup> National Advocacy Service for People with Disabilities (2018) **Annual Report 2018**, page 29 <https://advocacy.ie/app/uploads/2019/09/NAS-Annual-Report-2018-published-September-2019.pdf>

process. Together, they came up with a plan to connect the individual with appropriate disability services in the community, and the individual avoided a custodial sentence.

However, through consultation with advocacy organisations in respect of other areas of work, the NDA is aware that advocates are rarely allowed in the courtroom and are not allowed to advocate on behalf of an individual in a court setting. The NDA has also been informed that access to advocates is dependent on the extent of a Guard's or solicitor's disability awareness and can be quite arbitrary.

## **Research**

In 2012, the NDA funded a work of research entitled *Access to Justice for People with Disabilities as Victims of Crime in Ireland*.<sup>17</sup> This report explores how the criminal justice system in Ireland recognises and responds to the needs of people with disabilities who report having experienced a crime or abuse. The report notes that, while the Criminal Evidence Act 1992 makes provision for the use of an intermediary, it remains unclear who that intermediary should be. As a result, such support currently operates in an ad hoc manner, depending on the networks available to the individual.

The report lists several barriers to the different stages of the justice system: reporting and recording of crimes, the trial, the post-trial period. Barriers include the lack of trust by people with disabilities of the criminal justice system and authority figures in it; lack of disability awareness on the part of justice personnel; and the lack of accessible environments, information and methods of communication. It also proposes several facilitators in the same contexts. The use of intermediaries is repeatedly highlighted, for example in supporting the individual through the interviewing process, to provide technical linguistic support, and to ensure that a victim achieves appropriate levels of support during the often traumatic process of compiling an impact statement.

On this latter point, the report draws attention to the importance of victim impact statements. Such statements, in their current form, demand a particular level of literacy. Support is not provided to individuals who may not have the literacy capacity to draft a victim impact statement. The Victims Charter provides an interpretation service in the court room, that is available by order of the court, to witnesses who do not speak English so that they can make a victim

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<sup>17</sup> Edwards, Claire; Harold, Gillian; Kilcommins Shane (2012) **Access to Justice for People with Disabilities as Victims of Crime in Ireland** <http://nda.ie/nda-files/Access-to-Justice-for-People-with-Disabilities-as-Victims-of-Crime-in-Ireland1.pdf>

impact statement where the law or the court permits a statement to be made.<sup>18</sup> It does not clarify whether this interpretation service extends to victims who use ISL, and it does not clarify what type of support is provided to individuals with communication difficulties or 'limited powers of expression'.<sup>19</sup>

The report continuously emphasises how prominent the 'principle of orality' is throughout the justice system. From reporting a crime to An Garda Síochána, to speaking with a solicitor, to giving evidence in court, the capacity of an individual to communicate effectively is often taken for granted. With so much depending on good oral evidence, it is crucial that people with communication difficulties are adequately supported to access the same levels of justice to those achieved by people who can effectively verbalise their evidence.

The report also highlights stakeholder views that indicate the value of a pilot project for intermediaries to allow demonstration of operations and benefits. In qualitative evidence included in the report, a member of the judiciary noted that he had never seen an intermediary used in a court setting, and expressed wariness about the method, stating that there was a danger that such a person may be at liberty to pressurise the person giving evidence to respond in a particular way.<sup>20</sup> Another piece of qualitative evidence relevant to this advice paper is the point in the report made by a member of the judiciary that "they were unaware of any disability awareness training available".<sup>21</sup> The NDA advises that through a collaborative approach with all stakeholders, and a careful, comprehensive pilot approach, all stakeholders can understand the need for different supports to be in place for individuals with communication difficulties, they can see how such an accommodation might work and they can input from the beginning on how such a scheme could be enhanced and improved in an Irish context.

Finally, the report calls for a comprehensive collection of data of the extent of the use of intermediaries, who the intermediaries are and how effective their involvement is. The NDA advises this will be crucial to understand the current landscape in order to build on what already exists.

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<sup>18</sup> Victims of Crime Office, Department of Justice and Equality (2010) **Victims Charter and Guide to the Criminal Justice System**, page 25.

