

Intermediaries Member Guidance

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Executive Summary Intermediaries

Definition:

An intermediary is a communication specialist that assesses an individual's communication needs and recommends adaptations to the communication format/style and delivery.

The Parole Board has a duty to consider how its policies or decisions affect people protected under the *Equality Act 2010*. The use of an intermediary can eliminate indirect discrimination, advance equality of opportunity, and generally fosters good relations, as required under the *Public Sector Equality Duty* (section 129).

Intermediaries are impartial (non-partisan), and their assessment can help to ensure the prisoner has a fair hearing, where there are complex communication needs. With over 95% of hearings now taking place remotely, it is important that prisoners with complex communication needs are not disadvantaged by this.

An intermediary can assist someone who is under 18, or who has a physical, neurological, neurodevelopmental or mental health condition, a neurodivergent need, or speech, language and communication issue that affects their ability to participate fully in an oral hearing.

An intermediary report is required to contain a specific assessment of the prisoner's needs, and how these needs can be met. It cannot act as a diagnosis or be considered as evidence.

Key Points

Evaluate what is already available (1.5-1.12):

- It is important to gain an understanding of the nature of the prisoner's communication needs.

The majority of prisoners with communication needs will not require an intermediary. Fair participation can be achieved by other measures, such as adapting questioning style or

- The panel and HMPPS will need to review available reports and information on communication needs.
- There is an emphasis on exploring current or potential adaptations and alternatives that can be put in place.

Identifying the need for an intermediary (4.1 – 4.9):

- This section provides an outline of the different types of communication needs.
- It will need to be considered which type of communication specialist is most appropriate. In some cases, a more appropriate assessment or professional may be identified that will better meet the needs of the prisoner.
- Panels should direct further information from other professionals that work with the prisoner about any needs or issues.

Implementation - MCA Stage (5.1-5.21):

- Where it is unclear on the needs of the prisoner, an intermediary assessment and subsequent report might be needed.
- An intermediary report is not 'evidence' in the sense that the intermediary is not a witness to proceedings.
- Any report produced will not be added to the dossier.
- The assessment will identify recommendations for panels on communication needs, such as how to present information, language and questioning types to use, practical arrangements, and bespoke advice relevant to the individual.
- The MCA panel will need to take any recommendations into consideration when setting directions if an oral hearing is required.
- Assisted evidence may take at least twice as long to elicit and probe. This should be considered when setting the

tier for the case and time allocations for case management conferences (CMCs) and oral hearings.

Implementation – Panel Chair Stage (5.22-5.34):

- A discussion may be needed about the panel submitting questions to the intermediary in advance of the hearing so that they can make suggested changes.
- It is good practice to utilise a CMC so the panel can receive pre-hearing advice, and supply questions in advance to the intermediary to obtain more reliable evidence from the prisoner during the hearing.
- All attendees should be notified of adaptations being put in place and if an intermediary is attending the oral hearing. Ideally, the intermediary should physically be in the room with the prisoner

Implementation - Oral Hearing Stage (5.35-5.38):

- If the prisoner is struggling because necessary adaptations are not in place, the panel chair can direct a short adjournment and consider with their co-panellists whether to adjourn the hearing.
- The panel chair may take representations from the prisoner, their representative, or other witnesses. Continuing in these circumstances should be avoided, as it may be, or seen to be unfair and lead to reconsideration.

HMPPS Responsibilities (6.1 – 6.14):

- Where the Parole Board has directed for an intermediary report, and HMPPS

does not already have information addressing concerns, HMPPS should commission an assessment at the earliest opportunity.

- HMPPS are responsible for funding the assessment and the attendance of an intermediary at a parole hearing.
- Panels should be mindful that individual prisons may not have funding readily available, which could lead to delays.

Victims (8.1-8.3):

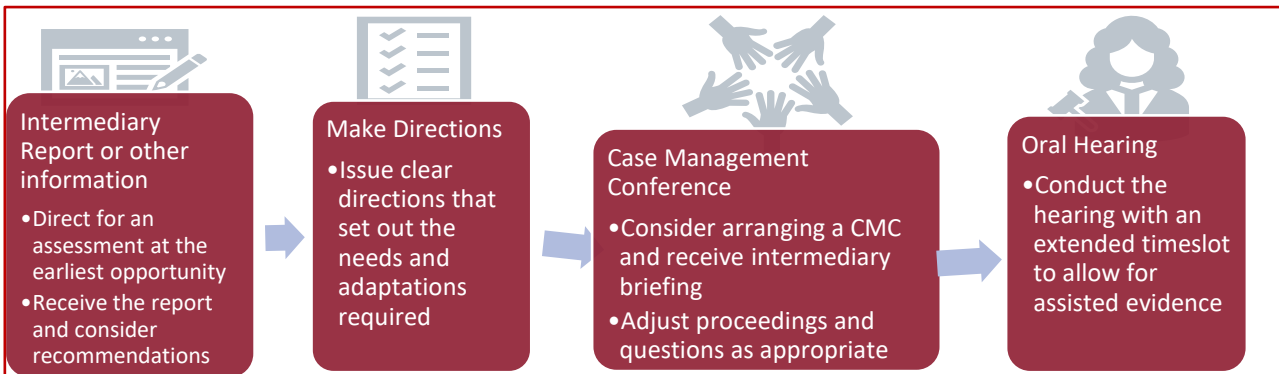
- It is HMPPS’ responsibility to identify whether victims reading out their VPS or observing the hearing would benefit from an intermediary and if so, to make the necessary arrangements.

Prisoner cohorts (7.1-7.23):

- This section provides more specific detail and advice on the prisoner cohorts: neurodivergent, swallowing difficulties, d/Deaf, children, previously detained in a secure psychiatric hospital, female and IPP sentence prisoners.

