

Intermediaries for Justice

Adapting practice as a response to COVID 19

Checklist for assisting vulnerable people

This document explores potential ways that Intermediaries can assist during the COVID-19 pandemic. It provides a checklist for Intermediaries and other stakeholders to use when considering how to ensure that effective communication assistance is delivered in the current climate. It is an initial document which we hope will be updated as experience of adapting practice is gained.

Usual Intermediary process when Court is operating normally

Typically, when Intermediaries have been appointed by the Court, they assist all concerned to communicate with the person using information derived from their communication assessment. Intermediaries can be appointed for complainants, witnesses and defendants and anyone who is a party to a family court hearing. This document is aimed at providing fair access to justice and effective participation for vulnerable people in various settings. For ease the person who the Intermediary is working with will be referred to as a vulnerable person /VP.

The Intermediary report describes the VP's language and communication profile and what helps/hinders effective communication with them. Recommendations are provided in the report regarding:

- 1) The communication environment e.g. seating, breaks, timing of sessions, access to equipment (e.g. hearing loops etc)
- 2) The linguistic style and strategies that all communicating with the person need to adopt
- 3) The actions the Intermediary will take to monitor effective communication and employ strategies to assist the person to follow proceedings and have their say (e.g. Intermediaries determine which specific strategies are most relevant for an individual e.g. drawing, writing, pointing to pictures/symbols, to typing a

precis of what is being discussed and checking comprehension in breaks, speaking quietly to the person to clarify information being discussed and simplifying throughout the proceedings).

- 4) The Intermediary often assists before, during and after proceedings (e.g. when the person is communicating with the advocate to provide communication accessible summaries of expectations or outcomes). Typically, Intermediaries attend Court in person and sit next to the vulnerable person to assist.

During COVID-19

Intermediaries may still be required to ensure people understand their court matters and express their views e.g. regarding the revised timing of court hearings and what might be the next steps involved in their case; what rules or conditions might apply if remote working or working at a social distance is appropriate; the outcome of the proceedings; participating in judge-alone hearings and trials; instructing their lawyers etc.

Intermediaries may be required to carry out further assessments where adaptations to the court process are required as a result of Covid 19. Addendum reports to the recommendations provided in the initial intermediary reports are likely to be required to ensure effective communication is maintained.

Intermediaries may also be asked to carry out assessments for new referrals.

Assisting effectively via **remote methods** is challenging as the usual channels for effective monitoring of communication are limited e.g. the Intermediary cannot easily talk directly to the person to check comprehension or explain information without interrupting proceedings; showing written/drawn information created in the moment/diagrams to the person is not likely to be possible through some remote mediums but may be possible through others.

An important part of the intermediary role is to assist by carrying out an ongoing evaluation of **emotional regulation** which affects communication. Also people with **mental health issues** may need many strategies to help with focus, managing intrusive voices etc. Remote working obviously produces severe limitations in this area.

Intermediaries are typically appointed to assist VPs who may find communicating in non-face to face settings very challenging and may be **unfamiliar with communicating via technology** or may find it very difficult to explain their communication needs when using remote methods e.g. **to say if they cannot hear, see or understand the interaction**. Even a short breakdown or misconnection of link may affect the meaning of a question or sentence.

Hearing, vision, concentration and sensory issues all may impact on effective participation in virtual settings. It is vital to adapt to the needs of individuals. An assessment is required to ascertain if they have phones, laptops or computers/broadband. An assessment should be made of the effectiveness of participation through remote mediums before formal proceedings commence. Intermediaries are highly skilled at assessing communication capability and the communication demands of various contexts, and in developing accommodation to overcome communication barriers. They can draw on their existing communication expertise and apply these to working remotely in the legal settings when they work as Intermediaries.

If a legal setting requires attendance in person, there are also communication challenges relating to the physical distancing and health considerations required in the COVID 19 context.

The checklist on the following page is designed to help the Intermediary and all concerned consider the various factors involved and possible solutions. The aim is to ensure the necessary preparation for effective communication takes place 1) if the person will be appearing in person, or 2) if the person will be appearing via audio/video link.

The information is designed to be in-line with current government guidelines from the MOJ and HMCTS but may need to be adapted as the context changes and as this process is tested.

Two key factors underpin the planning required for effective communication:

1 LOCATION

This will determine where the Intermediary needs to be and how they will effectively assist.

Where will the vulnerable person physically be located for the hearing?

- 1.1 Physically present in the courtroom
- 1.2 At court but in a separate room linked to the court room, socially distancing with the Intermediary
- 1.3 Appearing via remote link from their home
- 1.4 Appearing via phone but this is a challenging medium for participation
- 1.5 Present for part but not all the hearing
- 1.6 The vulnerable person and the Intermediary linked but from different locations
- 1.7 Who will be with them and (if not the Intermediary) who could assist in person to show them material or explain anything the Intermediary can provide during proceedings or after?
- 1.8 Does that person need to observe 2m distancing or are they in the same 'bubble' as the person?