<sup>19</sup> Edwards, Claire; Harold, Gillian; Kilcommins Shane (2012) **Access to Justice for People with Disabilities as Victims of Crime in Ireland**, page 90.

<sup>20</sup> Edwards, Claire; Harold, Gillian; Kilcommins Shane (2012) **Access to Justice for People with Disabilities as Victims of Crime in Ireland**, pages 113-114.

<sup>21</sup> Edwards, Claire; Harold, Gillian; Kilcommins Shane (2012) **Access to Justice for People with Disabilities as Victims of Crime in Ireland**, page 105.

## Good practice in other jurisdictions

In April 2019, the NDA held a roundtable to explore the role and the use and value of intermediaries for victims of crime, witnesses and accused in the criminal justice system in Ireland. The aim of the roundtable was to understand the learning from the use of intermediaries in a different jurisdiction and to consider the opportunities for how a similar system could be implemented in this jurisdiction.

The roundtable included officials from An Garda Síochána, the Law Society, the Bar Council, the judiciary, the Office of the Director of Public Prosecutions, Cosc, the Courts Service, the Decision Support Service and academics. The NDA invited officials from the Northern Ireland Department of Justice to address the roundtable in order to share learning and experiences on the introduction and implementation of the Registered Intermediaries Scheme that has been in place in Northern Ireland since April 2017, and which is managed and overseen by the NI Department of Justice.

The NDA is also aware of other jurisdictions that have a type of intermediary support in place, and key information is summarised below.

### Northern Ireland

The Criminal Evidence (Northern Ireland) Order 1999 provides special measures in relation to vulnerable witnesses. This Order also sets out the criteria for eligibility for special measures for vulnerable witnesses and vulnerable defendants. Essentially, the special measures are in place for persons who have communication issues, which impact on them giving evidence. The relevant provisions relating to the examination of a vulnerable person through an intermediary are:

- Article 17 of the 1999 Order, which states that an application for an intermediary may be made where it is considered that their use is likely to improve the quality (completeness, coherence and accuracy) of the evidence given by the witness.<sup>22</sup>
- Article 21BA “Examination of accused through an Intermediary”, which states that an application for an intermediary may be made where their use will enable the defendant to participate effectively in the proceedings

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<sup>22</sup> <https://www.justice-ni.gov.uk/ri>



- 21BB “Further provisions as to directions under Article 21BA(3)”, which states that a court may discharge or vary a direction made under 21BA to invoke the use of an intermediary in respect of a defendant.

The two latter provisions were inserted into the Order by the Justice Act

Following a commitment given in its Victim and Witness Strategic Action Plan 2010-11 to develop a model for the provision of intermediaries for particularly vulnerable victims and witnesses, the Northern Ireland Department of Justice launched the Registered Intermediary Scheme in 2013, which was initially piloted in a three-phase approach. By focussing on a smaller geographical area in the first instance, and involving fewer judges at the beginning, the phased pilot approach helped to ensure consistency and address glitches and teething problems. A campaign to recruit and train 12 Registered Intermediaries (RIs) was launched in August 2012. Recruitment included newspaper advertising. Twelve persons were selected to undertake the accreditation training and eleven passed. The key criteria for an RI related to their communication skills and the ability to assist with the giving of evidence where an individual has communication difficulties. While there is no requirement as to particular qualifications to be an RI, the outcomes of the recruitment exercise have been almost exclusively that these are through social workers, and speech and language therapists.

During the first phase of the pilot, between May 2013 and March 2015, there were 383 requests for a Registered Intermediary. 331 requests were made by the PSNI, 35 by the PPS and 17 by solicitors. 294 requests were for victims, 20 for prosecution witnesses, 52 for suspects and 17 for defendants. 218 requests were for males and 165 for females. 149 requests were in respect of adults and 234 in respect of children under the age of 18. The nature of the ‘vulnerabilities’ of the individuals included learning disability; young age; Autism Spectrum Disorder; Alzheimer’s or dementia; Attention Deficit Disorder; brain injury; Down’s Syndrome; cerebral palsy; and schizophrenia among others. The nature of offences included sexual offences; assault; cruelty or neglect’, burglary, robbery or theft; murder or attempted murder; attempted abduction; harassment; and human trafficking offences among others.

