**Legal Updates - A Roundup of the Rest**

**Transparency**

With Carlisle being one of the three court centres involved in the transparency pilot, we have had more experience than many other court users of journalists attending hearings. The national template orders for a reporting restriction can be found, along with all the local and national template orders you are likely to need, on the Cumbria DFJ website at <https://cumbriadfj.info/template-orders>.

There have been some interesting judgments in the past year that deal with transparency issues, and in particular the problem that arises in relation to participants in proceedings, whether lay parties or legal representatives, informing journalists that a hearing may be of interest.

Mrs Justice Theis has published five judgments in a case that sparked significant interest on the Northern Circuit due to the involvement of a member of the Bar and part-time judge. In respect of transparency, the latter three judgments are of particular interest. In “No. 3” allegations arise that a barrister involved in the case “tipped off” a particular journalist to attend.

***A Local Authority v X & Ors (No. 3: Application under r27.11(3) FPR 2010 to exclude a member of the press)* [2025] EWFC 49** <https://www.bailii.org/ew/cases/EWFC/HCJ/2025/49.html>

Theis J refused to exclude a named member of the press, in circumstances where X and Y alleged that Counsel for the children through their guardian had engineered her attendance. Theis J referred to the earlier judgment of Lieven J in *Louise Tickle v Father* [[2023] EWHC 2446](https://www.bailii.org/ew/cases/EWHC/Fam/2023/2446.html) at [42] – [52] Lieven J set out the relevant principles when considering an application for reporting of a Family Court hearing. The principles at [43] – [46] were identified as particularly relevant;

*"43. Firstly, although Family Court proceedings are normally held in private the press and legal bloggers are entitled to attend under FPR27.11(2)(f).*
*44. Secondly, such a person can be excluded, but only where it is "necessary" in the interests of the child, the safety or protection of parties or others, or the orderly conduct of proceedings, FPR27.11(3).*
*45. Thirdly, I agree that in approaching the test of "necessity", what was said in Re H-L (a child), albeit in a different legal context, is a useful guide.*
*46. Fourthly, it will rarely, but not never, be appropriate for the Court to inquire as to why the journalist is seeking to report, or how s/he became aware of the hearing. In general, as Mr Barnes submits, this will be a matter for the journalist who would not be expected to reveal a "source". However, if the Judge becomes concerned that one party is seeking to use reporting as a litigation strategy, particularly in the context of issues around coercive control, the Judge may wish to inquire into the background to the application to report. This can only be considered on a case specific basis."*

Theis J gave two further judgments dealing with the principle of whether the judgments should be published and how they should be anonymised ***A LA v X & Y and Ors (No 4: Welfare and Reporting of Judgments*) [2025] EWFC 126** <https://www.bailii.org/ew/cases/EWFC/HCJ/2025/126.html>, and dealing with an application in relation to anonymisation of the judgment and the transparency order***A Local Authority v X & Ors (No. 5: Transparency Order)* [2025] EWFC 140** <https://www.bailii.org/ew/cases/EWFC/HCJ/2025/140.html>.

***Tickle v The Father & Ors* [2025] EWFC 160** <https://www.bailii.org/ew/cases/EWFC/HCJ/2025/160.html>

This judgment of Mrs Justice Henke deals with an “application”, which was not a formal application and was later withdrawn, on behalf of the father for a journalist (Louise Tickle again) to reveal how she became aware of a hearing, apparently some hours before the father himself did). While Henke J makes it very clear in the judgment that she is not determining an application, as one was never made, and that she does not intend anything in the judgment to be seen as guidance, there is one aspect that may be of interest. Henke J notes that Ms Tickle was critical of the court’s comment that “the source of the information could be obtained if it was relevant to the issues that I had to determine by means other than requiring a journalist to reveal their sources.” Henke J is not explicit about what she meant by this and later notes that “The issue before me was about timing and who had been notified when, not the source of notification to the press. That is the issue to which I was referring when I said that the information could be obtained from other sources.”

