



Intermediaries – Practical steps and the overall benefit

The Youth Justice Legal Centre has this month issued guidance on the use of intermediaries for child defendants which is helpful and most welcome. The general concept of an intermediary is often overlooked by lawyers who lack an understanding of the requisite preparatory steps and overall benefit to the individual client. It is now imperative that the use of an intermediary is considered from the very outset.

Whilst the issued guidance is targeted towards child defendants, the use of an intermediary extends to any individual who can be classified as 'vulnerable' regardless of their age. The preparatory steps and legal test as set out within the guidance remains the same for vulnerable adults and is considered below.

An intermediary acts as a facilitator ensuring complete accurate and coherent communication between the vulnerable individual and the legal professionals concerned. The core concept is to ensure the client's general understanding of the process and an ability to provide coherent instructions to their legal team.

Lawyers often use complex language and technical terminology which may not be fully understood by an individual client. The situation is exacerbated when the client has, for example, learning difficulties. Lawyers have to be able to adapt their

approach in order to ensure that their client has fully understood their advice and their explanations of the criminal justice procedure.

As outlined above, a lawyer must from the very outset always consider whether an individual client requires the assistance of an intermediary. Often the triggering point in reaching such a decision is whether the client has indicated that they suffer from a serious mental illness or that they hold learning difficulties be they significant or otherwise. The Court must be notified of this instantaneously so that the issues can be further explored and a timetable set to accommodate any anticipated assessments.

A lawyer is not suitably qualified to determine where an individual client falls on the spectrum of vulnerability whilst they may have a general idea from their experience. It therefore follows that a lawyer cannot determine at first instance whether an intermediary is essential. The correct course of action is to instruct an appropriate psychologist (with specific experience of adults or children) in order to carry out specific communication assessments.

The psychologist should be asked explicitly to comment upon the individual's ability to participate in the preparation of their case and whether, in order to ensure their absolute understanding, an intermediary ought to be appointed. Should a psychologist conclude with a recommendation that an intermediary should be appointed, the procedure is then engaged and followed.

Before any application can be placed before a Court, a specific intermediary report should also be obtained. This will require a further assessment of the individual by an intermediary to determine the individual's difficulties, specific needs and proposed requirements. The intermediary should be provided with information about the case prior to assessment in addition to any medical records and reports previously obtained.

The intermediary report once prepared shall provide specific recommendations as to language, breaks and general approach which must be adopted to ensure the most

effective participation and understanding of the vulnerable individual in the case. Such issues shall be considered by the Court in determining the application.

Once an intermediary report has been prepared, it must be sent to the relevant Court under a covering note highlighting the authorities: *R (C) v Sevenoaks Youth Court* [2010] 1 All ER 735, *R v Dixon* [2013] EWCA Crim 465 and Parts 1 and 3 of the Criminal Procedure Rules.

There is no statutory power to appoint an intermediary as highlighted within the guidance and the Court must be expressly invited to exercise its inherent power from the aforementioned authorities to appoint an intermediary. The application shall be determined by the allocated Judge and should the criteria be deemed to have been met, an intermediary shall be appointed by the Court.

It is imperative that a “ground rules” hearing takes place once an intermediary has been appointed. This should ordinarily take place in advance of the trial to enable the vulnerable individual to familiarise themselves with the Court environment and all legal professionals involved in the case. Such a hearing acts as a test run so that the proposed recommendations of the report can be aired, acknowledged and applied during the course of the trial process. It is, however, not uncommon for such a hearing to take place on the same day as the trial to ensure that the matters raised remain fresh in the minds of all parties concerned.

Whether or not an intermediary is of assistance is the topic of much debate between legal professionals. We take view that this very much depends upon the caliber of the appointed intermediary and the experience and adaptability of the appointed legal team. Ultimately we have found that intermediaries are of a substantial assistance during any trial process securing an individual client’s understanding and engagement whilst ensuring that the procedure has been conducted in a fair and just manner.



James Peacham

Trainee Solicitor



j.peacham@birds.eu.com



+44 (0)20 3657 7266

James has handled numerous cases with vulnerable defendants and witnesses requiring intermediaries.