The feedback to the NI Department of Justice from the pilot was very positive, with good working relations established between the RIs and criminal justice practitioners. There were, in particular, many examples of full disclosure being obtained from a victim where this previously might not have been possible due,

for example, to their young age or intellectual disability, which led to more straightforward and more efficient access to justice for all parties involved.<sup>23</sup>

One notable aspect of the Northern Irish pilot was that RIs were made available to facilitate communication with suspects as well as victims at the police investigative stage. The Registered Intermediaries Scheme has enabled suspects to participate effectively when being interviewed and thereby enhanced their access to justice from the outset.

While 37 requests were made for an RI at court stage, there were only four cases in which an RI facilitated communication at the trial during the pilot. The review of the first phase of the pilot concluded that it had limited experience at the court stage, and therefore the full potential of the Scheme had not yet been demonstrated. Therefore, a second phase of the pilot was launched in April 2015. Results were similar to those seen during the first pilot, however, awareness of the availability of RIs had increased.

Following two pilots and two evaluations, the Registered Intermediaries Scheme was rolled out to cover all Magistrates' and Youth Courts in Northern Ireland in April 2017. The Scheme was originally rolled out for witnesses, but it now also applies to defendants - the provision contained in Section 12 of the Justice Act

#### Criminal Evidence

(Northern Ireland) Order 1999 made this expansion possible. The Scheme only applies to criminal cases, and not civil/family cases.

Costings for both the pilot project and the national Scheme are outlined below in the section entitled 'Costings'.

### **How it works in Northern Ireland**

A Registered Intermediary does not usually have a legal background. They are specialists in communication skills, and the panel is currently made up of speech and language therapists and social workers, who undergo an intensive week-long course on the criminal justice system at Masters level. They remain accredited to their original organisation/body, where applicable.

Once called upon, the RI will meet with the individual to assess whether or not they are needed. They will assess how best to facilitate the person in question, and produce a report, which may include a list of "do's and don'ts", and recommendations in respect of how best to communicate with the individual based on their particular needs and circumstances. This report will be discussed

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<sup>23</sup> Department of Justice Northern Ireland (2015) **Northern Ireland Registered Intermediaries Schemes Pilot Project, Post-Project Review**, page 3 <https://www.justice-ni.gov.uk/sites/default/files/publications/doj/registered-intermediaries-post-project-review-feb15.pdf>

at a Ground Rules Hearing. Northern Ireland officials indicated that in many cases a Registered Intermediary should not have to intervene in the trial if all parties take on board the recommendations made in their report, as the legal professionals involved in the trial will have been made aware of how to facilitate communication by the individual in question from the outset. A Registered Intermediary is only present when the individual is giving evidence. They are not a supporter nor an advocate of the individual. If the individual is an accused and is found guilty, the RI is not involved in the probation hearing, only the trial.

The NI Department of Justice provided funds for the first two years of the pilot. The cost was subsequently divided up between the Public Prosecution Service (PPS), the PSNI and the Department of Justice. Of the three, the PSNI avails of Registered Intermediaries the most. The NI Department of Justice retains oversight for the Registered Intermediaries Scheme.

### **England and Wales**

The Youth Justice and Criminal Evidence Act 1999 provides for a Registered Intermediary to be made available to witnesses who are vulnerable due to their age or 'incapacity'. Section 16 of the 1999 Act stipulates that the witness must be under the age of 17 or suffers from a mental or physical impairment to the extent that the court considers that the quality of evidence given by the witness may be diminished without the use of an intermediary.

The Registered Intermediary Procedural Guidance Manual (2019) outlines good practice and procedure.<sup>24</sup> When a police officer believes that a witness might benefit from the assistance of a Registered Intermediary, the officer contacts the Crown Prosecution Service. They then submit a 'request-for-service' form, which will be used to match the witness's communication abilities and needs to an available Registered Intermediary with suitable expertise operating in the geographical area. The appointed Registered Intermediary undertakes an assessment, before providing a preliminary report for the interviewing police officer. The Registered Intermediary also produces a report for the court, consisting of advice and recommendations for those who will be questioning the witness. The Registered Intermediary attends the witness's familiarisation visit to the court, the Ground Rules Hearing and the live link room or the court during the trial.

