



**In the Upper Tribunal  
(Immigration and Asylum Chamber)  
Judicial Review**

In the matter of an application for Judicial Review

In the matter of an age assessment

In the matter of a preliminary issue

The King on the application of  
Hameed Ahmadzai

Applicant

v

London Borough of Newham

Respondent

**BEFORE**

**THE HON. MR JUSTICE DOVE, PRESIDENT  
PRINCIPAL RESIDENT JUDGE BLUM  
UPPER TRIBUNAL JUDGE O'CALLAGHAN**

**UPON** hearing Mr G Lee, Counsel, instructed by Luqmani Thompson & Partners on behalf of the applicant and Mr M Paget, instructed by OneSource Legal Services on behalf of the respondent at a hearing held at Field House on 27 March 2024

**IT IS ORDERED THAT:**

1. An intermediary provided by Communicourt Ltd is appointed in these proceedings.
2. Costs reserved.

**IT IS DIRECTED THAT:**

1. The parties file an agreed amended timetable, with attendant time estimate for the fact-finding hearing, including preliminary ground rules hearing, **by 4pm on Wednesday 8 January 2025.**
2. The parties file counsels' dates to avoid up to the end of March 2025 **by 4pm**

**on Wednesday 8 January 2025.**

*D O'Callaghan*  
**Upper Tribunal Judge**  
Immigration and Asylum Chamber

**24 December 2024**

**The date on which this order was sent is given below**

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**For completion by the Upper Tribunal Immigration and Asylum Chamber**

Sent / Handed to the applicant, respondent and any interested party / the applicant's, respondent's and any interested party's solicitors on (date): 24/12/2024

Solicitors:  
Ref No.  
Home Office Ref:



Case No: JR-2023-LON-000324

**IN THE UPPER TRIBUNAL**  
**(IMMIGRATION AND ASYLUM CHAMBER)**

Field House,  
Breams Buildings  
London, EC4A 1WR

24 December 2024

**Before:**  
**THE HON. MR JUSTICE DOVE, PRESIDENT**  
**PRINCIPAL RESIDENT JUDGE BLUM**  
**UPPER TRIBUNAL JUDGE O'CALLAGHAN**

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**Between:**

**THE KING**  
**on the application of**  
**HAMEED AHMADZAI**

**Applicant**

**- and -**

**LONDON BOROUGH OF NEWHAM**

**Respondent**

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**Mr G LEE, COUNSEL**  
(instructed by Luqmani Thompson & Partners), for the applicant

**Mr M PAGET, COUNSEL**  
(instructed by OneSource Legal Services) for the respondent

Hearing date: 27 March 2024

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**J U D G M E N T**  
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**Judge O'Callaghan:****Introduction**

1. As a preliminary issue, the applicant seeks an order from the Upper Tribunal that an intermediary assist him in age assessment proceedings.
2. The proper approach to the appointment of an intermediary by a tribunal judge addressed in this judgment is applicable to statutory appeals as well as to the present judicial review proceedings and consequently reference below to an applicant can properly be read to include an appellant in a statutory appeal conducted in the Immigration and Asylum Chamber.
3. In this judgment we consider the position in respect of intermediaries provided by HM Courts and Tribunals Service ("HMCTS") in England and Wales. Tribunals in Scotland and Northern Ireland follow the established HMCTS procedures in respect of intermediaries and their payment.
4. An intermediary is an impartial specialist who facilitates communication with a vulnerable person. Their primary function is to improve the quality of evidence and aid understanding between the tribunal, the advocates and the witness or party.
5. The Chamber may appoint an intermediary if the appointment is necessary for a vulnerable person to give the best evidence they can, consistent with the overriding objective and costs proportionality.
6. An appointment of an intermediary will be in rare circumstances and solely consequent to medical reasons relating to deficient cognitive functioning, including the impact of immaturity or learning differences upon a minor's cognitive capacity, which seriously impacts quality of evidence and reduces effective participation in proceedings.
7. Though an appointment of an intermediary will be rare, as in most cases the assistance of an intermediary will not be required, it does not follow that there is a high hurdle to overcome if the appointment is necessary for effective participation in proceedings.
8. The Chamber has many applicants who are vulnerable but will not qualify for an intermediary: they may have mental health issues which do not impair their ability to give evidence or communicate

