1st September 2020

We write on behalf of Intermediaries for Justice, a charity working towards a justice system where all people, including those with vulnerabilities, can understand the questions they are asked and can tell what has happened. We see the Intermediary role - impartial communication experts - as an integral part of this process. Our members are mainly from the intermediary community and we have some associated members who support the charity's vision and aims around the provision of intermediaries for all vulnerable people in court.

We write in connection with the PIN Notice recently published relating to Court Appointed Intermediary Services.

We consider that the aim of equality of access to justice is in line with the **fundamental legal principles** of the Law of England and Wales and the overriding objective of equality before the law, ensuring that all parties are on an equal footing. **The right to a fair trial is key in a democratic society.**

Should the PIN result in a tender process, our members have asked us to express these concerns about the privatisation of part of the intermediary service:

1. **A 2 Tier System**

The PIN notice envisages one intermediary service for witnesses in the criminal courts and another for all other vulnerable people who are requiring communication support in the justice process.

We consider the contracting out of these services is the direct opposite of what needs to be done at this stage: all intermediary work needs to be taken into the Witness Intermediary Scheme and administered by the NCA team. This team does an excellent job on a very limited budget and members consider their service to be a real success for intermediaries and end-users.

Our members are concerned because:

- Should the provision of Intermediaries be separated into two different services, The Registered Intermediary system will be regulated, whilst the independent intermediary service will not.

- The Registered Intermediary Scheme has an experienced and skilled workforce, some members of whom have been in the role since the scheme was rolled out in 2008.

- The intermediary role is one where the experience of the court environment and personal resilience are prerequisites. Our experience is that this cannot quickly or easily be 'trained in' but comes instead from extensive professional experience.
- These are not skills that are acquired via large scale recruitment of employees by private companies where the pay is often minimal, workforce may be small, the working conditions can be difficult, and the attrition rate is high.

2. **Quality concerns** *(quotes from our recent member survey in italics)*

The inevitable consequence of tender exercises is that **cost is usually the determining factor for a successful bid, at the sacrifice of quality.**

There is currently a highly skilled workforce of intermediaries who maintain the same code of ethics and practice in their HMCTS work as in their Registered Intermediary work.

For example, they will commit to providing their services throughout a trial (in place of a" for-profit" company deploying staff where it is financially expedient to do so, even where this means a new intermediary attending every day of a hearing). This is something that does not work for many vulnerable people with specific communication difficulties or in reality for the court where the requirement of gaining an in-depth understanding of an individual's needs through detailed assessment, as well as establishing the rapport required to communicate with confidence are fundamentals of the role.

We consider that the service that the court requires will not be adequately delivered, and will result in a situation where there will be someone sitting next to a vulnerable person bearing the label "intermediary" - but they will not have the skill set or the ethical approach required to carry out the role effectively. We emphasise that the Intermediary role requires skill and expertise, through professional training and background, to fulfil the role of impartial communication expert within the dynamic context of a court hearing. We understand that many colleagues in the Justice system are aware of this fact and are concerned that, should practitioners with inadequate skills, experience, or the time to fully assess and assist communication be used, the role of the intermediary will be devalued- ultimately, best evidence, which is clear, accurate and coherent, will not be achieved.

We do not believe that expanding the current scheme to include HMCTS work would result in a reduction of available intermediaries across settings. Instead, if properly structured and funded it would assure the recruitment and retention of skilled and experienced practitioners in all courts and tribunals.

Our members are concerned *"That a private company will take on the contract and charge unreasonable amounts of money for sub-standard intermediary service, and that currently, independent RIs will not be able to continue the work they are already doing."*

"Profit before quality"

"Lack of impartiality; putting profit first so service may not be in the VP's best interest; reduction of standards; training....."

"It will sacrifice the Intermediary service on the altar of cost-saving".

"I am concerned that tendering out will diminish the quality of intermediaries which might put victims/witnesses at risk."

3. **Potential loss of qualified intermediaries due to cuts in pay and working conditions**

We have reflected on the rates charged by private sector providers and the salaries they pay their employees (for example we understand that one provider employs mainly young graduates working in their first professional roles who may have limited expectations in terms of income, in line with their limited professional experience.) This is not the profile of the communication expert envisaged by the scheme, where most people come from an established professional background and have the requisite professional and life skills to perform the court role in what can be a challenging environment.

We note that the profits made by these companies are legitimate and they are entitled to set their pay structure accordingly. We also know that there is concern about the level of charges set by some "for profit" providers in an unregulated market. We do not consider that driving costs down in general to access the cheapest workforce or to derive the best profit margin will provide the right level of service to courts or vulnerable people. We support fair terms and conditions both for end users and for intermediaries.

Our members are concerned that there may be:

"Lowering of professional standards, lowering of pay, poor and inconsistent regulation"

"Potentially poor-quality service for users, which lacks the high levels of professionalism and consistency that RI's provide"

"Private companies looking to make profit at expense of intermediary"

4. **How will this work in the real world?**

One member gives a vivid example:

"This potential splitting of the intermediary scheme is potentially taking this valuable service in the opposite direction to how it should be progressed. In the interest of fair access to justice for all and equality for all vulnerable people, judges, barristers, associated organisations and intermediaries have discussed and advised that one level playing field and system for all is needed. This splitting will cause confusion, for example, I have worked on

cases where a witness has become a defendant in the same trial. I was able to offer continuity. Also, if there is to be a new approach of one trial for 'crime and family' case, would an RI be able to offer continuity and assist the same vulnerable person in what might be viewed as a family court?"

"There needs to be one training for all intermediaries with good standards and regulations for all intermediaries".

Summary

We object in the strongest terms to court-appointed intermediary services being contracted out to private for-profit businesses. There are many inconsistencies in the current proposed approach that do not stand up to scrutiny.

We consider that the correct next step is **to properly fund the MoJ-run scheme and to extend it to all vulnerable people.**

Cases to be matched based on professional skill sets, supervision to be provided, along with a professional and rigorous CPD provision, and a regulatory framework to be built into the scheme so that the court professionals have confidence in the intermediary workforce.

Whilst the current scheme is underfunded, and the private sector is unregulated the professional reputation of the intermediary is likely to decline. Unless a regulatory regime is put in place which governs all intermediary work, the prospective PIN development could result in a massive waste of public funds, spent on a contracting out process that will very quickly be seen to be not fit for purpose. We have followed developments in the Probation Service (and with court appointed interpreters) and we consider these may serve as an unfortunate blueprint for what is yet to come in the provision of intermediary services.

We urge you to reconsider and to deploy the funds earmarked for the tendering process, to the Witness Intermediary Team which should be extended to house enquiries for communication assistance across the Justice system.

From: Chair &The Board of Trustees Intermediaries for Justice