

## **Intermediary practice in light of Covid-19. / 27.03.20**

### **– summary of current situation (thanks to Olwen Cockell)**

The majority of Intermediaries had been working according to their usual protocols up until mid-March 2020.

- On March 18<sup>th</sup> the Government advised that a national closure of schools would commence from Friday March 20<sup>th</sup>, with continuity of school provision being provided for a small cohort of children (e.g. children of keyworkers and children considered vulnerable).
- On March 19<sup>th</sup> 2020 Samantha Dine issued the following statement on the Registered Intermediary Online Forum (RIO):
  - *“The Ministry of Justice met with Witness Intermediary Service end-users to discuss how COVID-19 may impact the service and to agree advice for Registered Intermediaries. Advice from the MoJ will be updated on a weekly basis unless significant information needs to be communicated in the meantime. We understand that RIs will have questions and concerns about the impact of the virus on their work.*

*At this stage the Police and CPS are continuing on a business as usual basis and applications for RIs will continue as normal. This may change as the situation evolves if it becomes necessary to put in place more stringent prioritisation of services and in this event RIs will be kept informed via these updates. Where an RI is unable to attend an appointment due to being unwell or needing to self-isolate then the normal process of finding a replacement will be followed. No cancellation fee applies in these circumstances. Where it is necessary for the police or CPS to cancel an appointment then cancellation fees will apply according to the normal policy set out in the rate card.*

*Arrangements for a new RI taking over a case for another remain as usual and a new assessment should be conducted. RIs who are unable to accept a case for any reason do not drop to the bottom of the fair rotation list – this only happens when a case has been accepted. Note that in the event that a case is cancelled the database is adjusted so that the RI does not move down the list. Whether appointments can proceed where the witness is over 70 years old, or otherwise classed as vulnerable according to PHE guidelines, will be decided on a case by case basis.*

*The Judicial Office has stated that ‘in all jurisdictions steps are being taken to enable as many hearings as possible to be conducted with some or all of the participants attending by telephone, video-link or online’. It is anticipated that RIs will be able to give advice as to whether this is appropriate for witnesses that they are assisting. The Lord Chief Justice has decided that ‘no new trial should start in the Crown Court unless it is expected to last for three days or less’. This is because of the number of participants, judge, jury, defendants, witnesses, lawyers and court staff in these trials and the risks that a trial may not be able to be completed. Whilst we appreciate that this may cause some inconvenience and concern to RIs we must recognise that precautions are necessary at this time. Cancellation fees continue to apply according to the standard terms set out in the rate card.”*

- There were responses from the Intermediary community via RIO and also via the IfJ WhatsApp groups expressing concern about the reference to 'business as usual' and the fact that intermediaries were being discouraged to postpone their assistance because in doing so they forfeited their cancellation fee.
- By the afternoon of March 19<sup>th</sup> an intermediary had raised concerns on RIO about their financial long-term security stating, *"My diary is rapidly emptying and I'm sure the issue of where money is coming from is concerning us all. I'll be home schooling 2 young boys as of Monday and for the foreseeable future. I'm going to ask my mortgage company for a 3 month break and have stopped my pension payments and ISA contributions. Has anyone got any good ideas to share? Can we claim any Statutory Sick Pay or something?"*
- A further reference to financial implications was made on RIO on March 23<sup>rd</sup>, *"I fear that things may become very quiet over the coming weeks/months. It would seem that some Police officers are being asked to put these assessments and interviews on hold as I have now had some cancellations."*
- The Intermediary community showed a continued ambition to work and a request was made of Samantha Dine, MoJ, to clarify whether the RI role would be classed as a keyworker.

Samantha confirmed that Intermediaries would be classed as keyworkers and responded on RIO on March 23<sup>rd</sup> stating,

*"I'm working on providing further guidance asap, which may be helpful with some schools. I am not sure that I will be able to provide a letter/document from the MoJ, but it is something that I am looking into."*,

later Samantha advised that she could not issue anything specific for the Intermediary community and recommended that intermediaries *"print off a copy of the guidance on key workers then that should be of assistance in explaining that your role is necessary for the running of the justice system, should you need to do so."*

- Intermediaries, on more than one occasion, queried if face to face working should be postponed and requested formal/official guidance about safe working practices and infection control protocols.
- On March 23<sup>rd</sup> 2020 Samantha Dine advised, *"RIs are included as key workers so are not required to cancel imminent assessments/ABEs. The police are responsible for taking decisions as to whether assessments/ABEs can be postponed and, should they go ahead, RIs have the decision as to whether to provide assistance or pass the case back to the NCA to be reallocated to another RI."*
- Intermediaries were directed by the MoJ to Covid-19 guidances issued for the general public, for the NHS, for businesses and for the Courts and Judiciary but no specific guidance was issued in relation to face to face working at police investigation stage.

- Intermediaries started to make references to the feasibility of remote working.
- On the afternoon of March 23<sup>rd</sup> an intermediary posted on RIO, *“We are going to try to do through the video part of WhatsApp as the police officer says she has it on their system and from my point of view, it is a re-assessment, as I have met with the lady previously. I understand the vulnerable person frequently uses WhatsApp and the police say their system is secure. The re-assessment seems to be a priority to continue as I have just heard from the court that they are likely to be continuing with the GRH which is scheduled for later in this week at Mag Court. I will make it clear that this is not normal practice (ie not face to face contact) but is the best way of taking the situation forward.”*
- Another intermediary posted on RIO, *“I was thinking it would be useful for some guidance from the MOJ in regard to adhering to government advice during the pandemic. I would like to suggest if assessments are urgently needed to potentially do this by way of Skype as all police officers have their own laptops with this tool and potentially the use of skype during ABE.”* Samantha Dine responded that the MoJ is *“not involved at this kind of operational level I'm afraid. RIs are encouraged to use their own skills and judgement to decide and advise whether this is suitable for the witness.”*
- However, other intermediaries expressed an interest in exploring the feasibility of remote working. Contributions on RIO included suggestions to use other apps including, *“‘zoom’ is a better platform than skype as you can screen share and so show the VW resources/visuals, you can give remote access so make your screen/games interactive and more engaging, and there is also a whiteboard facility so they could write/draw and you would be able to see.”*
- Meanwhile IfJ convened a zoom meeting with IfJ intermediary members on 25.3.20 to discuss the various implications of Covid-19 on intermediary working practices. Intermediaries voiced concerns regarding a number of recent experiences, both at police investigation and at trial stage; for instance, being asked to complete a face to face home visit to assess a frail, vulnerable person, being asked to assist face to face at ABE with a young child and how rapport could be fostered and emotional regulation provided whilst abiding by social distancing guidelines, being asked to assess a young witness and provide a pre-trial report (despite the trial being postponed), the feasibility of assisting with S.28 recordings.
- The general consensus was that intermediaries are keen to work as safely as possible and are willing to explore remote working and technological resources to assist vulnerable people but that vulnerable people are entitled to the right assistance to give their ‘best’ evidence and this may not be achievable through remote working.