- in proceedings, and their circumstances can properly be addressed by appropriate case management and the application of relevant Presidential Guidance.
9. The procedure for appointment is front loaded and founded upon a carefully structured system of judicial decision and direction.
  10. The onus is placed upon parties and representatives to identify at the outset of proceedings that a party or witness is a person who may require an intermediary. If it is necessary for that person to give evidence to enable the fair hearing of the case, and their welfare would not be prejudiced by doing so, parties and representatives are to identify to the Chamber at an early stage in proceedings whether an intermediary is considered necessary to ensure that effective participation is achieved.
  11. An application for an intermediary's report will be made to a judge in writing, accompanied by a paid application in judicial review proceedings, with identification of need founded upon cogent medical evidence, such as a psychological or psychiatric report, or detailed medical opinion from a GP, addressing communication needs.
  12. An application for a report is to be made on notice to the respondent, who will be expected to confirm with the Chamber whether there is an intention to examine the vulnerable person at the hearing. The respondent's confirmation as to their position can be expected to be made within five working days. Silence can be taken by a judge to indicate an intention to examine.
  13. An application for a report, which if ordered is provided at public expense, will usually be considered by a judge on the papers, but a case management review hearing ("CMRH") can be directed if considered appropriate in the circumstances. A judge is required at this stage to consider whether competent representation and good case management will ensure that best evidence can be given and so negate the requirement to order a report.
  14. An intermediary's report should not adopt a template approach: it is to engage with the applicant's personal circumstances and to exhibit an understanding of proceedings conducted in the Chamber generally.
  15. Upon receipt of an intermediary's report, it will be for a judge to assess whether competent representation and good case management will ensure that best evidence can be given without the appointment of an intermediary. Consideration of the necessity requirement will usually be undertaken by a judge on the papers,

and if an intermediary is appointed attendant case management directions can be issued, if required, addressing recommendations made in the report.

16. If an intermediary is appointed, a ground rules hearing will be undertaken as a preliminary matter on the morning of the hearing, and not on a date prior to the hearing.
17. It will be rare for an intermediary at a tribunal hearing to aid beyond a vulnerable person giving evidence where the person is represented.

### **Presidential Guidance**

18. The circumstances in which a person will be treated as vulnerable in the Chamber is addressed by the *Joint Presidential Guidance Note No. 2 of 2010: Child, vulnerable adult and sensitive appellant guidance* (“the Presidential Guidance”) as well as by the *Practice Direction for the First-tier and Upper Tribunal on Child, Vulnerable Adult and Sensitive Witnesses* which is supplemented in the First-tier Tribunal by Practice Direction 13 of Part 4 to the *Practice Direction of the Immigration and Asylum Chamber of the First-tier Tribunal*. The latter came into force on 1 November 2024.
19. The application of the Presidential Guidance and Practice Direction in respect of vulnerable persons and their ability to effectively participate in proceedings is to be considered along with the guidance provided by the Court of Appeal in AM (Afghanistan) v Secretary of State for the Home Department [2017] EWCA Civ 1123; [2018] 2 All ER 350 and the Upper Tribunal in SB (Vulnerable Adult: Credibility) Ghana [2019] UKUT 00398 (IAC); [2020] Imm AR 427, at [61]. Consideration is also properly to be given to the Equal Treatment Bench Book.
20. The appointment of an intermediary is separate to issues arising from a lack of capacity. Guidance as to capacity and the appointment of litigation friends in the Chamber is provided by *Joint Presidential Guidance No. 1 of 2024: Appointment of litigation friends in the Upper Tribunal (Immigration and Asylum Chamber) and First-tier Tribunal (Immigration and Asylum Chamber)* which came into force on 2 December 2024.

