



IFJ submissions re intermediaries, remote working and vulnerable people in the Justice system-Covid 19 response

Response to The Remote Access Family Court Mr. Justice MacDonald

IFJ

Ifj ([Intermediaries for Justice](https://www.intermediaries-for-justice.org)) is a charity that works towards access to justice for all, via the provision of intermediaries **throughout the Justice system**. We are working towards a justice system where people with vulnerabilities can understand the justice process and can communicate their evidence effectively. Most of our members are independent intermediaries who are mainly registered intermediaries offering their services in the family courts.

We have contacted the membership and discussed the challenges faced as a result of Covid 19 and the Remote Access Family court. We trust you will consider the views and recommendations below. As registered intermediaries, many members have a lifetime of clinical experience in communicating with vulnerable people and many have worked for years enabling communication in the courts.

Introduction:

The Ministry of Justice has told Registered Intermediaries that they have been designated as key workers in terms of the Covid 19 pandemic. We welcome the recognition that the role intermediaries play in the justice process is essential to the fair administration of justice for all those accessing the legal system.

Our members (47 of whom take work in the family courts) remain committed to supporting justice professionals in enabling vulnerable people ("VP") to participate in the family court justice process. Members have some concerns as to how some of the proposals will impact vulnerable adults and children. The intention of the document is to raise the concerns with you and to invite a dialogue as to how best we can continue to assist the court at the present time.

Our key message is that the remote access to justice approach will require a consideration as to what is possible on a case by case basis. Members had doubts about assisting younger children using remote access methods. However there may be some older children and adults who may be able to participate remotely and some members currently say they would be willing to try assisting in this way. Step one would be (for the intermediaries who are competent with the technology and who are able to work presently) to assess whether this is a possibility, with safety as a priority.

Intermediaries who work in the family courts can be reached through the IFJ website:
<https://www.intermediaries-for-justice.org/find-intermediary>

Intermediaries Initial concerns:

1. We welcome the clarification in version 2 of the paper which confirms that “live court-based hearings should now be confined only to exceptional circumstances where a remote hearing is not possible and yet the hearing is sufficiently urgent to mean that it must take place with those involved attending court in a manner which meets the social distancing requirements.”
2. We have questions about how those requirements can be met i.e. whether intermediaries can work effectively at a 2 metre distance from the vulnerable person they are working with. This would be impossible if we are in the court room. It presents some difficulties if we are dialing in to the court from a remote location where we are sitting 2 metres away from the person we are working with.
3. Members are concerned about the welfare and communication impact on VP’s who are required to give evidence using remote communications.
4. Where the VP is not able to participate remotely even with an intermediary present the intermediary will advise the court of these assessment findings, and the court can consider whether the case falls within the category of work that needs to be adjourned as set out in para 3.4 of the recent guidance on remote access in the family courts.
5. The difficulties are exacerbated where the intermediary is also communicating with the VP via a remote link. Intermediaries would not be able to use certain strategies e.g. nonverbal prompting to write down, draw or indicate concerns/comments /queries during proceedings and would find it difficult to assist with anxiety, focus , trauma related responses and concentration from a remote location for example. They may be unable to identify signs of emotional distress and dysregulation e.g. fidgeting, altered breathing pattern, sweating and therefore would be unable to respond in a timely manner to these signs to pre-empt distress and disengagement. They would have difficulty in managing the VP’s response to distractions, including distracting thoughts triggered by the content of the proceedings.
6. With certain vulnerabilities we are concerned that this remote set up will be a fundamental barrier to effective communication.
7. Some issues could potentially be resolved to an extent by having a discrete channel between the VP and intermediary so that the intermediary does not interrupt the course of the hearing in certain circumstances. However, the factors to be considered are far more wide-ranging than the technological logistics which you take into account with interpreters (as referenced in your paper). It will also not be possible for some VPs to manage two information streams and some will not be able to manage a multi-party online meeting. It will also be challenging for the intermediary to follow proceedings and support the VP’s focus and engagement simultaneously via the discrete channel.
8. Consideration must be given on a case by case basis as to whether a remote assessment can be carried out, and whether the involvement of an Intermediary *remote* from the VP is sufficient to ensure that the VP is able to engage in and follow proceedings and in turn to have fair access to justice.
9. Communication abilities are compromised by external factors such as anxiety and stress. Intermediaries would include any preliminary findings in their report for the court.

Assessment is ongoing and this information will need to be updated at the hearing.

10. We consider that the mental health of some vulnerable people will decline as a result of contact with their children possibly being withdrawn and due to social isolation and fear engendered by the current crisis. The court will be dealing with the vulnerable at their very lowest point. Communication abilities will be severely diminished as a result of a myriad of factors, all crowned by the anxiety involved in a family court hearing.
11. **If the remote access set up is a barrier to participation then the intermediary will inform the court of their findings and make recommendations about what might work instead, if anything. If the intermediary cannot effectively (or safely) assist the person, they will say so.**
12. We note that you have consulted commercial providers of intermediary services. As a charity with 143 members, 47 of whom take family court work, we hope we can assist you with the changes required as a result of the Covid 19 crisis. As a charity our object is to provide access to justice for vulnerable people and we have provided our further thoughts on the options available in Appendix 1 below. Nearly all our members are self-employed individuals and each Intermediary will decide what they can and cannot do in this respect.
13. Some real examples of the experiences/concerns in court last week from intermediaries:
 - a. An intermediary in court last week reported that the mother she was working with was extremely worried about the Covid 19 situation, **the mother could not focus on the hearing** and rushed through the process with a view to getting out of court as soon as she could. The Intermediary considered that her ability to participate had been compromised by the matter proceeding in such exceptional times.
 - b. An intermediary expressed concern about sharing an iPhone with the VP. There is no guidance for us on this.
 - c. Another asked for guidance about how to preserve visuals used or produced when giving evidence (drawings that might be done for example) without potentially preserving any contamination from the virus.
 - d. The intermediary was at a safe social distance, but the client kept leaning in close to her and there was no equipment available to prevent this happening.
 - e. On the way to carry out an assessment of a child's communication the intermediary was told that the mother had flu symptoms but was still intending to bring the child to the assessment.
 - f. See Appendix 2 for a full account of one intermediary's account of assisting an intervenor last week.