What an Intermediary Cannot Do (9.1-9.6):

- Act as a support worker, advocate, McKenzie Friend, Litigation Friend, or representative.
- Act as an interpreter or translator.
- Act as an expert witness.
- Advocate on the prisoner’s behalf.
- Assess mental capacity, risk, or provide recommendations.
- Provide an opinion on release or transfer to open conditions.



1. Introduction

- 1.1 This guidance sets out information for panels to consider when reviewing cases where an intermediary may be required to assist with identifying the communication needs of a prisoner.
- 1.2 The guidance offers practical advice for panels at the Member Case Assessment (MCA) stage, when setting panel chair directions (PCDs) for oral hearings, and where a duty member may be involved. It sets out:
- the definition of an intermediary;
 - the role of an intermediary;
 - identifying the need for an intermediary;
 - practical advice for panels;
 - HMPPS responsibilities;
 - other types of communication specialists;
 - what an intermediary cannot do.
- 1.3 It is recognised that many prisoners going through a parole review require assistance in a number of ways, for example, understanding the contents of their dossier, and assistance to communicate effectively at an oral hearing.
- 1.4 Panels will need to take reasonable steps to ensure that prisoners are given the opportunity to understand and engage in their parole review. The use of an intermediary can be an important aspect of providing the prisoner with a fair parole review and the ability to engage more meaningfully in any oral hearings.
- 1.5 The use of an intermediary can eliminate indirect discrimination, advance equality of opportunity, and it generally fosters good relations, as required under the Public Sector Equality Duty (section 129)¹.

However, it should be noted that involvement of an intermediary is only likely to be necessary where there are *exceptional* communication needs which would result in the prisoner not being able to engage fairly in their parole review.

- 1.6 It is important that all other alternative arrangements or adaptations are fully explored for a fair hearing to take place before determining whether an intermediary is required. The panel will need to have an understanding of the prisoner's communication needs and skills when planning the hearing. Adaptations might include taking additional, frequent breaks, changing questioning style, or regularly checking that the prisoner is following the discussion during the hearing.

¹ The [public sector equality duty](#) is a duty on public authorities to consider or think about how their policies or decisions affect people who are protected under the [Equality Act 2010](#).

- 1.7 Where the panel determines that alternative arrangements are insufficient, and an intermediary assessment needs to be directed, HMPPS will look at all existing available evidence, including from other reports and file notes, to see if relevant information is readily available. Such needs are unlikely to only be relevant to parole reviews and so professionals within HMPPS may already have identified any complex communication needs and how to support the prisoner. PPCS may therefore seek to vary or revoke a direction if the need can be addressed by other means.
- 1.8 It is likely that those working most closely with the prisoner, for example the Prison Offender Manager (POM) or a psychologist, will be able to advise on how best to engage and communicate with the prisoner. The prisoner's representative, if there is one, should also be able to offer advice about this.
- 1.9 Only in cases where there is no clear information or understanding of the prisoner's communication needs will an intermediary be commissioned.
- 1.10 The panel should draw on the Questioning Vulnerable Prisoners (QVP)² training and use the skills acquired to ensure the best approach is taken when questioning the prisoner. Adopting the twenty principles of questioning vulnerable people may assist the preparation for the oral hearing. Some additional considerations can be found in paragraphs 5.14 and 5.15 of the Oral Hearing Guidance³.
- 1.11 In a recent judgment from the Family Court in the case of *Re X & Y (Intermediary: Practice and Procedure)*⁴ it states (at paragraph 11):
- "It should not be the default position that a witness or party who is identified as vulnerable and needing measures to be taken to support their participation or giving of evidence requires an intermediary. Only if their fair participation cannot be achieved by other measures will an intermediary be necessary."*
- Whilst the judgment relates to matters in the Family Court the same principles likely apply equally across other jurisdictions.
- 1.12 This guidance provides advice primarily for panels to make decisions about when an intermediary may be required to undertake a communication assessment and, in some cases, attend an oral hearing.

2. Definition of an intermediary

- 2.1 An intermediary is a communication specialist that assesses the specific speech, language, and communication needs of an individual and recommends adaptations to the communication format, style, or delivery.

² *Questioning Vulnerable Prisoners*.

³ *Oral Hearing Guidance*.

⁴ [*Re X & Y \(Intermediary: Practice and Procedure\)*](#).

2.2 The following explanations may be helpful:

- **Speech** refers to saying sounds accurately and in the right places in words. It also relates to speaking fluently, without hesitating, prolonging and repeating words or sounds. It also means speaking with expression in a clear voice, using pitch, volume, and intonation to add meaning.
- **Language** refers to understanding and making sense of what people say. It also includes using words to build up sentences which are used in longer stretches of spoken language and to build conversations. This skill involves putting information in the right order for it to make sense.
- **Communication** refers to how we interact with others; our ability to talk to people and take turns as well as change language to suit the situation. It includes non-verbal communication, for example eye contact, gestures and facial expressions. In addition, communication relates to being able to consider another person's perspective, intentions and the wider context.

2.3 Speech, language and communication needs fall under the wider neurodivergence umbrella definition in the prison context. This umbrella definition covers the group of conditions that fall under the broader category of neurodevelopmental disorders (NDDs). These incorporate **learning difficulties and disabilities** (LDDs), which generally include: learning disability, dyslexia, dyscalculia, and developmental coordination disorder (DCD, also known as dyspraxia); **other common conditions**, such as attention deficit hyperactivity disorder (ADHD, including ADD), autism spectrum conditions, developmental language disorder (DLD, including speech and language difficulties), tic disorders (including Tourette's syndrome and chronic tic disorder); and **cognitive impairments** due to acquired brain injury (ABI).

