

**CONFIDENTIAL**

# **A Fair Deal for Interpreters**

**Justice, Financial Responsibility  
and Fair Employment**

**26 September 2011**

Prepared by

**involvis**  
empowering communities

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## Executive Summary

A Framework Agreement (FWA) to regulate the supply of Police and Court Public Service Interpreters has been brokered by the Ministry of Justice (MoJ).

Its intentions are to endeavour to ensure that interpreting services to the judiciary and police are delivered to a high standard via qualified interpreters, in a way intended to save around £18 million annually against the current £60 million budget.

The Ministry of Justice (MoJ) considers that the best way to do so is to let a contract to a single self-regulating commercial organisation which will effectively book interpreters either individually or through agencies to service the police and courts, determine a rate for the job, and monitor not only the quality of the interpreters' work and need for further training and review, but also its own performance.

However, the rates which will be available through this system will range between £16 and £22 per hour, with very limited allowances for travel time. No travel expenses will be allowed and interpreters will be paid on their delivery time only. This will not be sufficient to retain qualified interpreters or indeed to recruit new ones, as they are way below market rates.

It is therefore likely that there will be a haemorrhaging of skilled operatives from the system.

A key term of the FWA will be frustrated in respect of the co-ordinating agency ("the Contractor") being bound contractually to increase the pool of well-qualified interpreters and safeguard the justice system for those people who do not speak English as their first language and who therefore have a right to an interpreter when criminal proceedings are brought.

Over 2,300 well-qualified, experienced and dedicated Police and Court Public Service Interpreters and their representatives are facing financial ruin as the result of the ill-conceived and poorly consulted-upon Framework Agreement (FWA) brokered by the Ministry of Justice (MoJ).

It will jeopardise not only their incomes and status, but also the operability of the English justice system. This will also be at a tremendous and untenable financial cost to the country if and when the contract which has been negotiated on the basis of the FWA and signed with the preferred supplier is fully operationalised.

It would also put this country in an untenable position through breach of EU Directives.

### **The likely consequences of the changes are:**

1. The quality of interpreting secured by the police through this outsourcing proposal will dramatically decrease. Data was secured from police forces in 20005/6 and updated in 2009/10 using Freedom of Information requests. Police forces that had been securing high percentages of interpreters, for example Lincolnshire with 68%, dropped to less than 30% as soon as outsourcing was implemented.
2. Individuals who do not have English as their first language will regularly and increasingly be unable to obtain justice, as there will be insufficient qualified interpreters to meet their needs and guarantee their rights under the Human Rights Act, Article 5

and 6 of the European Convention on Human Rights and Fundamental Freedoms (EHCR).

3. The EU Directive applying to all 27 Member States to be implemented by autumn 2013 which provides that these rights should be implemented consistently across the EU will be breached.

4. Interpreters will find that it is no longer economic to work in their chosen profession due to the uncompetitive market rate which will have to be offered as a consequence of these alleged economies, and will either find other employment, cease to work and rely upon other household income, or have to resort to welfare benefits. Even if they continue to work, it is likely that they will fall below the tax threshold, which will entail a loss of revenue to the country.

5. Combining these likely consequences will ensure that the cost of the “reforms” will far outweigh the short-term savings envisaged by the MoJ under the FWA. It is not possible to estimate the exact net cost to the nation, taking account of the notional £18 million savings, without robust and independent financial modelling, but it can be estimated to be well over £200 million in Year One. Such ongoing and rising costs are completely unsustainable in the context of the recession and the Spending Review cuts made last October to stabilise the nation’s finances.

In conclusion, it is recommended that the Ministry of Justice at least suspend the contract until further investigations have been made into its viability in the light of this Report. Having done so, it will become evident that the reforms are completely economically unsustainable and are likely to lead to serious breaches of European and English Law.

## 1. The Substantive Report – propositions and findings

In this section we set out the propositions in our argument and our findings from the extensive investigations we have undertaken in preparing this report.

In preparing our report we undertook the following:

- We conducted two focus groups with interpreters to gather opinions. These took place in August 2011. Findings are in Appendix D
- We undertook a survey which all interpreters were invited to take part in. In total 842 interpreters completed the online questionnaire at the beginning of September 2011, representing a very high participation rate of 38%. The topline findings of the survey are included in the main body of this report on page 18. Appendix H (Survey Results, page 68) contains all of the quantitative (Economic Impact Report) and qualitative data (Survey Results) which were collected, as well as the Survey Proforma with the questions which were asked.
- A review of the process and consultation undertaken by MoJ (in the context of what is best practice) which has already drawn public criticism and has attracted negative media comment. See Appendices J (Media Items) and K (Dossier of Evidence).
- Research into the likely financial impact of the FWA and proposed contract, from which we have prepared an Economic Model. See page 13.
- To obtain an independent Legal Opinion which is enclosed in full and signed by Barrister Simon J Harding in Appendix E.

### 1.1 Rationality but non-deliverability

The MoJ's rationale in adopting the Framework Agreement (FWA) is reasonable, but cannot be complied with under the terms of the contract awarded. The FWA has its strengths and limitations, and is not in itself a bad document, but it cannot be delivered.

This section also includes detail on contractual arrangements which have been entered into by the MoJ. It assesses the likelihood of contract failure with any other potential provider on the basis of the rates published in August 2011 on behalf of the MoJ.

The intention of the MoJ was expressed in the statement of Crispin Blunt MP, Minister for Justice, in his Written Ministerial Statement for the 5th July 2011, as follows:

Source: Hansard, 5 July 2011: Column 87WS,  
<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110705/wmstext/110705m0001.htm#11070548000006>

#### Interpretation and Translation Services

The Parliamentary Under-Secretary of State for Justice (Mr Crispin Blunt): Against a background of the need to make economies right across the public sector I announced, in a written ministerial statement on 15 September 2010, Official Report, column 46WS that:

*(1) The Government were proposing to make changes to the provision of interpretation and translation services across the justice sector to cut the cost and make more efficient provision while safeguarding quality.*

## IN CONFIDENCE

In pursuit of that aim the Ministry of Justice conducted a competitive dialogue procurement process to explore how these services could be delivered more efficiently, before taking a decision on the way forward. That process resulted in a proposed framework agreement with a single supplier, under which justice sector organisations could contract for language services as needed. Having sought and taken account of the views of interested parties, the Government have decided that a framework agreement is the best way to meet their objectives.

*(2) The Ministry of Justice will contract under the framework on behalf of Her Majesty's Courts and Tribunal Service and the National Offender Management Service. Other justice sector organisations, including police forces, have indicated that they intend to sign contracts under the framework agreement as soon as they can. In some cases this will be when pre-existing contracts come to an end.*

*The framework agreement will deliver significant administrative and financial savings over the current approach. It will do this by introducing market forces into language services provision and providing a single point of contact available to staff at any time of day for the provision of all language services, including interpretation, translation and language services for the deaf and deaf-blind.*

*Language services will now be booked through various mechanisms including a secure internet portal, telephone or e-mail. This does away with the current time-consuming and inefficient process of making direct telephone contact with each individual interpreter to check their availability for work. A single request will be all that is required, reducing the burden on staff.*

Interpreters' details will be held centrally on a new register maintained by the supplier, which will be freely accessible to the justice sector and legal practitioners.

*The Government have always been clear however that efficiency cannot be at the expense of quality. Clear quality standards specify the qualifications and experience required for interpreters to work in the justice sector. A strict code of conduct sets out the high standard of professional conduct expected of them. A robust, accessible complaints process has also been designed, with effective sanctions to ensure that breaches of these standards are investigated and dealt with proportionately and properly.*

*The supplier will be obliged under the framework to increase the pool of appropriately qualified, experienced and security cleared interpreters beyond the current limits, and to collect and monitor detailed management information to allow better planning for future needs. Failure to do so will result in the supplier being financially penalised.*

*Moving over to the framework agreement will result in a more efficient and effective service for the public which is forecast to result in savings of at least £18 million on the current yearly spending in this area of £60 million. It will ensure, through the various benefits it offers, that the Government continue to be able to provide access to efficient, high-quality language services for those in need, while getting value for money on behalf of the public.*

A number of these assertions are questionable, and points are raised against numbered sentences in the text above.

- (1) *The Government were proposing to make changes to the provision of interpretation and translation services across the justice sector to cut the cost and make more efficient provision while safeguarding quality.*

The objective of safeguarding quality is compromised by the method in which costs are to be cut – that is, primarily by reducing the rates payable to Interpreters.

This will result in a reduction in the number of qualified interpreters willing to undertake the required work, as evidenced by the replies to the questionnaire to Interpreters conducted by Involvis in August 2011.

It will therefore be necessary for the FWA contractor to resort to less qualified interpreters (possibly at tier 3) who lack the skills and ability to deliver consistent interpretation services to courts and police. This will reduce the overall quality of the service.

- (2) *The Ministry of Justice will contract under the framework on behalf of Her Majesty's Courts and Tribunal Service and the National Offender Management Service. Other justice sector organisations, **including police forces**, have indicated that they intend to sign contracts under the framework agreement as soon as they can.*

Some police forces are unwilling to enter into a contract with the MoJ's preferred supplier on the basis of their experience of the poor quality of their delivery, and others have expressed themselves content with existing providers.

## **1.2 Non-consultation/"nonsultation" (after Andrew Gilligan)**

The nature of the consultation process operated by the MoJ before the adoption of the FWA has flaws in it which are likely to amount to a breach of legislation and of accepted good practice within government departments.

The views of qualified interpreters who have served the justice system for many years, and those of their representatives, have not been taken into account during the MoJ consultation exercise.

A recent (14 July 2011) article in the Law Society Gazette succinctly makes several cogent points regarding the flaws in the consultation process undertaken by the MoJ in respect of the FWA:

**Law Society Gazette: 14 July 2011**  
**MoJ in line of fire over interpreters contract**

**Thursday 14 July 2011 by Catherine Baksi**

The Ministry of Justice could face a legal challenge to its new cost-cutting arrangements for the provision of interpretation and translation services across the justice sector. In a move expected to save at least £18m annually on its current £60m spend, the MoJ announced last week that it is to contract with one supplier to provide language services to criminal justice agencies.

After a 12-month procurement process, Manchester-based Applied Language Solutions (ALS) has been awarded the contract to provide the services for the next five years, beginning as early as September.

Under the agreement, it will provide services for HM Courts and Tribunals Service and the National Offender Management Service.

The police and other organisations will also be able to use its services under the same framework agreement.

*However, some professional organisations representing interpreters and translators have voiced concerns about the change and the consultation process leading up to it, and the quality standards of interpreters used by ALS.*

A spokeswoman for one group, Professional Interpreters Alliance (PIA), said it is 'seeking advice' on what legal action it can take to challenge the MoJ's decision. To date, translation and interpretation services have been provided under a national agreement, which requires qualified interpreters to be registered with the Register of Public Service Interpreters (RPSI) and its sign-language equivalent.

Opponents of the new scheme, which will render the RPSI defunct, say it will lower the quality of language services provided.

*They also claim the consultation process was conducted too quickly, and that the views of many respondents were ignored.*

*In a joint paper sent to the MoJ, seven interpreters' groups including PIA, suggest that scrapping the national agreement is 'unlawful' and that the new arrangements are 'procedurally flawed' because no equality impact assessment was carried out until very late in the process.*

They question the scale of savings that the MoJ will make, saying the figures are not based on any evidence.

The PIA spokeswoman also questioned the standards of service provided by interpreters employed by ALS.

Earlier this year, the group sought a judicial review of a move by four police forces to outsource their interpretation services in an exclusive contract with ALS.

*The police admitted they had not conducted a proper impact assessment. In a letter to stakeholders following the consultation on the new framework agreement, the MoJ said it had considered all responses, but did not share concerns that the new scheme would lower standards.*

An ALS spokeswoman said: 'ALS has demonstrated that it has the experience and the ability to deliver a reliable, quality service.'

'There will always be rare occasions where it is difficult to find an interpreter at short notice, due to location or a specific language demand - and this is unavoidable regardless of the service provider.'

'However, our fulfilment rates to date have been excellent and are not a source of concern for our existing customers.'

'From the official contract award date, quality control measures will be ascertained through an external and completely independent assessment process, developed and delivered by independent institutions.

'All interpreters currently working or planning to work in criminal justice settings will be required to have completed this assessment process successfully, which we believe will eliminate any risk of poor quality interpreting, which has been a concern to the profession for many years... All interpreters will [also] be required to complete annual continuing professional development work.'

Link: <http://www.lawgazette.co.uk/news/moj-attacked-over-interpreters-contract>

It is customary for Government departments to undertake a twelve week consultation when introducing new regulations or at the Green Paper stage of parliamentary Bills. The MoJ complied with this requirement, although to date no evidence of any responses has been posted on the MoJ website, which is unusual.

Neither have any robust replies been made to any of the numerous points and objections raised by members of the interpreter community or other interested parties. This does not reflect good practice.

For the avoidance of doubt, the seven principles of consultation adopted by the MoJ in this respect are reproduced below, along with the identity of the Civil Servant to whom complaints regarding the process may be made. This is taken from a recent consultation regarding data usage under the Data Protection Act conducted by the MoJ: "Call for Evidence on the Current Data Protection Legislative Framework". (Link: <http://www.justice.gov.uk/consultations/docs/dpa-call-evidence-response-paper-28-01-11a.pdf> viewed 30 August 2011)

### **Consultation Co-ordinator contact details**

If you have any comments about the way this consultation was conducted you should contact the Ministry of Justice Consultation Co-ordinator at [consultation@justice.gsi.gov.uk](mailto:consultation@justice.gsi.gov.uk).

Alternatively, you may wish to write to the address below:  
Consultation Co-ordinator Legal Policy Team, Legal Directorate 6.37, 6th Floor 102 Petty France London SW1H 9AJ

### **The consultation criteria**

#### **The seven consultation criteria are as follows:**

1. When to consult – Formal consultations should take place *at a stage where there is scope to influence the policy outcome*.
2. Duration of consultation exercises – *Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible*.
3. Clarity of scope and impact – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

4. Accessibility of consultation exercises – *Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.*

5. The burden of consultation – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

6. Responsiveness of consultation exercises – *Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.*

7. Capacity to consult – *Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.*

**These criteria must be reproduced within all consultation documents.**

The points where the MoJ seem to have erred in this case are italicised.

### **Flaws in the MoJ consultation process**

In the survey conducted by Involvis only 9% of the 843 interpreters who responded indicated that they have been consulted on the proposals (see questionnaire output). No consultation results digest has been published on the MoJ website, and although the MoJ has claimed that it has taken into account consultation responses, no evidence has ever been given for this proposition. This is clearly unacceptable.

### **1.3 Monopoly and non-accountability**

It is bad practice and manifestly absurd to allow a company which is spending vast amounts of public money to monitor its own performance: yet this is what is envisaged in the FWA.

The unjustifiable monopoly which will arise from letting such a large and important contract to just one organisation is unlikely to benefit the public purse, which would benefit from the economies and efficiencies which might result from market testing through a series of contemporary contracts.

This route has been ignored in the current FWA.

### **1.4 The impact on the justice system in England and Wales**

The likely negative impact on the justice system in England and Wales, if the contract were to be progressed in the present form, is detailed below. It is likely that, due to the unavailability of qualified Interpreters, any agency running the FWA will have to resort to less qualified interpreters. This will undoubtedly prejudice the outcome of trials and other Justice engagements involving victims, witnesses and suspects who cannot communicate adequately in English.

## Malpractice as a result of outsourcing

A summary of cases of malpractice in police stations and courts that have been documented is included in Appendix I (Legal Cases) to this report.

Interpreters are frequently called to court after a first hearing has had to be suspended due to faulty interpreting. They operate under a duty of confidentiality, which determines that they are unable to reveal malpractices even though they are certainly aware of numerous instances.

The evidence has been organised as a list for ease of reference. However, greater details provided by interpreters could be provided in most cases if needed.

The cases do present a picture that gives rise to concern about the ability of agencies to service the public sector. There is evidence of poor interpreting as well as of organisational overstretch, along with the ever-present feature of poorly trained and inexperienced interpreters.

The non-English speaking public that comes into contact with the CJS are at risk of not having their rights to a properly qualified interpreter and to a fair trial respected.

## 1.5 Impact on interpreters

The financial impact on qualified interpreters if the contract is progressed in the short (1 year) medium, (2- 5 years) and long (5-10 years) term is significant. It is modelled in this Report.

*The current National Agreement and its terms and conditions are inadequate but are by any standards significantly better than the terms and rates which are set to replace it.*

The **National Agreement for Public Service Interpreters** was signed in January 2002 with ancillary Terms and Conditions (T&C) published in February 2007 and updated in June that year.

It established **the rate for court interpreters at a minimum of £85 per assignment covering the first three hours, and £30 for every subsequent hour, plus £15 for each hour of travel time, plus travel costs.**

The T&C revised in 2007 re-instated travel time and a paid lunch hour of £30 regardless of whether work took place during that time, and reduced the mileage allowance from 35.7p to 25p per mile, or 45p payable where there is no appropriate public transport available.