CONCLUSION

There is an urgent need for further dialogue as to how VP's communication can be facilitated to give evidence and fully participate in hearings whilst ensuring no

parties are placed at risk of infection with Covid -19 . Some members believe that there are options which have yet to be explored.

For more information about IFJ please see: [Introduction to IFJ](#)
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Appendix 1: Initial thoughts on Options

1 Assessments:

- It may be in many cases that the assessment process is compromised due to the distance between the Intermediary and VP (similar points to below regarding nonverbal communication, use of aides to communication and focusing attention). Step one may well be to assess whether an assessment can take place remotely for the specific individual.
- We need to be clear about the technology that will be used in court and to be able to trial it as part of our assessment with the VP.
- Assessment will need to include assessing the VPs ability to access and use the communication platform (Skype/Zoom etc.) and their ability to switch channels of communication as required.
- In many cases there will need to be someone present to assist the VP with the technology in case of something going wrong-a family member who has been in close proximity to them anyway. We anticipate that it may be difficult to find someone who is willing or able to assist.
- Some intermediaries were of the view when we spoke last week that they may in some circumstances consider a face to face assessment if there is robust guidance in place keeping everyone safe. (Thinking is evolving on a daily basis and we aim to speak to intermediaries and gather their thoughts at regular intervals). What risk assessments would the court carry out in advance of a face to face assessment? Where might these assessments take place? Would the measures applicable in the courts for live hearings be applicable to this remote working environment too?

2 Working in a remote location sitting next to the vulnerable person:

- Given the current guidelines, the view is that this is not a safe way of working.
- Members thought about PPE equipment, perspex screens for example or other measures that could be taken to enable some form of distancing even when intermediaries are sitting next to the vulnerable person? It is likely that this is not a realistic proposition in the current times.

3 Working in a remote location-social distancing between intermediary and VP

Throughout the court process

Again, some intermediaries considered that it may be possible to assist in this way. Where intermediaries have assessed and concluded that it works to support communication in the same room as the vulnerable adult and to keep the appropriate distance (by sitting more than 2 metres away from the person) some intermediaries may do so although this would make it harder to use visuals which are required, or to read documents and simplify the content visually -all techniques used in a number of cases to support the person's communication. Difficult but potentially possible.

When the person gives their evidence

Whilst the VP is giving evidence it will be more challenging to assist communication, but work done in advance with barristers committing questions to writing may reduce the difficulties. There would need to be a conversation about how the intermediary will intervene.

4 Working from a different remote location to that of the vulnerable person

If the initial intermediary assessment shows that we may be able to work remotely from the VP, who will be with the VP at the time of the hearing to help with the technology?

We anticipate that many of the people we work with will struggle with split screens and the whole set up of a multi-party remote meeting. Again everyone is different. Some intermediaries may feel they lack the competence to work in this way. Others will be willing to assess and determine if there is a way to move forward that enables meaningful participation. We would hope to test the technological capabilities and practice using the technology before the hearing, but we would need to know what technology the courts intend to use.

We have given examples in point 5 above about the kind of methods we currently use to support communication that may not be available to the VP if we are working remotely from them. This may mean we are less able to effectively support communication and again in these cases we would advise the court.

Appendix 2 :

From an intermediary about her day on Monday 23rd March:

"I had been booked for a 10-day fact finding hearing In XXX. On Friday March 20th, despite the rapid increase in government direction for social distancing, I was told the hearing was still taking place. The VP was an Intervenor and had no legal representation of his own. His daughter had got a solicitor, so I was advised to go to the solicitor's office rather than to the court itself. The solicitor told me that she had taken it upon herself to organise this as all other parties were working remotely and she felt that the office environment would be better and cleaner than the courtroom

The VP's daughter also had an Intermediary so there were 5 of us in a fairly small meeting room, unable to exercise social distancing.

The proposal was that the VP I was working with should take part in a remote trial, however there were many difficulties associated with this:

1. How does this address the issue of social distancing if I am to be with him and doing my job of explaining things? Reading is a big issue for him, and I would have to assist in going through documents.
 2. How do we signal when breaks are needed?
 3. The impact that this will have on processing memory and retention (all issues for him)
 4. He is a very shy unassuming man- how will he signal if he is not following?
 5. My client is not technically minded and only has a basic mobile phone. What equipment would he use? What if it went wrong? Advice is that we should not share devices.....
- These are just a few of the issues.....*
- The case has already been adjourned once and everyone was mindful of the fact that a little boy had been in care for nearly 12 months and postponing now would increase this time.*

However, all parties agreed that it was not viable or fair to have intermediaries working in this way which would not be adhering to the social distancing guidelines.

They did say that this case would be seen as a priority when things settled down again.

We are aware that courts rely on us informing them if the process cannot be adapted in a way to meet the VPs communication needs. I did feel encouraged that I had been listened to and my involvement had been seen as an integral part to a fair hearing."