2.4 It is estimated that perhaps half of those entering prison could reasonably be expected to have some form of neurodivergent condition which impacts their ability to engage⁵.

2.5 An intermediary can assist a prisoner of any age or gender who has a physical, neurological, or mental health condition that affects their ability to communicate effectively during their parole review.

3. The role of the intermediary

3.1 Intermediaries are communication specialists who can assess communication strengths and needs and facilitate communication with a prisoner for the purposes of their parole review. **Intermediaries are non-partisan and provide impartial recommendations.**

⁵ Justice inspectorate report July 2021 "[Neurodiversity in the CJS: a review of evidence](#)".

- 3.2 They are responsible for conducting an assessment and reporting, orally or in writing, about the communication needs of the prisoner and the steps necessary to meet those needs. They can help to improve the quality of evidence given by the prisoner and to facilitate their understanding and participation in proceedings.
- 3.3 An intermediary assessment will provide advice on how information can be adapted, so that it becomes more accessible to the prisoner. The assessment will outline special arrangements and other adaptations they consider necessary to enable the prisoner's effective participation in their parole review.
- 3.4 The assessment should explain how both receptive and expressive communication needs should be addressed. It should explain how a prisoner will likely need help to understand the questions that they are asked as well as to have assistance in expressing themselves when replying to questions.
- 3.5 The assessment should additionally advise if the prisoner should be assisted by an intermediary or someone else such as a keyworker or support worker at their parole hearing (if there is one) and it may explain that if not, the prisoner may not be able to fully participate.

4. Identifying the need for an intermediary

- 4.1 Ideally, information about a prisoner's needs or any diagnosed condition would arrive with them when they enter prison. This would enable any necessary adaptations to be made from the start, enabling them to settle into the prison environment, engage with the regime, and lay foundations for effective ongoing rehabilitative work.
- 4.2 On reception to prison there is usually a brief generic screening process conducted by health care practitioners. This relies on self-disclosure of any communication needs, or on the assessor's observation of learning difficulties or behaviours which might indicate a need for adaptations.
- 4.3 During their induction period, prisoners will be screened again, by learning and skills staff. HMPPS has introduced the Curious Information System, a system of rapid (self-completion) and in-depth follow-up screening tools.
- 4.4 The screening records any health problems a prisoner may have and invites them to self-declare any existing learning difficulties and disabilities that they are aware of. Speech, language, and communication needs is one of the "health problems" categories.
- 4.5 The type of communication need could be due to a physical, neurological, or mental health condition that affects a prisoner's ability to understand the parole process and participate fully during an oral hearing.
- 4.6 Although not an exhaustive list, examples of where the prisoner may have particular communication needs are:

- **Impaired Cognitive functioning** – including ABI, stroke;
- **Learning disabilities** – these can vary from mild to severe;
- **Literacy issues;**
- **Mental health conditions** – including anxiety, depression, paranoia, psychosis, schizophrenia, obsessive compulsive disorder (OCD), dissociative identity disorder, bi-polar affective disorder, post-traumatic stress disorder (PTSD), trauma and dissociation;
- **Neurodiversity** - including attention deficit hyperactivity disorder (ADHD), Autism Spectrum Disorder (ASD), and Foetal Alcohol Syndrome Disorder (FASD);
- **Personality disorders** – including emotionally unstable personality disorder (EUPD) / borderline personality disorder (BPD), antisocial, narcissistic, and schizoid personality disorders.
- **Physical disabilities or genetic disorders and illnesses** – including cerebral palsy, MS, ME, dementia, Alzheimer’s, chronic fatigue, chronic pain, fibromyalgia, long covid, sight impairment; Huntingdon Chorea:
- **Sensory difficulties** such as hypersensitivity and sensory processing disorder;
- **Stammer and speech impairments** – possibly due to neurological conditions or stroke;
- **Hearing difficulties** which can include being hard of hearing or Deaf;
- **Substance misuse and addiction.**

- 4.7 In most cases where the prisoner experiences one or more of the above conditions, panels should direct further information from other professionals that work with the prisoner about any needs or issues. This will establish the extent of any communication needs and whether these may be adequately supported through alternative arrangements or adaptations (see [paragraph 1.6 and 1.7](#)).
- 4.8 Where it is determined that an intermediary is required, identifying one with the right specialism and using the right combination of communication methods, for example non-verbal, or symbol systems⁶ will often facilitate improved engagement by the prisoner in their parole review.
- 4.9 When determining the need for an intermediary, consideration should be given to what an intermediary ***is not and does not do***, which will help to identify if something/someone else is needed. [Sections 7](#) and [9](#) of this guidance provide more information which may assist.

5. Practical advice for panels

- 5.1 The findings in a recent research report⁷ noted that identifying the need for an intermediary was often made late in the process (in courts) which led to delays.

⁶ *Symbol-based communication is a component of augmentative and alternative communication (AAC). It is often used by individuals who are unable to communicate using speech alone and who have not yet developed or have difficulty developing literacy skills.*

⁷ *The role of intermediaries at Parole Board oral hearings – O’Mahony, Milne & Smith.*

- 5.2 **It is therefore important to emphasise that the earlier a need is identified the less chance there will be for delay later in the process.**
- 5.3 The communication needs of the prisoner and for an intermediary to be commissioned should ideally have already been identified and assessed by HMPPS (or a secure psychiatric hospital) ahead of any case being referred to the Parole Board.
- 5.4 These matters should primarily be identified by those working closely with the prisoner, such as the POM, Community Offender Manager (COM), or other HMPPS staff, such as a psychologist or healthcare professional. In some cases, a Neurodiversity Support Manager (NSM) may have engaged with the prisoner and provided advice.
- 5.5 HMPPS will only commission an assessment from an intermediary if they have concerns that there are speech, language, or communication needs and specialist advice is required. This will not happen in the majority of cases because there will most likely be information already available that can advise on other adaptations or alternative arrangements that can be put in place that meets the prisoner's communication needs.
- 5.6 Where an assessment has been undertaken there should be sufficient information provided within the parole dossier about the specific adaptations that may already be in place to support the prisoner to navigate their parole dossier and participate in an oral hearing.