The consequence of the revision regarding travel cost is that interpreters tend to travel by train, which in many cases takes longer than travelling to the destination by car, and in fact incurs higher costs to the state than would otherwise be the case.

The current T&C were established well before the present rise in inflation. It is likely that the new rate offered under the contract with ALS will be 29% of the former level, at £25

per hour plus very limited travel expenses for work during the day, and £30 per hour for weekends and bank holidays.

There is no precedent in the economic history of this country for earnings of professional workers to be cut by 71% or more, on the basis of an assignment lasting for one hour, without taking account of loss of payment for travel time and reasonable travel expenses.

*This may amount to direct or indirect discrimination under the Equalities Act 2010 against the interpreter profession on grounds of race.*

## **1.6 Effects on morale**

The total lack of personal contact with interpreters when assignments are booked under the new regime, along with the worry caused by reduced pay-rates, is likely to sap the morale of interpreters. High morale is an essential quality for their work and its decrease will affect the quality of their output.

This was identified in the two Focus Groups organised by Involvis which took place in August 2010. See Appendix D for findings. This, plus the withdrawal of qualified interpreters from the market (see questionnaire results on page 18) will reduce the pool of suitable personnel for assignments, and the task of replacing experienced qualified interpreters will take very many years to put right.

Experience does not come overnight.

## **1.7 Impact on public finances**

A robust financial model has been created which sets out the estimated savings sought by the MoJ over 1, 5 and 10 years, against the estimated increased financial liability to the nation over that period. The financial impact on the nation in terms of Tax and National Insurance revenue losses and welfare benefit uptake has been incorporated into the model, as well as estimates of the financial impact on the nation in terms of costs to the court system concerning adjourned and lost cases where either a competent interpreter could not be found or where the interpreter service was demonstrated to be non-competent. Such estimates have been based on the experience in Scotland due to an interpreter walk-out already referred to.

The financial impact on the nation in terms of costs to the police services where either an interpreter could not be found or where the interpreter service was demonstrated to be non-competent, and where suspects could not be detained due to the need to avoid breaches of the EHCR, has been incorporated into the model. It is clear that the latter will lead to significant wasted officer-time and incur additional resources needed to fight increased crime.

Finally, an estimate of the cost of litigation where persons charged and brought to court bring actions against the police, judiciary and MoJ on the basis of a breach of human rights, because they have not received a proper interpreter service, or none at all, has been adduced.

## Economic Model

**Overview:** The model has been calibrated using the results of the online survey conducted by Involvis Ltd in week ending 2 September 2011. All 2,216 interpreters on the National Register were invited to complete a questionnaire, which achieved a high return of 842 responses, representing a 38% return rate.

Tax loss\*: it is estimated that, on the basis of the questionnaire returns and the sentiment expressed by interpreters in their replies regarding acceptable pay levels and alternative work, that the tax revenue loss alone in full Year One (2012/13) would be in the region of **£53 million**.

Even if the notional savings of £18 million were netted off from this figure, the loss to the public purse would still be in the region of £35 million in Year One, assuming implementation in 2012/13 and using 2011/12 tax threshold levels for modelling purposes. **If the estimated cost of welfare benefit take-up, and those of lost cases and additional police time (etc) are taken into account, the public purse hit figure rises to over £230 million in Year One.**

This is due entirely to the knock-on effects of not being able to secure qualified and experienced interpreters to service the courts and police through withdrawal due to the proposed adverse terms and conditions. Clearly these figures are estimates. Even allowing for a prudent margin of error, the estimated total figure is predicted to exceed **£230 million** in Year One alone.

**Table 1: Actual cost to the government**

Government cost to service yr 1 (old)	£60,000,000
Target Government cost saving yr1	£18,000,000
Government cost to service yr 1 (new)	£42,000,000

<b>Actual cost to HM Government</b>	
New fee inc. payments to interpreters	<b>£42,000,000</b>
Travel expenses	<b>£1,171,200</b>
Tax loss*	<b>£53,061,775</b>
<b>Total estimated cost (a)</b>	<b>£96,232,975</b>

**Table 2: Welfare Payment Additional**

WP Additional	
Social security (b)	£3,996,720
HB (c)	£1,027,728
CTB (d)	£634,400

**Table 3: Court and Police Costs**

Remand due to adjournment	£25,579,200
Compensation claims by prisoners	£100,000,000
Extra cost of policing when criminals acquitted	
Police only (ignore admin)	£5,334,658
Lost tax through contraband (etc)	No estimate
<b>Subtotal (e)</b>	<b>£136,572,706</b>

**Table 4: Estimated Cost to the state in Year One**

Total additional cost to government	£221,093,680
Lost tax revenue	£11,712,000
<b>Total estimated cost to the public purse of proposal Yr 1 (f) i.e. sum (a) to (e)</b>	<b>£232,805,680</b>

**Projected costs over five years**

Assuming that Year One costs rise with immigration levels (a 1% cumulated per annum increase assumed) and that a statistically uniform cross-class degree of criminality is assumed, it can be estimated that the cost of the “reform” by 2016/17 would be in the region of £244.5 million, and £254.4 million by 2019/20 (at April 2011 prices). See table and graph below.

Immigration rate increase	Immigration rate	Cumulative rate	Year	Cost
0.00%	1.000%	1.00%	2012	£232,805,680
1.00%	1.010%	2.00%	2013	£237,461,794
2.00%	1.020%	3.01%	2014	£239,813,131
3.00%	1.030%	4.03%	2015	£242,187,749
4.00%	1.040%	5.06%	2016	£244,585,648
5.00%	1.050%	6.10%	2017	£247,006,827
6.00%	1.060%	7.15%	2018	£249,451,286
7.00%	1.070%	8.21%	2019	£251,919,027
8.00%	1.080%	9.28%	2020	£254,410,047

It is unlikely that the public purse would be able to sustain this year-on-year cost/revenue loss trend, and in itself justifies considerable caution when contemplating the adoption of the FWA.

## 1.8 Legal opinion

The content of the legal opinion from Barrister Simon Harding is contained in Appendix E on page 44.

It raises significant causes for concern regarding the proposed Framework Agreement and its effects on all court users, whether they are judges, advocates, defendants, witnesses or appellants.

It also sets out the implications with regards English Law and EU Directives.

### 1.8.1 The Human Rights Act

The Human Rights Act 1998 (also known as HRA) came into force in the United Kingdom in October 2000. It is composed of a series of sections that have the effect of codifying the protections in the European Convention on Human Rights into UK law.

*All public bodies (such as courts, police, local governments, hospitals, publicly funded schools, and others) and other bodies carrying out public functions have to comply with the Convention rights.*

This means, among other things, that individuals can take human rights cases to domestic courts; they no longer have to go to Strasbourg to argue their case in the European Court of Human Rights.

**The Act sets out the fundamental rights and freedoms that individuals in the UK have access to. They include:**

- Right to life
- Freedom from torture and inhuman or degrading treatment
- ***Right to liberty and security***
- Freedom from slavery and forced labour
- ***Right to a fair trial***
- ***No punishment without law***
- Respect for private and family life, home and correspondence
- Freedom of thought, belief and religion
- Freedom of expression
- Freedom of assembly and association
- Right to marry and start a family
- ***Protection from discrimination in respect of these rights and freedoms***
- Right to peaceful enjoyment of property
- Right to education
- Right to participate in free elections

The human rights which interpretation helps guarantee, and would be compromised through lack of qualified interpreters or delay in providing them in a timely manner to suspects and witnesses, are italicised in the list above.

In more detail, in relation to the right to a fair trial, it is reasonable to say that there is a right to a fair and public hearing where:

- the person is charged with a criminal offence and has to go to court and/or

- a public authority is making a decision that has a decisive impact upon her/his civil rights or obligations.

The interpreter is the mouthpiece of the accused or witness, and if no competent interpreter can be supplied, this is tantamount to denying that individual's rights in these respects. The result of this could be a significant number of actions brought under the Human Rights Act against the police and judiciary by those who hold that their human rights have been breached.

### **1.8.2 Police and Criminal Evidence Act 1984 (PACE) and accompanying codes of practice**

The Police and Criminal Evidence Act 1984 and the PACE codes of practice provide the core framework of police powers and safeguards around stop and search, arrest, detention, investigation, identification and interviewing detainees.

The Code most relevant to the provision of an interpreter is Code C: the Code of Practice for the detention, treatment and questioning of persons by police officers. This Code was applied from 31 January 2008.

A review of the Code shows that a shortage of qualified and competent interpreters puts the PACE legislation and its associated codes of guidance in severe jeopardy, opening the police up to successful legal challenges and a loss of confidence in their ability to hold and charge suspects of crime, to the detriment of public safety and order. This risk is completely unacceptable.

See Appendix G (Pace Codes) on page 64.

### **1.8.3 EU Directive 2010/64/EU – implementing Articles 5 and 6 of the European Convention on Human Rights (ECHR) and Fundamental Freedoms.**

The *EU Directive on the rights to interpretation and translation in criminal proceedings* was signed by the European Parliament on 20 October 2010. EU Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings was the first EU Directive ever in the area of criminal justice.

Relevant extracts from the EU Directive are in Appendix F on page 57.

**In summary**, it is hard to see how the cost-cutting measures proposed and the likely reduction in the number of qualified interpreters available to service the system can possibly safeguard the intentions of this EU Directive.

The EU Commission's role is to ensure EU law is properly applied - by individuals, national authorities and other EU institutions. The Commission can impose sanctions on individuals or companies who break European Union law.

It can take formal action against national authorities if they are suspected of breaking EU law, asking them to remedy the situation by a certain date. This may involve taking them to the European Court of Justice (ECJ).

It is unlikely that any government of a signatory state would knowingly wish to expose itself to such actions: but the proposed implementation of the FWA risks just that.

## The principle of non-regression

The EU Commission\* has made it clear that it expects all member States to implement the terms of the EU Directive within its deadlines (by 2014). This is completely compromised through the regressive activity of reducing the number of qualified interpreters through withdrawal due to the imposition of adverse pay and conditions under the FWA by its proposed contractual provider, with serious consequences which will be played out in Strasbourg.

\*Ref: Letter from Viviane Reding, Vice President of the European Commission dated 29 June 2011, as below:

VIVIANE REDING  
VICE-PRESIDENT OF THE EUROPEAN COMMISSION  
JUSTICE, FUNDAMENTAL RIGHTS AND CITIZENSHIP

Ref. Ares(2011)704488 - 29/06/2011

RUE DE LA LOI, 200  
B-1049 BRUSSELS  
TEL. (+32-2) 298 16 00

Brussels, 29 June 2011  
Ares (2011) link 603245

Dear Ms Katschinka,

Thank you for your letter of 1 June 2011 and for the consistent support your organisation has provided to the initiatives taken by the European Commission in the field of procedural rights. It is with great satisfaction that the Commission welcomed, in October last year, the adoption of Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings, the first EU Directive ever in the area of criminal justice.

The Commission, in its role as guardian of the Treaties, will deploy all the necessary resources to make sure that this legislation is fully transposed and implemented by all Member States within the deadline set in the Directive. I have taken good note of your project and wish to congratulate you and your organisation on such valuable, concrete steps towards this goal. The involvement of all relevant stakeholders is indeed essential if the rights conferred by the Directive are to become effective for all citizens.

I would like, therefore, to lend my full support to your project and to offer, besides the financial aid EULITA receives from the JPEN Programme, the participation of officials in directorate-General Justice in your workshops in order to address the issue of transposition with the experts from the Member States.

I also wish expressly to endorse the TRAFUT project and would be happy if you would disclose my endorsement to experts, participants and any other stakeholders.

While thanking you once again for your excellent co-operation, I wish you success for your project.

Yours sincerely,



Dipl. Dolm. Liese Katschinka  
President of EULITA  
Dr Heinrich Maierstrasse 9  
A - 1180 Wien

e-mail: [liese-katschinka@speed.at](mailto:liese-katschinka@speed.at)

## 2. Questionnaire output

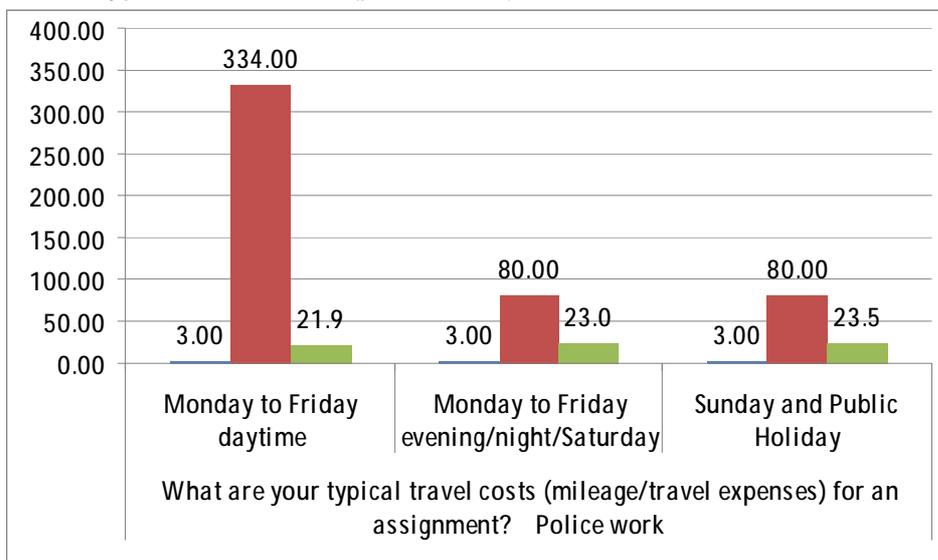
### 2.1 Quantitative output

An online survey was conducted by Involvis Ltd in week ending 2 September 2011. All 2,216 interpreters on the National Register were provided with a link to access the online survey anonymously.

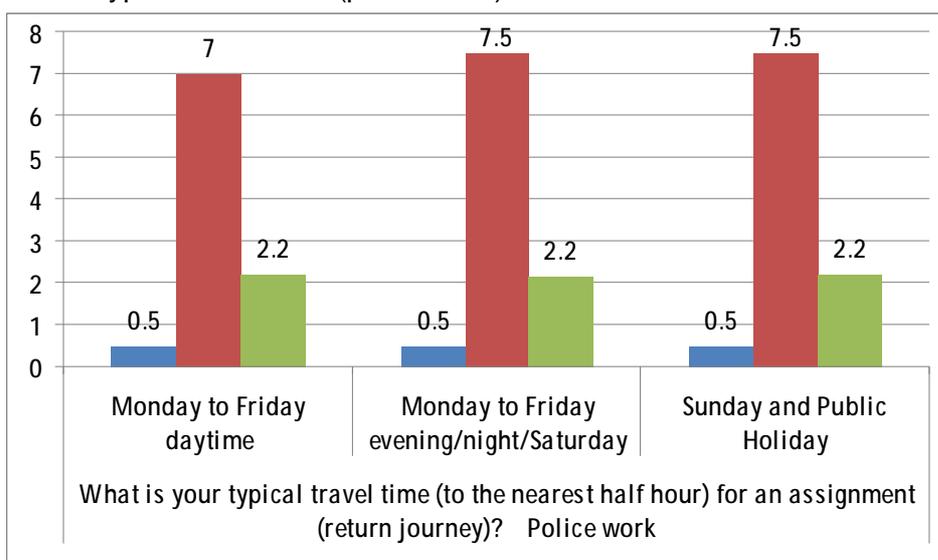
In total 842 (38%) of interpreters completed the survey.

Here is a summary of the key results. The full questionnaire and spreadsheet of responses can be found in Appendix H on page 68.