Something to consider for any lawyer who is tempted to “tip off” a journalist to attend a hearing though is the possibility that if a judge suspects the representative for a particular party has inappropriately provided information to the press she could simply ask that individual, which could place a legal representative in an extremely difficult position.

**Deprivation of Liberty**

***J v Bath and North East Somerset Council & Ors* [2025] EWCA Civ 478** <https://www.bailii.org/ew/cases/EWCA/Civ/2025/478.html>

The most significant recent case in relation to deprivation of liberty is this sucessful appeal of Lieven J’s decision in***Re J : Local Authority consent to Deprivation of Liberty* [2024] EWHC 1690 (Fam)** <https://www.bailii.org/ew/cases/EWHC/Fam/2024/1690.html>. The Court of Appeal confirmed that a local authority with a care order (and therefore parental responsibility) cannot consent to its own deprivation of the liberty of a child, even if it is “obviously in the child’s welfare interests”. There are obvious issues with a state body authorising its own interference in Art 5 rights and there is a clear need for checks and balances on local authority’s assessment of a child’s welfare interests when it comes to such deprivation of liberty. However, the obvious motivation of Lieven J to reduce the number of DOL applications is something that will no doubt reoccur. There are an enormous number of these applications, particularly in the North West and they take up a lot of high court time and cost local authorities and CAFCASS legal a lot of money. The national DOL court and the use of deputy high court judges could be seen as an attempt to streamline the process.

There have been a number of recent cases in which orders authorising the deprivation of liberty have been refused for various reasons.

***Re Jake (a child)* [2025] EWHC 2230 (Fam)** <https://www.bailii.org/ew/cases/EWHC/Fam/2025/2230.html>

In this case, the order was refused on the basis that the young person was on licence as part of his criminal sentence, which included a curfew between 9pm and 7am and the risk of being recalled should he fail to be of good behaviour. The court concluded that the sanctions imposed by the criminal sentence and the management of the young person by the young offending team would serve to protect him and others from harm and the correct organ of the state to take responsibility is the young offending team rather than children’s services.

***G (A Child)* [2025] EWHC 1974 (Fam)** <https://www.bailii.org/ew/cases/EWHC/Fam/2025/1974.html>

Mrs Justice Henke refused to make the order, concluding that it was not necessary or proportionate and would not be in the child’s best interests. The case involved a 17 year old who at the time of the hearing was in hospital, having been admitted as a voluntary psychiatric patient. The local authority sought for G to be discharged into a residential placement with restrictions imposed, citing his history of suicidal ideation. The young person had been accommodated for some time by the local authority by his own consent but was refusing the residential placement and argued that he should move into semi-supported accommodation. The court noted that G had not threatened suicide for some time and was no longer subject to restrictions in hospital and considered that the local authority was attempting to impose a placement upon the young person by way of a deprivation of liberty order. The order was refused and the local authority had agreed that if the order was not made G could move to his preferred placement.

***Peterborough City Council v Mother & Ors* [2024] EWHC 493 (Fam)** <https://www.bailii.org/ew/cases/EWHC/Fam/2024/493.html>

In this Lieven J judgment, an order was refused in respect of a profoundly disabled young person on the basis that the proposed “restrictions” did not amount to a deprivation of liberty. Those proposed restrictions were;

* 1. SM is supervised 1:1 in the home at all times either by a physically present person or by remote live only video feed;
	2. SM is moved by her carers as appears reasonable or necessary to meet her welfare needs;
	3. SM's feeding and administration of medicine is managed by her carers through her gastrojejeunal button as appears reasonable or necessary to meet her welfare needs;
	4. SM is dressed and undressed, washed and her needs arising from her incontinence are managed as appears reasonable or necessary to meet her welfare needs;
	5. SM's bed has bars on the side to prevent her moving while in bed so as to fall and injure herself;
	6. SM is supported outside of the home at all times, with up to 2:1 supervision to ensure her safety and ability to mobilise as appears reasonable or necessary to meet her welfare needs;
	7. External doors to the property are kept locked for the purpose of ensuring the integrity and security of SM's home.

