## Phoebe Green

## Call: 2021

Phoebe is a specialist Family Law barrister at Cathedral Chambers and accepts instructions in Public Law Children, Private Law Children and Injunction work.

Phoebe has developed a busy workload across her areas of practice and prides herself on her friendly but professional attitude. Phoebe regularly acts for clients across all stages of private law proceedings which has included conducting fact-finding and final hearings often containing significant allegations. Outside of the private law sphere, Phoebe also receives instructions to represent parents, local authorities and guardians in care proceedings through to final hearing.

Phoebe is a member of the Family Law Bar Association and is an active committee member of both the WAC Circuit's Women Forum and EDI Committee.

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# Intermediaries in the family justice system – a rarity or a necessity?

Phoebe Green, junior barrister at Cathedral Chambers, takes a look at the recent developments in respect of the use of intermediaries in the family justice system in light of the President's Guidance and *Re M (A Child: Intermediaries)* [2025] EWCA Civ 440

**The role of intermediaries**

The role of intermediaries in the family justice system is governed by Part 3A of the Family Procedure Rules 2010 ('FPR'). FPR r3A.1 defines an intermediary as "*a person whose function is to –*

*(a) communicate questions put to a witness or party;*
*(b) communicate to any person asking such questions the answers given by the witness or party in reply to them; and*
*(c) explain such questions or answers so far as is necessary to enable them to be understood by the witness or party or by the person asking such questions."*

**Participation directions and intermediaries**

In order to understand how the land lies in respect of the use of intermediaries in the family justice system, it is necessary to delve deeper into the relevant sections of the FPR.

FPR r3A.4(a) defines the court's duty to consider how a party can participate in the proceedings and states that *"The court must consider whether a party's participation in the proceedings (other than by way of giving evidence) is likely to be diminished by reason of vulnerability and, if so, whether it is necessary to make one or more participation directions*".

FPR 3A.8 sets out the participation directions which are available which at r3A.8(a) and (b) provide for the use of an intermediary to provide for a party or witness to participate in proceedings or to be questioned in court with the assistance of an intermediary. Where the court has found a person to be vulnerable and has deemed therefore that their participation in proceedings is likely to be diminished as a result,

**the court must ask itself whether it is necessary to approve the appointment of an intermediary in furtherance of achieving a fair hearing**

or should it be making an alternative participation direction. The key word here for the purposes of the below discussion being "**necessary**".

**The President's Guidance and recent case law**

The use of intermediaries in care proceedings has been a hot topic of discussion amongst family practitioners in recent months not least in part to the Practice Guidance which was published on 23rd January 2025 from the President of the Family Division, Sir Andrew McFarlane. The President's January 2025 guidance "*Practice Guidance: The Use of Intermediaries, Lay Advocates and Cognitive Assessments in the Family Court*", set out the expectations on parties who may be making an application for an intermediary assessment or appointment.

At paragraph 9 the President reiterates that "*the question for the court in considering whether to direct an assessment by, or appointment of, an intermediary is whether that direction or appointment is 'necessary' to enable a party to participate in proceedings fairly by enhancing their ability to receive and answer questions that may be put to them*".However, the reader of the President's Guidance will note that at paragraphs 10 and 12, the Guidance contains reference to "rarity" and "very rarest of cases" in respect of the appointment of an intermediary.

(continued overleaf)

The reference to rarity appears to have developed from a string of cases which culminated with *West Northamptonshire Council v KA & Ors* [2024] EWHC 79 (Fam) in which Lieven J in the High Court considered at [45] that it will be "*exceptionally rare*" for an order for an intermediary to be appointed for a whole trial and that "*a judge appointing an intermediary should consider very carefully whether a whole trial order is justified, and not just make such an order simply because they are asked to do so*".

Thus followed the President's Guidance in January 2025.

**Recent court of appeal decision – Re M [2025]**

That short revision of the recent history brings us to 18th March 2025, the date an important judgment was handed down by the Court of Appeal.

The Court of Appeal has this week (on 10th April 2025) published its judgment in the case of *Re M (A Child: Intermediaries)* [2025] EWCA Civ 440 which has once again ignited the topic of intermediaries when it comes to access to justice in the family justice system, in particular with reference to care proceedings.

Lord Justice Peter Jackson, giving the leading judgment in the Court of Appeal, considers the use of intermediaries within the family justice system. It is notable that this case was heard just a few weeks after the President's guidance above) was published. The judgment makes for important reading for any family law practitioner and particularly those practicing in the area of care proceedings where issues regarding the use of intermediaries more commonly arise.

Jackson LJ noted a number of 'reservations' that he had in respect of *West Northamptonshire* and other recent case law and considers at [41] that "*there is (in any event) no warrant for overlaying the test of necessity with concepts of rarity or exceptionality. Frequency is not a test, and nor is exceptionality. Similarly, the introduction of tests of "compelling reasons", or of adjournments for lack of an intermediary being "unusual" or "very unusual", beckon the court to short-circuit its consideration of the evidence in the individual case*".

Jackson LJ went on at [44] to state that:

***"these projections, including references to "very rare" or "rare" cases, are not a substitute for a straightforward application of the rules***".

Finally, Jackson LJ clarifies at [50] that "*any perception on the part of the senior family judges that intermediaries are being appointed too freely must be treated seriously. But as a matter of law the solution lies in the effective application of the necessity test found in the FPR, a test that the court has routinely applied to the appointment of experts in family proceedings since 2014*".

**Rarity vs necessity**

It could be argued that the Court of Appeal decision presents somewhat of a row back from recent case law and the President's guidance. What is clear is that any additional tests suggested in recent judgments and the January 2025 guidance which included tests of "*rarity*" or "*exceptionality*" and tests relating to "*compelling reasons*" or a "*spectrum of vulnerability*" are removed and do not apply.

Instead, the Court of Appeal has confirmed that only the pre-existing test of "*necessity*" set out in the FPR should continue to be applied when considering intermediary applications. •

**Members of Cathedral Chambers have the expertise and experience necessary and are able to help with advising on any potential applications for intermediaries. Please don't hesitate to contact the clerks to speak with one of our specialist family law barristers.**

Information and reference to precedent and legislation is correct at the time of writing. All efforts have been made to ensure the accuracy of the information. This article does not constitue legal advice.

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