#### 1. Typical travel costs (police work)

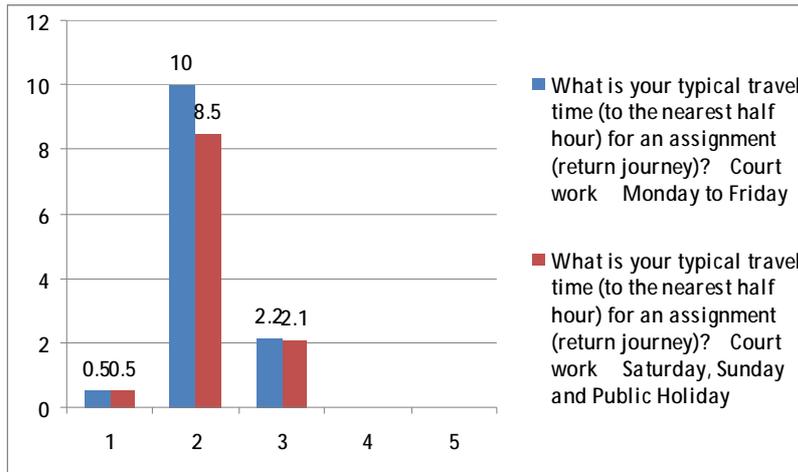


#### 2. Typical travel time (police work)

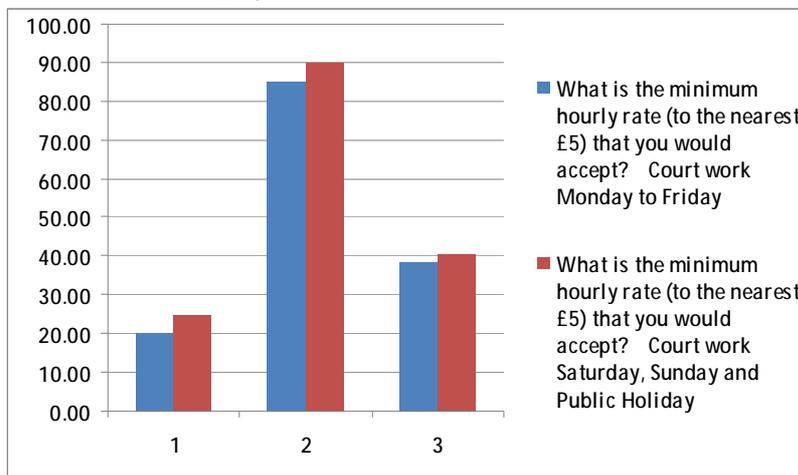


IN CONFIDENCE

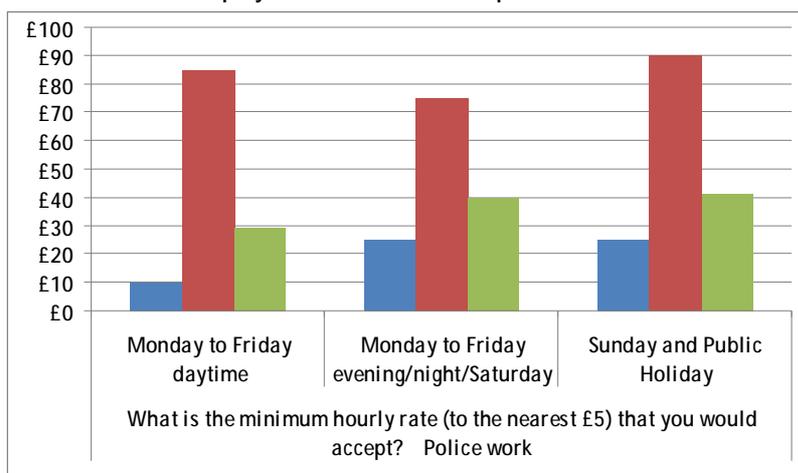
3. Typical travel time (Court work)



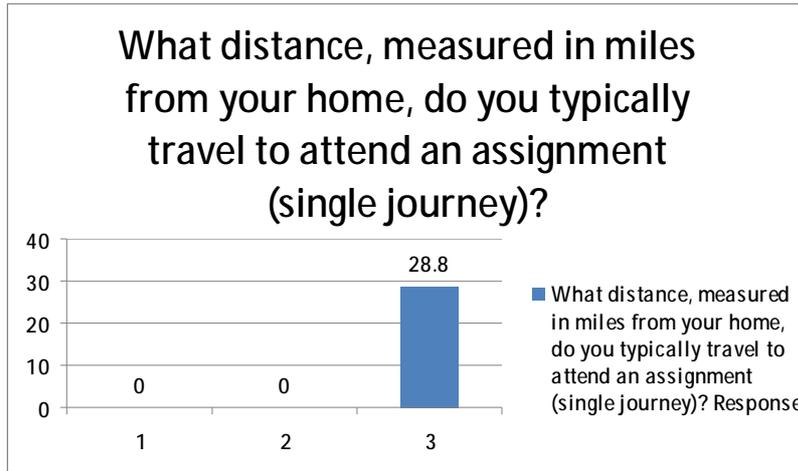
4. Minimum payment sentiment –court work



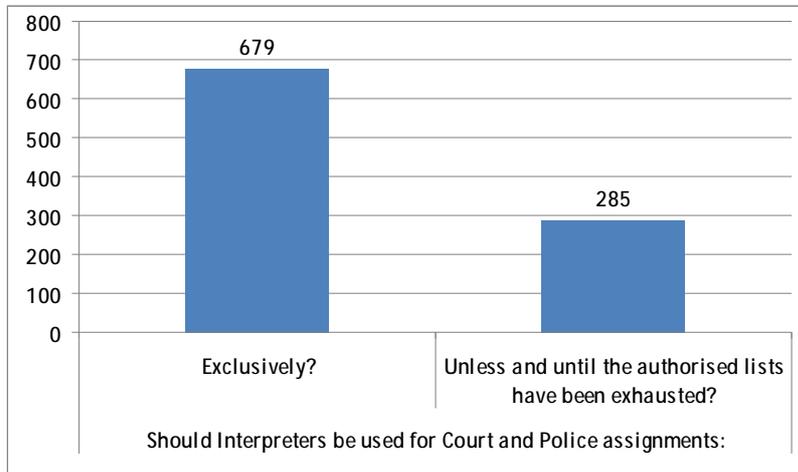
5. Minimum payment sentiment –police work



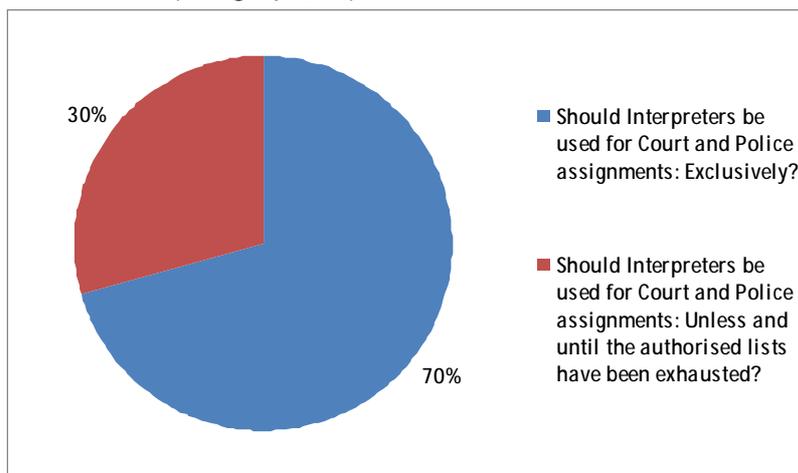
6. Travel distance from home



7. Should (DPSI -qualified) Interpreters be used for Court and Police work?

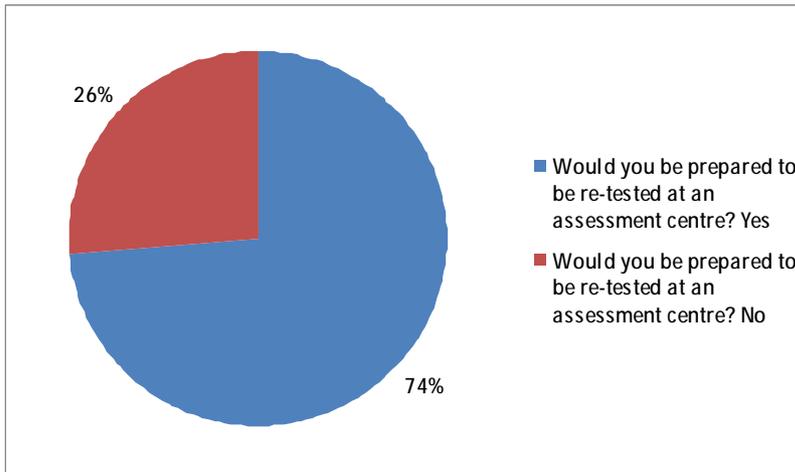


8. As 7. (Pie graph, %)

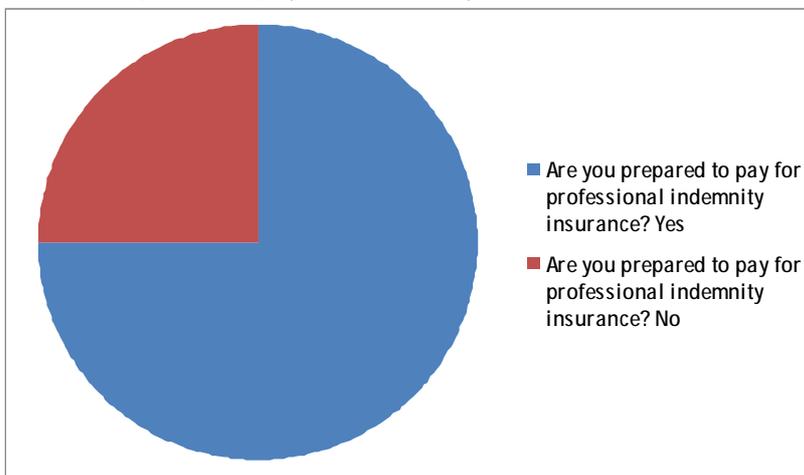


## IN CONFIDENCE

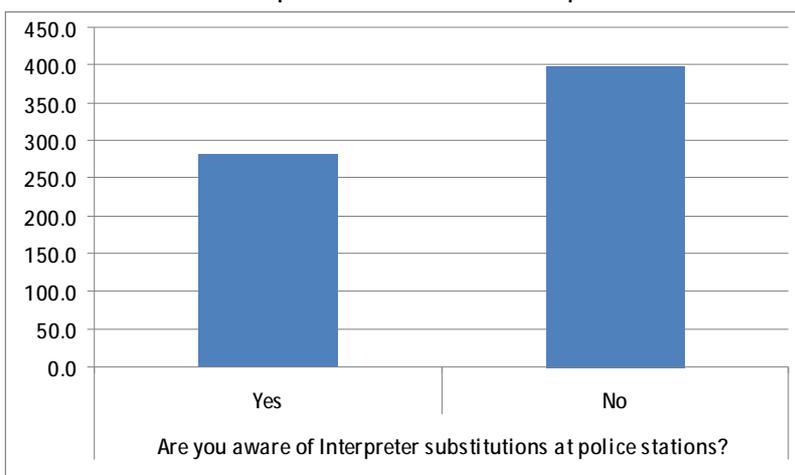
9. Prepared to be re-tested at an assessment centre?



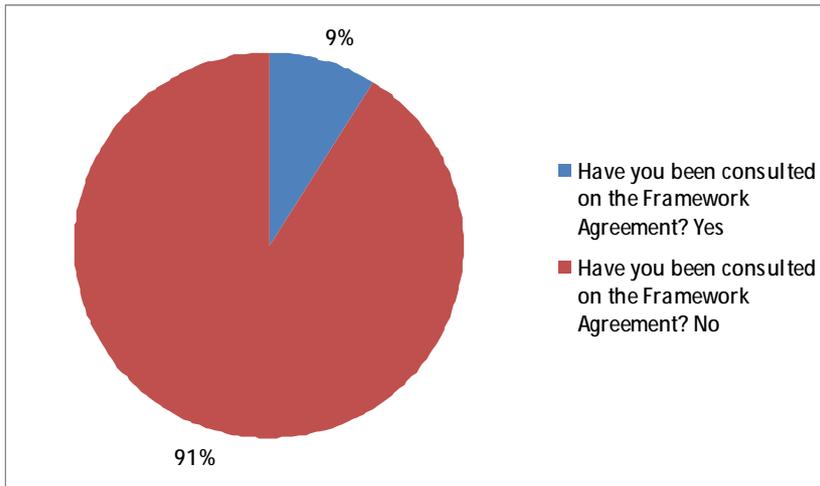
10. Prepared to pay for indemnity insurance?



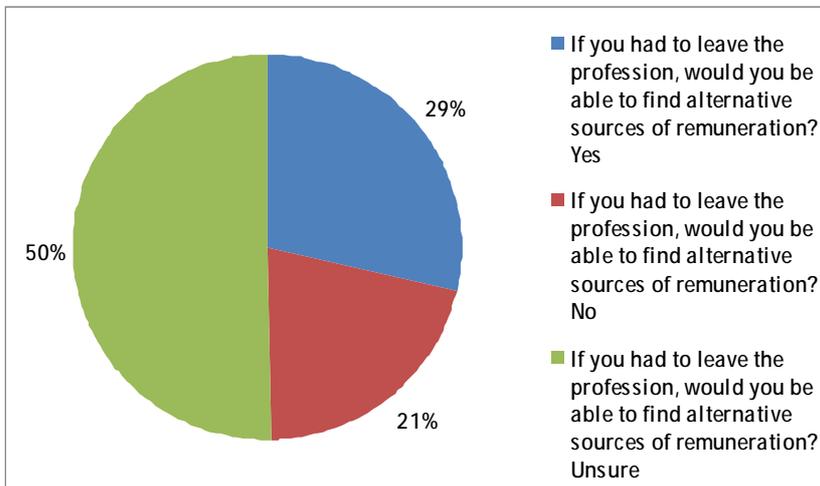
11. Aware of Interpreter substitutions at police stations?



12. Were you consulted on the Framework Agreement?



13. Would you be able to find other work if you ceased to be an interpreter?



2.2 Qualitative output

See embedded spreadsheet (Appendix H).

### 3. Recommendations

On the basis of the findings from our investigations including the survey of interpreters' opinions, the review of EU legislation and the legal opinion, our recommendations to the Ministry of Justice (MoJ) are as follows:

1. The current contract between the MoJ and the intended service provider should be suspended to give the MoJ a chance to re-evaluate the legal, sustainability and cost implications of the arrangement.
2. If Ministers decide, on the basis of evidence and argument provided in this report and other actions taken by interpreters, to set aside the contract, arrangements should be made to consult and engage fairly with interpreters. Alternative options should be investigated which may be able to deliver the requisite savings without compromising on the quality of interpreting in maintaining a fair justice system.
3. Any further work done to establish the basis for a cost-effective way of saving taxpayers' money by reforming the interpreter booking system should concentrate on the economies and efficiencies which can be delivered by overhauling the administrative systems employed by the courts and the police, rather than seeking to do so by reducing the remuneration of qualified interpreters.
4. Renewed undertakings should be made to the relevant EU commissioner that the terms of the EU Directive are being adhered to against the desired timetable. This will address the concerns raised in that quarter concerning the UK's determination to implement its terms.

#### Definitional note

\* The definition of '**interpreter**' contains four elements. Such a person is:

- Appropriately qualified
- Experienced
- Registered on the National Register, and
- Vetted by national security/the police (for which a CRB check in itself is not sufficient to fulfil this criterion)

## **Appendix A: MoJ-advertised interpreter rates**

Site link (viewed 29 August 2011): <http://www.linguistlounge.com/>

## Appendix B: ALS advertised interpreter rates

(taken off the site and replaced by MoJ rates – 20.8.11)

Site links: (viewed 8 August 2011)

Link to company site: <http://www.appliedlanguage.com/>

Link to Linguist Lounge area (which had rates on it):

<http://www.appliedlanguage.com/www.linguistlounge.com>

**Rates have since reverted to those announced by MoJ under 1.)**

### **1. Statement from ALS (seen by Involvis Ltd on 6 August 2011) since no longer available on the ALS site:**

Dear Interpreter

The objective of this 2-page briefing is to give you a clear understanding of the pricing model that is being applied to National Register Interpreters (or equivalent) who are contacted by us to fulfil assignments for the criminal justice system in hours and out of hours.

This model applies only and exclusively to National Register interpreters (or equivalent) who are taking bookings for the police, courts, or other criminal justice assignments. There is no minimum payment for assignments other than the first hour.

#### Pricing Model In Hours from (07:00 to 20:30)

Hour 1: Base rate of £25 plus an additional £5 for travel within 10 linear miles from the post code from which the interpreter is leaving to fulfil the assignment

Hours 2+: Base rate of £25 on a pro rate basis in 15 minute increments. [Therefore, each additional block of 15 minutes is paid at  $\frac{£25}{4} = £6.25$ ] Each increment is therefore between 1 to 14 minutes, 15 to 29 minutes, 30 to 44 minutes and 45 to 59 minutes.

If interpreters are travelling more than 10 linear miles from one post code to another, they are paid travel expenses of 20p per mile for the miles covered beyond that 10 mile radius.

For example, if an interpreter must travel 25 linear miles to a booking, the round trip is 50 miles. Of those 50 miles, the first 10 miles they cover on the way there and the last 10 miles on the way back are not paid for.

Therefore, from the 50 mile total distance you must subtract 20 miles for a total of 30 miles at .20p. Therefore,  $50 - 20 = 30$  and  $30 \times £.20 = £6.00$

A typical assignment of 2 hours and 36 minutes in hours with 50 miles of total travel (25 miles there and 25 miles back) would therefore be paid as follows:

Hour 1 = £30 (£25 base rate) + (£5)

Hour 2 = £25

36 minutes = 3 pro rata increments as the time FWalls into the third increment =  $3 \times £6.25 = £18.75$

Travel = 50 miles total distance covered for the assignment

50 miles minus 20 miles = 30 miles to be paid at .20p (£6.00)  
2 hours 36 minutes = £30 + £25 + £18.75 + £6.00 = £79.75

### Pricing Model Out of Hours 20:30-07:00 and weekends bank holidays

The structure of the model is identical but the base rate of pay increases from £25 to £30.

Therefore, if the breakdown shown above were to happen at 22:00 hours, the payment would be:

A typical assignment of 2 hours and 36 minutes in hours with 50 miles of total travel (25 miles there

and 25 miles back) would therefore be paid as follows:

Hour 1 = £35 (£30 base rate) + (£5)

Hour 2 = £30

36 minutes = 3 pro rata increments as the time falls into the third increment = 3 x £7.5 = £22.50

Travel = 50 miles total distance covered for the assignment

50 miles minus 20 miles = 30 miles to be paid at .20p (£6.00)

2 hours 36 minutes = £35 + £30 + £22.50 + £6.00 = £93.50

The payment that ALS will make for travel of more than an hour is at £10 per hour.