### **Intermediary**

21. Farbey J explained the role of the intermediary in Morrow v Shrewsbury RUFC [2020] EWHC 379 (QB), at [23]:

“... The intermediary's role is to assist the witness to understand questions and communicate answers. It is not a general witness support role which is provided by others within the criminal justice system. An intermediary is independent of the parties and owes his or her duty to the court.”

22. Upon appointment an intermediary will provide support to a party or witness giving evidence and may, on rare occasions, be required to support a party to participate effectively at other times during a hearing.
23. The representatives drew our attention to the approach adopted to intermediaries in criminal courts: R v Rashid [2017] EWCA Crim 2; [2017] 1 WLR 2449; R v Dean Thomas [2020] EWCA Crim 117; [2020] 2 Cr. App. R. 12 and R (TI) v Bromley Youth Court [2020] EWHC 1204 (Admin); [2020] 2 Cr. App. R. 22; and in family courts: In re S (Vulnerable Parent: Intermediary) [2020] EWCA Civ 763; [2020] 4 WLR 97 and West Northamptonshire Council v KA [2024] EWHC 79 (Fam); [2024] 2 FLR 204. We have also considered post-hearing judgments relating to family courts: In re: X (Intermediary: Practice and Procedure) [2024] EWHC 906 (Fam); and civil courts: CXC v Clarke [2024] EWHC 3138 (KB).
24. There are obvious and important differences between tribunals and civil, criminal and family courts, not least the absence of strict rules of evidence in tribunal proceedings. Each jurisdiction has its own Procedural Rules, Practice Directions and Guidance through which an assessment as to the necessity of an intermediary appointment is to be undertaken. However, in essence, tribunals and courts seek to ensure that an individual can participate in proceedings by giving their best evidence. In this Chamber, such participation is enabled through the Presidential Guidance and the guidance provided by the Court of Appeal in AM (Afghanistan).
25. The Presidential Guidance details at paragraph 5.2(iv) that there is no provision in the Chamber for a Tribunal appointed intermediary. This element of the Guidance was addressed by the Court of Appeal in AM (Afghanistan) through the application of natural justice as a general principle of the common law in tribunal procedures and it was concluded that in a rare case where an intermediary is necessary a direction can be made for their involvement, at [38], [40].
26. The test is therefore one of necessity and it will be a rare case where the threshold is crossed such that an intermediary is required. The reference to rarity reflects the reference by the Lord Chief Justice in Rashid, at [69] and [73], to the inherent power of a judge at common law:

“73. ... There may be rare cases where what is provided by competent legal representation and good trial management is insufficient because of the defendant's mental or other disability. What may then be required is an intermediary. ...”

27. Though an appointment will be rare, as in most cases the assistance of an intermediary will not be required, it does not follow that there is a high hurdle to overcome if the appointment of an intermediary is necessary for effective participation in proceedings: TI, at [39].

28. We observe [31] of Ryder LJ's judgment in AM (Afghanistan):

“31. The PD and the Guidance Note [Guidance] provide detailed guidance on the approach to be adopted by the tribunal to an incapacitated or vulnerable person. I agree with the Lord Chancellor's submission that there are five key features:

- a. the early identification of issues of vulnerability is encouraged, if at all possible, before any substantive hearing through the use of a CMRH or pre-hearing review (Guidance [4] and [5]);
- b. a person who is incapacitated or vulnerable will only need to attend as a witness to give oral evidence where the tribunal determines that "the evidence is necessary to enable the fair hearing of the case and their welfare would not be prejudiced by doing so" (PD [2] and Guidance [8] and [9]);
- c. where an incapacitated or vulnerable person does give oral evidence, detailed provision is to be made to ensure their welfare is protected before and during the hearing (PD [6] and [7] and Guidance [10]);
- d. it is necessary to give special consideration to all of the personal circumstances of an incapacitated or vulnerable person in assessing their evidence (Guidance [10.2] to [15]); and
- e. relevant additional sources of guidance are identified in the Guidance including from international bodies (Guidance Annex A [22] to [27]).”