Lieven J noted that restrictions a-e were aspects of SM’s care provision, which may infringe upon Article 8 rights to privacy and autonomy, but cannot be said to infringe upon Article 5 rights. Even the restrictions at f and g do not amount to a deprivation of liberty, because the child is physically and mentally incapable of exercising her liberty and that is the reason she cannot leave where she is living, not any action of the state.

Local authorities will need to think carefully about whether the restrictions they seek to impose actually amount to deprivation of liberty in acccordance with the Storck criteria (helpfully summarised in ***Cheshire West and Chester v P* [2014] UKSC 19** as follows;

* + 1. the objective component of confinement in a particular restricted place for a not negligible length of time;
		2. the subjective component of lack of valid consent; and
		3. The attribution of responsibility to the state.

Local authorities will also need to consider whether the restrictions are necessary and proportionate and whether they could be imposed by other means as the inherent jurisdiction is only to be invoked when there is no statutory or other route to the same outcome.

**Artificial Intelligence**

The use of artificial intelligence and in particular “generative AI” is increasing at a rapid pace, while AI may have a role in summarising large amounts of information or in preparing marketing material from bullet point information, there is understandable scepticism from those who fear that it is being used by people who do not understand what it can and cannot do. The Bar Council provided guidance in January last year, which includes the following;

Bar Council guidance 30 January 2024

* It is not a conventional research tool, it does not analyse the content of data and it does not think for itself. It is, rather, a very sophisticated version of the sort of predictive text systems that people are familiar with from email and chat apps on smart phones, in which the algorithm predicts what the next word is likely to be.
* LLM AI systems are not concerned with concepts like ‘truth’ or accuracy.
* Key risks;
	+ Anthropomorphism
	+ Hallucinations
	+ Information disorder
	+ Bias in training data
	+ Mistakes and confidential training data
* ChatGPT and other LLMs use the inputs from users’ prompts to continue to develop and refine the system. In consequence, anything that a user types into the system is used to train the software and might find itself repeated verbatim in future results. This is plainly problematic not just if the material typed into the system is incorrect, but also if it is confidential or subject to legal professional privilege.
* The ability of LLMs to generate convincing but false content raises ethical concerns. Do not therefore take such systems’ outputs on trust and certainly not at face value.
* It matters not that the misleading of the court may have been inadvertent, as it would still be considered incompetent and grossly negligent. Such conduct brings the profession into disrepute (a breach of Core Duty 5), which may well lead to disciplinary proceedings. Barristers may also face professional negligence, defamation and/or data protection claims through careless or inappropriate use of these systems.
* Be extremely vigilant not to share with a generative LLM system any legally privileged or confidential information (including trade secrets), or any personal data, as the input information provided is likely to be used to generate future outputs and could therefore be publicly shared with other users. Any such sharing of confidential information is likely to be a breach of Core Duty 6 and rule rC15.5 of the Code of Conduct, which could also result in disciplinary proceedings and/or legal liability.
* Barristers will also need to comply with relevant data protection laws. You should never input any personal data in response to prompts from the system. Note that in March 2023, the Italian Data Protection Authority issued a temporary ban on ChatGPT, largely to investigate whether there was a lack of any legal basis for the collection and processing of any personal data used for training the system, and whether there was a lack of any proper notice to data subjects. Italy, France and Spain are currently investigating OpenAI’s processing of data. Using only synthetic data (that is data that is artificially created) on prompts to the LLM represents one possible way to avoid the risk of falling into breach of the General Data Protection Regulation (EU 2016/679) as retained in English law (UK GDPR).
* The UK Government’s White Paper: A pro-innovation approach to AI regulation 7 published in March 2023, suggests that existing regulators should act in accordance with five principles (similar to the OECD principles on AI 8 although with different wording):
	+ (i) safety, security and robustness;
	+ (ii) appropriate transparency and explain-ability;
	+ (iii) fairness;
	+ (iv) accountability and governance;
	+ (v) contestability and redress.
* This document and sample policy has been prepared by the Bar Council to assist barristers and chambers on matters of information security. It is not "guidance" for the purposes of the BSB Handbook I6.4, and neither the BSB nor bodies regulating information security, nor the Legal Ombudsman is bound by any views or advice expressed in it. It does not comprise - and cannot be relied on as giving - legal advice.