## 2. Earlier release from ALS in the name of the Ministry of Justice (viewed

Link to pdf:

<http://www.linguistlounge.com/TiersAndPaymentAugust2011.pdf>

### **Ministry of Justice contract Interpreting tiers and payment details**

The market conditions surrounding the delivery of public sector interpreting services in the United Kingdom have changed as result of economic pressures. In the past, interpreters were paid for travel time and travel expenses, which were then passed on to the public service provider. This is no longer the case for the majority of contracts, including the Ministry of Justice (MoJ) language services contract with Applied Language Solutions.

Interpreting services are now contracted for set rates, which are paid to interpreting service providers **on an hourly basis. Additional costs for travel time and travel expense will not be passed on and are not paid for by the public authority.**

Additionally, the MoJ contract requires that Assessment Centres be attended by all interpreters working in Criminal Justice sector settings in England and Wales. These Assessment Centres lie at the heart of the continuing professional development work and tier to which an interpreter will be assigned.

The Assessment Centres have been designed and are being run by Middlesex University, entirely independently of Applied Language Solutions. Middlesex University was chosen for its extensive experience in working in educating those who train interpreters in the United Kingdom. This continuity is important.

All CJS work will be coordinated through the new register being hosted by Applied Language Solutions. An interpreter's availability for assignments and their efficient allocation is therefore possible. The elimination of the inefficiency of uncoordinated service delivery will allow interpreters to be assigned to more hours of work more effectively.

## IN CONFIDENCE

Details of foreign language interpreting tiers and associated, non-negotiable payment rates are as follows:

### **TIER ONE (£22 per hour)**

The interpreter must have one or more of the following:

- Chartered Institute of Linguists Diploma in Public Service Interpreting, DPSI, (English Law Option);
- Chartered Institute of Linguists Certificate in Community Interpreting, CCI;
- Metropolitan Police Test (post 1997) and an Honours Degree or higher in Interpreting.

Or:

- Registrant of National Register Public Service Interpreters to Full or Interim level; or
- Membership of Association of Police and Court Interpreters; or
- Membership of Institute of Translation and Interpreting (ITI (P&C Division)) to Police Court Interpreter (PCI) level).

Together with:

- At least 100 hours public sector interpreting experience (not restricted to legal interpreting);
- References;
- And, in all cases, a pass at the assessment centre to the Tier One standard.

### **TIER TWO (£20 per hour)**

The interpreter must have one or more of the following:

- 'Partial DPSI' i.e. the interpreter must have passed all modules with the exception of written translation;
- A degree in linguistics, English philology, Modern Languages or MA in Teaching of English, or other language related diplomas where English features as part of the course.
- Health or Local Government full or partial DPSI.

Together with:

- Previous or current employment in criminal justice services in their country of origin, legal training in the UK or abroad, or other exposure to criminal justice work through other channels is also acceptable (volunteer and/or paid work in the community for police services or work for Victim Support, for example);
- University level education (any degree);
- At least 100 hours public sector interpreting experience;
- References;
- And, in all cases, a pass at the assessment centre to the Tier Two standard.

### **TIER THREE (£16 per hour)**

The interpreter must have one or more of the following:

- Demonstrable experience in the public sector with appropriate linguistic background;
- Formalised basic interpreter training including one of the following: The WEA Programmes, Bi-Lingual Skills Certificates, Community Level Interpreting Degrees under the NVQ certification system.

Together with

- References;
- And, a pass at the Assessment Centres to the Tier Three standard

It is also desirable for Tier Three interpreters to have at least 100 hours of public sector interpreting experience.

**Additional information regarding required qualifications and experience.**

**Rare languages**

In the case of rare languages where the DPSI or equivalent qualification is not available, the interpreter must have the Cambridge Proficiency in English Certificate, or NRPSI registration (rare language).

All rare language candidates should have 100 hours of public sector interpreting experience, evidence of continuous professional development, verifiable references and a pass at the Assessment Centres.

**Language Service Professionals working with the deaf and deafblind  
Definitions**

**NRCPD.** National Register of Communication Professionals working with deaf and deafblind people. NRCPD registered communication professionals have all achieved recognised qualifications in their discipline and work to strict professional codes of practice. Registration is the only guarantee that providers of communication services have met safe-to-practise standards and carry professional indemnity insurance if it is required. All five registration categories sit within this framework.

**MRSLI.** Member of the Register of Sign Language Interpreters. This sits within the NRCPD framework. Fully qualified and competent to work in all settings.

**CACDP.** Council for Advancement of Communication with deaf people. Registration Status and qualifications.

All Communication Professionals working with deaf and deaf-blind people must be registered with the NRCPD. This must be at the following levels:

**1. Sign Language Interpreter**

- MRSLI
- NVQ 4 (pre October 2010) BSL/English Interpreting and Language Units. Or
- NVQ 6 (post October 2010) BSL/English Interpreting and Language Units. Or
- Postgraduate diploma or MA in BSL/English Interpreting from UCLAN or Leeds University.

**2. Lipspeaker**

- Member of the Register of Level 3 Lipspeakers.
- CACDP Level 3 in Lipspeaking certificate.

**3. Speech to Text Reporter**

- Member of the Register of Level 3 STTRs;
- CACDP Level 3 Verbatim Speech to Text Reporting certificate.

**4. Deafblind Manual interpreters**

- Member of the Register of Level 3 Deafblind Manual Interpreters;
- CACDP Level 3 Deafblind Manual certificate.

**5. Notetaker (Electronic and Manual)**

- Member of the Register of Level 3 Notetakers;
- CACDP Level 3 Notetaking certificate.

**If you have any queries regarding payment for Ministry of Justice language services, please email [legal@appliedlanguage.com](mailto:legal@appliedlanguage.com)**

2 **Rates statement ALS linguistlounge page viewed 20 August 2011**

<http://www.linguistlounge.com/TiersAndPaymentAugust2011.pdf>

**Ministry of Justice contract interpreting tiers and payment details**

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### **TIER THREE (£16 per hour)**

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- CACDP Level 3 Verbatim Speech to Text Reporting certificate.

### **4. Deafblind Manual interpreters**

- Member of the Register of Level 3 Deafblind Manual Interpreters;
- CACDP Level 3 Deafblind Manual certificate.

### **5. Notetaker (Electronic and Manual)**

- Member of the Register of Level 3 Notetakers;
- CACDP Level 3 Notetaking certificate.

- 1 If you have any queries regarding payment for Ministry of Justice language services, please email [legal@appliedlanguage.com](mailto:legal@appliedlanguage.com)**

## Appendix C: Framework Agreement – key issues

### 1. Statement in the Lords (5 July 2011)

#### Justice: Interpretation and Translation Services

**The Minister of State, Ministry of Justice (Lord McNally): My honourable friend the Parliamentary Under-Secretary of State, Ministry of Justice (Crispin Blunt) has made the following Written Ministerial Statement.**

Against a background of the need to make economies right across the public sector I announced, in a **Written Ministerial Statement on 15 September 2010**, that the Government were proposing to make changes to the provision of interpretation and translation services across the justice sector to cut the cost and make more efficient provision while safeguarding quality.

In pursuit of that aim the Ministry of Justice conducted a **competitive dialogue procurement process** to explore how these services could be delivered more efficiently, before taking a decision on the way forward. **That process resulted in a proposed framework agreement with a single supplier, under which justice sector organisations could contract for language services as needed.** Having sought and taken account of the views of interested parties, the Government have decided that a framework agreement is the best way to meet their objectives.

**The Ministry of Justice will contract under the framework on behalf of Her Majesty's Courts and Tribunal Service and the National Offender Management Service.** Other justice sector organisations, including police forces, have indicated that they intend to sign 15 contracts under the framework agreement as soon as they can. In some cases this will be when pre-existing contracts come to an end.

- **The framework agreement will deliver significant administrative and financial savings over the current approach.** It will do this by **introducing market forces into language services provision and providing a single point of contact available to staff at any time of day for the provision of all language services, including interpretation, translation and language services for the deaf and deafblind.**
- **Language services will now be booked through various mechanisms including a secure internet portal, telephone or e-mail.** This does away with the current time-consuming and inefficient process of making direct telephone contact with each individual interpreter to check their availability for work. **A single request will be all that is required, reducing the burden on staff.**
- **Interpreters' details will be held centrally on a new register maintained by the supplier, which will be freely accessible to the justice sector and legal practitioners.**

The Government have always been clear however that efficiency cannot be at the expense of quality. **Clear quality standards specify the qualifications and experience required for interpreters to work in the justice sector.** A strict code of conduct sets out the high standard of professional conduct expected of them. **A robust, accessible complaints process has also been designed,** with effective sanctions to ensure that breaches of these standards are investigated and dealt with proportionately and properly.

**The supplier will be obliged under the framework to increase the pool of appropriately qualified, experienced and security cleared interpreters beyond the current limits, and to collect and monitor detailed management information to allow better planning for future needs. Failure to do so will result in the supplier being financially penalised.**

**Moving over to the framework agreement will result in a more efficient and effective service for the public which is forecast to result in savings of at least £18 million on the current yearly spending in this area of £60 million.**

**It will ensure, through the various benefits it offers, that the Government continue to be able to provide access to efficient, high quality language services for those in need, while getting value for money on behalf of the public.**

Link to source:

[http://services.parliament.uk/hansard/Lords/ByDate/20110705/writtenministerials\\_tatements/part008.html](http://services.parliament.uk/hansard/Lords/ByDate/20110705/writtenministerials_tatements/part008.html)

## **2. New FWA Code of Conduct**

### **Introduction**

Legal linguists working in criminal justice settings in the United Kingdom have grave professional responsibilities. In the course of carrying out their duties as language services professionals, they must strive to interpret and translate to the best of their ability and to act in a manner that is of a consistently high ethical standard.

This will protect them, the professionals and **non-English speaking people** with whom they are working, and the interests of the profession as a whole.

It is beyond the scope of this, or any code, to **proscribe** precisely the conduct that would be appropriate in response to each and every type of challenge arising in the course of this work.

The canons in this code are provided to **LIT** registrants working with Applied Language Solutions in order that they may be fully aware of the standards of conduct expected of them. These canons encourage professional linguists to develop their own appreciation of the critical importance of professional conduct and to clearly understand the core codes whose violation, in the judgement of

any reasonable person, will lead to disciplinary proceedings. Any disciplinary proceedings may end in temporary or permanent suspension from the LIT register that is maintained by the Applied Language Solutions on behalf of the Ministry of Justice.

## Scope

Any LIT Registrant engaged through Applied Language Solutions, delivering services to the criminal justice sector, is bound by this code. It applies to all interactions with both the primary party who has commissioned the services of the LIT registrant and any/all other additional parties who are involved in any and all aspects of the work carried out as a direct or indirect function of the given assignment.

For the purposes of the MoJ Framework Agreement interpreters, translators and language service professionals for the D/deaf and deafblind must:

- Act with integrity and maintain high standards at all times.
- Be of good character, which may preclude those with certain criminal records.
- Observe absolute confidentiality in relation to every individual assignment unless otherwise required by law or where disclosure is stipulated by the relevant legislation; this duty extends beyond the completion of the individual assignment. Particular regard must also be paid to a client's legal professional privilege arising from legal consultations.
- Not seek to take advantage of any information disclosed during an assignment.
- Comply with current Data Protection legislation.
- Not use any information obtained in the course of an assignment for any purpose other than as authorised.
- Keep safe any document, recordings or media provided during the course of an assignment and ensure that it is not copied and is returned at the end of the assignment. Documents are for the eyes of the translator and authorised staff only, and must not be seen by or shared with anyone else.
- Act impartially at all times and not act in any way that might result in prejudice or preference on grounds of religion or belief, race, politics, gender, gender reassignment, age, sexual orientation or disability other than as obliged to in order to Faithfully translate, interpreter or otherwise transfer meaning.
- Not give advice, legal or otherwise, to the person for whom they are interpreting, nor enter into discussion with them (other than simple

pleasantries and to confirm language/dialect match or preferred means of communication).

- Disclose any conflicts of interest or potential conflicts of interest or other FWActor which may make it inappropriate for them to accept a particular assignment in relation to each individual assignment.
- Disclose any previous involvement with the case.
- Disclose any relationship with the parties involved in the assignment or their FWAmilies
- .
- Disclose any information, including any criminal record, which may make them unsuitable for any particular assignment.
- Undertake assignments only for which they are competent (both linguistically and in terms of specialist knowledge or skills).
- Disclose professional limitations in relation to each individual assignment.
- Always interpret/translate to the best of their ability.
- Decline any reward other than agreed fees.
- Seek to increase their knowledge and skills.
- Not engage in activities which can reasonably be understood as likely to damage the reputation of the profession of translating and interpreting or the justice system.
- Not sub-contract or attempt to sub-contract work to another party without express written consent from the Contractor and the collaborative partner involved in the assignment

### **3. National Agreement (modified 2007)**

**Since January 2002, a National Agreement between police, courts and other legal agencies has (or had!) been in force.**

The agreement states that every interpreter/LSP working in courts and police stations should be registered with one of the recommended registers, i.e:

- Full Members of the Register (MRSLI) with the IRP for communicating with deaf people
- Full or interim status with the National Register of Public Service Interpreters (NRPSI) for non-English spoken languages

The current arrangements for interpreters in criminal investigations and proceedings flow from a revised agreed protocol between CPS and other agencies in the criminal justice system - The National Agreement on the arrangements for the use of Interpreters was published in August 2008.

The Agreement reflects the introduction of the **Human Rights Act 1998** and emphasises the requirement to check the competency of an interpreter. In all cases, **Article 6 of the European Convention on Human Rights requires that an interpreter in criminal proceedings be fully competent for the task assigned.**

The agreement states that every interpreter/LSP working in courts and police stations should be registered with one of the recommended registers, i.e:

- Full Members of the Register (MRSLI) with the IRP for communicating with deaf people
- Full or interim status with the National Register of Public Service Interpreters (NRPSI) for non-English spoken languages

### Relevant Extracts from the National Agreement

#### 3. Obtaining suitably qualified interpreters: ECHR requirements

3.1 The rights to liberty and security, and to a Fair trial, are fundamental human rights protected by the European Convention on Human Rights. *They include the right to interpretation where needed.*

**Article 5 ECHR** says that everyone who is arrested “shall be informed promptly, *in a language which he understands*, of the reasons for his arrest and of any charge against him.”

**Article 6 ECHR** states that everyone charged with a criminal offence has the right:

- To be informed *promptly, in a language which he understands and in detail*, of the *nature and cause of the accusation* against him;
- To have the *free assistance of an interpreter if he cannot understand or speak the language used in the court.*

#### 5. Fees and Terms and Conditions

5.1 A set of **standardised terms and conditions** for the provision of FWAceto-FWAceto spoken language services can be found at <http://www.hmcourtsservice>.

gov.uk/infoabout/interpreters/index.htm. **(NB. This is no longer available – tried to view 12.8.2011)** and will be reviewed annually.

The National Criminal Justice Board has determined that **all CJS agencies should seek to conform to these terms and conditions, where the work is intended for use in criminal proceedings.** Her Majesty's Courts Service and the Crown Prosecution Service have adopted these terms and conditions with effect from February 2007

## **10. Outsourcing interpreting services**

10.1 Police forces and other CJS agencies that are contemplating outsourcing the provision of interpreters must ensure that this does not compromise compliance with the standards set out in this Agreement.

**In particular, where the fees payable to interpreters – as distinct from those paid to the intermediary agency – are lower than those contained in the recommended Terms and Conditions for Interpreters in the CJS (see Section 5.1 of the National Agreement), they are likely to be unattractive to fully qualified interpreters who are on the NRPSI and CACDP Registers, with the result that the contractor resorts to unqualified interpreters who may not be competent. This is not acceptable.**

### **Oath taken by C&J Interpreters**

**General Source: Crown Prosecution Site (viewed 20.8.2011)**

**[http://www.cps.gov.uk/legal/h\\_to\\_k/interpreters/](http://www.cps.gov.uk/legal/h_to_k/interpreters/)**

**The interpreter's oath is as follows:**

I swear by Almighty God that I will **well and faithfully interpret** and make **true explanation** of all such matters and things as shall be required of me according to the best of my skill and understanding.

**Source:** <http://flwblog.lawweek.co.uk/2009/11/interpreters-in-courtroom.html>  
**(Viewed 20.8.2011)**

## Appendix D: Focus Group questions and responses

### Focus Group One

Reference: Report (1) para 1.1

#### Questions for Focus Group 1:

1. Is there any other EU convention which you know of which would be breached as a result of letting the Framework Agreement in this manner?
2. Do you agree that the suggested consequences will arise, and if not, which ones?
3. Are there any other consequences which you think may arise if the FWA is fully implemented in its present form?