For GPP cases it can be found in:

- the OASys report under the "preferred language" field in the "Case ID – Offender Information" Section.
- the PAROM report under "mental health and mental capacity" or in the "oral hearing considerations" section.

For recall cases it can be found in:

- section 10 of the Part A – are there any vulnerability issues and/or diversity needs;
- section 11 of the Part B – any other information including mental capacity;
- section 10 of the Part C – any other information including mental capacity.

- 5.7 Psychological reports and/or prisoner representations may identify that there are likely to be speech, language or communication needs or refer to findings from a WAIS⁸, such as working memory difficulties and impaired verbal reasoning, although some specialist neuropsychological reports may provide more information.

⁸ *The Wechsler Adult Intelligence Scale (WAIS) is an IQ test designed to measure intelligence and cognitive ability in adults and older adolescents.*

- 5.8 Where it is unclear on the needs of the prisoner, an intermediary assessment and subsequent report might be needed to identify adaptations to be put in place to ensure the prisoner can engage in their review and any oral hearing. In cases of complex communication needs, it may be necessary for the prisoner to have the assistance of an intermediary at their oral hearing.
- 5.9 There may be reference in the dossier to a 'communication passport' for the prisoner, which is a document providing a practical and person-centred approach to passing on key information about prisoners with complex communication difficulties who cannot easily speak for themselves.

The intermediary assessment

- 5.10 An intermediary assessment is not 'evidence' in the sense that an intermediary is not a witness in the proceedings. Any report produced by an intermediary will *not* be added to the dossier but will be shared with HMPPS staff and the panel, as well as the prisoner's representative (if there is one). The intermediary report is specifically commissioned to assess and advise on communication adaptations for the oral hearing and is likely to have a statement to that effect on the front page of the report. This is different from reports that may be within the dossier, such as a Speech and Language Therapist (SALT) report or a psychologist report.
- 5.11 The assessment is likely to cover:
- how to present information in written or visual form so that the parole dossier will be more accessible, for example including a simple executive summary style⁹;
 - using basic language and – avoiding figurative language and low frequency words;
 - the types of questions that should be asked to get the best response – for example, using a targeted or simplified questioning style such as – avoiding preambles, and tag or multi-part questions;
 - not overloading and keeping information simple such as – avoiding jargon, legal terminology, and acronyms, using a maximum of three key words per question;
 - how long the prisoner will need to answer a question;
 - practical matters about the length of a hearing or gestures the prisoner could use to indicate they have a question or feel anxious;
 - taking frequent breaks;
 - using non-verbal materials;
 - regularly checking understanding;
 - arrangements such as room layout and environment.
- 5.12 The assessment report may also highlight other matters, for example, that the prisoner:

⁹ "[The parole dossier and its negative impact on prisoner identity](#)" – Bradley Read *Criminology and Criminal Justice* February 2024.

- will not be able to read any documents independently;
- will not be able to take their own notes;
- will be distracted easily by noises;
- may not ask for clarification if they do not understand something;
- will assume shared knowledge when answering questions;
- will go on a tangent, etc.

5.13 Intermediaries sometimes also assist the prisoner with communication at an oral hearing, or at case conferences to prepare for a hearing. The assessment may recommend that an intermediary attend an oral hearing to:

- help to rephrase any questions the prisoner does not understand;
- make sure the prisoner can understand and follow what is happening;
- assist the prisoner to communicate their answer, for example, using augmentative and alternative communication.

The MCA stage

5.14 Where the need for an intermediary has already been identified, and an assessment has been carried out, the MCA panel will need to take any recommendations into consideration when setting directions, if an oral hearing is required. Logistical arrangements, timing and composition of the panel will all need to be considered. It will be important for the oral hearing panel chair to easily identify requirements when planning for the hearing.

5.15 The benefits of a completed intermediary assessment in advance of an oral hearing are that:

- the needs of the prisoner can properly be assessed providing the panel chair with an opportunity to make directions as part of their case management to consider and implement any recommendations made by the intermediary;
- if the panel has a better understanding of the prisoner's needs and communication style in advance, it is likely that the prisoner will be able to engage more fully and fairly in their hearing;
- the prisoner's representative can focus on their role more fully knowing the most appropriate communication methods have been adopted or appropriate adjustments have been made;
- the panel can prepare questions in ways that meet the specific needs of the prisoner in advance;
- more effective questioning from the panel can increase the likelihood of the prisoner being able to give their best evidence during the hearing and this should minimise delays due to misunderstandings;
- witnesses will be able to present their evidence in a more accessible format for the prisoner.