There is also Law Society guidance available, which has been updated more recently - <https://www.lawsociety.org.uk/topics/ai-and-lawtech/generative-ai-the-essentials>

For an understanding of the pitfalls of using generative AI in legal work, the two judgments in relation to barrister Sarah Forey are a cautionary tale;

***Ayinde, R (On the Application Of) v The London Borough of Haringey* [2025] EWHC 1040 (Admin)** <https://www.bailii.org/ew/cases/EWHC/Admin/2025/1040.html>

This judgment deals with applications for wasted costs arising out of a judicial review into a housing authority decision. The substantive judicial review had been settled by agreement, with the housing authority accepting that it did, in fact, have a duty to house the applicant. The defendant housing association had breached a number of court orders and missed a number of deadlines and the claimant therefore sought wasted costs, which were awarded as summarily assessed. However, the defendant also sought wasted costs against the claimant’s solicitor and barrister on the following bases;

1. The first is that the Claimant's barrister and solicitor put five fake cases in the Claimant's statement of facts and grounds for the judicial review. Those are in paragraphs 17, 20, 24, 27 and 28.
2. Secondly, that when requested to produce copies of those cases, they did not.
3. Thirdly, that in the statement of facts and grounds at paragraphs 15 and 16 and by implication throughout, the Claimant's lawyers asserted that section 188(3) of the *Housing Act 1996* was a "Must" provision instead of a discretionary "May" provision.

The defendant had raised in correspondence an inability to identify or locate the cases cited, and asking for copies of the authorities, this was refused by the claimant’s solicitors with an accusation that the defendant was raising the “errors in citation” as technicalities. The claimant’s solicitor insisted that the defendant’s solicitor could easily find the cases. The barrister responsible for drafting the document also conducted the hearing and referred to the “fake cases” as “minor citation errors”, suggesting that she had a box of photocopied authorities and a table of cases and citations that she used and that she had somehow made a mistake in copying the text into her document. Ritchie J commented;

“On the balance of probabilities, I consider that it would have been negligent for this barrister, if she used AI and did not check it, to put that text into her pleading. However, I am not in a position to determine whether she did use AI. I find as a fact that Ms Forey intentionally put these cases into her statement of facts and grounds, not caring whether they existed or not, because she had got them from a source which I do not know but certainly was not photocopying cases, putting them in a box and tabulating them, and certainly not from any law report. I do not accept that it is possible to photocopy a non-existent case and tabulate it. Improper and unreasonable conduct are finding about which I am sure. In relation to negligence I am unsure but I consider that it would fall into that category if Ms Forey obtained the text from AI and failed to check it.”

The judgment concludes “I will require the Defendant to send the transcript to the Bar Standards Board and to the Solicitors Regulation Authority. It will be a matter for both counsel whether they comply with, what I believe are their obligations of self-reporting and reporting of knowledge of another, and it will be a matter for the solicitors' firm as to whether they have a similar requirement of self-reporting under the Solicitors Regulation Authority rules.”