#### Reactions from interpreters present.

The interpreters present agreed that these would be the consequences, and added a number of key points bearing in mind the above paragraph and also on the questions at 1.2:

1. The assessment system proposed will deliver a relatively worthless piece of paper: interpreters' qualifications (principally the Diploma in Public Service Interpreting) is the key and respected qualification, and the assessment process risks invalidating it.
2. Everyone on the NRSI is a qualified interpreter – there is no need for a tier of assessment to bolster this.
3. Everyone is skilled and experienced in other lines of work, and could secure other employment, so the reduction in qualified interpreter numbers as a result of the FWA implementation is assured.
4. There is anxiety on how it will be decided which tier is assigned which jobs – there is the distinct risk that unqualified (or under qualified) interpreters will be drafted in to attend court and police appointments because no-one in the correct tier can be located.
5. There are already signs that unqualified interpreters are being used by police forces, with subsequent drops in the quality of the service – one interpreter said that Surrey Police Force were known to charge people with indictable offences with the interpreter on the phone.
6. There was concern that the use of unqualified interpreters had prejudiced intoxication arrest procedures at police stations, with drunk drivers then released with serious health and safety consequences for the general public.

Reference: Report (1): para 1.2

1. Do you consider the rates on offer under the Framework Agreement to be reasonable? There was general agreement that the rates were not

reasonable, and would lead to interpreters walking away from the system and getting other work.

**2. How many hours of interpreting do you do at the moment? Also say what the least and the most time you spend doing so on-site at present.**

There was considerable discussion on the hours and time spent interpreting. The results are summarised in the table below, and will assist in building the economic model which will demonstrate the loss to the nation in terms of lost trials, adjournments, miscarriages of justice, tax, NI etc. in conjunction with the questionnaire results.

**Raw results from the focus group**

**A. Times on site and travel times**

Train Fare per assignment (ave)	Petrol /asst	Time on site min (ave)	Time on site (shortest)	Time on site (longest)	Time n site (modal)
£15-20	30	20	1/2	20h	3
£15-50	100	30	10	30h	3
£50-200	40	6	1/2	20h	3-4
£10-180	50	20	1 1/2	20h	3
£120	10	20	1 1/2	16h	3
£6 - 40	180	25	45mins	25h	3

**B. Journey times and weekly assignment numbers (for modelling)**

Average mileage return	Shortest	Longest	No. of assignments per week (ave)
40	10	100	6
90	10	200	5/6
50	12	100	2/3
10	2	200	10
80	8	500	4
110	20	240	6
15	1	30	3
100	70	300	2/3
20	4	100	3

1. **On average, how much time do you spend travelling to and from assignments? Also say what the least and the most time you spend.**
2. **On average, how much do you spend on travelling to and from your assignments? Also say what the least and the most amounts you spend.**
3. **Directly, would you work for the FWA rates?** The answer was a resounding “no”.
4. **If not why not?** Answers were focused around intending to take up other work opportunities, and having done so, not going back to interpreting.
5. **What rates are you prepared to work for?** There was general agreement that the National Agreement rates were a reasonable basis for payment, although they had been eroded over time due to non-adjustment for inflation. There was some reference to better rates prior to 2007, when the NAS and T&C was revised, but there was awareness of the economic realities which bear upon even these rates.
6. **Have you any other employment (now, or possibly that you could take up given your skills, experience and qualifications) which you could resort to if you decide not to continue working as a Public Service Interpreter with the Courts and Police?**

A range of answers were given, including:

- Retirement
- Working in the commercial sector as a translator
- Undertaking translations for publishing houses.
- Immigration advisory work
- Marketing
- Re-training to work in an administrative office environment.
- Tourist guide
- Supply teacher
- Financial compliance work (FSA registered)
- Language teaching
- EFL
- Community work
- Estate agency
- Working for Non Governmental Organisations

This makes the point that there are alternative options for interpreters, and they are not tied into the C&J system.

1. **Would you consider going onto benefits?**

Most said that they would, albeit reluctantly, and that this would be a significant burden on the government.

2. If you were to work for the rates proposed under the FWA, would your income be above or below the taxation threshold (see table below).

See response table:

Above =A or below = B under NA – just interpreting	Below under FWA – just interpreting	Above under NA – all work	Below –under FWA – all work
A	B	A	B
A	B	A	B
A	B	A	B
A	B	A	A
B	B	A	A
A	B	A	A
A	B	A	A
B	B	A	B
A	B	A	B

**Income Tax rates and allowances**

	2009-10	2010-11	2011-12
<b>Income Tax allowances</b>			
<b>Personal Allowance (1)</b>	£6,475	£6,475	£7,475
<b>Income limit for Personal Allowance</b>	Not applicable	£100,000	£100,000
<b>Personal Allowance for people aged 65-74 (1)(2)</b>	£9,490	£9,490	£9,940
<b>Personal Allowance for people aged 75 and over (1)(2)</b>	£9,640	£9,640	£10,090
<b>Married Couple's Allowance (born before 6th April 1935 but aged under 75) (2)(3)(4)</b>	Not applicable	Not applicable	Not applicable
<b>Married Couple's Allowance (born before 6th April 1935 and aged 75 and over) (2) (3)</b>	£6,965	£6,965	£7,295
<b>Income limit for age-related allowances</b>	£22,900	£22,900	£24,000
<b>Minimum amount of Married Couple's Allowance</b>	£2,670	£2,670	£2,800
<b>Blind Person's Allowance</b>	£1,890	£1,890	£1,980

From the 2010-11 tax year the Personal Allowance reduces where the income is above £100,000 - by £1 for every £2 of income above the £100,000 limit. This reduction applies irrespective of age.

Source: HMRC: <http://www.hmrc.gov.uk/rates/it.htm>

**FWA rates:**

**2 Rates on the MoJ site: See Appendix One**

**2 Rates advertised by ALS: See Appendix Two**

1.3 The MoJ will find itself completely discredited not only internationally but also as a Department of State in the view of parliamentarians and the country at large, when the implications of this decision become apparent.

1. **Do you agree with this statement?** Yes
2. **If not, why not?** Many members said that this effect could not be exaggerated
3. **Is there anything you would like to add to it?** N/A

The only rational course to avoid these consequences is to stop the bureaucratic machinery (the MoJ civil servants and their advisers) implementing the contract, to ensure that interpreters collectively have a chance to convince the government to freeze the FWA and maintain the status quo until an alternative regime satisfactory to interpreters and the State can be put into place, to safeguard justice, the financial stability of the country and the interests of dedicated and qualified interpreters who are essential to maintaining a fair and just legal system, and who have been ignored in the consultation leading up to the implementation of the FWA. It should be noted that in its response to the "consultation" the MoJ civil servants stated that they were "confident" that the proposed FWA is EU compliant, even though it would appear not to be the case, as already outlined.

1. **What do you think the basis for a more reasonable agreement should be?**
2. **Does the National Agreement constitute a reasonable basis to regulate the relationship between Service Providers and the MoJ?**  
**NB. A summary of the Framework Agreement will be tabled on Saturday 13 August to aid discussion)**
3. **If you answered "yes" please say why you think this?**
4. **If you answered "no" please say why you have given this answer?**

It was agreed that the National Agreement would form a reasonable basis, but that rates would have to be updated (see before)

**Reference: Report (2) para 2.1**

1. **Were you consulted about the proposed changes to the system of hiring interpreters?**
2. **If you answered "yes", what was the form of the consultation?**

3. If you answered “yes” to 1, do you feel that the consultation format was adequate to enable you to express your views?
4. If you answered “no” to question 3, what aspects of the consultation do you feel were inadequate?
5. If so, what would you have wanted to say to the MoJ?

There was no substantive consultation: interpreters were not informed about it, and therefore did not take part in this. It is understood that there were two road-shows, one in London, the other in Manchester, at the last minute'; The Tribunals Booking System based in Loughborough claims that it was not consulted on the changes.

\* “Nonsultation” referred to in an article in the Daily Telegraph, 20.8.2010, *A Government ruse that's nothing short of an insultation*. Link to article: <http://www.telegraph.co.uk/news/politics/7955561/A-Government-ruse-thats-nothing-short-of-an-insultation.html>

**Reference: Report (2) para 2.4**

**1. What do you consider the main impacts on the justice system would be?**

- Miscarriages of justice through the use of non or poorly- qualified interpreters
- inability to hear evidence

## Appendix E: Barrister's written opinion

### Involvis Ltd – Interpreters' Contracts and the Proposed Framework Agreement

#### OPINION

1. I have been asked to advise in regards to the Framework Agreement ('FWA') brokered by the Ministry of Justice to provide court and police station interpreters via a private organisation called 'Applied Language Solutions' ('ALS').
2. The MoJ and related organisations including the various police forces, the CPS and probation trusts will be able to sign contracts under this FWA with ALS. The company envisage that the contract will commence in October 2011.
3. The FWA proposes to cut budgets significantly and the effect of it is to cut the pay of interpreters to a significant degree.
4. Previously, the National Register of Public Service Interpreters required registrants to have a Public Service Interpreting qualification with rigorous criteria – see <http://www.nrpsi.co.uk/pdf/CriteriaforEntry.pdf>. The NRPSI is a voluntary organisation that provides regulation to the interpreting and translation profession by ensuring standards and experience and publishing a register and its criteria.
5. I understand now from the ALS website the position is as follows<sup>1</sup>:

“All linguists wishing to work on MoJ assignments with Applied Language Solutions (ALS) must apply for the registration and assessment processes that will lead to being listed on the Ministry of Justice's (Legal Interpreting & Translation) register. This is the only

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<sup>1</sup> [http://www.appliedlanguage.com/about\\_us/news/linguist\\_lounge.aspx](http://www.appliedlanguage.com/about_us/news/linguist_lounge.aspx)

register that Applied Language Solutions will use to select linguists for MoJ assignments under the FWA.

We have created a dedicated website [www.linguistlounge.com](http://www.linguistlounge.com) where you can find out more about the Ministry of Justice contract and start the registration process. . .”

6. The website referred to (<http://www.linguistlounge.com>) has a Frequently Asked Question FAQ which says as follows (<http://www.linguistlounge.com/faq>):

“What has been taken into account by Applied Language Solutions in designing this service solution?”

This work sits very firmly within a much broader context described by the need for quality. It sits within:

- The well-established commitment on the part of the United Kingdom to mutual trust and mutual recognition as the primary form of judicial cooperation within the European Union.
- DIRECTIVE 2010/64/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 October 2010 on the Right to Interpretation and Translation in Criminal Proceedings.
- The position of the directive within the Stockholm Program
- The right of the individual to have criminal proceedings carried out expeditiously, with appropriate representation, and to understand the language used - in short to ensure the conditions of a fair trial are met through appropriate provision of language services - axiomatic in a democratic society. Nearly 20 years of work has gone into the directive that is now in place and which the United Kingdom must comply with by October of 2013. It comes out of the work done by the GROTIUS and AGIS projects, the Green Paper on Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the European Union”

7. The FAQ says as follows:

“The MoJ contract stipulates that Applied Language Solutions will maintain a register of approved legal linguists who will be available to the collaborative partners in addition to being available to solicitors and barristers. The precise details of how this register is to be maintained are rightly an area of interest to concerned parties.

The register is not owned by Applied Language Solutions. For the life of the contract it will be fostered, in both senses of the word, by the company. At the end of the contract period it will be supplied to another organisation should we not continue to hold the contract.

This register will not, however, be visible to the public. Your details as an approved supplier will be securely stored. The CJS service provider will be able to ask for an appropriate linguist but the individual will be selected to attend based on their abilities. An individual can be requested by name or identifying number but will only be provided if there is a specific and justifiable need for continuity. Otherwise, the work will be distributed equitably in relation to the nature of the job.”

8. My facts are derived from a version of the report prepared by Involvis Ltd I have seen dated 31<sup>st</sup> August 2011.

9. I am asked in short to review the report and consider any legal issues that in my opinion are of significance and may result in potential unlawfulness or illegalities. I should also point out that this opinion is ‘broad brush’ at this stage rather than being detailed as to individual clauses of the proposed FWA. I have not seen the actual FWA or the proposed contract.

Relevant Details of the FWA

10. I understand that it is proposed that a single supplier is contracted to provide on a demand basis interpreters to the Courts and Tribunals Service and National Offender Management Service when required. The police, it would appear, will follow suit.

The EU Directive

11. Directive 2010/64/EU (which I shall call the 'EU Directive') is part of a series of Directives being implemented by the European Union with a view to standardising as much as possible standards in criminal trials. The thinking is that for Member States to recognise criminal convictions in other EU states, other Member States must have confidence that the convictions were reached with all due procedural safeguards (Articles 3 to 10). It also explicitly recognises that existing protections under the ECHR are not enough to ensure adequate compliance across all Member States.

12. Dated 20<sup>th</sup> October 2010, it was published in the Official Journal on the 26<sup>th</sup> October 2010.

13. Article 6, for instance, says as follows:

“Although all the Member States are party to the ECHR, experience has shown that that alone does not always provide a sufficient degree of trust in the criminal justice systems of other Member States.”

14. It is part of a 'roadmap' of measures first set down in 2009 to introduce broader changes and standardisations across the EU in many aspects of criminal law. I also get the impression that underpinning these changes are concerns about the European Arrest Warrant system (see for instance preamble paragraph 15) functioning across Europe adequately.

15. This EU Directive was issued on the 20<sup>th</sup> October 2010 but has not, as far as I can see, been implemented into British domestic law. I also note this Directive

was introduced after the FWA was announced by Crispin Blunt MP on 15<sup>th</sup> September 2010.

16. Preamble paragraph 14 says as follows:

“The right to interpretation and translation for those who do not speak or understand the language of the proceedings is enshrined in Article 6 of the ECHR, as interpreted in the case-law of the European Court of Human Rights. This Directive facilitates the application of that right in practice. To that end, the aim of this Directive is to ensure the right of suspected or accused persons to interpretation and translation in criminal proceedings with a view to ensuring their right to a fair trial.”

17. The Right is summarised in preamble paragraph 17, as follows:

“This Directive should ensure that there is free and adequate linguistic assistance, allowing suspected or accused persons who do not speak or understand the language of the criminal proceedings fully to exercise their right of defence and safeguarding the fairness of the proceedings.”

18. It is defined as follows in Article 2(8):

“8. Interpretation provided under this Article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence.”

19. The right encompasses both giving instructions to legal advisors as well as trial and the ability to exercise any onward appeal (preamble paragraph 17, 19 and 20, Articles 1 to 4). Preamble paragraph 21 provides for the requirement for a mechanism to be in place that can check the correct language is spoken,

including consultation with the Defendant and that documents be translated for Defendants (Preamble paragraph 30).

20. Preamble paragraph 24 provides for a competent authority to be able to deal with problems with interpreting if put on notice of such issues and Article 26 to replace such an interpreter.

21. Other safeguards are mentioned, in particular when video conference technologies are used or the Defendant is particularly vulnerable.

22. Interestingly, the Directive also says as follows (preamble paragraph 31):

“Member States should facilitate access to national databases of legal translators and interpreters where such databases exist. In that context, particular attention should be paid to the aim of providing access to existing databases through the e-Justice portal, as planned in the multiannual European e-Justice action plan 2009-2013 of 27 November 2008 ( 1 ).”

23. Article 5 says as follows:

“Article 5

Quality of the interpretation and translation

1. Member States shall take concrete measures to ensure that the interpretation and translation provided meets the quality required under Article 2(8) and Article 3(9).

2. In order to promote the adequacy of interpretation and translation and efficient access thereto, Member States shall endeavour to establish a register or registers of independent translators and interpreters who are appropriately qualified. Once established, such

register or registers shall, where appropriate, be made available to legal counsel and relevant authorities.

3. Member States shall ensure that interpreters and translators be required to observe confidentiality regarding interpretation and translation provided under this Directive.”

24. Article 8 says as follows:

“Article 8

Non-regression

Nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Charter of Fundamental Rights of the European Union, other relevant provisions of international law or the law of any Member State which provides a higher level of protection”

25. What is perhaps noteworthy here is the preference for registers of qualified interpreters to be kept by the state and made available to legal Counsel. I do not know whether this features in English law but it would appear that such a list is kept by the National Register of Public Service Interpreters already.

26. In my opinion, virtually all of the requirements as set out in this Directive are implemented already in existing domestic law. Judges are generally well versed in the issues that arise in proceedings conducted through interpreters and have wide powers and discretion to intervene and ensure a fair trial.

27. However, the issue of concern in regards to the implementation of the FWA is the question of ‘adequacy’ of interpreters. While each Member State is given a margin of appreciation for how they define adequacy, and I note that the Directive does not define it, it would seem to be obvious to take ‘adequate’ to mean ‘adequate to do the job’.

