

The Advocate's Gateway

**Planning to question someone
who is deaf**

Toolkit 11

1 January 2018

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The Advocate's Gateway toolkits aim to support the identification of vulnerability in witnesses and defendants and the making of reasonable adjustments so that the justice system is fair. Effective communication is essential in the legal process.

'Advocates must adapt to the witness, not the other way round.' Lady Justice Hallett in [R v Lubemba; R v JP](#) [2014] EWCA Crim 2064, para 45.

The handling and questioning of vulnerable witnesses and defendants is a specialist skill. Advocates must ensure that they are suitably trained and that they adhere to their professional conduct rules.

'We confirm, if confirmation is needed, that the principles in Lubemba apply to child defendants as witnesses in the same way as they apply to any other vulnerable witness. We also confirm the importance of training for the profession which was made clear at paragraph 80 of the judgment in R v Rashid (Yahya) (to which we have referred at paragraph 111 above). We would like to emphasise that it is, of course, generally misconduct to take on a case where an advocate is not competent. It would be difficult to conceive of an advocate being competent to act in a case involving young witnesses or defendants unless the advocate had undertaken specific training.' Lord Thomas of Cwmgiedd, CJ in [R v Grant-Murray & Anor](#) [2017] EWCA Crim 1228, para 226.

The Advocate's Gateway toolkits draw on the expertise of a wide range of professionals and represent best practice guidance; toolkits are not legal advice and should not be construed as such. Toolkits represent our understanding of the law, procedure and research at the time of writing however readers should consult the most up to date law, procedure and research.

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Summary

Deaf people are as diverse as the wider community – ‘hearing’ people and no two people who are deaf will have exactly the same profile of strengths and needs.

- Information about the individual is essential and, if not supplied, must be requested.
- This toolkit contains general guidance and is not a replacement for assessment by an appropriate expert, for example, a psychologist and/or Deaf Registered Intermediary (Deaf RI) who will provide advice specific to the individual.
- Assessment should be considered in order to advise the court of a deaf person’s communication needs and any adaptation to process which is required.
- The guidance pertains to both deaf adults and children, with even greater care needed in the case of deaf children, where specialist expertise in this field is essential.

- Even deaf witnesses with severe learning disability have given evidence effectively with appropriate assistance.

1. WHAT IS DEAFNESS?

Deafness can be defined in terms of audiology or cultural affiliation.

- The medical model of deafness defines the degree of deafness according to the extent of hearing loss (ranging from mild, through moderate and severe, to profound deafness) and emphasises the use of equipment to facilitate communication, e.g. hearing aids and hearing loop systems.
- It is *generally* the case that an individual with mild to moderate deafness will make use of residual hearing and benefit from amplification with hearing aids. Those with severe or profound hearing loss are less likely to have any useful residual hearing and more likely to rely on sign language. However, there is considerable variability, with some severely deaf people making use of residual hearing. In addition, some severely or profoundly deaf people communicate orally without sign language, either through choice or lack of opportunity to learn British Sign Language (BSL).
- **There is a key distinction between congenital deafness and acquired deafness.** This toolkit is primarily concerned with those who are deaf from birth or early life prior to the acquisition of spoken language, whose first or preferred language is a sign language. However, some communication issues are still relevant when considering someone with deafness acquired later in life due to illness, accident or ageing.
- The Deaf Community espouses a cultural definition, less to do with decibels of hearing loss and more to do with cultural affiliation and the use of sign language (BSL in the UK, other sign languages in other countries). Those with significant hearing loss often prefer the description 'deaf' or 'Deaf' – the capital 'D' denoting cultural affiliation – to 'hearing impaired'. Many deaf people do not consider deafness a disability and reject the notion of 'impairment' as implying a defect in comparison to hearing peers, seeing themselves not as incomplete hearing people but as part of a complete culture and language with a different life experience.
- **Terminology** The correct term for a deaf person is 'deaf', not 'hearing impaired', 'non-hearing' or any variation on this. Someone who has no speech is referred to as 'deaf without speech', or by stating the preferred method of communication: '*X's first language is BSL; he does not use speech.*' The terms 'deaf and dumb' and 'deaf-mute' are considered

offensive and should not be used. 'Hard of hearing' is used for people who have lost some of their hearing, usually associated with ageing. 'Deafened' refers to becoming deaf after the acquisition of speech.

2. UNDERSTANDING DEAFNESS

- 2.1 Around one in six of the UK population has some form of hearing loss** and more than 900,000 people are severely or profoundly deaf ([Action on Hearing Loss 2016](#)).
- 2.2 Courts are expected to make reasonable adjustments to remove barriers for people with disabilities** ([Equal Treatment Bench Book 2018](#)). In preparation for trial, the court must take every reasonable step to facilitate the participation of any person, including the defendant (Criminal Procedure Rules 2015, rule 3.8(4)(a) and (b)).
- 2.3 Deafness is not a learning disability; there is the same range of intellectual ability in the deaf population as the hearing population.** However, even deaf people with a high level of education and professional qualifications require some accommodation in order to access legal proceedings.
- 2.4 A substantial number of deaf people experience language and educational deprivation during development and may not have fulfilled their true intellectual potential.** These deaf people are often vulnerable, with limited language, poor social awareness and reduced understanding of complex topics. Such individuals require additional accommodation and the court is likely to require specialist guidance. This might include allowing extra time for explaining unfamiliar concepts, or allowing a Deaf RI to explain concepts in a more culturally appropriate and visual manner, with use of examples.
- 2.5 It is essential to distinguish individuals with deprivation arising from developmental experiences from those with a learning disability.** Some deaf people will have additional needs such as a learning disability, mental health problems, language impairment or neurodisability. Such disabilities co-existing with deafness often go unrecognised as problems may be attributed solely to deafness. In these cases expert assessment and advice is essential and the use of a Deaf RI will be required.

2.6 Causes of deafness

A large proportion of deafness is due to unknown causes. Known causes include the following.

- Inherited conditions – in which case the individual is more likely to have deaf relatives and to have been brought up in the Deaf Community, although this is not necessarily the case. Those with familial or genetic deafness, particularly those with

deaf parents, are likely to have an advantage in terms of intellectual, social and emotional development (e.g. Braden 1994; Hindley et al 1994). However, there are a number of inherited syndromes where deafness is a feature, leading to additional difficulties such as learning disability.