The Witness Intermediary Scheme was established by the Ministry of Justice's Better Trials Unit, and operates a national database of intermediaries who are

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<sup>24</sup> Ministry of Justice (2019) **Registered Intermediary Procedural Guidance**  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/831537/moj-registered-intermediary-procedural-guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/831537/moj-registered-intermediary-procedural-guidance.pdf)

recruited, selected, trained and accredited by the Ministry of Justice. Since its national roll-out in September 2008 (following a pilot which began in 2004), the Witness Intermediary Scheme has been available in all 43 police forces and Crown Prosecution Service areas in England and Wales. The Ministry of Justice retains overall governance, strategy and policy management while the National Crime Agency's Specialist Operations Centre operates and manages the Witness Intermediary Scheme's matching service and Registered Intermediary Register on behalf of the Ministry.

There were approximately 200 Registered Intermediaries on the Ministry of Justice's register covering England and Wales in 2016.<sup>25</sup> In 2018, there were 6,391 requests for Registered Intermediary services.<sup>26</sup>

The relevant sections of the 1999 Act do not apply to an accused person. However, the court may allow the use of a non-registered intermediaries to assist a defendant. This is based on the court's inherent jurisdiction to ensure that the defendant has a fair trial, pursuant to Article 6 of the European Convention on Human Rights. The non-registered intermediary is not sourced from the Witness Intermediary Scheme.

### **New Zealand**

A similar scheme has been in place in New Zealand since 2012. A Communication Assistant is a court-appointed specialist who advises and assists lawyers, police and judges with defendants, witnesses and civil litigants who have communication difficulties, so that they can give 'best evidence' and participate effectively in the justice system.<sup>27</sup> The scheme began in the adult criminal court and has since been used in the Youth Court and, less frequently, the Family and civil courts.

Communication Assistants are appointed under Section 80 of the Evidence Act 2006, which entitles defendants in criminal proceedings and witnesses in civil or criminal proceedings to "communication assistance", broadly defined in Section 4 of the same Act as "oral or written interpretation of a language, written

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<sup>25</sup> Cooper, Penny and Mattison, Michelle (2017) **Intermediaries, vulnerable people and the quality of evidence: An international comparison of three versions of the English intermediary model**, *The International Journal of Evidence & Proof* 2017, Vol. 21(4) page 355.

<sup>26</sup> Ministry of Justice (2019) **Registered Intermediary Procedural Guidance**, page 5.

<sup>27</sup> Benchmark (2020) **Communications Assistance Guidelines**, Section 2  
<https://www.benchmark.org.nz/guidelines/communication-assistants/>

facilitates communication" with a person with a communication impairment.<sup>28</sup> Communication Assistants can provide assistance during pre-trial client and witness/suspect interviews, during trial and afterwards. Their assistance includes direct assistance with monitoring of questioning, the provision of visual aids and stress-management techniques during questioning, and formal recommendations as to directions for adapting courtroom processes. Most Communication Assistants are speech and language therapists, but others such as psychologists, social workers and specialist teachers may also qualify.

If a lawyer believes that a defendant or witness may need to avail of a Communication Assistant, they will request that an assessment be carried out by a psychologist or psychiatrist, or a specialist teacher or social worker with expertise in this area. A Communication Assistant may then be appointed, and will undertake a Communication Assistance Assessment before delivering a court report with recommendations.

There is no accredited list or register of Communication Assistants. Communications Assistants are found through a social enterprise organisation of speech and language therapists.<sup>29</sup> An individual may make an application for the

support is needed at that stage or the court, if needed at that stage). The relevant authority then contacts the social enterprise organisation, which refers them to an available and appropriate Communications Assistant.

New Zealand has seen examples of more than one Communication Assistant working together on the same case in a multi-disciplinary team, for example a Communication Assistant working alongside a sign-language interpreter.

Funding for Communication Assistants comes mainly from the Ministry of Justice and occasionally from Crown Law or Legal Aid or the police. In Youth Justice assistance at Family Group Conferences.

