Intermediaries and Fitness to Practise Hearings – an overview

Intermediaries and Fitness to Practise Hearings

Intermediaries are impartial communication specialists. They help some people with communication needs when they need to communicate with the police, a court or at a hearing or tribunal.

A communication need may be due to age, disability or disorder (e.g. mental, physical or learning).

Sometimes the communication need has always been there (e.g. Learning Disability, Developmental Language Disorder, Attention Deficit Hyperactivity Disorder, Autistic Spectrum Disorder, hearing impairment, cerebral palsy). This may have been recognised and a diagnosis given as a child or young person. Other times services have failed to identify communication needs or people have not sought diagnostic assessment.

Communication difficulties can also be acquired as we get older (e.g. head injury, dementia, stroke, Parkinson's Disease) or a diagnosis is given later in life (e.g. Personality Disorders, neurodiverse people who learn as adults that they are autistic or gain a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD)).

Intermediaries assist with emotional regulation with mood disorders, anxiety and other mental health issues. Communication is easiest when we are well regulated.

For some people their communication skills may fluctuate depending on mental or physical health needs and/or the situation or due to language demands (e.g. Post Traumatic Stress Disorder, the effects of trauma, psychosis, Dysfluency/ a stammer, or neurological conditions such as epilepsy, Tourette's Syndrome, or Functional Neurological Disorder).

Registered Intermediaries work with vulnerable witnesses within the criminal justice system as part of the Witness Intermediary Scheme. Ministry of Justice Witness Intermediary Scheme- GOV.UK

Court Approved Intermediaries work with vulnerable defendants in criminal justice system or respondents in the family courts and appellants in immigration tribunals. They can also assist in employment tribunals. They work as part of HMCTS Approved Intermediary Scheme. HMCTS approved intermediaries- GOV.UK

There is currently no organised scheme to access an intermediary for professional body Fitness to Practise hearings. The professional regulatory body involved would need to source and fund an intermediary with the right skill set and experience for that particular witness, complainant or accused professional.

The regulatory body may contact:

i. known Registered or Court Approved Intermediaries to see if they may have availability to work outside these 2 schemes or
ii. use the charity Intermediaries for Justice's 'Find an intermediary' function- Find an intermediary | Intermediaries for Justice (to contact members of Intermediaries for Justice who are willing to work within Fitness to Practise hearings).

Both Registered and Court Approved Intermediaries:

- Must have a 1st professional qualification and or significant professional experience in assessing and assisting people with communication needs.
- Will have received training in being a Registered Intermediary or Court Approved Intermediary.
- Must maintain their skills and knowledge in working as an intermediary through continuing professional development.

The professional body requesting an intermediary is responsible for checking the intermediary appointed is appropriate for that particular witness or accused professional. The term 'intermediary' is currently not a protected professional title and therefore anyone may describe themselves as an 'intermediary.'

Intermediaries are not interpreters and sometimes both an interpreter and intermediary are needed.

Intermediaries can work with the complainant or witnesses for the regulatory body, or the registrant and their witnesses. They are impartial.

Once appointed an intermediary will need to:

- Gain consents to contact any professionals working with the witness, complainant or registrant (to find out background information about their communication and relevant health needs, and any existing communication strategies that assist them)
- Meet with the witness/complainant/registrant with a responsible third-party present who knows the case. This is to prevent the intermediary becoming a witness to further information about the complaint. This meeting will explore the witness'/complainant's/registrant's communication strengths and needs, and what may assist them for communicating within the whole Fitness to Practise process.
- Write a report for the requesting professional regulatory body detailing what reasonable adjustments and special measure may be required for the

witness/complainant/registrant to communicate and effectively participate in the Fitness to Practise process and/or hearing (e.g. use of virtual/in person hearing, the duration of questioning, what language may confuse and how to simplify the language of questions so it is understood, the preferred and best means of communicating answers for the hearing (e.g. verbal, written, typed, drawings, sign language, augmentative and alternative communication systems), how the intermediary will assist with emotional regulation to enable continuation of their communication for the hearing).

The regulatory body should share this report with the panel/case presenter prior to the hearing. This enables intermediary findings and recommendations to be applied to the communication and management of the hearing to enable effective participation.

It may be helpful for the Intermediary to highlight in their report the need for extra time on the day of the hearing. This allows time for the panel/case presenter to draft their questions and the intermediary to review them with suggestions for how the questions may be asked so they are understood by that particular vulnerable person.

- Arrange a practice visit to the hearing venue or hold a test call over video conferencing technology to explore the impact of the environment on the witness'/complainant's/registrant's communication and help them understand what to expect
- Review the Fitness to Practise hearing's questions. Best practice would be well before the hearing date, but this may need to be timetabled into the date of the hearing. The Intermediary can make suggestions to the question language (so that the questions are likely to be understood) and also the manner of questioning (so it is trauma informed). Sometimes this may involve discussions with the professional due to ask the questions, to make sure the intention of the question is still maintained. Intermediaries do not protect witnesses/ complainants/ registrants from difficult questions. They enable challenging questions to be asked in a way that can be understand. Intermediaries must not tell the witness/complainant/registrant what the questions or topics asked about will be, this information is highly confidential
- Have a Ground Rules Hearing before the Fitness to Practise hearing to agree with the professionals involved what adjustments will be made to assist that particular person's communication needs so they can effectively participate.
- Be present when the witness, complainant or registrant refreshes their evidence. This should occur before the day of the hearing to prevent the risk of language overload on the day of the hearing.
- Sit near the witness, complainant or registrant when they are asked their questions or participating in the Fitness to Practise hearing (this may mean being with them in the same location for a virtual hearing). Intermediaries monitor the language level of the questions and emotional state of the witness/ complainant/ registrant and will

intervene if there is a communication issue, or a break is needed for emotional regulation work to be completed.

- May assist the witness/complainant/registrant in understanding what a victim impact statement is and enabling them to communicate their information for this when the witness wishes to make one and the Regulatory Body requests a victim impact statement.

Useful Information from Regulatory Bodies

Social Work England

Concerns- Social Work England – landing page for all our guidance

Guidance for employers- Social Work England – this has a good overview of what fitness to practice is

New concerns- Social Work England and How we investigate concerns- Social Work England – sets out how we treat initial concerns about a social worker and how we then investigate them.

Fitness to practise guide- Social Work England

Fitness to practise process flowchart- Social Work England – this is a helpful flow chart to visualise the whole process

Hearings- Social Work England

https://www.socialworkengland.org.uk/concerns/hearings-guidance-for-witnesses/

https://www.socialworkengland.org.uk/concerns/supporting-vulnerable-witnesses/

https://www.socialworkengland.org.uk/concerns/fitness-to-practise-glossary-of-terms/

https://www.socialworkengland.org.uk/concerns/equality-and-diversity/

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