- Maternal illness in pregnancy (e.g. rubella), birth trauma and illness after birth (e.g. meningitis) – causes such as rubella and early childhood meningitis are sometimes associated with additional difficulties such as visual impairment or learning disability.

2.7 There is no simple correlation between degree of deafness and intelligibility of speech.

Having good speech does not indicate that the person is just ‘a bit’ deaf. Nor does the presence of a hearing aid indicate full hearing.

2.8 Written communication

Although some deaf people may benefit from speech-to-text translation, it is important not to expect a deaf person to be able to read fluently, particularly in the case of complex legal documents.

- Due to a disadvantaged education, many deaf people of average intelligence have difficulty with written English.
- Research indicates that deaf people generally have lower literacy levels than hearing people, with some suggesting that the average reading age of a deaf school-leaver is around 7–9 years (Maybery 2002; Powers and Gregory 1999).
- English is likely to be a second language and does not have the same grammatical structure as BSL. So, to ensure understanding by BSL users, all legal documents require interpretation into BSL. Ideally, key documents should be interpreted onto a DVD so that the deaf person has a record to which they can refer.

3. DEFINITIONS

British Sign Language

BSL is the natural language of the Deaf Community and was recognised as a language in the UK in 2003 and legally recognized as an official language in Scotland in 2015 (BSL Scotland Act). It has developed over the centuries, much like spoken language. It is not an ‘invented’ language and is not just a visual representation of English.

BSL is not a ‘limited’ or ‘concrete’ language but is as full and rich as any language, able to express abstract concepts, use metaphor and be studied by linguists (e.g. Sutton-Spence and Woll 1999). It is the first or preferred language of many deaf people in the UK. In the UK, there is BSL, in France, French Sign Language and so forth. Do not assume a deaf immigrant to the UK will be fluent in BSL; it is likely to be a challenge to find an appropriate sign language interpreter (SLI). There are a number of Deaf Interpreters (see below) and a few SLIs with proficiency in other signed languages or in International Sign.

Note: International Sign is not a language. It is an ad hoc form of signed communication where deaf people draw on resources from their respective national sign language and use visual communicative strategies. This can be an effective form of communication between deaf people who use different sign languages but should not be relied upon to ensure that a deaf person understands legal proceedings. In some cases (for example, where a witness uses American Sign Language and the defendant uses BSL) it will be necessary to arrange interpretation from one sign language to another. In these circumstances the interpreting, assisting and monitoring referred to at paragraph 6.5 below will apply in respect of the use of each sign language.

Cochlear implant

A surgically implanted electronic device that provides a sense of sound to a person who is profoundly deaf or severely hard of hearing. Cochlear implants may help provide hearing in patients who are deaf because of damage to sensory hair cells in their cochlea. Younger deaf witnesses and deaf children are more likely to have a cochlear implant than older deaf people, although cochlear implants for deafened adults are becoming more common.

Deaf/blind communication

Individuals who are deaf/blind require additional specialist assistance and will require some form of deaf/blind manual communication. This involves the interpreter using a 'hands-on' approach to allow the person to feel the signs by holding the interpreter's wrists/hands or using tactile finger-spelling on the deaf/blind person's hands.

Deaf Community

The Deaf Community consists of deaf people who define themselves as a group, mostly those who use BSL. Deaf clubs and associations are where deaf people meet together informally and come together socially to engage in sport, drama and other activities. Some cater for diverse subgroups in relation to ethnicity, age, religious affiliations and sexual orientation. Some Deaf clubs are connected to Deaf community organisations that also provide interpreting, employment support and social work services.

Deaf interpreter (relay)

This is a deaf person who functions in a relay capacity between the deaf client and a hearing SLI (see below) and has a high level of skill in adapting sign language to meet the needs of those with communication difficulties. This role is also sometimes known as a deaf relay. The SLI will interpret the English into BSL to the deaf interpreter, who will then relay the message to the deaf person in an appropriate form. This can include interpreting into a different sign language, or working intralingually within BSL but employing additional strategies, such as, tactile signing, adding information or examples, using visual cues or role-play, drawing pictures or using other visual props. However, in the majority of cases a Deaf Registered Intermediary will incorporate this role. Deaf interpreters can be registered with the [National Register of Communication Professionals working with Deaf/Deafblind People](#) (NRCPD) as translators or interpreters. However, as this is a relatively new profession, many deaf people working in this capacity are not registered with a professional body.

Expert interpreter

An independent BSL interpreter who acts as an expert witness to advise the court on all matters relating to interpreting within proceedings.

Finger spelling

Spelling-out words using the fingers – this tends to be used mainly for names, places and other proper nouns.

Hearing aid

An amplification device worn by a deaf or partially hearing person to assist hearing. Note that the wearing of a hearing aid does not mean that the person can hear perfectly or does not need an SLI in court. There is considerable variability in the benefit gained by hearing-aid use; for some people it assists merely with orientation to environmental noise while for others it is of great assistance in hearing speech.

Hearing loop

A sound system in which a loop of wire around an area in a building, such as a meeting room, produces an electromagnetic signal received directly by hearing aids.

Lip reading

Some deaf people who become deaf after they acquire speech never learn sign language. This group includes those who become deaf in older adulthood and those with mild hearing loss. Others who are deaf from birth, by choice or chance, grow up without the opportunity to learn BSL, so they rely on lip-reading, although speech may be very difficult for them.

Lip-speakers

Lip-speakers are registered professionals who are trained to speak very clearly with lip patterns that are as easy to read for the deaf person as possible. Some may enhance this with finger-spelling and occasional signs. Understanding a lip-speaker is preferable to having to attempt to lip-read several people in court. However, the difficulties of lip-reading remain (see below). Lip-speakers are registered with NRCPD (see below) and can be found on the national register's website.

Makaton

This is a language programme using signs and symbols to help people to communicate. It is designed to support spoken language and the signs and symbols are used with speech, in spoken word order'

(see [Let's Talk Makaton](#)). Makaton is a system of communication, borrowing individual signs from BSL, but is not a language per se.

Oral/aural

Oral/aural describes the process of relying on speech, lip-reading and technical aids to assist hearing.