***Ayinde, R (On the Application Of) v London Borough of Haringey* [2025] EWHC 1383 (Admin)** <https://www.bailii.org/ew/cases/EWHC/Admin/2025/1383.html>

The above case and another were referred to a Divisional Court and listed together under the court's *Hamid* jurisdiction. That jurisdiction relates to the court's inherent power to regulate its own procedures and to enforce duties that lawyers owe to the court: *R (Hamid) v Secretary of State for the Home Department* [[2012] EWHC 3070 (Admin)](https://www.bailii.org/ew/cases/EWHC/Admin/2012/3070.html) [[2013] CP Rep 6](https://www.bailii.org/cgi-bin/redirect.cgi?path=/ew/cases/EWHC/Admin/2012/3070.html), *R (DVP) v Secretary of State for the Home Department* [[2021] EWHC 606 (Admin)](https://www.bailii.org/ew/cases/EWHC/Admin/2021/606.html) [[2021] 4 WLR 75](https://www.bailii.org/cgi-bin/redirect.cgi?path=/ew/cases/EWHC/Admin/2021/606.html) at [2].

At paragraphs 4 to 22 the judgment sets out some of the issues with use of artificial intelligence and some of the guidance and regulatory duties for lawyers. At paragraphs 23 to 31, the judgment sets out the courts powers in relation to inappropriate use of artificial intelligence. It is worth noting that Sarah Forey continued to deny that she had used generative AI in the production of her pleadings and refused to accept that her conduct had been improper, albeit she accepted negligence in the inclusion of incorrect cases and citations in her document.

The court found that the threshold for initiating contempt proceedings were met in relation to Ms Forey, but decided not to do for five reasons;

“First, there are a number of factual issues which could not easily be determined in the course of summary proceedings for contempt. Secondly, there are questions raised as to potential failings on the part of those who had responsibility for training Ms Forey, for supervising her, for "signing off" her pupillage, for allocating work to her, and for marketing her services. Those could not be addressed in contempt proceedings brought against Ms Forey alone. Thirdly, Ms Forey has already been criticised in a public judgment; she has been referred to the regulator and her conduct will be the subject of an investigation by her regulator. Fourthly, she is an extremely junior lawyer who was apparently operating outside her level of competence and in a difficult home and work context. Fifthly, our overarching concern is to ensure that lawyers clearly understand the consequences (if they did not before) of using artificial intelligence for legal research without checking that research by reference to authoritative sources. This court's decision not to initiate contempt proceedings in respect of Ms Forey is not a precedent. Lawyers who do not comply with their professional obligations in this respect risk severe sanction.“

There is an appendix to this judgment at paragraphs 83-102 which sets out an interesting selection of examples in various jurisdictions of material being put before a court that is generated by an artificial intelligence tool, but which is erroneous.

***MS v Secretary of State for the Home Department (Professional Conduct: AI Generated Documents) Bangladesh* [2025] UKUT 305 (IAC**) <https://www.bailii.org/uk/cases/UKUT/IAC/2025/305.html>

Just last month a judgment was published by the Upper Tribunal (Immigration and Asylum Chamber), which contains some helpful and concise advice in the header;

* 1. *AI large language models such as ChatGPT can produce misinformation including fabricated judgments complete with false citations.*
	2. *The Divisional Court has provided guidance in the case of R (Ayinde) v London Borough of Haringey, Al-Haroun v Qatar National Bank QPSC [[2025] EWHC 1383 (Admin)](https://www.bailii.org/ew/cases/EWHC/Admin/2025/1383.html) that the consequence of using AI large language models in a way which results in false authorities being cited is likely to be referral to a professional regulator, such as the BSB or SRA,  as it is a lawyer’s professional responsibility to ensure that checks on the accuracy of citation of authority or quotations are carried out using reputable sources of legal information. Where there is evidence of the deliberate placing of false material before the Court police investigation or contempt proceedings may also be appropriate.*
	3. *Taking unprofessional short-cuts which will very likely mislead the Tribunal is never excusable.*

The barrister involved, Mr Rahman, was referred to the Bar Standards Board, but the judge noted;

“We do not consider that this is a case where there is evidence that there has been a deliberate placing of false material before the Tribunal with the intention that the Tribunal will treat it as genuine. This isbecause we find that Mr Rahman did not know that AI large language models, and ChatGPT in particular,were capable of producing false authorities. It follows that this is not a case where it would be appropriateto refer the matter for police investigation or to initiate contempt proceedings.”