28. This is interesting for two reasons. First, it does not require a standard to be 'excellent', for instance, but adequate to ensure the aims and objectives of the Directive are complied with. That must mean that the potential Defendants are able to engage with and understand the whole of the procedure and the trial to allow them to have a fair hearing.
29. This is a hearing where they are fully able to give their instructions to their lawyers and be effectively cross examined. It also means, perhaps equally relevantly, that the quality of interpreting is good enough to allow the nuanced language of cross examination to be effectively communicated to allow for effective and rigorous cross examination of all witnesses who do not have English as their first language.
30. I shall turn briefly to the position in domestic law.
31. I note that there is no specific 'right' to the assistance of an interpreter under English law. However, it has often been said that the accused should be "capable of understanding the proceedings" which implies a right to an interpreter if a defendant is unrepresented<sup>2</sup>. A trial is a nullity if the accused cannot comprehend the charges and instruct his lawyers<sup>3</sup>.
32. The Police and Criminal Evidence Act 1984, Code C also provides for "suitably qualified" interpreters to be provided to those who do not understand English.
33. Under Article 6(3)(e) of the European Convention on Human Rights, a person charged with a criminal offence has the right to have the free assistance of an interpreter if he cannot understand or speak the language used in court. The guarantee is intended to enable the accused to understand the language of

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<sup>2</sup> *R v Lee Kun* [1916] KB 337; *Kunnath v The State* [1993] 1 WLR 1315

<sup>3</sup> *R v Iqbal Begum* (1991) 93 Cr App R 96

the court, and does not entitle him to insist on the services of an interpreter to enable him to conduct his defence in his language of choice<sup>4</sup>.

34. Whether the accused is capable of understanding the language is a determination of fact for the state to make, and the onus is on the accused to show the inaccuracy of its assessment<sup>5</sup>. The substance of 'assistance' required by Article 6(3)(e) extends beyond provision of an interpreter at the hearing to include the translations of "all statements which it is necessary for him to understand in order to have a fair trial"<sup>6</sup>.
35. Thus it seems to me that a critical issue in the whole question is the meaning of the word 'adequate'. The UK Government must, under the ECHR (and therefore the Human Rights Act 1998 in English law) and to comply with its obligations under the EU Directive ensure that interpreting and translation services are adequate to ensure a fair trial.
36. I understand that there may be very real concerns as to whether or not under the proposed FWA the standards in existence previously would be maintained. I say this because it is my understanding that interpreters currently engaged by the Ministry of Justice who wish to interpret at court or tribunals had to have a DPSI (Law option) qualification in order to be registered for the NRPSI. This is no longer the case.
37. One particular concern is that 'Linguist Lounge' allows for interpreters who qualify under Tier 1 to have a Chartered Institute of Linguists Certificate in Community Interpreting, CCI qualification only.
38. It seems to me that it must be right to say that if under the previous National Agreement and good practice, it was felt that interpreting had to be of a suffi-

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<sup>4</sup> *F v France* (1983) 35 DR 203; *Bideault v France* (1986) 48 DR 232, EComm HR

<sup>5</sup> *X v Germany* (1967) 24 CD 50; *A v United Kingdom* (1978) 2 Digest 916

<sup>6</sup> *Kamaskinski v Austria* (1989) 13 EHRR 36 para 74

cient standard, this would no doubt be considered adequate. In my view, any derogation of that standard may very well result in a suggestion that the potential standard of interpreting is no longer adequate. Such an argument could render the terms of the FWA non-compliant with the terms of the EU Directive, as I have set out above.

39. A further concern arises out of the proposed fees that will be paid. Whilst this is of course in the main a matter for the Ministry of Justice and its subcontracted bodies and the interpreters, if the effect of those heavily reduced rates would be that the ability to obtain competent interpreters of the relevant standard is significantly impaired, then this may also leave the FWA challengeable as in essence not being able to implement the concepts enshrined in the EU Directive.
40. Speaking as a court user with considerable experience in working with interpreters in both criminal, civil and immigration cases, it is not over the top to say that where a Defendant or appellant does not speak English as a first language or not sufficiently competently to speak it in court, the interpreter is the most important person in the room, without exception.
41. There is an old adage in law that justice must not only be done, it must also be seen to be done. In cases involving interpreters, if it is clear that a defendant or appellant is struggling to understand the proceedings or to make their own points clear, justice is not being seen to be done.
42. It also follows that hearings may very well often be aborted or adjourned unnecessarily. I have already considerable experience of this problem even under the old regime and if it is right to say that there is a real risk that standard will drop, then it must also follow that it is much more likely that postponements, cracked trials and adjournments will also become more plentiful. This is of course enormously expensive and frustrating for all court users.

43. It is therefore some concern to me to see that under the FWA, the likelihood may be that the standard of interpreting will worsen. Whether the existing FWA puts the United Kingdom in breach of its obligations under the EU Directive is hard to say at this stage. However, evidence on its implementation would not be difficult to obtain. Freedom of Information requests could be made of relevant government bodies and the Ministry of Justice on statistics for cracked trials, adjourned and postponed hearings and the like.
44. If there can be a clear trend upward of these adjournments, then an argument might be advanced with some force that the EU Directive is not being applied properly because the assumption is that the existing system being adequate has been replaced with a new system that does not provide the same level of adequacy.
45. Even if such evidence would not render the actual FWA unlawful, clearly the implications for fair trials and the costs accrued because of unnecessary postponements and adjournments would be considerable. Further of course, there would be rights of appeal onward on the basis of a lack of a fair trial and unsafe convictions or unfair hearings on the basis of inadequate interpretation. This may potentially result perhaps in civil claims being brought if the implications of poor interpreting can be shown to result in miscarriages of justice or unnecessary lengths of detention.
46. It is therefore my opinion that any system that seeks to replace the existing system with one with less than adequate safeguards to ensure the current level of adequacy may be liable for challenges now, but certainly if not now in the future. This would appear to be regrettable.

Tendering

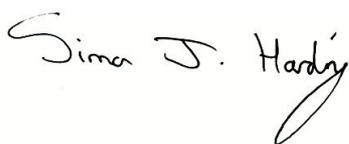
47. I understand that the Ministry of Justice have said that they have conducted a 'competitive dialogue procurement process'<sup>7</sup>.
48. It is also suggested that the degree of consultation with users of the court systems and of interpreters has been wholly inadequate and that the actual tendering process has not been done with all of the thoroughness and rigour that the law demands.
49. There have been in place for many years considerable burdens on government bodies that seek to outsource government functions to private sector organisations. This of course is done to ensure a fully open and transparent tendering process so that the public can be satisfied that their money is being well spent. It also avoids any accusations of cronyism or favouritism.
50. I have not looked at the actual facts of the tendering process. However, the observation I make at this time is that if those who instruct me are correct to have legitimate queries about the manner of consultation and the adequacy of the tendering process, then that might result in legal challenges striking down the FWA.
51. This of course must not be considered in isolation but in conjunction with the above point. If it is clear that the consultation has not been adequate, the tendering process has not been fully complied with and the repercussions of the new proposed system make it likely that the United Kingdom government would be in breach of its obligations under the EU Directive, then collectively these points may very well amount to a significant legal challenge to the legality of this FWA.
52. It is therefore my opinion that there are significant causes for concern regarding the proposed FWA and its effects on court users, whether they are judges,

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<sup>7</sup> Page 6 of the Report.

advocates, defendants, witnesses or appellants. If the concerns on the level of consultation with the professions are correct, then it would be unfortunate for the Ministry of Justice to launch a new process without being fully informed of the facts and the implications on court users of all sorts.

53. Whilst I can readily understand in the current economic times the need to save taxpayers money, if the concerns as raised above are genuine regarding the adequacy of interpreters, then in my view, it is much more likely that any short-term savings made by the cutting of interpreters' fees under the new scheme would be dramatically outweighed by the far greater costs of wasted court time, adjourned or postponed hearings, collapsed trials and onward appeals. This would not only have a significant financial cost above and beyond the proposed savings but also do potentially untold damage to the perception of British justice in the eyes of not only the broader public but also the ethnically diverse communities who use and depend upon adequate interpreting services for them to have adequate access to justice. The government introduced the Access to Justice Act in 1990, enshrining the requirement of access to justice for all as the cornerstone of British justice. In my opinion, any proposed changes which result in less than adequate interpreting services deny justice at a fundamental level to those in society who perhaps need it more than anyone else.

A handwritten signature in black ink that reads "Simon J. Harding". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

Tuesday, 20 September 2011  
Simon Harding  
36 Bedford Row  
London WC1R 4JH

## Appendix F: EU Directive

### EU Directive 2010/64/EU – implementing Articles 5 and 6 of the European Convention on Human Rights (ECHR) and Fundamental Freedoms.

Source:

<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:280:0001:0007:en:PDF>

viewed 29 August 211)

Having regard to the Treaty on the Functioning of the European Union, and in particular point (b) of the second subparagraph of Article 82(2) thereof...

(1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice. According to the Presidency Conclusions of the European Council in Tampere of 15 and 16 October 1999, and in particular point 33 thereof, the principle of mutual recognition of judgments and other decisions of judicial authorities should become the cornerstone of judicial cooperation in civil and criminal matters within the Union because enhanced mutual recognition and the necessary approximation of legislation would facilitate cooperation between competent authorities and the judicial protection of individual rights...

(2) On 29 November 2000, the Council, in accordance with the Tampere Conclusions, adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters (3). *The introduction to the programme states that mutual recognition is 'designed to strengthen cooperation between Member States but also to enhance the protection of individual rights'.*

(3) The implementation of the principle of mutual recognition of decisions in criminal matters presupposes that Member States have trust in each other's criminal justice systems. *The extent of mutual recognition is very much dependent on a number of parameters, which include mechanisms for safeguarding the rights of suspected or accused persons and common minimum standards necessary to facilitate the application of the principle of mutual recognition.*

4) *Mutual recognition of decisions in criminal matters can operate effectively only in a spirit of trust in which not only judicial authorities but all actors in the criminal process consider decisions of the judicial authorities of other Member States as equivalent to their own, implying not only trust in the adequacy of other Member States' rules, but also trust that those rules are correctly applied.*

5) *Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter the ECHR) and Article 47 of the Charter of Fundamental Rights of the European Union (hereinafter the Charter) enshrine the right to a fair trial. Article 48(2) of the Charter guarantees respect for the right of defence. This Directive respects those rights and should be implemented accordingly.*

(6) Although all the Member States are party to the ECHR, experience has shown that that alone does not always provide a sufficient degree of trust in the criminal justice systems of other Member States.

(7) Strengthening mutual trust requires a more consistent implementation of the rights and guarantees set out in Article 6 of the ECHR. *It also requires, by means of this Directive and other measures, further development within the Union of the minimum standards set out in the ECHR and the Charter.*

(8) Article 82(2) of the Treaty on the Functioning of the European Union provides for the establishment of minimum rules applicable in the Member States so as to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension. *Point (b) of the second subparagraph of Article 82(2) refers to 'the rights of individuals in criminal procedure' as one of the areas in which minimum rules may be established.*

(9) *Common minimum rules should lead to increased confidence in the criminal justice systems of all Member States, which, in turn, should lead to more efficient judicial cooperation in a climate of mutual trust. Such common minimum rules should be established in the fields of interpretation and translation in criminal proceedings.*

10) On 30 November 2009, the Council adopted a resolution on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings (1). *Taking a step-by-step approach, the Roadmap called for the adoption of measures regarding the right to translation and interpretation (measure A), the right to information on rights and information about the charges (measure B), the right to legal advice and legal aid (measure C), the right to communication with relatives, employers and consular authorities (measure D), and special safeguards for suspected or accused persons who are vulnerable (measure E).*

(12) *This Directive relates to measure A of the Roadmap. It lays down common minimum rules to be applied in the fields of interpretation and translation in criminal proceedings with a view to enhancing mutual trust among Member States.*

(13) *This Directive draws on the Commission proposal for a Council Framework Decision on the right to interpretation and to translation in criminal proceedings of 8 July 2009, and on the Commission proposal for a Directive of the European Parliament and of the Council on the right to interpretation and translation in criminal proceedings of 9 March 2010.*

**(14) *The right to interpretation and translation for those who do not speak or understand the language of the proceedings is enshrined in Article 6 of the ECHR, as interpreted in the case-law of the European Court of Human Rights. This Directive facilitates the application of that right in practice. To that end, the aim of this Directive is to ensure the right of suspected or***

**accused persons to interpretation and translation in criminal proceedings with a view to ensuring their right to a fair trial.**

(15) *The rights provided for in this Directive should also apply, as necessary accompanying measures, to the execution of a European arrest warrant (2) within the limits provided for by this Directive. Executing Members States should provide, and bear the costs of, interpretation and translation for the benefit of the requested persons who do not speak or understand the language of the proceedings.*

(16) *In some Member States an authority other than a court having jurisdiction in criminal matters has competence for imposing sanctions in relation to relatively minor offences. That may be the case, for example, in relation to traffic offences which are committed on a large scale and which might be established following a traffic control. In such situations, it would be unreasonable to require that the competent authority ensure all the rights under this Directive. Where the law of a Member State provides for the imposition of a sanction regarding minor offences by such an authority and there is a right of appeal to a court having jurisdiction in criminal matters, this Directive should therefore apply only to the proceedings before that court following such an appeal.*

**(17) This Directive should ensure that there is free and adequate linguistic assistance, allowing suspected or accused persons who do not speak or understand the language of the criminal proceedings fully to exercise their right of defence and safeguarding the fairness of the proceedings.**

**(18) Interpretation for the benefit of the suspected or accused persons should be provided without delay.** However, where a certain period of time elapses before interpretation is provided, that should not constitute an infringement of the requirement that interpretation be provided without delay, as long as that period of time is reasonable in the circumstances.

**(19) Communication between suspected or accused persons and their legal counsel should be interpreted in accordance with this Directive. Suspected or accused persons should be able, inter alia, to explain their version of the events to their legal counsel, point out any statements with which they disagree and make their legal counsel aware of any facts that should be put forward in their defence.**

(20) *For the purposes of the preparation of the defence, communication between suspected or accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings, or with the lodging of an appeal or other procedural applications, such as an application for bail, should be interpreted where necessary in order to safeguard the fairness of the proceedings.*

**(21) Member States should ensure that there is a procedure or mechanism in place to ascertain whether suspected or accused persons speak and understand the language of the criminal proceedings and whether they need the assistance of an interpreter. Such procedure or mechanism**

***implies that competent authorities verify in any appropriate manner, including by consulting the suspected or accused persons concerned, whether they speak and understand the language of the criminal proceedings and whether they need the assistance of an interpreter.***

***(22) Interpretation and translation under this Directive should be provided in the native language of the suspected or accused persons or in any other language that they speak or understand in order to allow them fully to exercise their right of defence, and in order to safeguard the fairness of the proceedings.***

***(26) When the quality of the interpretation is considered insufficient to ensure the right to a fair trial, the competent authorities should be able to replace the appointed interpreter.***

***(32) This Directive should set minimum rules. Member States should be able to extend the rights set out in this Directive in order to provide a higher level of protection also in situations not explicitly dealt with in this Directive. The level of protection should never fall below the standards provided by the ECHR or the Charter as interpreted in the case-law of the European Court of Human Rights or the Court of Justice of the European Union.***

***(35) In accordance with Article 3 of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to take part in the adoption and application of this Directive.***

## **Article 1**

### **Subject matter and scope**

1. This Directive lays down rules concerning the right to interpretation and translation in criminal proceedings and proceedings for the execution of a European arrest warrant.

***2. The right referred to in paragraph 1 shall apply to persons from the time that they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether they have committed the offence, including, where applicable, sentencing and the resolution of any appeal.***

3. Where the law of a Member State provides for the imposition of a sanction regarding minor offences by an authority other than a court having jurisdiction in criminal matters, and the imposition of such a sanction may be appealed to such

a court, this Directive shall apply only to the proceedings before that court following such an appeal.

## **Article 2**

### **Right to interpretation**

***1. Member States shall ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned are provided, without delay, with interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings.***

***2. Member States shall ensure that, where necessary for the purpose of safeguarding the fairness of the proceedings, interpretation is available for communication between suspected or accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications.***

***3. The right to interpretation under paragraphs 1 and 2 includes appropriate assistance for persons with hearing or speech impediments.***

***4. Member States shall ensure that a procedure or mechanism is in place to ascertain whether suspected or accused persons speak and understand the language of the criminal proceedings and whether they need the assistance of an interpreter.***

***5. Member States shall ensure that, in accordance with procedures in national law, suspected or accused persons have the right to challenge a decision finding that there is no need for interpretation and, when interpretation has been provided, the possibility to complain that the quality of the interpretation is not sufficient to safeguard the fairness of the proceedings.***

***7. In proceedings for the execution of a European arrest warrant, the executing Member State shall ensure that its competent authorities provide persons subject to such proceedings who do not speak or understand the language of the proceedings with interpretation in accordance with this Article.***

***8. Interpretation provided under this Article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence.***

## **Article 4**

### **Costs of interpretation and translation**

Member States shall meet the costs of interpretation and translation resulting from the application of Articles 2 and 3, irrespective of the outcome of the proceedings.

## **Article 5**

### **Quality of the interpretation and translation**

***1. Member States shall take concrete measures to ensure that the interpretation and translation provided meets the quality required under Article 2(8) and Article 3(9).***

***2. In order to promote the adequacy of interpretation and translation and efficient access thereto, Member States shall endeavour to establish a register or registers of independent translators and interpreters who are appropriately qualified. Once established, such register or registers shall, where appropriate, be made available to legal counsel and relevant authorities.***

***3. Member States shall ensure that interpreters and translators be required to observe confidentiality regarding interpretation and translation provided under this Directive.***

## **Article 10**

### **Report**

***The Commission shall, by 27 October 2014, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by legislative proposals.***

## **Article 11**

### **Entry into force**

This Directive shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

## **Article 12**

### **Addressees**

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 20 October 2010.