29. Consideration as to the appointment of an intermediary will occur after it has been decided that it is necessary for the fair hearing of a case that a vulnerable person give evidence and that their welfare will not be prejudiced by doing so. If circumstances change after the appointment of an intermediary, and the opposing party



no longer requires the person being assisted by an intermediary to give evidence, then it is to be expected that they will advise the Chamber and the parties and that the necessity for the intermediary will be reviewed.

30. The Chamber has many parties to proceedings who are vulnerable. We note from our experience that there is a wide range of issues and circumstances that can affect a person such that they are properly to be regarded as vulnerable. Whilst consideration of a request for an intermediary will be fact-dependent, and reliant upon cogent medical evidence, it is obvious that not every vulnerable person will require the appointment of an intermediary. Persons who have mental health concerns that do not impair their ability to give evidence or communicate in proceedings can properly be addressed by the application of the Presidential Guidance.
31. The question for a judge when considering an application to appoint an intermediary revolves around the quality of the evidence a vulnerable person can give or impediments to essential elements of their participation in proceedings, balanced with the overriding objective and costs proportionality.
32. We consider that deficient cognitive functioning, including immaturity and relevant learning differences, are capable of significantly impacting the ability to give best evidence. The appointment of an intermediary will, therefore, only arise where it is necessary consequent to these issues.
33. An applicant who asserts that they have deficient cognitive functioning will be expected to provide medical evidence that supports the necessity for them to be aided in specific ways to ensure that they give their best evidence.
34. Signs of deficient cognitive functioning include memory loss, and difficulties in concentrating, understanding, remembering and following instructions. Limitations will be on a wide scale, commencing at mild where the condition does not affect daily life or usual activities. It will be essential for the medical evidence supporting any application for an intermediary to demonstrate the link between the nature and extent of these issues and the necessity for an intermediary to be appointed. For many people with a cognitive impairment, a necessity for an intermediary may not be demonstrated.
35. A judge should be vigilant to problems that may arise in hearings concerning vulnerable young persons, particularly as to how

- immaturity, concentration and understanding may affect their participation.
36. An intermediary is not to be appointed on a “just-in-case” basis, nor is the recommendation of a psychologist or psychiatrist determinative. Additionally, a failure by a psychologist or a psychiatrist to properly diagnose and analyse a person’s needs will not establish a requirement for an intermediary. A judge is best placed to understand what steps are required to ensure that a person can give best evidence and participate appropriately in proceedings.
  37. Legal representatives can properly be taken to understand their role in ensuring that their client, or a witness called by their client, has sufficient understanding of proceedings and their role in them, including giving evidence. Representatives can ensure that their clients provide adequate instructions in advance of a hearing, engage in the preparation of their witness statement and can attend court without significant distress. Necessity in securing the service of an intermediary arises when a judge is satisfied that appropriate support provided by legal representatives, in combination with available case management powers, is insufficient to enable a vulnerable person to participate effectively in proceedings. We consider that the provision of frequent breaks, the tailoring of language in questioning and the use of tools identified in the Advocates Gateway, will usually be sufficient to enable effective participation.
  38. A judge should be mindful that it is not sufficient that a vulnerable person would be assisted or helped by intermediary support.
  39. It is not the default position that a vulnerable person who needs measures to be taken on to support their participation or giving of evidence requires an intermediary. Judges in this Chamber are experienced as to the particular importance for many vulnerable witnesses in being permitted frequent breaks as well as the need for straightforward questions instead of several questions being wrapped up in one.
  40. It will be rare for an appointed intermediary to aid beyond a vulnerable person giving evidence where the person is represented, for example to enable a party to give instructions prior to a hearing or to aid in communication of closing submissions to a party.