- 5.16 **Assisted evidence**¹⁰ in oral hearings, where an intermediary is assisting a prisoner with communication, **may** take at least **twice** as long to elicit and question, and this should be considered when setting the tier¹¹ for the case and the potential impact on any other case listed on the day.
- 5.17 However, by following best practice from the Questioning Vulnerable Prisoners training, this should assist the panel to stay focused, while still assessing issues that go to risk.
- 5.18 The MCA panel will also need to consider the appropriate format for the oral hearing. A face to face or hybrid arrangement may be most suitable. This can be ascertained by seeking further representations if it is unclear from the existing information within the dossier. The prisoner's representative in particular may have extensive knowledge of the prisoner and be able to assist.
- 5.19 If concluding the prisoner's parole review on the papers, the MCA panel may wish to consider whether any instructions should be issued alongside the decision to ensure the prisoner is given assistance to access and understand their decision. The panel chair may wish to consider whether producing an accessible decision may be helpful. The panel chair could write a simplified summary, an *Easy Read*¹² style version, or other format that may assist.
- 5.20 The need for an intermediary is not always identified before the case is referred to the Parole Board. In some cases, the communication needs may only emerge once the parole review commences. Even if communication needs have been mentioned, an assessment may not have been completed. It may therefore fall to the MCA panel to bring attention to the matter. At this point, the MCA panel may make a determination whether directing an assessment will assist or if there is sufficient information already available.
- 5.21 **Directing such an assessment may duplicate existing information and most likely lead to delay and so should be approached with careful consideration. This may involve adjourning the review.**
- 5.22 Where an MCA panel decides to issue directions to commission an assessment or prepare for an oral hearing, they should be clear and specific on what is required and why. Examples of directions could be:
- an intermediary assessment is directed to establish the communication needs of the prisoner to enable effective participation at the hearing;
 - a face-to-face hearing is required due to the communication needs of the prisoner;
 - as many panel members and witnesses as possible should attend in person;

¹⁰ The Oral Hearing guidance outlines that assisted evidence is when the prisoner's evidence is assisted using another person or method, such as interpreting, translating, and signing.

¹¹ Please refer to the Oral Hearing Tier Listing Guidance for determining the tier of the case based on the prisoner requiring the assistance of an intermediary throughout the hearing.

¹² [Change – Easy Read resources](#) .

- a specialist member is required on the panel;
- a three-member panel is required due to the nature and level of questioning needed (it should be noted that some prisoners may find a three-member panel intimidating and care should be taken not to overwhelm them);
- the prison should ensure all recommended arrangements are put in place (list if possible);
- the intermediary is required to attend the oral hearing if their attendance would assist with enabling effective communication between the panel and the prisoner.

Panel Chair stage

- 5.23 Ideally, the prisoner's communication needs should already have been identified by the time the case reaches the oral hearing panel chair. The panel chair will still need to consider whether arrangements have been adequately covered within MCA directions or whether further directions and checks are needed via PCDs.
- 5.24 It is advisable to be specific when stating the communications needs and/or the involvement of an intermediary in the PCDs. Any arrangements or adaptations required for the prisoner must be indicated so that all attendees can take account of them.
- 5.25 Additional directions made late in the day might lead to delays in putting practical arrangements into place, jeopardising the viability and timing of the hearing, and possibly disadvantaging the prisoner.
- 5.26 Where an intermediary attends an oral hearing:
- the prisoner can feel more confident knowing they have extra assistance with their communication and that steps have been taken to enable them to give evidence;
 - advice can be provided to the panel, the prisoner's representative, and witnesses on adapting questioning and approach in real time;
 - the intermediary continues to assess communication need and identify communication issues throughout the hearing;
 - The prisoner is likely to more clearly understand recommendations made by witnesses, or concerns raised by the panel, or proposed licence conditions.

Practical examples

- During the evidence of an adult with a learning disability, an intermediary was used to note changes in their communication and presentation (such as glazed eyes) that suggested that they were tiring and losing focus. The intermediary was able then to suggest a number of short breaks.
- In a *criminal trial* an intermediary accompanied a vulnerable defendant with autism throughout a hearing. This included taking notes, simplifying language, and reviewing documents with them. With the

- assistance of the intermediary, the representative was able to advise the defendant and to take instructions from them.
- In a parole hearing the intermediary spoke quietly to the prisoner and used written bullet points to summarise what other witnesses were saying so that the prisoner was able to remain engaged in the process. The prisoner was able to ask the intermediary what certain words meant without disrupting the witness's evidence or the hearing process.
- 5.27 It is ultimately the panel chair's decision to decide if an intermediary is required, after considering the circumstances. If the panel chair determines that an intermediary is not required at the oral hearing, which goes against the recommendation in the report, an explanation should be provided. It is good practice to seek representations before making a decision, as it may arguably have an impact on the procedural fairness of the hearing.
- 5.28 It may be helpful to convene a case management conference (CMC)¹³ in order to confirm logistics for the oral hearing and discuss the intermediary recommendations in more detail.
- 5.29 CMCs are usually conducted by the panel chair alone, but it may be helpful to have one or more of the co-panellists (if it is a multi-member panel) in attendance if they have a specialism that is relevant to the prisoner's identified needs and could assist in exploring what support or adaptations may be helpful for example, a psychiatrist, a member with experience of mental health work, a youth worker or social worker. Other attendees might include the prisoner's representative, the POM, the COM, the intermediary, a prison psychologist and a representative from PPCS. It is recommended that the panel schedules the CMC with enough time prior to the oral hearing to ensure arrangements can be put into effect.
- 5.30 An intermediary, if identified at this stage, may need to attend the CMC if there is uncertainty about requirements, or where they are attending the hearing in person. The intermediary should be invited to attend if their appointment is contested, to enable them to fully explain their recommendations verbally to the panel chair.
- 5.31 Intermediaries will be familiar with court proceedings but may not have attended a parole hearing before and the panel chair should check this and if necessary, provide a brief outline of the parole process in so far as it assists the intermediary to provide advice.
- 5.32 A discussion may be needed about the panel submitting questions to the intermediary in advance of the hearing so that the intermediary can make suggestions how to change vocabulary, sentence structure etc to meet the communication needs of the prisoner. This practice can assist in reducing interventions in the oral hearing, and therefore reducing delays

¹³ In the criminal courts when an intermediary is being used for a defendant, there is a meeting prior to the hearing called a 'Ground Rules Hearing' to establish adjustments to proceedings (The Advocate's Gateway Toolkit 1).

on the day. The intermediary role is non-partisan, and the expectation is that the panel's questions will not be shared with the prisoner, representative, or other parties ahead of the hearing, unless expressly directed by the panel.