All of the above should instil caution in lawyers when making use of Artificial Intelligence and in particular generative AI. There are also GDPR and confidentiality issues with inputting information from our own cases into any publicly available large language model. There is a risk that information provided by one user may be regurgitated to another user if it appears relevant.

**Vulnerable Witnesses**

All family barristers should be taking advantage of the free of charge training provided by the FLBA. The next date on the Northern Circuit will be January 24th in Liverpool and places can be booked by emailing advocacytraining@flba.co.uk. There is preparatory work to complete, which will take at least one full day (8 hours) or equivalent time split across a number of days, so please only sign up if you are able to commit to the work.

The rules in respect of vulnerable witnesses are found in Part 3A of the Family Procedure Rules and Practice Direction 3AA. Paragraph 1.3 of the practice direction makes clear that it is the duty of the court and all parties to the proceedings to identify any party or witness who is a vulnerable person at the earliest possible stage of any family proceedings.

Rule 3A.3(1) requires the court to have regard to the matters set out in Rule 3A.7 when considering whether a party or witness is vulnerable;

(a)the impact of any actual or perceived intimidation, including any behaviour towards the party or witness on the part of—

(i)any other party or other witness to the proceedings or members of the family or associates of that other party or other witness; or

(ii)any members of the family of the party or witness;

(b)whether the party or witness—

(i)suffers from mental disorder or otherwise has a significant impairment of intelligence or social functioning;

(ii)has a physical disability or suffers from a physical disorder; or

(iii)is undergoing medical treatment;

(c)the nature and extent of the information before the court;

(d)the issues arising in the proceedings including (but not limited to) any concerns arising in relation to abuse;

(e)whether a matter is contentious;

(f)the age, maturity and understanding of the party or witness;

(g)the social and cultural background and ethnic origins of the party or witness;

(h)the domestic circumstances and religious beliefs of the party or witness;

(i)any questions which the court is putting or causing to be put to a witness in accordance with section 31G(6) of the 1984 Act( );

(j)any characteristic of the party or witness which is relevant to the participation direction which may be made.

In relation to “abuse” paragraph 2.1 of PD3AA clarifies that this includes any of the following;

a) domestic abuse,
b) sexual abuse;
c) physical and emotional abuse;
d) racial and/or cultural abuse or discrimination;
e) forced marriage or so called “honour based violence”;
f) female genital or other physical mutilation;
g) abuse or discrimination based on gender or sexual orientation; and
h) human trafficking.

Vulnerability will need to be considered in any case involving child witnesses, allegations of domestic abuse or intimidation and cases in which a party or witness suffers from a mental health condition or cognitive impairment.

***S (Vulnerable Party: Fairness Of Proceedings)* [2022] EWCA Civ 8** <https://www.bailii.org/ew/cases/EWCA/Civ/2022/8.html>

The Court of Appeal granted an appeal on the basis that the party’s cognitive difficulties rendered her vulnerable and the failure to apply Rule 3A and PD3AA amounted to a serious procedural irregularity and the hearing was therefore unfair. In this case, the party’s cognitive difficulties had not been appreciated by her representatives as they had never met her in person, the proceedings taking place during Covid restrictions, and the question of vulnerability had not, therefore, been raised with the judge.

If a party or witness is determined to be vulnerable, the court must move on to consider whether the quality of evidence given by that party or witness is likely to be diminished by reason of vulnerability and if so whether it is necessary to make participation directions (FPR Rule 3A.5).

One step that may be taken is an assessment by an intermediary and, if recommended, the subsequent appointment of an intermediary to assist the party. That assistance may be limited to when the party is giving evidence, it may extend to all court hearings or it may include assistance in conference with legal representatives. The use of intermediaries has come under some scrutiny from the High Court in the last year and was considered by the Court of Appeal in March this year.