Registered intermediaries

Registered intermediaries (RIs) are provided by the Ministry of Justice. They work with vulnerable witnesses throughout proceedings, from investigation through to trial. There are deaf RIs who regularly assist in cases involving deaf witnesses. Although the Deaf RI can usually incorporate the Deaf relay role, if all information requires relaying throughout a lengthy trial with several witnesses, this impairs the Deaf RI's ability to monitor the communication process as a whole. It may be necessary in some cases to use a SLI, a deaf relay and a Deaf RI. It is appropriate that the Deaf Intermediary, who is instructed throughout the case, is responsible for recommending an additional deaf relay if needed; this allows the intermediary to monitor communication and he/she can assist the communication team in adapting their communication to meet the needs of the deaf person. When the deaf person themselves gives evidence, it is likely that the deaf intermediary will take over from the relay as he or she has the greatest experience of the person's communication and can use additional visual aids, role play and prompts, none of which are available to a deaf relay.

Sign language interpreters/BSL interpreters

Sign language interpreters (SLIs)/BSL interpreters are qualified professionals who are skilled in the interpretation of English into BSL and vice versa and are accountable to their registration body, the NRCPD. They are also likely to be members of a professional association (Association of Sign Language Interpreters UK or Visual Language Professionals) and are required to maintain their skills by participating in Continuing Professional Development training. All SLIs working in legal settings must be qualified and registered (RSLI) and should also have experience and/or specific training in working in legal settings.

It is important that the deaf person in court understands the interpreters provided; difficulties can arise with interpreters from different areas of the country, in working with deaf children or young people, if the deaf person has idiosyncratic signs or if the interpreter is just not well-matched to the deaf person. A Deaf RI, the court interpreter or an independent expert RSLI will advise if this is the

case and may recommend a change of interpreter(s) or the use of a different interpreter(s) with particular skills, or the recruitment of a deaf interpreter to the interpreting team.

Sign Supported English

Sign Supported English (SSE) refers to the use of BSL signs in English word order and implies that the individual's first language is English rather than BSL. In reality, many deaf people use a hybrid of BSL and SSE. In some instances, speech is used at the same time as SSE.

Total Communication

This is relevant when considering the deaf person's background and education. Total communication (TC) is an acceptance and use of all means of communication, including sign language. This is in contrast to oralism, which promotes speech and lip-reading and discourages the use of sign language. Some deaf children will have been educated in a TC environment, others in oral schools.

4. ASSESSMENT

- 4.1 Knowing someone is ‘deaf’ tells you very little about them or their ability to cope in the legal process.**
- 4.2 It is vital to get a full picture of the individual’s communication capabilities.** The deaf person may indicate how to accommodate their communication needs, or family members may assist; although be aware that many deaf people with hearing families struggle to communicate with their own family. However, be wary of a reliance on lip-reading (see below). A Deaf RI, expert interpreter or, in their absence, the SLI, will advise about the most effective means of communication tailored to the individual’s needs and the vocabulary required by the case. (Matters of capacity to consent, competence and credibility are all beyond the intermediary’s and the interpreter’s remit. For further information on intermediaries, see [The Advocate’s Gateway](#).) They may also indicate whether additional assessment is required, for example, by a specialist clinical psychologist, if it appears the witness is not competent.

GOOD PRACTICE EXAMPLE

A Deaf RI worked with a deaf victim of assault, assessing that she had idiosyncratic signs which were difficult to understand. The intermediary accessed social services’ files to obtain background information and worked to complete a ‘timeline’ of the person’s life and was then able to clarify certain key signs and meanings.

GOOD PRACTICE EXAMPLE

In advance of cross-examination, the advocate worked with a clinical psychologist who had assessed the witness’s capacity to rephrase her questions to an appropriate level of understanding for an adult woman of normal intellectual ability but with minimal language skills, due to late exposure to BSL.

- 4.3 Specialist expertise in deafness is required** to distinguish whether a deaf individual’s difficulty in understanding is due to learning disability, a mental health problem, or

needs associated with deafness which affect their ability to take part in proceedings. If communication problems persist despite the deaf person being interviewed with a registered qualified BSL interpreter and having the support of a Deaf RI, an assessment by a specialist clinical psychologist for deaf people should be obtained, as deafness may disguise other disabilities relevant to competence.

4.4 Indicators that such an assessment is necessary include:

- feedback from the interpreter, relay or Deaf RI that they had difficulty communicating and considered the witness may not have understood the questions;
- the deaf person nodding but not engaging in conversation about the topic under discussion – ‘acquiescence’, or the tendency to answer in the affirmative, regardless of the question, is a characteristic that can be assessed prior to proceedings by an appropriately qualified and specialised clinical psychologist (in the case of vulnerable individuals this tendency may be linked to not understanding and wanting to ‘save face’ or wanting to please by agreeing);
- tangential answers to questions;
- the deaf person showing anxiety or anger;
- the deaf person asking the same questions repeatedly;
- the deaf person appearing not to have retained information between questions;
- a history of mental health problems, or indication of involvement with special education or learning disability services;
- the deaf person asking other unrelated questions rather than responding to the question being asked of them.

5. LIP-READING AND LIP-SPEAKING

5.1 Key points for questioning when the witness is lip-reading

Lip-reading is often very unreliable; if the person can use sign language, book SLIs for the hearing. However, if you are *relying on lip reading*:

- use a courtroom fitted with an induction loop in order that residual hearing can be used;
- make sure you have the person's attention before you start speaking, ensuring there is eye contact;
- ensure good lighting (so that you can be lip-read) and do not sit with your back to the window (as you will appear silhouetted);
- ensure there is no background noise, which can be distracting;
- face the witness so you can be lip-read and speak clearly, using plain language, normal lip movements and facial expressions;
- check whether the deaf person understands what you are saying by asking them to explain their understanding – if they do not understand, try saying it in a different way;
- keep your volume steady – it is uncomfortable for a hearing-aid user if you shout because it distorts lip pattern and looks aggressive;
- do not speak abnormally slowly as this also distorts lip pattern;
- do not cover your mouth when you are talking (if you have a beard or moustache you will be more difficult to lip-read);
- consider the use of a lip-speaker;
- consider the use of a speech-to-text writer as an adjunct to lip reading.

5.2 Important caveats about lip-reading and speech

- Lip-reading is very difficult. Lip-reading at a distance, with unfamiliar people, with accents, beards or who may not maintain eye contact is practically impossible. Even under optimum conditions (good light and being only 3 to 6 feet away from a

questioner who is facing the deaf person and who does not look down while speaking), a skilled lip-reader who is not particularly anxious may still clearly understand only 25 to 40 per cent of what is said (see [Hearing Link](#)). This is because a high percentage of English words are not seen on the lips or look the same as other words. (Try looking in a mirror and mouthing the words 'this' and 'these', 'walk' and 'wall'; 'pale', 'male' and 'bail').

