



Protecting the Vulnerable in Extraordinary Circumstances



COVID-19 Response

May 2020

www.communicourt.co.uk

INTRODUCTION

Communicourt is the largest provider of non-registered intermediary services to the courts, with around 40 trained professionals working across England and Wales.

We have been providing intermediary services to vulnerable adults and children in the courts since 2011. During this period, we've seen legislative reform, societal shifts in understanding of mental capacity and impairments, and important neurological advancements that provide a better understanding of the impact of communication difficulties on people's everyday lives.

Despite the disruption that COVID-19 has caused across the entire British economy and infrastructure, legal proceedings must and will continue. Like many essential services and industries, Communicourt's service to the courts must be adapted so that the system can continue to function fairly. Never in recent history has the legal system been forced into such rapid change as now.

Communicourt intermediaries work with some of the most vulnerable people in society, and regardless of the circumstances of each case, vulnerable people with communication impairments deserve a service that is tailored to their individual needs.

COVID-19 and vulnerable people in the legal system

It is not only the risk of potential delays that is impacting those going through the justice system at present. Some children or adults have only a basic understanding of spoken language and many of them communicate best in environments where they can take advantage of the visual cues, facial expressions, and body language of others. It goes without saying that the complex explanations and terminology used in court will be a challenge, and even basic day to day verbal communication that many take for granted is difficult for some of the adults and children with whom we work.

We have seen an increase in recent years in the number of judges and legal professionals recognising the benefit in engaging intermediary services for respondents in family proceedings. We recognise that these are challenging times for judges, who are expected to make complex decisions when access to the usual pool of resource and specialist expertise is limited and time is of the essence in meeting the 26-week timetable.

It may at first seem impossible to apply similar support in the environment we are now in – unprecedented times when hearings are being conducted remotely. However, we have found that it can be done, and that's what we've been striving for over the past 8 weeks – adapting how we work to ensure that vulnerable people aren't deprived of the communication support they need to access the justice system at this challenging time.

WHAT ARE WE DOING?

Since 23rd March, Communicourt has been offering a remote intermediary service, mostly in family proceedings. Working remotely has been a challenge, even to our highly trained practitioners, but it is a challenge which we have embraced, using new technologies and innovative working styles, and sharing ideas between the team to develop guidance about best practice in this everchanging arena.

The first obstacle for an intermediary is to carry out a detailed assessment of a vulnerable person's communication skills and deficits to inform specific, tailored recommendations. Because a face to face meeting has not been possible during the lockdown, we carried out a pilot study to test the efficacy of remote assessments. We have now assessed over 40 vulnerable people remotely, and our strategies have included:

- Using the screenshare function to use pictorial and visual resources.
- Using the whiteboard function to draw diagrams (e.g. a court room) to assess and enhance their understanding of roles and procedures during proceedings.
- Sharing written material via the screenshare function to assess reading ability and understanding of complex documents
- Assessing the person's ability to use the chat function as a separate communication channel (for remote hearings).

There is an increasing demand from solicitors for us to give an opinion on the fairness or feasibility of remote hearings. Our skilled intermediaries can assess communication and suggest strategies and adaptations for remote proceedings at a Ground Rules Hearing, but to comment on the possible success or fairness of a hearing would be the role of an expert witness (which intermediaries are not). Moreover, it will be hugely affected by the mode of technology used, and how it is implemented on the day. Decisions about fairness or feasibility are, of course, ultimately a decision for the judge.

Over the last 8 weeks we have worked in over 80 remote hearings. We have implemented a number of strategies for working remotely, using technology to support vulnerable people's understanding.

Communicourt has contributed to a diverse range of hearings involving live evidence (remotely), long hearings (over 2 weeks) and large hearings involving over 20 parties and professionals. We have worked with Skype for Business, MS Teams, CVP, Zoom, telephone conferencing facilities, and solutions which have involved a variety of these technologies. We commend the judges involved in those cases for their willingness and endeavour to adapt proceedings to prioritise the needs of the individual vulnerable person concerned, whether a respondent, witness, or defendant.

Ground Rules Hearings (GRH) are pivotal to the success of a hearing, but **currently 59% of remote hearings involving Communicourt are taking place without a GRH**. A GRH should be conducted at the beginning of all hearings but this is particularly important for remote hearings to discuss how the technology can best be used to maximise communication.

When a hearing is conducted remotely, anxiety and stress will be heightened considerably, particularly for those people who rely on body language and facial expressions and are denied these on a phone call hearing. Conversation turn taking is also much harder than usual. This is then all compounded by the frustrations caused by temperamental technology.

We have found that video hearings are much more effective than telephone conferences. Video enables an intermediary to build rapport quickly, use visual aids and use other visual cues such as raising a hand or holding up a household item to request a break.

Currently, only one third of hearings involving Communicourt have used video.

NEXT STEPS

WHAT'S NEXT?

The landscape of court proceedings is evolving, and so are the judges, barristers, lawyers, and intermediaries who work in them. Communicourt is keen to work alongside the justice sector to ensure that whilst the normal ways of working are disrupted, vulnerable people are not unfairly impacted for the rest of their lives due to a lack of flexibility/lack of consideration for their needs.

Simple changes to how assessments and hearings are being carried out will aid a fair and inclusive system.

Our learning is ongoing, but our recent experience has demonstrated that we can ensure that some vulnerable people can access the provisions they need remotely. While social distancing restrictions continue, we must all adapt our practices.

As lockdown measures are eased and amended to enable more flexibility in society, there is an opportunity for more face to face assessments and hearings, whilst respecting the social distancing rules. This is a new challenge for us because a great deal of an intermediary's role involves remaining close to the vulnerable person during the hearing, to enable a discreet instruction, or to point to visual aids and diagrams. We will continue to adapt to the challenges presented, to ensure that the vulnerable have a voice in the justice system and we will continue to share learnings from our experience.

From 15th May 2020, Communicourt are providing face to face assessments and where there is no other feasible option, attendance at court hearings. However, we urge the sector to not to forget the flexibility and learnings from past 8 weeks – we have been able to effectively assess and support vulnerable people that have had no choice but shield or socially distance. This requirement will not disappear overnight, and we must ensure anyone who requires an intermediary service has access to it, face-to-face or otherwise.