### **The process of applying for and appointing an intermediary**

41. The duty to identify a party or witness who is a vulnerable person rests upon the parties and their representatives, who are under a duty to assist the Chamber to ensure that a party or witness can participate in proceedings without the quality of their evidence being diminished. Good practice requires the parties' representatives to actively address at an early stage the question of whether a party is vulnerable. If the answer is positive, careful consideration is to be given as to whether the nature of the identified vulnerability requires the appointment of an intermediary.
42. The process of appointing an intermediary commences with an application to the Chamber for an order that there be a report from an intermediary and reasons must be provided as to why one is required. To secure an order, an applicant will be expected to file relevant medical evidence, such as a psychological or psychiatric report, or detailed medical opinion from a GP, along with their application. The application is to be made on notice to the respondent, who will be expected to confirm whether there is an intention to examine the person at the hearing. The respondent's confirmation as to their position can be expected to be made within five working days. Silence can be taken by a judge to indicate an intention to examine.
43. The application for an order seeking a report will usually be considered by a judge on the papers, but a CMRH can be directed if considered appropriate in the circumstances. Being mindful that the process of appointing an intermediary can delay a hearing, the Chamber can properly expect an application to be made early in proceedings and upon receipt should endeavour to consider an application without unnecessary delay.
44. If an order for a report is granted, it will be secured at public expense through HMCTS. A booking form for HMCTS Appointed Intermediary Service ("HAIS") is to be filed with the relevant Tribunal, with the service sought from the intermediary identified on the form. Consequent to approval, the form is returned to the applicant's representative upon whom the responsibility for arranging the approved intermediary falls. If the person who requires the support of an intermediary is unrepresented, HMCTS staff will book the intermediary by direction of a judge.
45. An approved HAIS supplier will carry out an assessment and write a report of the person's communication needs. The report is to be filed and served to permit a judge's consideration no later than ten working days following the assessment, accompanied by a written application for the appointment of an intermediary with attendant explanation of the intermediary's intended role in proceedings.

46. We observe that the report's recommendation may not be for an intermediary to be present at the hearing, either because the person's communications needs are too severe for an intermediary to assist satisfactorily or because recommendations are presented which, if adopted, make it unnecessary for an intermediary to be present. In these circumstances, the report is to be filed and served to permit a judge to consider appropriate case management.
47. Upon receipt of an intermediary's report, it will be for a judge to assess whether competent representation and good case management can ensure that best evidence can be given without an intermediary. A decision upon the application will usually be considered by a judge on the papers as case management.
48. Intermediaries are not to be appointed as a matter of routine case management. It must be clear to a judge that other adaptations of the hearing process will not sufficiently meet a person's needs to ensure that they can effectively participate. If the necessity threshold is met, and an intermediary appointed, a judge can undertake case management with the aid of the recommendations provided in the report.
49. Contrary to the approach adopted in other jurisdictions, for example in the family courts, if an intermediary is appointed a ground rules hearing will be undertaken as a preliminary matter on the morning of the hearing, and not on a date prior to the hearing. This will permit the judge hearing the case to manage proceedings on the day, with the benefit of previous case management. We are mindful that many judges sitting in this Chamber are fee-paid, not salaried, and the requirement that the same judge undertake the ground rules hearing and the hearing on different days is unnecessarily onerous for the Chamber. Judges in this Chamber are experienced in addressing the needs and requirements of vulnerable persons. Further, judges can expect representatives to have prepared appropriate questions in advance, being mindful that a witness has deficient cognitive functioning.
50. Given the present use of remote and hybrid hearings, particularly in the First-tier Tribunal, judges should properly be aware that an issue may arise where a person with deficient cognitive functioning is questioned by an advocate who is not in the room with them. This process removes many of the visual cues that are valuable to individuals with cognitive impairment and may impede their ability to participate in a hearing to the fullest possible extent. Consequently, whilst an intermediary may not be required for an in-person hearing with all advocates present, the same party or

witness may require an intermediary to negotiate the process of being questioned by an advocate who is not in the same room. Whilst the means of hearing is ultimately to be considered on the facts arising, parties can properly expect the starting point to be that all parties, representatives and witnesses will be present in a hearing room where a party or witness has deficient cognitive functioning.

### **Requirement for an intermediary in these proceedings**

51. The applicant is now, on his own case, an adult. The outcome of the age assessment proceedings will have substantial consequences for him, even as an adult, due to the continuing duties of the respondent under the Children Act 1989, provided he qualifies as a Former Looked After Child.
52. This is not a “submissions only” case. The respondent’s position is that the case entirely turns on credibility and it is intended to cross-examine the applicant at the fact-finding hearing.

