

## Expert witnesses and intermediaries



### What is an intermediary?

Intermediaries are communication specialists, whose role is to ensure an individual with communication difficulties or differences is able to understand and effectively participate in legal proceedings.

An intermediary is expected to facilitate communication between all parties and to intervene at any stage if the person they are assigned to is considered to be in difficulty.

Intermediaries are impartial and owe their duties to the court. They are not expert witnesses.

### What is an expert witness?

An expert witness is a person who has specialised technical knowledge of a subject related to a court proceeding. Expert witnesses may give testimony on evidence in a case without having seen the events in question because their highly specialised knowledge makes them an authority on the topic.

The purpose of the expert witness is to help the judge or jury come to a conclusion. Their analysis may shed light on facts that might not otherwise have been demonstrated by witnesses without specialised knowledge, which may corroborate or discredit the prior testimony of previous witnesses.

Expert witnesses come from all fields of work that involve highly specialised or technical knowledge. An expert witness is limited to the scope of their specialised knowledge.

### Why are intermediaries not expert witnesses?

Although intermediaries are specialists in communication, they do not provide evidence in a case, nor do they assist the judge or jury to come to a conclusion of the case.

Intermediaries are impartial and their duty is to assist the court in ensuring the defendant, respondent, intervenor or applicant is able to meaningfully participate in proceedings.

Intermediaries do not give evidence in a case about an individual's cognitive abilities as an expert witness would. Instead, they can advise the court on recommendations that would assist the individual's understanding and participation during the proceedings.

Intermediaries are not expected to give any evidential basis for their recommendations, but only to give suggestions about that person's communication based on an assessment of their communicative needs.

Intermediaries **cannot comment on a person's fitness to plead or their capacity to instruct their legal team**, as an expert witness (such as a psychologist) could.

Communicourt intermediary reports clearly outlines the manner in which the information contained within the report can be used during proceedings: *"An intermediary is not instructed as an expert witness. This report is not intended to*

be referred to as evidence within these proceedings or to be considered in terms of the wider issues that may be discussed. It is confidential and for use only as a guide to assist the court in communicating with your client in the context of this case, in order to ensure that they are able to effectively participate”.



## Further reading

- The Advocate’s Gateway - [Intermediaries in the Justice System](#) (accessed: 2024) - *“Intermediaries are independent and impartial officers of the court who owe their primary duty to the court. They are not expert witnesses or language interpreters. They cannot express an opinion on the competence of a witness or the accuracy of their evidence. Everything they do should be transparent”.*
- Crown Prosecution Service - [Special Measures](#) (accessed: 2024) - *“An intermediary is not an expert witness. If evidence of competence or, in cases involving sexual offences, the capacity to consent is required, an appropriate expert should be commissioned to provide the necessary information. An intermediary is not an interpreter or an appropriate adult”.*

## From The Access Brief

- [Intermediary assessments](#)
- [How can an intermediary assist at trial?](#)
- [Ground Rules Hearings](#)
- [Intermediaries and advocates](#)
- [Intermediaries and interpreters](#)

## Intermediary services

If you are concerned about your client’s ability to communicate effectively and participate in legal proceedings, Communicourt can help.

We will assess your client to understand their communication needs and how these might affect them in court. Your client does not need to have a diagnosis. Our reports will identify any particular communication issues and make bespoke recommendations to help you and your client throughout proceedings.

If intermediary assistance is recommended, one of our highly trained intermediaries can be there throughout proceedings to facilitate those recommendations.

**Intermediaries are mostly funded by HMCTS, with no charges or payments required by legal representatives.**

## How to book an intermediary

- 1 Refer online.** Refer your client for an assessment through [our online portal](#) (5 minutes).
- 2 Funding.** We send a quote for you to send to Legal Aid / HMCTS to approve (24 hours).
- 3 Book assessment.** Once funding is approved, please let us know. We will schedule an assessment (2-6 weeks).
- 4 Assessment will** take up to 3 hours and can be conducted in person or remotely. You will then receive a report (7 days).
- 5 Book dates** for hearings or conferences. We will send you booking forms to be signed by the court. Once signed, we will book the intermediary.