2 COMMUNICATION REQUIREMENTS FOR THE PARTICULAR PROCEEDINGS

What communication is required of the person during these proceedings?

- 2.1 Do they need Intermediary assistance in understanding the case before them and the legal process, in instructing their legal teams and understanding the advice given to them?
- 2.2 Do they need to understand the content during the hearing in order to give their views in real time as proceedings are occurring? (For example, if the hearing is not a substantive one but is dealing with matters or process and no live evidence is being given, would the VP need to be present in the court setting or could they communicate instructions on procedural matters in advance of the hearing and be informed of any outcome after the hearing with Intermediary assistance?)
- 2.3 Do they need to listen and understand proceedings or evidence from others in order to give their views to their lawyer in real time?
- 2.4 Do they need to answer questions in the courtroom? e.g. cross examination

CHECKLIST

1 Pre-proceedings /Assessment of basic needs regarding remote working or adapting the process

Is the VP currently self-isolating as they have COVID-19 symptoms?¹

Does anyone they live with or have met show symptoms of COVID-19?² Some people may be asymptomatic and not show any symptoms despite being positive for COVID 19.

Do they (or the people they live with) fall within the category of people who are clinically extremely vulnerable?³

Are they within the category who should be socially distancing? (the Over 70s and those with existing health conditions for example)

Does VP have a private space where they can communicate without being overheard?

Are they comfortable speaking on the telephone?

Have they ever spoken to more than one person at the same time on a telephone call?

Do they have a computer/tablet?

What do they use it for? How did they learn how to use it? How confident are they with technology?

Do they have Wi-Fi where they will be?

Can they read and write?

Is the VP comfortable using video-calling one to one?

¹ Anyone displaying symptoms for 7 days.

² It's 14 days for those living with someone displaying symptoms

³

<https://www.gov.uk/government/publications/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19/guidance-on-shielding-and-protecting-extremely-vulnerable-persons-from-covid-19>

This has been developed by IfJ from documents created by the Talking Trouble team in New Zealand with their permission.

Have they taken part in a multi-person video call? If yes, how many people Do they have a smart phone which can be used for an online assessment? Do they need help installing the video conferencing technology e.g. Zoom? Will they need help in operating the equipment and is there someone available to assist if they are participating from a remote (home) location? If using remote link what type of IT help is available? Is a break-out /private room facility available? Is there a back channel for intermediary communication available? Can the VP manage two channels of communication simultaneously? Can the VP cope with multiple screen images? i.e. multiple people connected? How do they react to seeing themselves? Are they ok with this? Is it a distraction? Is it harmful to self-esteem? Can their image be removed? Can what they see on screen be managed so that they don't see a specific participant in the call? Do they cope better just listening i.e. no visual connection? Do they hear intrusive voices? Do they have someone available for emotional support? Trauma informed practice: how will they feel about talking about traumatic events from the designated space?		
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Is it their home environment and should the intermediary be mindful of guidance in this respect? ⁴		
2 Post assessment Can the Intermediary prepare any simple information for the VP to ensure they understand what is going to happen, key issues that will be discussed etc, possible outcomes?	Intermediary to liaise with all solicitors /barristers so the Intermediary can understand what the hearing will be about, in particular, position statements where appropriate. Solicitor /advocate to email any documents to the Intermediary to read in advance If needed, the Intermediary to produce communication accessible summary for the VP.	
Will pre-hearing information prepared by the Intermediary be communicated to the VP?	Intermediary /Legal Team to discuss	
Can the legal team require assistance from the Intermediary to take effective instruction from the person, where and how is this to occur?	Intermediary /Legal team to discuss and consider options	
Will the Intermediary be able to assist in proceedings, have the Judge and all Counsel been informed?	Intermediary/legal parties/court	
Will the Intermediary appear in person to assist or will the Intermediary appear via video link? Will the Intermediary be physically in the same location as the VP? The Intermediary might appear via video link, but the VP might be physically present in court, or all might be appearing physically or remotely.	Court to advise Intermediary about arrangements to assist – timing of court appearances and how to access if remotely. Court to advise Intermediary directly if hearings are adjourned or timing changes. Intermediary to keep Court and legal parties informed about any clashes or if another Intermediary who did the assessment, formulated the recommendations, or was appointed because of a	