- 5.33 Panels should incorporate learning and principles from the mandatory training Questioning Vulnerable Prisoners (QVP)¹⁴. Questions could be discussed in a CMC or provided ahead of one and adaptations discussed prior to the hearing. This is an opportunity for the intermediary to brief the panel and other attendees prior to the oral hearing.
- 5.34 To provide effective assistance, the intermediary will need to physically be in the room with the prisoner. Where the hearing is to be held remotely the panel chair may wish to ascertain that the prison will be able to make the necessary arrangements.
- 5.35 An adjournment, whilst to be avoided, may be necessary if an assessment has not yet been carried out but is required.

Oral Hearing stage

- 5.36 The panel chair should remind all attendees of any agreed adaptations, being mindful of ensuring the dignity of the prisoner is maintained.
- 5.37 If an intermediary is in attendance, they should be invited to introduce themselves and why they are there. They will usually carry out actions such as:
- call for breaks during the hearing if it would be of benefit to the prisoner;
 - alert the panel chair and intervene when miscommunication may, or is likely, to have occurred or be occurring. Ideally prior steps will have been taken to adapt the questions in advance with intermediary input and consideration of QVP principles;
 - check the understanding of the prisoner during the hearing;
 - provide communication support which may include assisting the prisoner with regulating emotions and using grounding techniques or techniques to reduce anxiety which impacts on communication (but this should be impartial);
 - help the prisoner's representative to communicate with the prisoner and attend any private consultations between them during breaks;
 - quietly facilitate communication with the prisoner while other witnesses are giving oral evidence;
 - advise on how best to arrange the room to minimise distractions to witnesses answering questions;
 - in some situations, provide communication/visual aids – BSL, visual frame signing, hands-on signing, Sign Support English (SSE), Makaton, etc. This may require the attendance of additional parties such as BSL interpreter or language interpreter.

¹⁴ The [20 Principles of Questioning A Guide to the Cross-Examination of Vulnerable People and Children](#) has been used for Parole Board Member training.

- 5.38 In rare cases, the need for a change of intermediary due to length of hearing may be necessary. Helpful information can be found in the [Advocates Gateway Toolkits](#)¹⁵, which provides useful practice guidance when preparing for cases involving a person with communication needs.
- 5.39 If, during the hearing, it emerges that the prisoner is struggling as appropriate adaptations have not been considered or implemented, or an intermediary is not present, the panel chair can direct a short adjournment and consider with their co-panellists whether to adjourn the hearing. "Muddling through" should be avoided as this could lead to incomplete or unclear evidence and is likely to be unfair to the prisoner and may lead to a reconsideration of the panel's decision in an eligible case.

6. HMPPS responsibilities

- 6.1 It is not a legal requirement to arrange an intermediary for parole hearings. However, if other alternative arrangements are considered insufficient or do not provide a clear way forward, the provision of an intermediary should be considered as part of delivering a fair hearing, consistent with the overall duty of care. Appropriate arrangements should be made to support the prisoner to engage effectively.
- 6.2 The commissioning and funding process for an assessment and/or facilitating the attendance of an intermediary at a parole hearing is the responsibility of HMPPS. HMPPS has issued a briefing document for staff which can be found on SharePoint.
- 6.3 Where the panel has directed an intermediary assessment, **HMPPS should commission an assessment at the earliest opportunity.**

Commissioning

- 6.4 Intermediaries were first introduced in England and Wales through the *Youth Justice and Criminal Evidence Act (YJCEA) 1999*. The *Witness Intermediary Scheme (WIS)* was subsequently developed and piloted in 2004 when the special measure provisions in the YJCEA 1999 for examining witnesses through an intermediary were brought into force. From 2008, the WIS established the use of Registered Intermediaries for all police forces and the Crown Prosecution Service in England and Wales.
- 6.5 For HM Courts and Tribunal Services (HMCTS), the provision of intermediary services for those not eligible through the WIS was brought under contract through the *HMCTS Appointed Intermediary Services (HAIS) Framework* in April 2022. Under this scheme HMCTS Intermediaries are made available to vulnerable defendants and all parties in family, civil and tribunal cases who may have speech, language and communication support needs.

¹⁵ [Advocates Gateway Toolkits](#) (specifically toolkit 12)

- 6.6 Currently, the HAIS Framework does not apply to prison law and Parole Board cases, and there are no other established routes for commissioning and appointing an intermediary. The Parole Board must therefore approach the use of intermediaries on a case-by-case basis.
- 6.7 As there is no commissioning framework in place for parole work, PPCS will liaise with the prison on a case-by-case basis to identify a suitable intermediary to undertake an assessment, produce a report, and where required, attend the parole hearing. This will vary depending on local provisions. The prison can contact PPCS for advice in the event that there are challenges with meeting a Parole Board direction for an intermediary assessment.
- 6.8 In theory, anyone with the appropriate skills could act as an intermediary for parole reviews but it is recommended that where there are complex needs, only a HMCTS Intermediary, or a similarly qualified intermediary who understands the non-partisan role, is used.
- 6.9 The list of Intermediaries under the HAIS¹⁶ approved by HMCTS is publicly available and the majority are sole traders or work for larger organisations supplying intermediaries and can be approached by HMPPS to consider taking up parole work.
- 6.10 Properly trained and skilled intermediaries are a limited resource and in high demand. Using an intermediary from the published list provides assurances of the professional service they will provide (including appropriate insurance and accreditations).
- 6.11 The majority of Intermediaries will have limited experience, if any, of parole hearings. If they do take up parole work, it will be on an unregulated basis, outside of the HAIS Framework.
- 6.12 Should there be any difficulty with securing an intermediary, this should be escalated to PPCS. The provision of an intermediary for a prisoner is fundamental to fairness and equality.