#### *Consultant psychologist report*

53. The applicant filed and served a psychological report prepared by Dr Peter Maggs, Consultant Psychologist, C.Psychol, AFBPsS, DChEdPsych, MSc, MA, PGCE, BA (Hons), dated 19 July 2023. The respondent takes no issue as to Dr Maggs’ expertise.
54. Consequent to one meeting at the offices of the applicant’s legal representatives on 3 July 2023, and the completion of various cognitive assessments, Dr Maggs observed that formal testing revealed the applicant’s I.Q. as falling within the range from 51 to 59, which lies within the extremely low range of I.Q. scores, namely at the 0.1<sup>st</sup> percentile. This range of scores is associated with a designated learning disability.
55. The applicant has significantly restricted aspects of his language, visual-perceptive abilities, short-term auditory memory, short-term visual memory, concentration and fine-motor coordination. His verbal skills, perceptual reasoning, working memory and processing speed fall within the extremely low range.
56. Dr Maggs detailed that the applicant presents with significant challenges in his cognitive ability and adaptive functioning, e.g. in managing his day-to-day affairs, and his psychological functioning is exacerbated by problems with his mental health, notably anxious and depressed feelings. His conclusion is that the applicant will find the process of giving oral evidence particularly challenging on account of his significant learning difficulties.

However, he did not expressly recommend the use of an intermediary at the fact-finding hearing. We consider it fair to observe that whilst in his letter of instruction he was asked to address appropriate special measures at a forthcoming hearing, he was not specifically requested to address the suitability of an intermediary.

57. The respondent does not challenge Dr Maggs' opinion as to the applicant's cognitive ability.

#### *Intermediary report*

58. Ms Candice Connelly prepared an intermediary report on behalf of Commicourt, a HMCTS Managed and Approved Service Provider of intermediary services. The report is dated 8 December 2013. Ms Connelly was provided with Dr Maggs' report and undertook a remote assessment with the applicant on 27 November 2023.
59. Ms Connelly found the applicant to be limited in several areas of communication: attention and concentration, auditory working memory capacity, processing verbal information, understanding low frequency vocabulary, understanding complex grammatical structures, ability to express himself, literacy and time concepts.
60. A recommendation was made that the applicant have an intermediary to assist for the duration of the proceedings, including at any conferences related to the case.
61. Ms Eleanor Steel attended the preliminary hearing on behalf of Commicourt and answered questions as to the preparation of Ms Connelly's report.
62. We are concerned that Ms Connelly does not appear to understand the nature of proceedings in tribunals, which she refers to as a "court" throughout her report, particularly in respect of how an intermediary will work with an interpreter at a hearing. The recommendation that an interpreter chose what to interpret, and for an intermediary to simplify what an interpreter is to interpret so that the interpreter can then "explain" the information relevant to the applicant is not grounded in how the Chamber works with interpreters. Though Mr Lee sought to soften this recommendation by observing that an interpreter will undertake the task they are required by the Tribunal to conduct, we are concerned that Ms Connelly has taken it upon herself to recommend that an interpreter be directed to interpret what an intermediary considers relevant. It is for representatives to police their questioning, not for an interpreter to impose a filter once an appropriate question has been asked.