Our understanding is that that there are risks of non-compliance on the part of the MoJ's proposals with several Articles of the above, in particular Article 5, which states:

***"...In order to promote the adequacy of interpretation and translation and efficient access thereto, Member States shall endeavour to establish a register or registers of independent translators and interpreters who are appropriately qualified."***

The impact of very many interpreters ceasing to work in this capacity and leaving the profession, as evidenced by the questionnaire response, will act against the intention to establish a meaningful register which will in any way provide sufficientl suitably qualified interpreters to meet the requirements of courts and of the police in England and Wales. This will in itself compromise the effectiveness of Article 5 in these territories.

**Other Articles which will be compromised are:**

**Article 1:** (The right to be made) "aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence until the conclusion of the proceedings". The absence in many proceedings of qualified Interpreters through withdrawal from the system will make it very hard to comply with this requirement in a timely manner.

**Article 2:** "*Member States shall ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned are provided, without delay, with interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings*". Difficulties sourcing appropriately qualified Interpreters within easy reach of the location required will inevitably mean that in many cases, interpreters will not be provided "without delay" as required by the Directive.

*"Interpretation provided under this Article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence"*. How will this be delivered if there is a haemorrhaging of qualified Interpreters from the system, (as implied from the results of the questionnaire), entailing that the supplier will in all likelihood have to resort to less qualified personnel to fill the gap?

## Appendix G: Pace Codes

Source: <http://www.homeoffice.gov.uk/police/powers/pace-codes/> viewed 29 August 2011

**Code C** states that: 1.1 all persons in custody must be dealt with expeditiously, and released as soon as the need for detention no longer applies.

Part 1.1A states that a custody officer must perform the functions in this Code as soon as practicable. A custody officer will not be in breach of this Code if delay is justifiable and reasonable steps are taken to prevent unnecessary delay. The custody record shall show when a delay has occurred and the reason.

To comply with this code the police need to be able to secure the services of a competent interpreter.

It is likely that records under 1.1A will provide ample proof of the impact of such a shortage, to the detriment of the reputation and public perception of the efficiency of the police.

### 3 Initial action

#### (a) Detained persons – normal procedure

3.1 When a person is brought to a police station under arrest or arrested at the station having gone there voluntarily, *the custody officer must make sure the person is told clearly about the following continuing rights which may be exercised at any stage during the period in custody:*

- (i) The right to have someone informed of their arrest as in section 5;
- (ii) The right to consult privately with a solicitor and that free independent legal advice is available;
- (iii) The right to consult these Codes of Practice.

How will it be possible to ensure that the detainee is told clearly about his or her rights in the absence of a competent interpreter, the supply of whom will be severely compromised by the likely shortage of qualified personnel following the implementation of the FWA rates?

The detainee shall be asked to sign the custody record to acknowledge receipt of these notices. Any refusal must be recorded on the custody record.

This implies that a competent interpreter who can explain the need to sign these documents in a language which the detainee can understand must be present, but the FWA terms make this unlikely in very many instances, giving rise to a serious breach of this part of the Code.

3.3 A citizen of an independent Commonwealth country *or a national of a foreign country*, including the Republic of Ireland, must be informed as soon as practicable about their rights of communication with their High Commission, Embassy or Consulate.

Again, the efficiency of providing this service – or providing it at all – will be compromised by the difficulties in sourcing qualified interpreters that the FWA implementation will bring.

## **10 Cautions**

### **(a) When a caution must be given**

*10.1 A person whom there are grounds to suspect of an offence, see Note 10A, must be cautioned before any questions about an offence, or further questions if the answers provide the grounds for suspicion, are put to them if either the suspect's answers or silence, (i.e. failure or refusal to answer or answer satisfactorily) may be given in evidence to a court in a prosecution.*

The caution is of the form: "You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in Court. Anything you do say may be given in evidence."

The police will be unable to comply with this requirement in the absence of a competent interpreter; and, if none can be made available in a timely manner, they will be unable in most cases to detain that suspect, leading to the risk of serious public risk from criminals who do not speak English well on their premature release, as well as challenges from suspects that they have not been properly cautioned before being charged.

## **11 Interviews – general**

### **(a) Action**

11.1A An interview is the questioning of a person regarding their involvement or suspected involvement in a criminal offence or offences which, under paragraph 10.1, must be carried out under caution. Whenever a person is interviewed they must be informed of the nature of the offence, or further offence.

None of Part 11 can be complied with in the absence of a competent Interpreter, which will be made less likely following the implementation of the FWA at the rates proposed, for reasons already given.

Finally, it will not be possible to comply with Section 13 of the Code – Interpreters – in the absence of qualified and competent personnel. The text of this part is as follows:

## **13 Interpreters**

### **(a) General**

13.1 Chief Officers are responsible for making sure appropriate arrangements are in place for provision of suitably qualified interpreters for people who:

- are deaf;
- *do not understand English.*

*Whenever possible, interpreters should be drawn from the National Register of Public*

*Service Interpreters (NRPSI) or the Council for the Advancement of Communication with Deaf People (CACDP) Directory of British Sign Language/English Interpreters.*

(b) Foreign languages

13.2 *Unless paragraphs 11.1, 11.18 to 11.20 apply, a person must not be interviewed in the absence of a person capable of interpreting if:*

- (a) they have difficulty understanding English;*
- (b) the interviewer cannot speak the person's own language;*
- (c) the person wants an interpreter present.*

13.3 The interviewer shall make sure the interpreter makes a note of the interview at the time in the person's language for use in the event of the interpreter being called to give evidence, and certifies its accuracy. The interviewer should allow sufficient time for the interpreter to note each question and answer after each is put, given and interpreted.

*The person should be allowed to read the record or have it read to them and sign it as correct or indicate the respects in which they consider it inaccurate. If the interview is audibly recorded or visually recorded, the arrangements in Code E or F apply.*

13.4 In the case of a person making a statement to a police officer or other police staff other than in English:

- (a) the interpreter shall record the statement in the language it is made;
- (b) the person shall be invited to sign it;
- (c) an official English translation shall be made in due course.

#### **(d) Additional rules for detained persons**

13.8 All reasonable attempts should be made to make the detainee understand that interpreters will be provided at public expense.

13.9 If paragraph 6.1 applies and the detainee cannot communicate with the solicitor because of language, hearing or speech difficulties, an interpreter must be called. The interpreter may not be a police officer or any other police staff when interpretation is needed for the purposes of obtaining legal advice. In all

IN CONFIDENCE

other cases a police officer or other police staff may only interpret if the detainee and the appropriate adult, if applicable, give their agreement in writing or if the interview is audibly recorded or visually recorded as in Code E or F.

## Appendix H: Survey Results

### 1. Economic Impact Model



ECONOMIC\_IMPACT  
\_MODEL\_VALUES.xls

### 2. Survey Results



SURVEY\_RESULTS\_V  
ALUES.xls

### 3. Survey Proforma



Survey\_22579049.p  
df

## Appendix I: Legal cases

### 1. West Yorkshire Magistrates' Courts, first half 2003

In the first half of 2003, Colin Challen, MP for Morley, Rothwell and Middleton lodged a complaint against West Yorkshire Magistrates' Courts because the agency which had a contract with West Yorkshire Magistrates' Court, Universal Asian Languages, was supplying unqualified and incompetent interpreters across the region. This included a Slovak speaking interpreter from Liverpool, Helena Parry, who was sent by UAL to interpret for Czech speaking defendants.

Ms Parry attempted the DPSI twice at South Tyneside College in South Shields and failed both times. Following Mr Challen's complaints to Lord Falconer, UAL's contract was terminated and West Yorkshire Magistrates Courts now use NRPSI as the first port of call. UAL got the contract on the understanding they would use NRPSI interpreters only. An NRPSI registrant runs it.

### 2. South Yorkshire Magistrates' Courts, December 2003

In December 2003, Britannia Language Link, run by NRPSI registrant Toheed Ahmed, secured a contract with South Yorkshire Magistrates' Courts on condition that Britannia would supply NRPSI registered interpreters only. Investigations into the contract by Colin Challen, MP, revealed that Britannia used unqualified interpreters almost exclusively, e.g. in Czech and Slovak, 100% of interpreters supplied by Britannia were unqualified and not vetted. Following Colin Challen's complaint to the DCA, Britannia lost the contract and South Yorks Magistrates' started using NRPSI in June 2005.

### 3. Bradford Crown Court, May 2005

On May 19 2005, in the case of Reg v Milenky, Gujda and Lazok, Reliance Translations from Manchester sent the husband of an NRPSI interpreter Zuzana Slobodova-Nepil from London to Bradford Crown Court. The NRPSI registrant was contacted by Reliance, refused to go and Mr Ali asked her to send someone else instead. Colin Challen, MP for Morley, Rothwell and Middleton in West Yorks made a complaint to the Secretary of State for Constitutional Affairs, Lord Falconer, about a breach of government guidelines and waste of taxpayer money. Reliance Translations is run by an NRPSI registrant from a mobile phone who often asks qualified interpreters to send a friend instead when they refuse to work for the agency.

### 4. Burnley Crown Court, Lancashire, August 2005

In August 2005, the case of Reg v W Khan at Burnley Crown Court, Lancashire, had to be adjourned because Defence solicitors used an unqualified interpreter from an agency who prepared a statement, which was impossible to understand. This incurred huge cost to the taxpayer as well as causing enormous distress to the victim, the charge being a sexual assault on a minor.

### 5. From Boston Police Station Log Book, October 2005

3/10. CINTRA supplied an unqualified Russian interpreter to Boston Police Station who refused to stay after 9 o'clock because he apparently had a train to catch. Proceedings could not be concluded as a result of this.

**6. 4 /10 CINTRA failed to supply a Polish interpreter for Boston Police Station.**

7. 6/10 CINTRA failed to provide a Russian interpreter for an ID procedure at Grantham Police Station. The defendant and the solicitors were present, however, no interpreter turned up.

8. 6/10 CINTRA supplied an unqualified Polish interpreter to the police station at Spalding. This interpreter was so incompetent that the interview had to be suspended.

9. 10/10. Two Polish defendants attended Spalding Police Station at 14:00 hours to answer bail. CINTRA failed to supply an interpreter yet again .

10. 11/10. Lincoln Police Station needed two to three Polish interpreters to carry out an interview. CINTRA was only able to supply one.

11. 14/10. CINTRA supplied an incompetent Russian interpreter to Spalding Police Station who arrived at approximately 22:30. The interpreter was unable to conduct the interview, which had to be suspended and an NRPSI interpreter had to step in.

12. 14/10. Grantham Police Station contacted NRPSI directly because CINTRA was unable to supply an interpreter in Russian

13. 16/10 .CINTRA supplied an unqualified Portuguese interpreter to Boston Police Station who was unable to carry out the interview. Once again, an NRPSI registered interpreter had to intervene.

**14. East Midlands, November 2005**

According evidence by duty solicitor John Storer, CINTRA interpreters were unable to interpret the caution and the content of the interview; others broke down, possibly due to inexperience and lack of training. Several interviews had to be suspended in Lincolnshire, held Storer, because of poor interpreting. *BBC Politics Show, 27-11-05.*

**15. Norwich Crown Court, April 3, 2006**

The case involved 3 Latvian nationals. For two of them Russian was their first language, the third used Latvian as a first language and understood Russian. The issue of poor interpreting had figured so prominently in the preliminaries that Judge Jacobs expressed alarm at the standard of interpreters used by Norfolk Police after being told an interview was held in Russian by a woman who had studied the language only at school. The judge requested the NRPSI interpreters to re-transcribe the tapes of the police interview. The latter revealed that the caution was distorted to the extent that it ended up as: "You don't have the right to say anything at all and anything you say will be used against you". The

prosecution found that it was unable to go as far as they might have gone because of the poor interpreting.

The judge wanted to know why qualified interpreters were not used by Norfolk Constabulary. The reason was that it has an agreement with CINTRA [known in Norfolk as INTRAN]. The Latvian native speaker was interviewed in Russian because CINTRA did not supply a Latvian the interpreter. The issue was reported by the Eastern and Daily News, 04-04-06 and by the The Sunday Telegraph of 27-08-06.

**16. Newcastle Crown Court, June 2006**

At Newcastle Crown Court, the judge questioned the competence of the agency interpreter engaged by the court. The NRPSI interpreter was asked by the Judge to interpret for two defendants due to the particular circumstances and the lack of professional interpreters available.

**17. West Yorkshire Probation Service, June 2006**

In June 2006, West Yorkshire Probation Service instituted an investigation into the use unqualified interpreters by LITS (Leeds Interpreting and Translation Service) to whom they had outsourced the provision of interpreters, following a formal complaint about the agency sending a Czech lorry driver with no interpreting qualifications and a poor command of English to Leeds Magistrates Court on June 12 2006 to interpret for a Slovak speaking defendant. As a result of these investigations, which revealed that LITS uses unqualified interpreters in most cases, the contract was terminated and West Yorkshire Probation now uses NRPSI directly.

**18. St Mary's Wharf Police Station, Derby, July 2006**

CID at St Mary's Wharf Police station in Derby asked CINTRA to provide Slovak interpreters to assist in the investigation of the murder of Monika Horvathova, which occurred on July 6 2006 in Derby. These interpreters were needed to assist during an interview with the suspect, as well as to take statements from several Slovak speaking witnesses. CINTRA was unable to provide the requested number of interpreters and also sent an interpreter who was so poorly qualified that he could not assist with the investigation of such a serious case. The CID then had to obtain permission from their Superintendent to contact interpreters from the National Register directly. After that, they had to engage in lengthy negotiations with the finance department because all interpreters are now paid through CINTRA and the NR interpreters only agreed to do the job if they were paid directly. This caused the investigating officers a lot of problems and held up the murder investigation. It later transpired that one of the interpreters supplied by CINTRA, Helena Johnson, is registered on the National Register for Czech but does not speak Slovak. This could potentially cause problems for the CPS and jeopardise the case because the defence solicitors could argue that evidence recorded by Ms Johnson is inadmissible because she did not take the statements in the language spoken by the witnesses.

**19. Bethel Street Police Station, Norfolk, August 14, 2006**

An interpreter was called on August 14 2006 to the Bethel Street Police Station, Norfolk, to assist with an interview involving a German speaker who was given

bail on the July 8 2006. This person had not been interviewed by a solicitor or the police in full on the day of his arrest, because, apparently no interpreter could be found by CINTRA who has an exclusive contract with Norfolk Police. Other NRPSI were free to do the job but were not called. The person was on bail for a long after his arrest without being able to explain himself, particularly, as it was not have been established whether the person was the aggressor or the victim.

On another occasion the same interpreters was told by Norfolk Police that if CINTRA could not find an interpreter, they might have to drop the case, despite this interpreters being able and willing.

#### **20. Mold Crown Court, Wales, August 29, 2006**

An agency called European and Asian Translations run by an NRPSI registrant called Gunther Dancu, contacted a NRPSI interpreter, to attend Mold Crown Court in Wales to interpret for a Czech defendant. The NRPSI interpreter phoned Mold Crown Court to find out why she had not been contacted directly and why an agency was used instead. The listings clerk told her that the case was in fact for Polish and not Czech and they had requested a Polish-speaking interpreter. Had the NRPSI interpreter gone to Mold, as requested by the agency, the case would have had to be adjourned because she does not speak Polish.

**Case: R-v-Lau and Li**

**Ref: T20077018**

**Court: Bournemouth Crown**

**Dates: 28th August - 7th September 2007**

The actual interview in September 2006, before the New Agreement. I believe interpreter often used by Bournemouth police because she is local. She was called by the defence on the tapes and tapes actually played in court and subsequently excluded. Admitted not in the NR when asked. Bournemouth where you did a second tape interview for them. The first interpreter was so bad that the judge had been persuaded to exclude the tapes all together and the defendant managed to explain his revised story because the caution was not explained to him. The defence managed to get a hung jury and it's going to a retrial. A good example of how to waste money for not using proper interpreter. See *Kong NRPSi group email of 06-10-07*.

#### **Evidence from Scotland**

The reduction in Interpreter fees in Scotland, and the subsequent diminution in the availability of suitably qualified Interpreters has had an effect similar to that predicted for England and Wales, namely serious miscarriages of justice, as evidenced below (from Press reports):

**The Courier**

**27 February, 2010**

## **Doubts over courtroom interpreters**

TWO QUESTION marks were raised over the quality of foreign language interpreting at Dundee Sheriff Court yesterday.

First a Polish interpreter had to be replaced during a trial, then, after a Polish national—the accused in the long-running case—claimed he had not understood the evidence on a previous day.

The trial came to an abrupt halt yesterday, but will begin again and be heard by a different sheriff in May.

Daniel Serafin (33), of Strathmartine Road, denies two charges alleging that having been in charge of a car, he failed to provide a roadside breath test and two breath specimens.