***M (A Child: Intermediaries)* [2025] EWCA Civ 440** <https://www.bailii.org/ew/cases/EWCA/Civ/2025/440.html>

The Court of Appeal considered the decision of Lieven J in ***West Northamptonshire Council v KA & Ors* [2024] EWHC 79 (Fam)** <https://www.bailii.org/ew/cases/EWHC/Fam/2024/79.html> and the decisions of Williams J in ***Re X & Y (Intermediary: Practice and Procedure)* [2024] EWHC 906 (Fam)** <https://www.bailii.org/ew/cases/EWHC/Fam/2024/906.html> and **Oxfordshire County Council v A Mother and others (Intermediary Appointment Refused) [2024] EWFC 161**. The court emphasised that there is “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.” A summary of the approach to be taken is set out at paragraph 7;

In deciding whether and, if so, for what purpose to approve the appointment of an intermediary:
(1) The court will exercise its judgement within the framework of Part 3A of the Family Procedure Rules 2010 ('the FPR') and Practice Direction 3AA. These provisions are not complex, and they require very little elaboration. Their relevant parts appear in the Annex below. By following them, the court will steer a path between the evils of procedural unfairness to a vulnerable person on the one hand, and waste of public resources on the other.
(2) The test for the appointment of an intermediary for any aspect of proceedings is that it is necessary to achieve a fair hearing. Decisions are person-specific and task-specific, and the introduction of other tests upsets the balance struck by the FPR and may draw attention away from the circumstances of the individual case.
(3) Efficient case management will assist sound decision-making in this area. There must be early identification of vulnerability where it exists. Intermediaries are not experts, but applications for intermediary support should be approached with similar procedural discipline. Different considerations may apply to different elements of the proceedings, and the court should normally require an application notice and/or a draft order that specifies the exact extent of the requested assistance.
(4) Correctly understood, the court's powers are wide enough to permit it to authorise intermediary assistance for legal meetings outside the court building. However, support that is necessary in the courtroom may be unnecessary in a less pressured setting. Accordingly, the court should give separate consideration to any application of that kind.
(5) The Family Court is accustomed to using checklists when making procedural and substantive decisions. The mandatory checklist in FPR rule 3A.7 is an essential reference point to ensure that the factors relevant both to the individual and to the proceedings are taken into account. The weight to be given to them is a matter for the court, making a broad and practical assessment.
(6) An application for an intermediary must have an evidential basis. This will commonly take the form of a cognitive report and, if authorised, an intermediary assessment. Other evidence may come from the social worker or the Children's Guardian. The court can also take account of submissions on behalf of the vulnerable person, and from the other parties, as they may have their own perspectives on the overall fairness of the proceedings. This reflects the collaborative nature of the task of identifying and making adjustments for vulnerability. Whatever the evidence and submissions, it is for the court, and not others, to decide what is necessary to achieve a fair hearing in the individual case.
(7) When considering whether an intermediary is necessary, the court will consider other available participation directions. In some cases they will be effective to secure fairness, so that an intermediary is unnecessary, or only necessary for a particular occasion, while in other cases they will not. The court is entitled to expect specialist family lawyers to have a good level of understanding of the needs of vulnerable individuals in proceedings and an ability to adapt their communication style. It will consider what can reasonably be expected of the advocates, and in particular of the vulnerable party's advocate in the individual case, bearing in mind that professional continuity may not be guaranteed. Intermediaries should clearly not be appointed on a 'just in case' basis, or because it might make life easier for the court, but equally advocates should not be required to stray beyond their reasonable professional competence to make up for the absence of an intermediary where one is necessary.
(8) The rules provide that the reasons for a decision to approve or refuse participation directions for a vulnerable person must be recorded in the order. That can be done very briefly, and it is a further useful discipline.
(9) The approach described should ensure that intermediaries are reliably appointed whenever they are necessary, but not otherwise.