

## INTERMEDIARIES IN FAMILY COURTS: HOW AND WHY DOES THIS MATTER?

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### Introduction: The role of an intermediary

An intermediary in courts in England and Wales is a court-based and non-partisan communication specialist, typically with a professional background in a communication-related field (for example, speech and language therapy, special education, psychology or similar), who has also received approved additional training in legal processes and is registered with the Ministry of Justice (HMCTS, 2022). Intermediaries facilitate understanding and communication between the court and a vulnerable person (VP), which, in Family Courts, includes respondents, other parties and witnesses. Intermediaries in this context work within the Ministry of Justice's HMCTS Approved Intermediary Scheme and work with VPs in criminal courts, tribunals, civil and family courts. The intermediary special measure was first referenced in the Youth Justice and Criminal Evidence Act (YJCEA, 1999), which originally described vulnerable witnesses eligible for assistance in criminal courts, on grounds of age or incapacity. Those working with vulnerable complainants and witnesses are trained by, and registered with, the Ministry of Justice and are typically referred to as registered intermediaries.

However, since 2022, this accommodation has formally been rolled out in other jurisdictions and for other VPs (HMCTS, 2022). Specifically in relation to Family Courts, the amendments to the Family Procedure Rules (FPR\_Part-3A) and Practice Directions. Practice Direction-3AA in 2017, *Vulnerable Persons: participation in proceedings and giving evidence*, made reference to intermediaries in the Family Court for the first time.

Unlike criminal courts, vulnerability is not legally defined in Family Courts. However, professionals are encouraged to consider several factors that may cause vulnerability, such as age, immaturity, lack of understanding, communication or language difficulties (including literacy), physical disability, or mental health conditions (Practice Direction-1A). Advocates are also urged to consider the subject matter of the case, the social, domestic and cultural circumstances of a client and their relationship with a party or witness. Vulnerability, however, is relevant if it adversely impacts a client's ability to participate effectively in proceedings. What this means in practice, is that individuals with vulnerabilities such as Intellectual Disability, Autism, Attention Deficit Hyperactivity Disorder (ADHD), dementia, Cerebral Palsy, post-traumatic stress disorder (PTSD) and/or other mental health difficulties may be eligible to be considered for intermediary assistance.

### How this works in practice

Historically, it is often a solicitor working in the Family Court who identifies that their client (for example, a parent against whom the local authority has initiated care proceedings) has an identified diagnosis, for example Autism, Learning Disability and so on. On many occasions, however, a client without a diagnosis may present as struggling to understand and communicate information relating to their case at

pre-proceeding conferences. What prompts this realisation (in the absence of a formal diagnosis) is that perhaps their client appears unable to understand the threshold, the nuances involved with the case, their role in the case progressing this far, the implications for themselves and their children and/or other aspects of the case. On other occasions, it may be a barrister who identifies their client's difficulty in court, an environment where legal and professional 'jargon' is the norm. Legal professionals interacting and communicating with other legal professionals, where the legal terms, processes and vocabulary are familiar and routine, can be immensely confusing for a VP.

Once a solicitor or barrister suspects that their client's vulnerability may adversely impact their ability to participate effectively with their case, they make an application to the court for an intermediary assessment, often backed up by a recommendation from an expert psychologist in a cognitive assessment. Once the court directs that an intermediary is to assess and provide a report, funding is agreed. An identified intermediary with the professional skills that align with the communication needs of the VP is instructed.

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