## Costing

It is difficult to compare the costs of establishing and managing a scheme of Registered Intermediaries across the other jurisdictions examined. In England and

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<sup>28</sup> Benchmark (2020) **Communications Assistance Guidelines**, Section 2  
<https://www.benchmark.org.nz/guidelines/communication-assistants/>

<sup>29</sup> <https://talkingtroublenz.org/about-ttanz/>

Wales, Registered Intermediaries (RIs) also work on a self-employed basis, and earn £38 per hour. They may also claim for travel and subsistence, and receive a rate of £55 per hour for work carried out during 'unsociable hours'.

RIs in Northern Ireland carry out their work on a self-employed basis and are able to claim for travel and subsistence costs from that Department of Justice, as well as a professional fee for the time spent carrying out their role. The professional fee is £37 per hour. The pilots showed that, in relation to costs for defendants, the average cost per case was approximately £470.

The most relevant comparison in this jurisdiction is with Guardians ad litem (GALs). GALs are appointed by judges in child care proceedings under Section 26 of the Child Care Act 1991. The legislation intends for GALs to enhance the decision-making capacity of the court in child care proceedings. One of a GAL's functions is to engage with the child in order to independently establish the wishes, feelings and interests of the child and present them to the court. Previously, GALs could charge different hourly rates, and add travel and subsistence claims to that amount. Following consultations with GALs by Túsla in 2015, a flat hourly rate of €125 was set, which includes both the work carried out by GALs and all expenses incurred. While Túsla is not involved in either the management nor the monitoring of the GALs service, any costs incurred by GALs shall be paid by Túsla, from a budget provided by the Department of Children and Youth Affairs.

It is envisaged that some costs will be incurred in the establishment of a pilot scheme and the training and monitoring of RIs. The costs borne by Northern Ireland Department of Justice for both the pilot project and the continued maintenance of the national Scheme are broken down below:

### **Pilot schemes for both witnesses and defendants in the Crown Court in Belfast**

A campaign to recruit and train 12 RIs was launched in August 2012. Twelve persons were selected to undertake the accreditation training and eleven passed. The actual costs were as follows:

- Advertising the recruitment campaign: £3,235.14
- Fees for an RI for assisting with selecting those who went forward for interviews: £962.90
- Costs associated with interviewing potential RIs: £3,717.15
- Accreditation training costs were £28,974.49.

The total cost for the recruitment and training of 11 RIs to participate in the pilot project was £36,889.68.

### **Costs for the recruitment campaign in 2018**

The additional costs for the recruitment campaign were minimal (£1,250). It was managed by the Intermediaries Scheme Secretariat within the Department and advertised on the DoJ website and Speech and Language Therapy and Social Workers recruitment websites at no cost. The Department did not advertise in newspapers; this was based on learning from the recruitment for the pilot project, where there were hundreds of applications from people who believed they were good at communicating but did not fit the profile of an RI. There was one payment to a Registered Intermediary for assessing case studies and sitting on the recruitment panel of £1,250. The other two panel members were from Department of Justice and PSNI and incurred no charge.

### **Costs for training in 2018**

In 2018, £29,275 was spent on training for 24 RIs. This can be broken down as follows:

- Travel and accommodation, which included travel for applicants who were successful and overnight accommodation for trainers and 2 candidates who had significant travel: £3,650
- Main facilitator's fees: £22,200
- Hire of training facilities: £2,175
- Payments to existing RIs for role play during training: £950
- Catering for 6 days: £300

### **Ongoing Costs – Training for RIs**

In 2019, the NI Department of Justice facilitated a day's CPD training. The total cost was just over £7,000. However, the majority of this cost was paying RIs for their time and travel. The Department has since decided that, for any future training, it will not pay the RIs for their time as they receive non-monetary benefits in relation to their continuous professional development. Future training may be provided based on the profile of the vulnerable people that RIs are assisting, for example, there is an increase in the number of cases where the person suffers from a mental illness as well as other vulnerabilities and therefore there may be a need in the future to provide specialist training to those RIs who do not include mental illness within their skillset.