- In order to lip-read a word, you need to know that word already. There is a high risk that much of what is said in a legal context (both vocabulary and the non-conversational form of questions) will be unfamiliar to a deaf person.
- Some deaf people have intelligible speech, however, this does not mean that they will be able to lip-read reliably.
- Some deaf people may say they can lip-read or do not need sign language to be 'helpful', to speed things along, to avoid looking disabled or to appear 'as hearing as possible'. This does not mean they are a skilled lip-reader or that they do not need an SLI.
- Shouting, raising your voice or speaking unnaturally slowly to communicate with the deaf person does not help. It distorts the lip pattern and makes lip-reading more difficult.
- The live link is inappropriate for lip-reading due to the distance involved and the fact that it is a two-dimensional screen. Its use would increase the risk that the deaf person would pick up only a few words and try to guess the rest.
- In cases where there is some residual hearing, the pre-trial visit to the court should be used to test out various approaches to improving communication.
- There are significant difficulties when more than one person is speaking or when the person who is speaking changes in quick succession. This means that meetings, legal conferences and exchanges in court can be impossible to follow.
- In cases where the witness is relying on lip-reading, consider the use of a lip-speaker to allow them to follow proceedings.

POOR PRACTICE EXAMPLE

The court failed to book interpreters because information was provided that the deaf defendant could lip-read. He was seated in the witness box instead of the dock in order to 'follow proceedings'. However, the judge and advocates spoke at their usual pace, looked down and at each other, and did not look directly at the deaf person to see if he was able to follow. The judge's face was hidden from the defendant's view by legal books on the Bench.

POOR PRACTICE EXAMPLE

Three teenage witnesses giving evidence over the live link were expected to lip-read questions from a prosecutor who read from his papers, despite constant reminders from the magistrates to look at the camera while speaking.

POOR PRACTICE EXAMPLE

In a case where a deaf witness was required to refresh her memory by viewing the Achieving Best Evidence (ABE) interview, she was unable to do so as she could not see the face of the officer asking the questions; eventually the judge was persuaded to allow the Deaf RI to use the written transcript to assist the witness, allowing the Deaf RI to sign the questions from the officer.

6. SIGN LANGUAGE INTERPRETERS AND DEAF INTERPRETERS

6.1 Key points for questioning via sign language interpreters

- Use a registered, qualified SLI with legal training and experience. There is a pool of interpreters who specialise in court interpreting.
- If there are difficulties, the interpreter will be able to advise you how best to phrase your question. SLIs abide by a Code of Conduct so will maintain confidentiality and are required to be impartial. Their role is only to mediate the communication between you and the deaf person, but not to participate in any way.
- Do not ask the SLI's opinion about other matters that go beyond their role, e.g. the mental health of the deaf person.
- Talk directly to the deaf person, not the jury or the judge, and use the first person '*Can you tell me ...?*' not the third person via the interpreter or intermediary '*Can you ask him to tell me ...?*'
- Talk at a natural pace.
- When reading out a text, pause after one or two sentences. This is because written text is usually more condensed than speech and typically read at a faster pace than normal speaking rate.
- Remember that the SLI is obliged to interpret everything that is spoken or signed. Do not ask the SLI not to interpret something.
- Remember that English is a second language for those who communicate with sign language. Do not expect the deaf person to be able to read written documents without assistance – these may need to be interpreted into BSL. Do not rely on writing notes with deaf people as they may not be understood.
- Rely on the Deaf RI, skilled in BSL, to give advice about communication and issues which may arise with interpreters. If there is no intermediary, an expert interpreter or the court interpreters may provide advice on these matters.

6.2 Sign language is the natural language of the Deaf Community. BSL has a grammar and structure which is different to English. English is linear while BSL is spatial. This means that, for example, whilst in English you cannot say two words at the same time, this is possible in BSL, e.g. <little-boy> can be indicated by signing <boy> with one hand at the same time as <little> with the other. It is not a word-for-sign transcoding of spoken language, so certain concepts may take longer to interpret from English into BSL and vice versa as SLIs need to search for the equivalent meaning in each language.

6.3 SLIs

All SLIs working in legal settings must be qualified and registered. They should also have experience or specific training in working in legal settings. This requirement should be made clear at the time of booking. The court books interpreters via the Ministry of Justice portal, but the Crown Prosecution Service (CPS) and solicitors can book via the NRCPD website, which lists individual interpreters by area, or via local agencies.

6.4 When working with a deaf person who uses BSL you should bear in mind the following points.

- **Book an SLI for all meetings.** Do not rely on lip-reading or written English.
- **Do not ask family and friends to ‘interpret’.** They are not qualified, may have a low level of signing and, of course, are not independent. Employing an SLI is not a guarantee of understanding; this depends on the needs of the deaf person, the skill of the interpreter and, to some extent, the ‘match’ between the two.
- **The court has a responsibility to book appropriately qualified and registered SLIs in cases with deaf witnesses and defendants.** The established guidelines on booking court interpreters are designed for spoken language interpreting and do not fit with BSL interpreting requirements. For example, the general interpreter guidelines require separate interpreters for the defendant (known as court interpreters) and for CPS witnesses, i.e. the court interpreter will sit with the defendant in the dock providing a whispered interpretation.

However, BSL is a visual language and therefore all parties can watch the same interpreter, avoiding duplication of the interpreting service when both the defendant and the witness(es) are deaf. For this reason, rather than working separately, as court and CPS foreign language interpreters are necessarily required

to do, the BSL interpreting service is best served by having two/three interpreters working (solely) 'for the court' and a separate interpreter for the deaf defendant. The court interpreters will interpret everything that is discussed within the courtroom and the defence interpreter will interpret all legally privileged information outside of court. No extra interpreters are required by the CPS unless there are numerous deaf witnesses and an interpreter is required in the Witness Service room.

6.5 The expert interpreter or court interpreters will be able to offer advice about how many interpreters are required, but you should follow these general principles.

