

Working with clients who have an Official Solicitor



An Official Solicitor often becomes involved when an individual is unable to understand or retain key information about their case. An Official Solicitor may also be required in cases where a person has difficulty thinking about important information in a clear or considered way. People who have difficulty expressing their instructions or decisions coherently may also require an Official Solicitor.

Who needs an Official Solicitor?

The above difficulties may arise from stable life-long conditions such as a [learning disability](#), or from a fluctuating condition, like a mental health condition such as [schizophrenia](#).

For the Official Solicitor to become involved, your client must lack capacity as defined in section 3 of the Mental Capacity Act 2005: “A person is unable to make a decision for [themselves] if [they are] unable (a) to understand the information relevant to the decision, (b) to retain that information, (c) to use or weigh that information as part of the process of making the decision, or (d) to communicate [their] decision (whether by talking, using sign language or any other means)”.

It is important to note that a person may have capacity to make some decisions (e.g. the location contact will take place), but lack the capacity to make others (e.g. long-term care arrangements for a child).

A person who lacks capacity may experience difficulties with:

- **Understanding** verbal and written information
- **Retaining** key information
- **Weighing up** information to reach a considered decision
- **Expressing themselves** coherently

Why communication matters

Although your client is not considered able to make decisions in their current legal proceedings, they still have a right to participate in the case. Your client can still express their wishes and feelings, which can be considered by the Official Solicitor and acknowledged by the court.

It is, therefore, important your client is able to understand as much as possible, and is supported to express their views. Their case will likely have a significant impact on their life, and they should be supported to understand and participate to the fullest extent possible.

Tips for assisting a client who lacks capacity

The strategies required to support someone who has an Official Solicitor will vary depending on their unique communication profile. An intermediary assessment will provide bespoke recommendations to support them at all stages of proceedings. These general tips may assist:

- **Use simple vocabulary and short sentences.** Imagine speaking in bullet points
- **Do not assume understanding.** If a legal terms are used, provide a simple explanation and check understanding with a comprehension question like, “*What is capacity?*”. Learn more about [checking understanding here](#)
- **Try interactive tasks and visual aids.** For example, if discussing the role of the Official Solicitor, use a flow diagram with stick people to show how the process works. Learn more about [creating visual aids here](#)
- **Assist them to express their wishes and feelings.** For example, they may want support to write a letter to the court, which could be read out by an intermediary or advocate, or passed to the judge

How can an intermediary help?

If your client has an Official Solicitor, an intermediary can be booked to assist them. The intermediary can...

- Explain the concept of an Official Solicitor to your client using simple explanations and visual aids. They will also check your client’s understanding of the term by asking them to explain it in their own words
- Assist your client to write a letter to the judge, or find an alternative means through which they can express their wishes and feelings
- Explain the content or process of proceedings in simple terms and check your client’s understanding of discussions
- Assist your client to give evidence if they are required to do so, by facilitating communication between the service user and the court
- Take part in a [Ground Rules Hearing](#), attended by the trial judge and advocates.

At this hearing, attendees will discuss how the recommendations in the intermediary report can be implemented to ensure your client can participate as effectively as possible

In some cases, when intermediary support is unlikely to be sufficient to support your client to follow and effectively participate in proceedings, an intermediary report may *not* recommend intermediary assistance.

However, these reports will often caveat that an intermediary *can* be allocated in order to assist your client *to some degree*.

In these cases, an intermediary can be assigned, but it is important for the court to be aware that, even with this assistance, your client is unlikely to achieve effective participation.

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.

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