## **Next steps**

In order to provide individuals with a voice, protections and the access to justice to which they are entitled, the NDA advises that an introduction of a national scheme of Registered Intermediaries be progressed through the Department of

Justice and Equality. We believe responsibility and oversight for the pilot in the first instance, and later a national scheme, should rest with the Department of Justice and Equality, as the Department with ownership of the relevant pieces of legislation and the civil and criminal justice systems, as well as responsibility for monitoring and implementing the UNCRPD. Based on our research and exploration of this topic, the NDA advises that costs be divided between the Department of Justice and Equality, An Garda Síochána and the Courts Service.

Based on evidence from other jurisdictions, we advise that small, phased pilot project be progressed in the first instance. This approach will provide an opportunity for the Department of Justice and Equality to identify challenges early on in the pilot and to resolve them on in a timely manner before scaling up, as happened in the Northern Ireland example. It will also allow the Department to obtain input from key stakeholders, who can become champions of the Registered Intermediaries Scheme and therefore support and facilitate its rollout on a national basis.

The pilot in Northern Ireland ran for almost four years, in three separate phases, each of which built on the results of the previous pilot. The NDA advises that a first phase be launched in Ireland, which would involve a small number of intermediaries (4-5) working in one geographical region, which would capture individuals with a variety of support needs. Subsequent phases could increase the number of intermediaries, and could involve a wider spread across the country.

The NDA advises that a steering group be set up, with participants similar to those who attended the NDA's Roundtable in April 2019 and which is led by the Department of Justice and Equality.<sup>30</sup> This steering group would be responsible for the establishment, monitoring and evaluation of the pilot project. The steering group would consider and agree the criteria and skills needed by intermediaries and agree on methods of training for those selected, similar to the training received by Registered Intermediaries in Northern Ireland. It is advised that the selected Registered Intermediaries sit on one panel, receive the same training to the same standards and be overseen by a central body, for example the Department of Justice and Equality. The NDA believes the Department of Justice and Equality is best placed to oversee the pilot project, and later a national scheme, rather than An Garda Síochána, the Courts Services, or the Office of the Director of Public Prosecutions, none of which has the far-reaching and encompassing remit of the Department of Justice and Equality in respect of the justice system. The NDA also advises that a person(s) with disabilities and communication difficulties, and with relevant lived experience, is invited to sit on

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<sup>30</sup> This roundtable included representatives from An Garda Síochána, the Courts Service, the judiciary, the DPP, the Law Society, the Bar Council, the Decision Support Service and the University of Limerick.



the steering group in order to assess the gaps in support that exists and how they should be addressed. Consultation with persons with disabilities in respect of policies that relate to their lives is a key obligation of the State under the UNCRPD.

The NDA advises that the pilot be available to victims of crime, witnesses and accused persons alike. This will satisfy the principle of equality, and it will allow the criminal justice system to achieve better evidence, as all parties involved will be accommodated to give the best evidence they can, including persons accused of a crime. Support for the pilot is more likely if all persons are accommodated to give their best evidence.

The NDA advises that the pilot should allow for an intermediary's involvement from as early as the Garda Station stage of an investigation in order to fully test and demonstrate the value and potential of the scheme, and in order to ensure that appropriate access to justice is made available from the very first stage. If a person with communication difficulties is accused of a crime and is not accommodated at the Garda Station stage, he/she may commit to a position or give an inaccurate account of events, without fully understanding the consequences of doing so, and this will affect the subsequent justice process.

The NDA advises that representatives from across the whole sector be involved from the beginning of the pilot, including police, legal representatives, courts and the judiciary. By raising awareness and providing training to the people who will be key to the success of the pilot project, it will help to ensure that there is consistency in the implementation of the pilot across the sector. It will also allow for the creation of champions across the sector, who will support the implementation of any subsequent national scheme following the pilot project. The NDA's roundtable included participants from across the justice sector and this holistic approach to involvement was welcomed and beneficial to advancing discussions.

Early interaction between all stakeholders, including the intermediaries recruited to participate in the pilot project, will enable the cultivation of good relationships across the justice system, and an understanding of the role the intermediaries are envisioned to play.