- In all matters other than the trial, it is usually necessary to book one BSL interpreter (plus a deaf relay or Deaf RI where there are additional linguistic or mental health difficulties) for the court. A second interpreter will be required to interpret for the defendant in conference and for privileged information outside of court.
- In a trial BSL interpreters usually work as a team of two or occasionally three. Three interpreters are only required where the defendant is deaf and the trial is estimated to last for more than five days, or if there is a deaf defendant and deaf witnesses, or if there are exceptional difficulties. When there are three court interpreters, one person will be actively interpreting, the second monitoring/assisting and the third resting. The cognitive demands of interpreting are such that after around 30 minutes of continuous interpreting accuracy tends to deteriorate, hence the team approach. The team of two/three court interpreters will be responsible for interpreting everything that is discussed within the courtroom.
- Where there is a deaf defendant, as has been described above, the defence team will need to ensure they have their own defence team interpreter to interpret legally privileged information and consultations out of court. The defence interpreter will also be able to offer linguistic and cultural advice to the defence team.
- Expert interpreters, court interpreters and/or deaf RIs are the best people to advise on how many interpreters will be needed for each preliminary hearing and/or the trial.

6.6 Deaf-blind communication

Deaf-blind communication is a complex skill requiring specialist interpreters. If you are working with a deaf-blind person, you should consult the [NRCPD website](#) for appropriate communication support. [The charity SENSE](#) also provides valuable information and resources.

6.7 Deaf interpreters (relays)

SLIs are generally skilled at modifying their communication to meet the needs of the client. However, for some deaf people with limited fluency in BSL, because they are foreign, have a learning disability or a mental health need, it may be beneficial to employ a deaf interpreter. Since 2014, qualified deaf interpreters have been able to register with NRCPD as translators and interpreters, but, as this is a new professional form of registration, there are many deaf people working in a deaf relay capacity who are not yet registered as deaf interpreters/translators and have not undertaken recognised training.

Given the complexity of the task, it is important that a deaf interpreter has highly developed bilingual skills and is competent in (written) English as well as BSL. If a Deaf RI is involved, this role may encompass the task of relaying information, with the additional benefit of being able to advise the court, which is beyond the remit of a deaf interpreter. In addition the Deaf RI will have met and assessed the communication skills of the deaf person and will be able to advise the interpreting team about communication issues, such as the use of idiosyncratic signs.

6.8 Preparation

Court interpreters need to read documentation to obtain a general background and contextual understanding of the case and to consider how to refer to specific proper nouns which are typically only initialised or visually represented in BSL, using a 'sign name' (e.g. <FS> for Fred Smith or <curly hair> as a name of specific person). As a minimum, the SLI should be furnished with a case summary, photograph album, list of witnesses, maps and other visual material, all of which help to build a visual picture in BSL. In some cases, where geography or layout of a scene is an issue, interpreters would be greatly assisted by a site visit in order to create a clear and accurate visual picture, or may be assisted by 'Google Street View'.

6.9 Monitoring communication

There are several difficulties for the court in working with BSL, not least that there is no ability for the court to monitor the interpretation process. This is problematic for the deaf person as they are unable to monitor how they are being represented by the voice-over of the interpreter and problematic for the courts in areas of dispute over interpretation. There are various options available to allow greater transparency and improve the ability of all parties to challenge the interpretation. However competent an interpreter may be, the possibility of human error does exist. To minimise this risk:

- the court interpreters will monitor and support each other's work;
- the interpreter working with the deaf person's legal team can monitor the court interpretation process and alert the advocate to any concerns;
- the use of a Deaf RI will help to ensure that the deaf person understands and the accuracy of interpretation is monitored – the Deaf RI alerting the court to any difficulties. An intermediary who is deaf will be accompanied by their own interpreter who will provide a 'back translation' of what is interpreted;
- in the case of a deaf witness or victim, the defence team may employ an expert interpreter to monitor the interpreting process or the court may consider employing an expert interpreter to monitor the process.;
- the court may consider video-recording the evidence of a deaf person. Not only would this allow for challenges of interpretation but also provide a first-hand recording of evidence which is currently not available (the audio-recording of the interpreter is not a recording of the original *signed* evidence). This matter was raised in the case of *R v IA and Others* [2013] EWCA Crim 1308 at the Court of Appeal. It was noted that the fact that the evidence was not able to be videoed was related to the limitations of technical equipment at court Visual recording of the evidence of deaf witnesses and defendants was achieved in a first instance case *H and Another* at Snaresbrook Crown Court in June 2014.

A cameraman from the deaf television company Remark! filmed the testimony. The footage was available for checking in the event of any dispute as to what had been said. At the end of each court sitting, the recording was transferred to a disc which was sealed and signed by counsel and the officer in the case. This was then placed

on the court file. Many deaf witnesses and defendants feel more comfortable knowing that testimony is being visually recorded and the interpretation can be checked.

7. AREAS OF DIFFICULTY AFFECTING COMMUNICATION AT COURT

- 7.1 The court may need to allow adjustments to facilitate communication.** The visual nature of sign language means that deaf people need a clear unobstructed line of sight to the interpreter, who needs to be positioned at least one metre in front of the deaf person. It is not possible for the interpreter to sit next to the deaf person. Someone who is slightly deaf but still relies on residual hearing or who has hearing in one ear may require some adjustments to the courtroom to facilitate hearing. In *H and Another*, deaf defendants sat in front of the witness box (as opposed to the dock) when the co-defendant gave evidence in order to ensure that the defendant was provided with the clearest possible view of the co-defendant's signing.
- 7.2 Many communication problems are attributable to the questioner's inability to communicate with a deaf person appropriately.** [In R v F](#) [2012] EWCA Crim 424, the Court of Appeal held that the attempts of counsel and judge 'represented a failure by them to communicate in a way which would enable the witness' competence to be properly tested'.
- 7.3 Effective communication at court is enhanced by the advocate having some understanding of the nature of BSL and the task of interpreting.** Although the BSL interpreter is trained to interpret your questions and the answers given, you will be more effective in working with deaf people if you understand the role of the interpreter, a little about how BSL works and have some prior knowledge about deafness. This will often require advice from a Deaf RI or other expert in deafness who has assessed the person. In the event that you are required to work with a deaf person, it would be good practice to undertake some deaf awareness training. This may be found online at very little cost.
- 7.4 The testimony of a deaf person in court can be altered for better or worse by the nature or quality of the interpretation.** An interpreter who hesitates, appears unsure, or makes statements with long pauses may not give a true reflection of the deaf person's communication. An interpreter or intermediary can inadvertently compensate for the deaf person's difficulties by making the witness seem more fluent or able than is

the case. Ensuring that professionally registered interpreters with legal experience are used will help to minimise this issue, but it is important to ensure that the interpretation reflects the true responses of the deaf person, which can be addressed by monitoring (see above).

