

Signs of Progress – BSL in the courtroom

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In the last 25 years the situation for deaf people who find themselves in criminal and family proceedings has certainly changed for the better, not least due to the introduction of Special Measures, including Registered Intermediaries. The developments in the courts reflect the improvements in access and understanding in wider society. However, it is fair to say that the courts lag behind other areas to some extent and still struggle to understand deafness; there is much more that could be done.

Over time BSL interpreting has become more professional – in terms of training and accountability – and been recognized by the courts. This has afforded deaf people more access to proceedings where previously they had been marginalized, excluded or obliged to rely on family members, often with disastrous consequences. However, alongside the development of Special Measures in general, many professionals working with deaf people in court have realized that the provision of interpretation into BSL is not sufficient. The establishment of Deaf Intermediaries has been a major step forward, however we would argue that more thought and consideration needs to be given to both the role of the Deaf RI and the situation of deaf people in court:

Are deaf people inevitably vulnerable and therefore in need of Special Measures? Arguably they are, as a result of the highly specialized, jargon-laden culture of the court; issues of language and interpretation are never straightforward. However, there are deaf people who would rail against this, as competent intelligent individuals who require only interpretation. Rather than labelling all deaf people as vulnerable, we would rather suggest that deaf people are disadvantaged by the court process and that this needs to be addressed in order to facilitate access, rather than requiring the deaf person to adapt and fit in with an inaccessible process. We would suggest that if the courts became more 'deaf-friendly' the need for Special Measures would disappear in some deaf cases; access would be improved and the interests of

justice served. The current situation regarding the likelihood of appropriate adaption of the court depends on the awareness and flexibility of the individual judge; a situation which surely does not seem satisfactory.

Does every deaf witness require a Deaf Intermediary? In the case of a BSL user or a deaf person with minimal language skills then this is undoubtedly the case; a Deaf RI communicating in their first language is likely to have skills above and beyond an interpreter or a hearing RI with fluent BSL, in adapting language and clarifying questions, recognizing subtleties in language, particularly in those with minimal language skills or idiosyncratic signing. A hearing intermediary, even with proficient sign language, is not sufficient either in terms of language skills or credibility to the deaf person; the risk is that they are seen as just another hearing person of high status with whom the deaf person does not build a rapport or feel confident. Imagine, as a hearing person, walking into a court room where all the people were deaf sign language users. You have an interpreter there but they are not on the same level as you and communication is a struggle. This would be a very confusing and stressful environment. It is important to gain a clear understanding of how a deaf person feels, walking into a court room full of hearing people. This makes the role of the deaf intermediary extremely important as they have an awareness of deaf culture, what it means to be deaf as well as having the language skills required to communicate effectively with the client.

A hard of hearing person whose first language is English or who has lost their hearing later in life would require a hearing intermediary with skills in communication, possibly BSL, as well as audiological advice on how to adapt the court room. However, it is not always the case that legal professionals are best placed to assess exactly who is involved; a deaf person may for example say they are 'fine' with a hearing RI who has a little sign language, but this may not be the case at all, it may reflect a wish to please or a desire to minimize their difficulties. It is therefore important that hearing RI's who find themselves instructed in the case of a deaf person are open to seeking advice from experts in deafness or Deaf RIs.

There is confusion between the role of a Deaf RI and a Deaf Relay which needs clarifying: A Deaf Relay is a deaf professional with a high level of skill in BSL, who works between the BSL interpreter, usually in the case of a deaf individual with minimal language, learning disability or who is from a different country. The role of the Relay is to adapt language to meet the needs of the deaf person, perhaps by adding information or presenting what is said in a different way. Such individuals are often used in other settings with deaf people who

have additional communication needs, and increasingly in the courts; for example, this has become commonplace in Mental Health Review Tribunals. However, several issues need clarifying, not least the apparent overlap between the Deaf RI and Relay. The RI will often act as a Relay for all or part of the evidence, negating the need for a separate Deaf Relay. At first glance this seems sensible as the skills of the Deaf RI subsume those of the Relay and augment the role by having prior knowledge and having established a rapport. However, in undertaking to relay a substantial part or all of the evidence, the Deaf RI in effect becomes part of the interpretation team and loses the monitoring function which is part of their role. This, in our view, needs further consideration.

What further steps could be taken?

Appropriate accommodation of the court would, in our view, save time and money and prevent deaf cases becoming overly focused on language and interpretation, as often is the case in our experience. So, what would a 'deaf-friendly' court room look like?

All those participating having some deaf awareness; at the very least reading the Toolkit 11: Planning to Question Someone who is Deaf (www.theadvocatesgateway.org/toolkits). In particular there needs to be greater understanding of the interpretation process. Too often cases became all about the interpretation and waste valuable time discussing this issue.

Use of court interpreters, Relays and Deaf RIs as required, with careful consideration at the PCMH stage of how this should be managed with advice from experts qualified to assess language and cognitive ability.

Separate interpreters and if necessary relay or Deaf RI for legal conferences in order that lawyers can take instruction but also for monitoring the interpretation in court and raising any concerns.

Video recording of all deaf evidence; this is in our view the most vital change needed to protect all concerned. At present the courts do not appear to appreciate that audio recording of the interpreters' voice-over of signed evidence is NOT a recording of the original. Therefore there is no means to challenge the interpretation to view the evidence given. This has recently been achieved in a complex case involving deaf defendants and witnesses and as well as gaining the confidence of the deaf individuals concerned, had the somewhat unexpected effect of reducing challenges to a minimum and assisting the smooth running of the case (R v H and another June 2014).

Although the Deaf Intermediary can provide advice about communication and assess the need for accommodation in court, the court needs to recognize its inability to directly assess the understanding or competence of a deaf witness and should to consider a specialist expert report in order to ascertain cognitive ability, which is beyond the remit of the RI.

Our final observation is that there need to be more Deaf RIs; at present only 2 or 3 of the handful trained currently accept referrals and there needs to be consideration of recruiting to represent the diversity of the Deaf Community. We would also suggest that training and supervision of deaf RIs could be developed to take account of this particular client group, and the specific challenges of assisting in a bimodal courtroom, as well as developing the role as discussed.