63. We do not consider the role of an intermediary to incorporate discussion with an interpreter as to how best to work to ensure the interpreter “supports” an applicant’s participation and understanding at the hearing, as recommended by Ms Connelly.
64. Ms Connelly appears unaware that practice in this Chamber is for documents to be filed and served prior to the hearing. Tribunal appointed interpreters do not “go through” hearing documents with an applicant prior to their “being introduced in court”.
65. The recommendation that the intermediary provide regular written updates regarding the strategies implemented and their effectiveness is suggestive of a lack of understanding as to the expected length of the applicant’s evidence in this matter, and that matters in respect of concerns as to the giving of evidence would be expected to be raised orally so that all representatives are made aware.
66. The identified recommendation that an intermediary support the applicant to make informed decisions to instruct his legal team as to whether to give oral evidence goes beyond a communication role.
67. Additionally, Ms Connolly initially addresses the appropriateness of the respondent’s questions being made available to the applicant in advance of the hearing at paragraph 4.5 of her report, though this request was refused by the Upper Tribunal in its order and directions sent to the parties on 3 November 2023. Upper Tribunal Judge O’Callaghan concluded in respect of the earlier request:
- “It would be unfair for the respondent to be required to detail its questions in writing. The respondent does not dispute that the applicant is properly to be treated as a vulnerable witness, and the applicant can therefore rely at the hearing upon relevant Presidential guidance and practice in respect of vulnerable witnesses appearing before the Upper Tribunal, which was approved by the Court of Appeal in AM (Afghanistan).”
68. At paragraph 8.3, having confirmed that she was provided with Upper Tribunal Judge O’Callaghan’s order refusing the provision of the respondent’s questions prior to the hearing. Ms Connelly proceeds to recommend:
- “8.4 The intermediary can assist counsel with the framing and structure of questions if they are provided in advance. This would allow for the intermediary to highlight any potential difficulties and offer suggestions for rephrasing.

8.5 The intermediary can assist all parties, as they are impartial, and their duty is to the court [sic]. As such, the questions would not be disclosed to Mr Ahmadzai or opposing parties.”

69. We consider the recommendation fails to understand the basic premise of tribunal hearings that matters are conducted openly before the parties and their representatives, save for clearly identified circumstances permitted by relevant Procedural Rules or Guidance. Further, whilst a judge will bear in mind the communication expertise of an intermediary, it is ultimately a judicial decision as to whether a proposed question is to be amended. This recommendation usurps the role of the judge.
70. There is an assumption by Ms Connelly that a ground rules hearing will take place in advance of the hearing. The report does not touch upon the role of an experienced Upper Tribunal Judge in these proceedings, nor the availability of special measures.
71. We appreciate that this may be one of the first occasions the appointment of an intermediary has been requested in tribunal proceedings. However, as we raised with Ms Steel, the report is grounded upon a hearing conducted in criminal or civil courts. Intermediaries, along with parties and witnesses, are not expected to take an oath; questions are not provided to parties in advance; documents are filed and served before the hearing; witnesses do not give evidence from a witness box; and tribunal-appointed interpreters do not engage in conferences before and after hearings with applicants. We are concerned that several of Ms Connelly’s recommendations go beyond necessary steps in this matter and fail to identify the applicant’s established ability to engage with his legal representatives, of which no concern is raised before us. There will be understandable concern on the part of the judiciary if a template approach is adopted to recommendations in an intermediary report.

#### *Appointment of intermediary*

72. We observe the respondent’s opposition to the appointment of an intermediary in this matter. Mr Paget carefully submitted that available case management powers were adequate in this matter.
73. Additionally, we note the assessment of the appellant in Re: S (Vulnerable Parent: Intermediary) who was found to have a Full Scale I.Q. of 65, which placed her in the 1<sup>st</sup> percentile, and in the extremely low range of cognitive functioning. The Court of Appeal ultimately held that the first instance judge erred in respect of the additional factors arising from a hybrid hearing, but observed that



“the judge’s conclusion that participation measures did not require the involvement of an intermediary is one that might or might not have been sustainable ahead of a conventional face-to-face hearing”, at [29].

74. Having considered Dr Maggs’ opinion as well as other evidence before us, we are satisfied that threshold of necessity is met in this matter. The applicant’s I.Q. is in the range of 51 to 59, placing him in the 0.1<sup>st</sup> percentile. We accept that he has deficient cognitive functioning, evidenced by his verbal skills, perceptual reasoning, working memory and processing speed falling within the extremely low range. Consequently, we are satisfied that the support of the applicant’s legal representatives and attendant case management alone will not sufficiently enable the applicant to give his best evidence and so it is necessary that an intermediary be appointed to aid in respect of the approach to be adopted to his questioning.
75. The ground rules hearing in this matter will take place on the morning of the fact-finding hearing.

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