7.5 Asking the SLI to ‘just interpret the question’ reveals a lack of understanding of the nature of BSL and the task of interpreting. Take the simple question: *‘Are you single?’* The SLI is likely to change that to *‘Are you married?’* in keeping with the way that this concept is expressed in BSL. The deaf person will then answer *‘No’* by shaking their head, on which the SLI gives the answer *‘Yes’* to the court. This all looks very confusing to the court but the interpretation is accurate in terms of meaning and intent. These issues need to be highlighted to the court and jury to ensure they do not make their own interpretation. While the interpreter must not add any information, considerable ‘cultural mediation’ is often required to bridge the gap between the court and the deaf person. The visual nature of BSL means that the interpreter or deaf RI may ask for clarification. For example, in the phrase *‘Open the window’*, the interpreter may ask what type of window this was because the signs for opening a casement and sash window are very different, i.e. the movement of opening different types of window is incorporated visually into BSL. Similarly, the question *‘Did you use the stairs?’* requires knowledge of whether the meaning is that the person went up or downstairs.

7.6 There are general terms which are difficult to convey due to the visual nature of BSL. Use of specific, descriptive words assists accurate interpretation. For example, there are signs for knife, gun, axe or baseball bat, all of which look different in BSL, but no generic sign for the superordinate term ‘weapon’. Similarly, there is no general sign for ‘assault’ which needs to be put into context. When the questioner uses a general term, the SLI may:

- finger-spell the word (e.g. ‘weapon’) – however, there is a risk that the deaf person will not understand the vocabulary or have sufficient facility in English to understand the spelled word even if they understand the concept.
- ask the court to specify what is meant in order to create a visual picture (e.g. the type of weapon or assault), in order to avoid a leading interpretation – although, this, of course, may not be desired by the questioner;

- change the question into a forced choice e.g. *'Did you have a weapon?'* may become *'Did you have a knife or gun?'* This is problematic, not only because the court may be unaware of the altered question but also because the deaf person may answer 'No' since they did not have a knife or gun but did have a baseball bat.

7.7 Heightened anxiety impairs concentration. Watching an SLI takes a great deal of concentration and this may be affected by anxiety, in turn affecting understanding. Deaf people who are in a situation involving hearing professionals who are authority figures, and with whom they cannot communicate directly, can find this extremely anxiety-provoking.

7.8 Interpretation inevitably leads to a delay in questioning due to the time it takes to sign a question and await the response. This is particularly the case with the addition of an intermediary or relay. This time-lag can lead to questioning appearing slow and laborious. It is important that the court understands the need for this delay and does not infer hesitation on the part of the deaf person, or indeed incompetence on the part of the interpreter. It is essential that advocates should avoid the temptation to 'fill the gap' with additional or supplementary questions in an effort to help, as this just makes the process longer and more confusing.

8. CASE MANAGEMENT

8.1 The ground rules hearing

This is the opportunity for the trial judge and advocates to plan adaptations to questioning necessary to facilitate the evidence of a vulnerable person. Where a Deaf RI is appointed, the purpose of the hearing is ‘to establish how questions should be put to help the deaf person understand them and how the intermediary will alert the court if he or she has not understood or needs a break’ ([Application for a special measures direction, Part F1](#)). Given this role, it is self-evident that the intermediary for a deaf person who signs must be fluent in BSL, whilst other deaf people who do not use BSL will require a hearing intermediary with expertise in deafness who has skills to meet their specific communication needs (e.g. lip-speaking).

8.2 If interpreters are to be employed, an expert interpreter can advise on how many interpreters will be needed, what preparation they will need and other interpreting matters.

8.3 The deaf person must be able to understand the questions and be enabled to give answers they believe to be correct. If he or she does not understand the question, the answers will not further the overriding objective. It is appropriate to ask a Deaf RI to provide some basic deaf awareness training at this stage to all parties. Ground rules hearings are:

- mandatory in all intermediary trials and they remain vital, even where participants have previously worked with an intermediary, as arrangements need to be agreed that are specific to the individual before the court (the intermediary must be present but need not take the Oath);
- good practice in all young witness cases and other cases with a vulnerable witness or vulnerable defendant with communication needs;
- desirable before the day of the witness’s testimony, where possible, giving advocates more time to adapt their questions and ensuring the witness can be prepared on the basis of agreed special measures.

8.4 **Ensure that the person is familiarised with court surroundings.** A deaf person may have very limited life experience. Explanations about the purpose of a trial and their role in it

are crucial, e.g. that they do not need to agree with suggestions put to them in cross-examination unless they are true. If use of a live link is proposed, it is essential that the person practises on the live link ahead of time and sees screens in place in the courtroom, so that they can express an informed view about how to give evidence. Bear in mind that the live link is a barrier to lip-reading and that understanding sign language over a two-dimensional screen is difficult. The interpreter and intermediary must be in the live link room with the witness. In exceptional circumstances, the advocates have been allowed to go into the live link room to question the witness (see section 4.12 Toolkit 7 - Additional factors concerning children under seven (or functioning at a very young age). In cases where the court is trying a deaf defendant, a live link can be preferable to the use of screens, for the obvious reason that a deaf defendant requires sign language and screening the witness will prohibit access to the witness's evidence. In cases where there are multiple deaf people involved, care needs to be taken to ensure all sign language is within all the deaf individuals' lines of sight, sometimes requiring the creative use of space within the courtroom.

8.5 Since BSL is a visual language, many deaf people, particularly those with limited BSL fluency or learning disabilities can be assisted by the use of balanced, non-leading visual aids. See Toolkit 14 - Using communication aids in the criminal justice system.

8.6 A Deaf RI or other Deaf expert can advise and suggest appropriate visual aids.

GOOD PRACTICE EXAMPLE

A deaf witness with limited BSL fluency who witnessed a serious crime was assisted in giving evidence to the police by the use of a map and 'lego' people in order to place characters at the scene.

GOOD PRACTICE EXAMPLE

A deaf witness with a learning disability, and no concept of times or dates, was assisted in court by a timeline to put pictures of significant events in order.