Finally, learning from the experience of other people and other jurisdictions should continue to be a priority. Ireland should continue to look to other jurisdictions for examples of best practice and for guidance in respect of the inevitable challenges that will arise in the rolling out of a pilot project and a national scheme. For example, an evaluation of the roll-out of the Registered Intermediaries Scheme to the Northern Irish Magistrates Courts (available in this court since April 2017) is currently underway and the NDA advises it would be

helpful to speak to the NI Department of Justice following completion of that evaluation in order to capture any additional learning.

### **Amendments to legislation**

Three amendments to the Criminal Evidence Act 1992 would be required in order to provide a clear statutory footing for the national scheme:

- Currently, Section 14 of the Criminal Evidence Act 1992 only provides for the use of intermediaries for witnesses. The National Disability Authority advises that this section be amended to include provision of an intermediary to the accused. To achieve better evidence- and to realise Article 13 of the UNCRPD- all parties involved must be accommodated, including persons accused of a crime;
- Section 14 clearly states that intermediaries may only be used in court to convey questions to the witness, but not to convey the answers of the witness back to the court. This is of limited use; it may mean that the witness understands the questions clearly, because it has been put to them in a way they understand, thanks to the involvement of the intermediary. However, they may not be able to answer adequately if they are denied the use of the intermediary to respond;
- Finally, it would be necessary to amend or delete the phrase ‘mental handicap’ in Section 19. The reason for this is twofold: the phrase ‘mental handicap’ is not in keeping with UNCRPD, and this linguistic amendment is in line with several amendments that were proposed in the Department of Justice and Equality’s Roadmap to Ratification of the UNCRPD’. Many of these proposed amendments are contained in the Disability (Miscellaneous Provisions) Bill, including the deletion of phrase such as ‘unsound mind’ and ‘mental impairment’. Secondly, not all individuals with communication difficulties would be accommodated if intermediaries were provided only to those typically understood to fall under the definition of ‘mental handicap’. Autism, for example, is defined as a ‘development disorder’.

As mentioned above, Statutory Instrument No. 119/1987- Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987 does not preclude the introduction of intermediaries at the Garda questioning stage. However, the language used in the Statutory Instrument is outdated and it also provides the same protections for persons with disability as it does for children. This is not in line with other Irish legislation nor international obligations, which insist that States Parties provide ‘age-appropriate’ accommodations for persons with disabilities. The NDA advises updating the language in this S.I., to clearly set out appropriate measures that are in place for the treatment of persons with disabilities in custody in Garda stations.

While the amendments outlined above would be necessary for a permanent national scheme, the NDA advises that the pilot be rolled out on an administrative scheme basis while the legislative amendments are being progressed.

## **Conclusion**

Effective access to justice, which is on an equal basis with the access afforded to the general population, is essential for the realisation of Article 13 of the UN Convention on the Rights of Persons with Disabilities, as well as Article 6 of the European Convention of Human Rights, Article 14 of the International Covenant on Civil and Political Rights. These two latter international treaties both speak of the right of the individual to an interpreter where an individual cannot understand or speak the language used in court.

Where an individual has communication difficulties and is not afforded the support to effectively engage with the different stages of the Irish justice system, that individual may be experiencing a breach of their rights to accessing justice on an equal basis as a person without communication difficulties could. By providing an intermediary, who can put questions to the individual in a way they understand, and interpret the answers they receive, that individual is supported and accommodated to give the best evidence they can. This evidence will be more accurate and more detailed than that individual could provide had they not access to an intermediary.

Not only is such a scheme important in terms of providing procedural accommodations for victims, witnesses and accused persons with disabilities and communication difficulties, it will also provide for appropriate safeguards to be put in place so that there is less likelihood of cases collapsing due to issues surrounding the credibility of statements gathered at investigative stages or of evidence given in court.

By putting a Registered Intermediaries Scheme in place, an individual with communication difficulties will receive the support they need in a justice system that is inclusive and accommodating in line with Ireland's obligations. Only when such an objective is achieved can Ireland state that it is realising this one important aspect of Article 13 of the UNCRPD.

The NDA is happy to continue to input and advise the Department of Justice and Equality as relevant and appropriate to assist in devising a pilot and considering the emerging issues.