Funding

- 6.13 The HAIS service is funded by legal aid but paid for directly through HMCTS. Funding is not available for parole work and so the commissioning of any assessments and the attendance of an intermediary at an oral hearing must be covered by the prison as an unfunded cost. This can often be a challenge in terms of funding and could lengthen the process for obtaining the report. HMPPS intend to issue their own guidance 'Intermediaries and parole hearings' to staff in Summer 2024. How to approach commissioning unfunded reports can be found on SharePoint: OMU Guidance – Specialist Reports.

¹⁶ <https://www.gov.uk/government/publications/hmcts-approved-intermediaries>

- 6.14 In some instances, a qualified prison representative may be able to apply to the Legal Aid Agency (LAA) for costs for a third party/expert witness, in this case an off-contract funded intermediary. The LAA will consider the application on its merits and may agree to cover it from legal aid.

7. Other communication specialists and prisoner cohorts

- 7.1 Other circumstances where different types of communication specialists may be more appropriate to assist in overcoming barriers faced by a prisoner are set out below.

Neurodivergent prisoners

- 7.2 Neurodivergence refers to the group of conditions that fall under the broader category of neurodevelopmental disorders (NDDs). These incorporate learning difficulties and disabilities (LDDs) which generally include: learning disability, dyslexia, dyscalculia, and developmental coordination disorder (DCD, also known as dyspraxia); other common conditions, such as attention deficit hyperactivity disorder (ADHD, including ADD), autism spectrum conditions, developmental language disorder (DLD, including speech and language difficulties), tic disorders (including Tourette's syndrome and chronic tic disorder); and cognitive impairments due to acquired brain injury (ABI) or foetal alcohol spectrum disorder (FASD).
- 7.3 The 2021 *Criminal Justice Inspectorate's Review of Evidence on Neurodiversity in the Criminal Justice System* estimated that at least 50% of prisoners can reasonably be expected to have some form of neurodivergent condition which impacts their ability to engage. There could be expert reports on neurodivergence in the dossier that may provide advice on how to assist the prisoner and could negate the need for an intermediary report.
- 7.4 HMPPS has established a NSM in each prison to assist with improving awareness and understanding of neurodiverse prisoners and to develop a more 'neurodiversity supportive environment'. They do not work with every neurodivergent prisoner and will not be able to comment on a prisoner's potential risk or how this might link to their condition. They will offer advice to POMs and COMs on any adaptations that could support a prisoner which should be reflected in their parole reports.
- 7.5 **NSMs are not trained to write reports for parole reviews and are not meant to attend hearings as a witness.** More information can be found on SharePoint.

Prisoners with communication and swallowing difficulties

- 7.6 Speech and Language Therapists (SALTs) help people with speaking and communication problems and those with eating and swallowing difficulties. They can advise on treatment, support, and care needs for prisoners who may have any of the following conditions:

- voice disorders
- head and neck cancer
- stroke rehabilitation
- brain injury
- tracheostomy management
- brain tumour
- progressive neurological conditions
- dysfluency
- dementia
- ADHD
- Autism
- Social communication problems

7.7 The prison (usually the POM or in some instances prison Healthcare) will make a referral to the relevant local Adult Social Services/healthcare provider who will carry out a SALT assessment. This could take some time.

7.8 Where prisoners are legally represented, the need for a SALT assessment may be highlighted by the representative and there may be an opportunity to direct one at the MCA stage. The dossier may also contain valuable background information or a previous psychological risk assessment which recommends a SALT assessment, which again may prompt a direction for one at the MCA stage.

d/Deaf prisoners

7.9 Additional considerations may be required where the prisoner is d/Deaf¹⁷ and a suitably trained intermediary is required. There are Deaf Registered Intermediaries that can assist.

7.10 The need for a Deaf Registered Intermediary is determined if the prisoner meets the following three criteria:

- is deaf or Deaf;
- has a concurrent vulnerability that affects their ability to communicate;
- communicate using BSL or another form of sign language.

7.11 A Deaf Registered Intermediary is a member of the Deaf community. Their role is the same as that of a hearing intermediary. Deaf intermediaries are trained, registered, and regulated by the MoJ. Their first language is usually British Sign Language (BSL), and they may also use some spoken English. It should be noted that BSL (like spoken English) varies regionally and that can lead to communication challenges.

7.12 A Deaf Registered Intermediary will always work alongside a BSL Interpreter (who is usually a hearing person) when communicating with

¹⁷ The 'uppercase D' Deaf is used to describe people who identify as culturally Deaf and are actively engaged with the Deaf community. The 'lowercase d' deaf refers to the physical condition of having hearing loss. People who identify as deaf with a lowercase 'd' don't always have a strong connection to the Deaf community and don't always use sign language.

hearing parties in the criminal justice system. It will therefore be necessary to ensure both a Deaf Registered Intermediary and a BSL Interpreter are added as witnesses, if needed at the oral hearing.