8.7 A neutral supporter whom the person trusts should always be considered as a special measure because of the potential benefits to recall and stress reduction. This is particularly important for a deaf person with minimal language skills, a learning disability or mental health needs ([Application for a special measures direction](#), Part C3; section 102 [Coroners and Justice Act 2009](#)).

8.8 Timetabling needs to be tailored to concentration span and interpreter fatigue.

Concentrating on watching an SLI is extremely tiring and the deaf person will need an ‘eye-break’, in some cases possibly every 20 minutes. Over the course of a trial there is often ‘slippage’ in this ground rule and the intermediary has a key role in ensuring guidelines are adhered to.

Interpreters also need to break approximately every 40 minutes otherwise they can experience cognitive overload and fatigue. When interpreters get fatigued, there may be more inaccuracies in the interpretation. SLIs usually manage this by working as a team of two or three. However, deaf interpreters (relays) or Deaf RI’s incorporating the relay function tend to work alone and will require breaks. Do not rely on someone to ask for a break, or to say they need one if asked.

GOOD PRACTICE EXAMPLE

At the beginning of the trial the Deaf RI proposed ground rules including breaks every 30–40 minutes. This was insisted upon even though the deaf person themselves stated they wished to continue at times to ‘get it over with’. The length of time, which may be needed to question a deaf person, needs to be considered in relation to listing times to avoid putting the witness under pressure of time.

POOR PRACTICE EXAMPLE

During the cross-examination of a young deaf woman prearranged breaks were set at around 40 minutes. In fact, questioning frequently went on for over an hour and, when requests were made for a break, the woman was advised that questioning would continue to finish a point.

8.9 Being introduced to the person and a brief discussion with the interpreters is an important opportunity to familiarise yourself with the person's communication abilities.

GOOD PRACTICE EXAMPLE

At the beginning of the trial the Deaf RI worked with interpreters to familiarise them with a deaf witness's idiosyncratic signs, in particular in relation to signs for places and people which were not standard BSL.

8.10 Adopt an appropriate manner while questioning. The deaf person only has visual information to gain an impression of the advocate. Make eye contact and be aware of facial expression and body language so as not to appear intimidating.

POOR PRACTICE EXAMPLE

The advocate shuffled his papers and looked at the jury, avoiding eye contact with a deaf witness, who was confused as to whether she was meant to respond to his questions. She thought him cross and rude.

8.11 For further guidance on case management, see Toolkit 1a - Case management and Toolkit 1 - Ground rules hearings and the fair treatment of vulnerable people in court.

9. FRAMING YOUR QUESTIONS

The accuracy and completeness of the witness's testimony can be significantly improved if appropriate questioning strategies are adopted. Writing out your questions in advance will help you spot potential problems. The Deaf RI or an expert psychologist who has assessed the witness is able to assist in anticipating difficulties with certain questions and modifying them.

9.1 Speak at a natural pace and use whole sentences.

- Do not slow down artificially as this impedes interpretation. Remember, the interpreter is not interpreting word-for-sign but is interpreting units of meaning, so needs to understand what you are saying before interpreting.
- If there is a time delay, be patient; do not fill the silence with another question.

9.2 If the response is tangential or there is no response, try rephrasing the question.

However, if you merely express the same meaning in a different way, the interpretation is likely to be the same, so try to add extra information to assist. For example, the question *'Did X force you to have sex with him?'*, if changed to *'Did X put you under pressure to have sex with him?'* has essentially the same meaning and would therefore be interpreted in the same way in BSL. However, if the question becomes *'Did X say he would hurt you if you said "No" to sex?'* is different and would be interpreted differently.

9.3 Use simple, common words. Avoid redundant words and phrases – such as *'To your knowledge ...'*, *'I put it to you ...'* – jargon and complex vocabulary.

- Use everyday concepts which are more likely to be familiar.
- Use questions rather than statements with questions tagged on before or afterwards. So, instead of *'It is the case, isn't it, that you were tired at that time?'*, say *'Were you tired at that time?'* and rather than *'You did not like him, that's true isn't it?'*, say *'Did you like him?'*
- Use the same words consistently in questions. This assists the interpreter in referring to the same thing in the same way.

9.4 Ensure there is a shared understanding of key concepts and phrases with the SLI. Preparation with interpreters prior to questioning is helpful to enable the SLI to interpret accurately. The RI is able to assist advocates in planning their questions.

- 9.5 Use words in their literal sense.** Avoid metaphors and figures of speech. These do not translate literally and will be interpreted by the SLI according to their meaning (e.g. *'It was raining cats and dogs'* will be interpreted as *'It was raining very heavily'*).
- 9.6 Ask simple questions, one idea at a time.** Complex questions lead to more complex interpretation and are likely to result in incorrect, partial or *'I don't know'* responses, even though the witness *does know the answer* to the question.
- 9.7 If the witness has limited BSL fluency or learning disabilities, it may be necessary to ask open, free recall questions,** e.g. *'What happened?'*, *'Tell me about ...'* to allow the witness to use their own words/signs rather than having to understand specific questions. This may lead to a long, seemingly irrelevant chronology, with the answer to the question embedded at some point. This can be managed with the assistance of the Deaf RI.
- 9.8 Follow a structured approach.** Avoid questions that jump around in time or appear unconnected. These require constant re-orientation on the part of the witness. Follow a logical, chronological order if possible. Referring to more than one event per question is confusing. Using a timeline with pictures to give a visual clue to the order of events can be helpful.
- 9.9 Signpost the subject and explain when it is about to be changed.** This gives the person transition time to focus on the next subject and aligns with the way BSL is used in which the signer often indicates that one topic is finished and another is starting, e.g. *'Now we have finished talking about X and we're going to talk about ...'*. It can be helpful to schedule a break at a change of subject.
- 9.10 Avoid questions in the passive form** These are unnecessarily complex and difficult to convey in BSL which tends to incorporate the 'active' rather than 'passive' voice, e.g. *'Were you to have been taken to the shops that day of the bus strike?' Better alternatives include: *'Did someone take you shopping on the day of the bus strike?'**
- 9.11 Avoid questions from which personal references have been removed.** This type of abstract question which removes personal references to the witness and/or defendant – e.g. *'about the touching of the boobs'* – is difficult to convey in BSL without specifically referring to the person involved. It would be more effective to be direct and say *'Did he touch your boobs?'*