⁴ [Guidance for Intermediaries during Covid 19](#)

	particular skill set, needs to be the Intermediary to assist. Intermediary to advise if there are any issues with them appearing in person (e.g. exposure to COVID 19 or immunocompromised health of the Intermediary or those in their bubble).	
What Platform will the court be using? Skype for business, Zoom etc	Intermediary to have the opportunity to consider what adaptations to the platform could be made, to accommodate communication difficulties. The intermediary should liaise with IT expert at court to discuss any adaptations required.	
Has the Intermediary report been made available to all concerned?	Intermediary /legal parties/court to liaise	
How is the input of the Intermediary to be delivered so it causes as little delay or disruption to proceedings, but enables effective communication for the VP? Ground Rules Hearing to be held at the start of each court hearing.	Intermediary to send proposed method of assistance summary to the court for distribution to all parties with as much notice as possible. Legals/Court to arrange brief discussion time prior to proceedings beginning so the Intermediary can answer any questions about the process before formal proceedings start. Communication assistance to be reviewed with trial Counsel present at each hearing	The Intermediary can provide possible options to the court that address the specific needs of the individual they have been appointed to assist in the particular context e.g. virtual court, appearing by phone etc. The Intermediary's proposed process can be discussed briefly between the Intermediary and all concerned before proceedings commence to ensure all are aware and in agreement about how the Intermediary role will be delivered.

		The recommendations in the Intermediary report may need adaptation.
How is the Intermediary to raise any communication issues with the judge during proceedings?	Intermediary to suggest options for Judge to consider and decide about.	It is vital when working remotely for the Intermediary to have phone numbers for direct communication with the court and advocates. It is easy to become excluded when working remotely. Permission to call the VP's instructing advocate (if present) should be sought.
How will the VP be informed about how they are to access assistance from the Intermediary?	The Intermediary to explain to the VP in the presence of their advocate via video link how assistance will work in practice and what to do if the VP wants to ask for clarification or help. The court to arrange for the Intermediary, Counsel and VP to have discussion time prior to formal court hearing commencing	
Plan for timing/breaks - how will breaks occur during proceedings? A) Breaks for Intermediary to speak directly to person concerned to clarify comprehension, ideally with the advocate/s also part of the same communication channel B) breaks if the person becomes too fatigued to concentrate or needs to rest.	Intermediary, Judge and Counsel to discuss in Ground Rules Hearing	
How will privacy be retained when discussion between the	All parties to discuss and court to advise	

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Intermediary/VP/Counsel might relate to confidential topics?		
What information is the VP told about who can hear any discussion they have with the Intermediary or with the advocate and the Intermediary?	Once information is available about the process, Intermediary to ensure the VP is given information and understands it.	
3 Health and Safety		
Health status of all concerned to be determined before any in-person attendance at court is arranged by the Intermediary.	Solicitor /court to confirm to the Intermediary that the health status of all concerned has been checked before the Intermediary attends to assist.	
Court to provide a pathway for a) attending court in person and any PPE required, with instructions on how this is to be used, b) how to access virtual methods of participation	Court to send the Intermediary the current protocols for attendance in person/virtual attendance.	
MOJ guidelines re COVID 19 protocol to be followed for assisting in person to deliver services in a safe manner for all concerned.	Intermediary to discuss their plan for assistance with the legal team	
Pre-hearing /during trial determine plan and agreement from all regarding factors like: • Seating of all concerned • The use of court spaces will need to be considered so both safety and effective communication achieved e.g. what physical spaces are going to be available for use for different purposes (discussion with advocates, where the Intermediary will be in the courtroom during proceedings). • Allow a defendant to sit in the well of the court, socially distancing • Docks with glass that can allow the Intermediary to show material through the glass (paper or screen) to explain information • Large docks or benches that enable spacing for the Intermediary to use white boards, large paper, 2nd screen	Intermediary to check all is in place for ensuring health and safety, privacy and confidentiality before assisting. Intermediary to liaise with all to ensure appropriate spaces are available before attending.	

attached to a laptop • Vulnerable people should have priority to use conference rooms which can be used for discussion between the lawyer, individual and the Intermediary with enough physical space and privacy • Use of empty courtrooms instead of trying to have discussion in small cells or meeting rooms that do not allow for 2m physical distancing between lawyers/Intermediary and individual, or adequate ventilation Safe management of any materials (pen/paper/props to be determined pre-hearing)		
4 POST-PROCEEDINGS		
What information does the VP need post-proceedings to understand what happened, what was decided, and what they have to do next, and how can the Intermediary assist them to understand this?	Intermediary to be advised if the VP needs assistance post-proceedings e.g. regarding a summary of what was discussed, the outcome, any expectations/conditions they need to follow. The Intermediary can assist to prepare information in a communication accessible format (audio/visual resources), and can review information with the person and the advocates to ensure they have understood and retained it, and if appropriate, effectively communicated their own views to advocate.	