- 7.13 Other forms of interpreters for deaf people (Relay Interpreters and BSL Interpreters) do not advise on communication strategies with d/Deaf prisoners who have particular needs. They do not carry out assessments and they do not write a report detailing the communication abilities of the deaf or Deaf person.
- 7.14 The MoJ has produced a guide¹⁸ to assist when working with d/Deaf witnesses at court and this may assist panels.
- 7.15 More general information about d/Deaf prisoners can be found on SharePoint.

Children

- 7.16 Many children (under 18 years old) have communication needs (for example, related to short attention span, suggestibility and reticence in relation to authority figures). Consideration should therefore be given to the communication needs of all children that come before panels for a parole review.
- 7.17 Panels may wish to consider whether the child has a history of communication needs, learning difficulties or mental health needs and whether these are documented. The child may have an Education, Health and Care (EHC) plan.
- 7.18 The incidence of an intermediary for children that have offended may be much higher than for the adult population. For example¹⁹:
- in a study in a Secure Training Centre, 109 children were screened for speech, language and communication needs (SLCN). Only two of the participants had previously been identified with SLCN. Of those screened 28% were found to not require any additional support, whilst 14.4% were identified for one-to-one speech and language therapy intervention. (*Bryan, Garvani, Gregory, & Kilner, 2015*);
 - at one Young Offender Institution an audit of 38 children found that only one child achieved age equivalence on a language assessment whilst 67% could be classified as having a developmental language disorder (*Turner, 2017*).
- 7.19 In most cases where children have offended and are in custody, their supporting/appropriate adult, children's services, Youth Offending Team, as well as any qualified prison lawyer already engaged, should be aware of any specific communication needs and adaptations that should be put in place. They should be able to advise panels accordingly.

¹⁸ "[Working with deaf people in the criminal justice system](#)" – Ministry of Justice.

¹⁹ Examples taken from "[Justice evidence base consolidation 2017](#)" The Royal College of Speech and Language Therapists.

Prisoners previously detained in a secure psychiatric hospital

- 7.20 Where a prisoner has been detained in a secure psychiatric hospital under the Mental Health Act 1983 (as amended) and is now commencing a parole review, there should have been a s117 aftercare meeting (which will have been minuted) and a Care Programme Approach (CPA) care plan produced. It may be helpful to have sight of these documents, as they may provide information and advice about any communication needs.
- 7.21 In particular, where there has been a Mental Health Tribunal hearing, there may have been adaptations made for that hearing. The Responsible Clinician (RC) and other medical staff working with the prisoner will most likely be aware of any specific needs. There will also be a CPA care-coordinator who may be able to provide advice on needs, what measures have been put in place to meet those needs, how the prisoner may present, and what may assist the prisoner in being able to engage in the parole review and participate in a hearing.

Female prisoners

- 7.22 Findings reported by the Justice Committee in 2022²⁰ highlight that prison population groups, such as women, who have suffered complex trauma histories and have undiagnosed ADHD and autism, have a higher rate of unmet needs relating to speech, language, and communication.

Imprisonment for Public Protection (IPP) prisoners

- 7.23 HM Inspectorate of Prisons reported in 2016²¹ that prisoners serving IPP sentences are known to have elevated levels of mental health difficulties, which may impact on their ability to communicate effectively.

8. Victims

- 8.1 Whilst this guidance relates to prisoners, panels should be aware that a victim engaged in the parole process may have their own communication needs. This should be managed by their appointed Victim Liaison Officer (VLO).
- 8.2 **It is the responsibility of HMPPS to identify whether any victims reading out their Victim Personal Statement (VPS) or observing an oral hearing would benefit from the use of an intermediary.**
- 8.3 As stated in the Generic Parole Process Policy Framework (paragraph 5.6.47), HMPPS (via the Secretary of State Victim Support Representative) provides support to victims who choose to attend an oral hearing in order to read a VPS or observe a private parole hearing. A VLO should identify the need for an intermediary for a victim. Panel chairs may wish to check whether there are any communication needs, particularly where a victim may be reading out their VPS.

²⁰ [Women in Prison](#) Justice Select Committee report 19 July 2022.

²¹ [HMI Prisons Annual Report 2015-2016](#).

9. What an intermediary cannot do

- 9.1 Intermediaries are communication specialists and cannot be used in place of other support or professional services.
- 9.2 An intermediary cannot act as:
- a support worker;
 - a McKenzie Friend;
 - a litigation friend;
 - an Independent Mental Capacity Advocate (IMCA) or Independent Mental Health Advocate (IMHA)
 - a prisoner's representative;
 - an expert witness;
 - an interpreter or translator.²²
- 9.3 An intermediary cannot:
- assess the prisoner's mental capacity;
 - advocate on the prisoner's behalf;
 - assess risk or provide recommendations;
 - advise the prisoner on parole matters.
- 9.4 Other assessments or reports that may be more appropriate are:
- Mental Capacity Assessment;
 - Psychological Risk Assessment;
 - Forensic Psychiatric Risk Assessment;
 - Specialist Psychological/Psychiatric report to provide an expert opinion on the prisoner;
 - Healthcare report in accordance with the HMPPS GPPP Framework;
 - Autism Spectrum Disorder (ASD) assessment; or
 - Attention Deficit Hyperactivity Disorder (ADHD) assessment.
- 9.5 Please see the guidance on [Specialist Reports](#) for the types of reports and assessments that may be appropriate.
- 9.6 There may be an issue of mental capacity, as well as communication needs, and a professional **other than** an intermediary may be appropriate as well. Where the prisoner's mental capacity is in doubt, please refer to the [Mental Capacity assessments and Litigation Friends Guidance](#).

²² If the communication need has arisen due to English not being a prisoner's first language, please see the *Translations and Interpreters guidance*.