- 9.12 Check directly on understanding, using simple words.** It is good practice to encourage someone to say when they do not understand a question (or what is happening), but do not assume that they will be capable of doing so. A deaf person may have difficulty in recognising when they do not understand something because they are so used to guessing and filling in gaps. Asking if someone understands and receiving a response of ‘Yes’ may be insufficient; best practice would be to ask the deaf person to explain back what they think is being asked.
- 9.13 A vulnerable or anxious deaf person may ‘nod’ when they do not understand the question** wishing to seem to understand in order to ‘please’ a questioner who is an authority figure, or not wishing to appear ignorant, or to ‘save face’. If you suspect this may be the case, check understanding by asking the deaf person to state what they understand by the question.
- 9.14 You may need to check understanding throughout.** Alternative approaches include asking the person to explain what was said, or to say, e.g. *‘It’s my job to ask you questions. I want to be sure you understand all my questions. If you don’t understand, please tell me. Let’s practise that. If you don’t understand, how will you tell me?’* (e.g. by raising a hand). *‘Are you sure?’* or *‘Is that true?’* are better alternatives than *‘Is that right?’* because the word *‘right’* gives undue emphasis to the suggestion.
- 9.15** The interpreter, Deaf RI or other Deaf expert may interrupt to check understanding; this is appropriate and is an indication of a careful and competent interpreter. Although it can be a little intrusive, it is not an indication of difficulties in interpretation.
- 9.16 Be alert to miscommunication.** Be alert to non-verbal clues to miscommunication, such as puzzled or frustrated looks, knitted eyebrows, downcast eyes and long pauses. An intermediary or interpreter often identifies signs of confusion before these are picked up by those in court.
- 9.17** For further guidance on framing questions, see generally **The Advocate’s Gateway toolkits.**

10. QUESTIONS LIKELY TO PRODUCE UNRELIABLE ANSWERS

10.1 Some question types carry a high risk of being misunderstood or producing unreliable answers. Deaf adults with learning disabilities, minimal language skills or deaf children are more likely to acquiesce (i.e. reply 'Yes') to questions, requiring a yes/no response that are repeated or that are not understood. When questions include information which did not originate with the witness, but is suggested implicitly or explicitly by the questioner, there is a danger of *'leading'*. Problematic question types should be discussed at a ground rules hearing (see section 3 Toolkit 1 - Ground rules hearings and the fair treatment of people in court). Cross-examination must enable the witness to give answers that they believe to be correct. This includes taking account of the individual's ability to refute a suggestion that is inaccurate.

10.2 'Tag' questions make a statement and then add a short question inviting confirmation, e.g. *'John didn't touch you, did he?'* or *'John didn't touch you, right?'* They are powerfully suggestive and linguistically complex. They may be dealt with by interpreters in different ways which may make them more or less leading but the court will be unaware of this and therefore avoiding them altogether is advisable. Judicial guidance recommends that this form of question be avoided with children and that a direct question be put instead.

10.3 Other forms of assertion

When a hearing person in a position of authority formally suggests that something is a fact, it may be difficult for a vulnerable deaf witness to disagree and to assert what they believe to be true. Deaf people frequently assume hearing people, particularly those in authority, are correct; this includes legal professionals and may be particularly relevant should the judge engage in some questioning. This is particularly the case in relation to deaf children who are taught predominantly by hearing adults. Many deaf people are also of the view that hearing people will be believed in preference to them. These attitudes are born of experience of discrimination which creates expectations of the same in court.

10.4 Forced choice (closed) questions create opportunities for error when the correct alternative may be missing, e.g. *'When you went to the flat, did John or Bill open the door?'* If the deaf person tends to repeat the last word or last part of the question or believes they have to choose one or other option, this is not an answer. Research

suggests that sometimes interpreters change an open question to a closed, forced choice without the court's awareness (Brennan and Brown 1997). With some deaf people forced choices are necessary. However, if they are to be used, this needs to be agreed with the court and not be the decision of the interpreter. The interpreter should alert the court to a difficulty with an open question and ask the court's permission to change it.

- 10.5 'Do you remember ...?'** This type of question requires complex processing, particularly when the deaf person is asked not about the event, but about what they said about it to someone else. If the witness is being asked to remember what they said in an ABE interview, it is more reliable to show them the clip of the interview again rather than expecting them to remember or understand exactly which part you are talking about.

GOOD PRACTICE EXAMPLE

When being cross-examined about inconsistencies a deaf woman with minimal language skills who found it difficult to comment on what she said, as opposed to what happened, was played the section of the ABE again and asked to comment on the clip.

- 10.6 Questions containing one or more negatives** make it harder to decipher the underlying meaning. Negatives increase complexity and the risk of unreliable responses. The interpreter may significantly alter the structure of the question in order to preserve meaning in BSL.

10.7 Effect of repetition

Questions repeated (consecutively or interspersed with others) by one or more authority figures (advocates and judges) are likely to risk reducing the overall accuracy.

- The person might conclude that their first answer is wrong or unsatisfactory. This is a very common experience for deaf people who spend a lifetime trying to understand hearing people and make themselves understood.
- If a question needs to be repeated (even with changed wording) for the sake of clarity, explain that you just want to check your understanding of what the person

said, without implying the first answer was wrong, e.g. *'Thank you, but I want to be sure I understand. Tell me again'* (followed by the question).

- A series of propositions inviting repetition of either 'Yes' or 'No' answers is likely to affect accuracy because an acquiescent person often gets into a pattern of responding. If only yes/no questions are asked, it is difficult for advocates to determine if the witness is having problems with the questions.

10.8 Long complex questions with several propositions. Deaf people spend a lifetime trying to 'guess' what hearing people are saying to them and may be reluctant to say they do not understand for fear of looking 'stupid' or displeasing the person talking to them. Frequently, half-understanding the question, or understanding a key word, is sufficient to prompt the person to guess at the answer. Even with an interpreter, the deaf person may answer part rather than all of a long or complex question.

10.9 Questions suggesting the witness is lying or confused. Because of the heightened anxiety, these questions are likely to have an adverse impact on concentration and accuracy of responses. If such a challenge is appropriate, it should:

- be addressed separately, at the end of cross-examination;
- be put in simple, clear language.

ACKNOWLEDGEMENTS AND REFERENCES

The development of this toolkit was funded by a grant from the Legal Education Foundation.

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