



BACKGROUND

Intermediaries are independent and impartial officers of the Court, that are instructed to support vulnerable parties that need some assistance during the Court process. For most Childcare Lawyers in the public sector, the use of an intermediary to help aid understanding can fundamentally ensure progression of proceedings.

During this case an intermediary was approached to help Father during a 4-day Final Hearing, he was presented by his colleague to be a competent professional who has carried out this role numerous times. During the hearing, it had become apparent that the intermediary had not read Father's cognitive assessment, or his intermediary assessment so did not have a clear understanding of what further support and guidance Father would require during the hearing. This was then highlighted by Father's regular confession to the Court, that he had a lack of understanding of parts of the evidence. It had further transpired that the intermediary did not understand the role he was instructed upon and had minimal experience acting in that capacity.

The intermediary's deficiencies led to the trial Judge adjourning the trial, concluding that to carry on would be unjust for the parents, due to their lack of understanding. Furthermore, as the other parties all wanted to recover their costs for the abandoned hearing, the intermediary and the colleague that referred him were joined as parties to proceedings. The Judge concluded within her Judgement that if it were not for the considerable lack of skill of the intermediary the wasted costs would not have incurred, and the case could have concluded at the hearing.

OUTCOME

Intermediaries perform an extremely important function in ensuring a fair trial for highly vulnerable people in the family Courts, it is of a great importance that they do that job to a professional standard, and that their conduct is monitored before, during and after relevant instruction.

This case illustrates how the clear lack of guidance on the use of intermediaries makes it difficult to ensure we are confident that the



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person being supported is done so correctly. The lack of such guidance also means that there is no definition on who may be an appropriate intermediary, what qualifications they have had to undertake and what areas of knowledge they have. An intermediary is simply referred in practice guidance as someone that 'communicates, helps communicate and explain', but such label is inherently ambiguous.

Within Criminal Courts where intermediaries were first introduced, the Ministry of Justice has produced guidance in *Registered Intermediary Procedural Guidance 2020*, which sets out a Code of Ethics and conduct for practice; such regulation is not available for the Family Courts and there is no clear reason as to why. Furthermore, there is no requirement even in criminal courts that intermediaries be registered therefore, from a statutory perspective there is a lot of work that needs to be done to clarify this role.

What is clear because of this hearing, and within the Judgement is that the onus is not on the Court to ensure that the intermediary is appropriate, it was clear that the responsibility should be placed on the solicitor and other parties to carry out the relevant due diligence of the intermediary before they are formally instructed.

Mrs Justice Lieven commented in her Judgement

"This case well illustrates how the lack of clear guidance on the use and roles of an intermediary makes it difficult to ensure an understanding by the person who puts themselves forward as an intermediary is competent to perform that role. The lack of such guidance also means that there is no definition on who may be appropriate to act as an intermediary, what training or qualifications they have, or what checks a judge or solicitor should undertake. This makes the appointment and conduct of the intermediary ripe for the kind of problem that arose in this case"

WHAT CAN WE DO?

Intermediaries are not only used with live Court cases, they are also commonly used within Childcare for meetings within the formal pre-proceedings process. Therefore, it is of utmost importance that as childcare lawyers we understand these inconsistencies within the statutory provisions and undertake the responsibility to ensure that the particular intermediary put forward is suitable for the needs of the vulnerable person, they have the necessary qualifications, understanding of their role and the experience to carry out this role to a high standard, before they are formally instructed.

Each intermediary should be suitable for the relevant person requiring assistance and therefore, we should be able to challenge the information put before us to in turn increase the support for vulnerable individuals.

As a practical way forward, the earlier we have a suitable intermediary instructed, the more we can ensure progression of the matter, ensuring that the vulnerable adult has the best opportunity to understand the concerns being put forward and the process and to effectively contribute their views and put forward their position, whilst also reducing the chance of the case extending beyond the 26-week timetable and incurring unnecessary costs to the public purse.

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We have a highly skilled team of Lawyers and Paralegals who have a wealth of both Public and Private sector experience concerning safeguarding children and children's welfare. Our Lawyers have extensive experience in conducting Advocacy in all tiers of the Courts, including undertaking the more complex cases, enabling continuity and consistency of service to be delivered. Our Team is able to use their expertise in understanding the "real" child protection landscape, including parameters of good practice, Social Work demands and Budgetary restraints. We are key contributors to the workings of the Local Family Justice Boards that our Clients serve, ensuring that we maintain regular and good dialogue with the local Judiciary and other Partner Stakeholders involved in child protection.

About Pathfinder Legal Services Ltd

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