***Re O & Y (Parents with Learning Disability: Intermediaries)*** [**[2024] EWFC 7**](https://www.bailii.org/ew/cases/EWFC/OJ/2024/7.html)

HHJ Middleton-Roy considered the role of intermediaries in care proceedings and gave guidance on the use of ‘whole trial’ intermediary orders.

The judgment came less than a week after the High Court pointed out in *West Northamptonshire Council v KA & Ors* [2024] EWHC 79 that *‘[the] position in respect of the appointment, qualification and duties of intermediaries in the family justice system is not clearly set out either in the Family Procedure Rules ("FPR") or in any Practice Direction’* and so the judgments consideration of the use of intermediaries in care proceedings is welcome guidance.

**The Background**

The court was concerned with the welfare of siblings, 9- and 7-year-old sisters who were placed separately by the local authority.

Both parents were vulnerable adults with learning disabilities and significant communication needs; both were said by the judge to have *‘a level of cognitive functioning within the extremely low range consistent with the bottom first percentile compared to their peers, with scores consistent across all domains including understanding and retention of information, perceptual skills and memory, particularly when under stress’* and were therefore assisted by intermediaries. The father struggled with his physical health and the mother with her mental health.

The younger child had autism and epilepsy and suffered with seizures as well as communication difficulties; she was said to function more like a child of 1.5-2 years old than a 7-year-old.

There were concerns about domestic abuse, with the children having witnessed swearing, shouting and violence in the home, as well as a lack of supervision and a lack of boundaries. The court was assisted with an expert cognitive and psychological report of both parents and a ‘sibling assessment’ which concluded that it is best for the children to be placed in separate foster placements.

A Care Order was therefore made, and the local authority’s care plan for contact – which was agreed by the parents and the Children’s Guardian – was endorsed by the court.

**Intermediaries**

The judge defined intermediaries as *‘impartial communication specialists, whose primary responsibility is to facilitate and enable complete, coherent and accurate communication between all parties and to ensure the vulnerable person's understanding and participation in the proceedings’*.

The role of an intermediary was also defined:

1. the primary responsibility of an intermediary is to facilitate and enable complete, coherent and accurate communication between all parties and ensure the vulnerable person’s understanding and participation in the proceedings;
2. make an assessment of and report on the communication needs of the vulnerable person as well as the steps that should be taken to meet those needs;
3. to assist and advise the judge; and
4. prevent miscommunication and intervene actively when miscommunication may or is likely to have occurred or be occurring.

The judge also said that ‘explanation time’ is almost always necessary to allow the intermediary to explain to the vulnerable person what has happened and is about to happen.

The judge said the use of intermediaries was **compelling, necessary and wholly essential** for the parents to be assisted by intermediaries in light of their vulnerabilities, individual cognitive profiles and specific communication needs in order to enable **meaningful and informed** participation in the Final Hearing and to ensure that their **Article 6 rights were protected**.

**‘Whole trial’ orders**

The importance of intermediary assistance throughout the trial was said to be important due to the inquisitorial, problem-solving nature of care proceedings as well as the fact that these were circumstances where the parent’s Convention rights to private and family life were being interfered with by removing their children from their care. As well as this, a ‘whole trial’ intermediary order furthers compliance with the overriding objective and was found to be necessary to *‘uphold the essential principles that Courts must take all steps possible to ensure that people with a learning disability are able to actively participate in decisions affecting their lives and that the Court must take steps to ensure that there are no barriers to justice within the process itself’*.

The judge also commented that *‘[on] the facts of this case, there could be no proper justification for any alternative order directing the intermediaries to assist for only part of the process’* which suggests that an assessment of whether a ‘whole trial’ order should be made is to be determined will turn on the facts of each case.

**Further Assistance for the Parents**

As well as the above, ‘*[having] regard to the parents' vulnerabilities, the Court ensured that judicial continuity was achieved throughout’* and it was said that the parents had the benefit of *‘highly experienced, specialist counsel’*.

Further, a ground rules hearing had taken place as part of the IRH and *‘[those] ground rules were revisited during the Final Hearing, necessary to assist both parents' participation in the proceedings’*.

**Mahnoor Javed**

**Pupil**

**4 Brick Court**

**January 2024**