The trial began in November and has taken place over four separate days, with different Polish interpreters sitting in the dock beside Serafin.

The Crown had finished its case and yesterday there was legal debate during which depute fiscal Douglas Wiseman told Sheriff Peter Grant-Hutchison that the interpreter did not appear to be translating.

The sheriff asked her about this and she said she had not been trained and did not have knowledge of the language used in court.

She was replaced by a male interpreter and matters continued with defence solicitor Kris Gilmartin saying his client claimed the interpreter, on the last occasion in December, had not been interpreting properly.

Serafin said she had not translated properly, but would say “to sum up” after a lengthy passage of evidence, and there were things he had not been told.

Depute fiscal Douglas Wiseman said the interpreter had the right to be heard in court on the matter, adding that the Crown position was that the accused did understand English and “is playing a game.”

After lengthy discussion with the parties, the sheriff said he was naturally reluctant to call a halt to the trial at this stage—however, in the highly unusual circumstances of the case, he saw no alternative but to stop the trial and said there should be a trial as of new.

The interpreters were provided by Global Language Services Ltd, and manager of the Edinburgh office, Darius Garab, was asked by The Courier to respond to the allegations some of their interpreters did not fully carry out their duties. Mr Garab said, “We train our interpreters before they go to court and make sure they are familiar with the courts.

“I am surprised that one of our interpreters said she has not been trained—sometimes they do get nervous.

“We train them three times a year in court matters and show them a video.

“There is proper training going on, but sometimes interpreters get stuck.”

While he claimed his court interpreters all had degrees in translation or interpreting, or the diploma in public service interpreting, he undertook to investigate the particular issues raised yesterday.

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<http://www.thecourier.co.uk/output/2010/02/27/newsstory14618528t0.asp>

**14 July 2008**

### **Concern voiced on court interpreters**

**By Paul Reoch**

A PERTH councillor last night suggested the present system used to deploy the services of interpreters at sheriff courts may be in need of an overhaul. Alexander Stewart voiced his concerns after statistics revealed over £50,000 has been spent on the services of interpreters at Perth Sheriff Court over 2006 and 2007.

The figures were supplied by the Scottish Court Service (SCS) after The Courier requested them under the Freedom of Information Act.

They show £27,284 was spent on interpreters at the court in 2006, rising to £28,349.

Whilst the SCS could not provide details of the main language spoken by interpreters on these occasions, a spokesperson said the dominant translation language in Scotland last year was Polish, then Mandarin and Lithuanian.

Councillor Stewart, who is one of the representatives for Perth City South, said he noted the figures “with interest,” and feels the situation needs addressed.

“Over the last two years in excess of £50,000 has been spent on interpreters assisting at Perth Sheriff Court,” he told The Courier.

“And if this trend continues, then we perhaps need to look at ways of improving the quality and availability of interpreters needed to assist our migrant population— which would, of course, also include adjusting budgets to allow for this type of expenditure.”

He continued, “We are all well aware of the positive impact that migrant workers are having on our economy. But there are sometimes repercussions on services, amenities and facilities, and it is quite clear that there is a demand in this area.

“It is the responsibility of the police to advise the procurator fiscal in the police report whether the accused or any proposed prosecution witness requires the services of an interpreter to give evidence in court,” Mr Stewart said.

*“As far as I am aware, it is then up to the PF’s office to engage a suitably qualified and experienced interpreter skilled in the language and dialect specified in this report.*

*“However, research has shown that the standard of this service does not always come up to the level required, and the interpreters themselves felt they had not provided an adequate service.”*

An SCS spokesperson said, “The SCS has been responsible for providing interpreters for an accused appearing in court since April 2002.

“This includes British sign language as well as foreign language interpreters.

“The SCS performs this duty as an impartial body, independent of both prosecution and defence interests. Interpreters for witnesses are instructed by the party citing the witness. Interpreters for prosecution witnesses are instructed by the Crown Office, and interpreters for defence will be briefed by defence solicitors.”

She added, “In terms of access to justice, the Human Rights Act 1998 and the Scotland Act 1998 that established a devolved Scottish Parliament determine that all public authorities, including the courts and other justice organisations, are required to respect the guarantees in the European Convention of Human Rights.

*“Article six of the Human Rights Act specifically allows everyone charged with a criminal offence the right to have the free assistance of an interpreter if he/she can’t understand or speak the language used in court.*

*“The act further provides that a public authority can’t act in a manner incompatible with the convention, and a challenge may be brought before the court for determination.”*

It has been estimated that the SCS has spent more than £1 million on interpreters’ fees for non- English speakers since 2002.

Sheriff Kevin Drummond last year said foreign nationals who do not show up for court dates should be held responsible for paying the cost of their interpreters.

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<http://www.thecourier.co.uk/output/2008/07/14/newsstory11649045t0.asp>

**The Scotsman**  
**Translating language skills into a new career**

Published Date: 31 May 2010

There's more than meets the eye - or the ears - to being an interpreter, learns Heidi Sohlt . . .

AS THE woman screams in pain, Kasia gently holds her hand, while whispering that her ordeal will soon be over. Just one more push and the agony will stop.

Soon, the room is filled with the sound of a newborn baby's cries and Kasia congratulates the mother. However, although she has played an important role in the birth of a child, she isn't a relative or on the medical team. Kasia, full name Katarzyna Korzeniowska (pictured below right), works as an interpreter, and this, she says, is one of her more rewarding placements.

The 27-year-old Pole started interpreting full-time around a year ago. She is self-employed but her work comes through an agency. This arrangement suits Kasia, as it is much harder to work independently when you are new to the industry.

She came to Scotland in January 2008. With two degrees, in European Business Management and Psychology and Management, and a post-graduate qualification in European Studies, Kasia was hoping to find a position within a large corporation. But things didn't turn out the way she had expected. "I applied to companies but didn't get anywhere. I think that people were put off because my degrees weren't from the UK," she says. "I worked as a nanny for a while, but stopped when I decided to become self-employed."

After approaching an agency, Kasia was interviewed and taken on. Thanks largely to the influx of Polish immigrants in Scotland, she has worked steadily since then, and fulfilled placements in a variety of environments.

According to the Polish Consulate in Edinburgh, there are around 70,000 Polish people living in Scotland. While many of those who arrive in the country are young and highly qualified, few speak English fluently enough to take up skilled positions, explains the consulate's spokesperson, Sylvia Spooner.

However, the majority get by without using the services of a professional interpreter. "Yes, there is a need for interpreter services in the courts, NHS and so on, but in general people are able to use the bit of English they have," she explains. "At the consulate we are not able to offer a formal interpreter service but we do some translation of official documents such as birth and marriage certificates. We don't really need interpreters unless there is something more serious."

When it does get more serious, Kasia is on-hand to help. "At the moment my work is mostly in the courts. I interpret in the district, sheriff and high courts, as well as at tribunals. I also work in medical settings such as labour wards, abortion clinics, GP surgeries and with health visitors. And the police use interpreters for taking witness statements or translating for an accused. Occasionally I do private work when, for instance, someone needs help dealing with a council."

Kasia is currently studying for her Diploma in Public Service Interpreting (DPSI). The course takes one year, at the end of which there is an exam. The qualification will mean that her hourly rate will increase.

"The course is expensive - it costs GBP 540 for the exam and diploma - but it is worth it," says Kasia. "The diploma is highly regarded in the industry, and makes you look more professional."

*She has, however, found plenty of work without the qualification. "Agencies will employ you without the diploma, after an interview. They usually require a bachelor degree and will also take into account your background, how long you have stayed in the country, and whether you have been studying English."*

Kasia says that her work, while varied and interesting, is demanding. "You have to be ready and quick to be in some place in a short period of time, appear there without preparation and be the best you can. You need to be able to think on your feet. Also, the work is irregular, so you can't plan ahead."

Many situations, she continues, can be stressful. Kasia is often assisting clients who are in some form of trouble or distress. Last year, she was interpreting in a rape trial. The testimonies were harrowing and disturbing, but Kasia could not allow herself to become emotional or distracted. "You have to keep a cool head and concentrate on the person next to you. Emotions cannot take over. You have to tell yourself that you are there for a reason - to perform your job professionally."

Making a good "language match" is another requirement, she adds. "While some clients are educated, with others you have to alter the way you normally speak, to make sure they understand."

And interpreters require a good grasp of complex terminology. "It helps if you come from a medical or legal background, but it is not essential," explains Kasia, who studied law as part of her degrees in Poland. "You do need a good understanding of the legal system in Scotland - its vocabulary, terms and expressions."

An excellent short-term memory is another requirement. "You have to train your memory. Interpreters do two types of work - consecutive and simultaneous interpreting. Simultaneous is the most challenging as you are interpreting the moment when someone is speaking. You are usually whispering, and it is most often used in court, when a lawyer or prosecutor is speaking to an accused. You can only work for 15 minutes at a time in this way as it is exhausting. Consecutive interpreting involves transferring a few words or statements at a time, in your language, and then back into English. As an interpreter you are expected to do both kinds. Surprisingly for many, it is actually easier to interpret from your own language into English, and there is a high failure rate in the diploma exam because candidates do not realise this, and so don't practise interpreting into their own language."

*Kasia's advice to anyone thinking of entering the industry is to be prepared for the instability of the work. Many interpreters are forced to hold other part-time jobs to supplement their income. The profession has seen a decline in pay which has been blamed on the awarding of key government contracts to specific agencies, and the use of unqualified interpreters.*

She adds: "Interpreters need many skills aside from being fluent in at least two languages. They need to be diplomatic and objective. You are there to facilitate communication between people, never to advise or interfere. Impartiality is crucial, as is the ability to interpret every word as it is said, never editing or adding anything."

On the plus side, Kasia enjoys the variety of her work. "I'm in it for the learning curve and the excitement. I love the fact that I am learning about so many different people and lives. You are in interesting places and situations all the time."

Kasia plans to work her way up the ranks and to one day take up employment with the European Union. Once she has her DPSI, she also wants to become a member of the Chartered Institute of Linguists. This, hopes Kasia, will help her to fulfil her ambitions.

"EU conferencing is the most difficult work for interpreters and is very highly regarded," she says. "My aim is to facilitate better communication between the EU nations. It's basically what I do now as an interpreter, but I hope one day to do it at a much higher level."

<http://www.scotsman.com/jobsnewsscotsman/Translating-language-skills-into-a.6052392.jp>

## **Courts to hire interpreters in £6m bid to safeguard justice**

Published Date: 14 May 2009

By MICHAEL HOWIE, HOME AFFAIRS CORRESPONDENT

SCOTLAND'S legal sector has launched a drive to improve the quality of court interpreting amid concerns foreign accused are being denied a fair trial. The Scotsman can reveal that court interpreting and translation services have, for the first time, been put out to tender to "improve quality" and value for money. The winner of the £6million contract will provide interpreting services for the growing number of non-English-speaking accused and witnesses in court cases.

The three-year contract will cover not only the Scottish Court Service but also the Crown Office and Procurator Fiscal Service, the Scottish Legal Aid Board, and the Scottish Children's Reporter Administration.

Currently, interpreters are hired on an ad hoc basis through a handful of agencies.

Most courts seek interpreters who have a diploma in public service interpreting (DPSI) that covers Scots Law. But a shortage of qualified interpreters in many languages means courts often have to make do with language teachers with little or no experience of court procedure.

*In one high-profile case, an assault trial collapsed because of mistakes made by a Polish interpreter. Experts say the lack of qualified interpreters is posing a growing threat to justice as the number of eastern European and other non-UK nationals appearing in court grows.*

Last month, Slovakian Marek Harcar, 33, was convicted of the rape and murder of a Glasgow businesswoman Moira Jones.

And in March, two Lithuanians – Vitas Plytnykas, 41, and 20-year-old Aleksandras Skirda – were convicted of murdering Jolanta Bledaite and disposing her body in the sea at Arbroath.

There are around 300 foreign nationals in prison, while the amount spent on court interpreters shot up from £167,000 in 2003-4 to £653,000 in 2006-7.

John Scott, an Edinburgh-based solicitor advocate and an expert on human rights, said the current patchy interpretation service was threatening the right to a fair trial.

*"This move is a belated acknowledgement of the continuing problems. Article six of the European Convention on Human Rights, which protects the right to a fair trial, includes the right to understand the case against you. That has not been happening as well as it should.*

*"There is an argument that the courts and the Crown Office have been in breach of their duty. This move represents a waking-up to these problems."*

The contract is advertised as being designed to "improve quality and coverage of service delivery". This will be measured for the first time against performance indicators to ensure justice is being served.

*Interpreters can earn about £11 an hour for court work, but the lack of guaranteed work and the £500 cost of obtaining the DPSI means some fear the shortage of suitably qualified translators will remain.*

*Julita Young, who runs her own translation company specialising in Polish and Czech, said: "It is well known that some interpreters working in courts don't actually have the right qualification. I have seen this myself when I'm in court and hear other interpreters from other agencies."*

*A spokesman for the Scottish Court Service said it faced "increasing demand for interpretation and translation services in courts throughout Scotland". The new approach will co-ordinate services and ensure value for money, it said.*

A Crown Office spokeswoman said: "The Crown Office and Procurator Fiscal Service welcomes this positive step towards further ensuring diversity principles are put into practice. Not only will the new contract improve the quality and coverage of service delivery, it will also encourage the sharing of knowledge and improve efficiency."

## **LOST IN TRANSLATION**

*A JURY trial of a Polish migrant accused of attacking another man in Aberdeen collapsed last year after the interpreter admitted her inexperience in open court.*

*This was despite reassurances from the interpreting firm that she was suitably qualified.*

Two years earlier, an assault case in Wick collapsed because an inexperienced Polish interpreter made too many mistakes.

And last month a High Court hearing suffered a hitch when it was discovered an interpreter spoke the wrong dialect.

A High Court trial collapsed in 2007 because three Vietnamese men accused of operating a cannabis factory did not understand the evidence against them.

*And unqualified interpreters have been heard advising accused of the sentence they can expect to receive if they continue to plead not guilty.*

<http://news.scotsman.com/scotland/Courts-to-hire-interpreters-in.5265049.jp>

## Appendix J: Media items

### **Further press evidence from Scotland that reduced fees and interpreter withdrawal from the market compromises service quality and deliverability.**

The following articles clearly support the contention that reducing payments will inevitably lead to reduced availability and hence lower quality interpreting, with serious legal implications in terms of trial adjournments, premature release for custody and knock-on effects in terms of the human and financial cost of increased crime:

#### **Battle of words threatens chaos in the courts**

Published Date: 01 November 2009

By Martyn McLaughlin

SCOTLAND's justice system is facing a revolt from professional interpreters which could throw the nation's courts into chaos, Scotland on Sunday can reveal.

In an increasingly bitter battle over pay and conditions, the translators claim they are faced with swingeing cuts to their contracts amid grave concerns over the increasing use of unqualified and inexperienced substitutes that could lead to serious miscarriages of justice.

They have now rallied together to form a new professional body – the Scottish Association of Interpreters & Translators (SITA) – with some members threatening to boycott court hearings and hold demonstrations to highlight their cause.

They claim that inadequate translation services could lead to foreign nationals either being wrongly convicted or escaping justice.

*The Miscarriages of Justice Organisation Scotland (MOJO) said the cutting of costs signalled a "very dangerous move", and threatens to undermine defendants' rights to a fair trial under the European Convention on Human Rights.*

*SITA has condemned a new contract, which came into force earlier this year, which allows for one agency, Global Language Services Ltd, to provide the overwhelming majority of work for the Scottish Courts Service (SCS), the Crown Office and the Procurator Fiscal Service.*

It has now started a database of problems in court cases linked to inexperienced translators which will be submitted to Kenny MacAskill, the justice secretary.

*The director of Global Language Services admitted that mistakes could be made in court, but said his industry is not as "formalised" as other professions.*

*The arrangement means that even those self-employed interpreters with years of experience are guaranteed only £36 for a day's work, inclusive of travel costs. Many say they are being "starved" out of their profession as a result – one veteran is now eking out a living as a taxi driver – and replaced by individuals with insufficient training and a potentially dangerous ignorance of the legal system.*

*This is despite the fact that the number of eastern European and other non-UK nationals appearing in court has risen in recent years.*

Melanie Beaumont, a Spanish interpreter with 12 years' experience, said: "It's a scandalous situation. The new government contract has basically dealt a death blow to our profession, and there are going to be several miscarriages of justice, not just one."

*Beaumont, the Edinburgh convenor for SITA, added: "A major implication of all this is that foreign nationals, people who are already psychologically vulnerable, don't have access to a fair trial. They're victimising a silent clientele.*

"Boycotting court cases is something that we have talked about and there have been some more radical measures proposed. SITA are going to develop a strategy to take action."

A senior source at SITA said demonstrations and boycotts were under consideration, and would be discussed by the association's full membership.

*The £5.5m contract was intended to create a streamlined interpreting service for Scotland's justice system that would improve both "quality" and "efficiency," according to the Crown Office.*

*The three-year contract was won by Global Language Services, a Glasgow-based firm, and came into force this summer.*

Yet many of the company's interpreters do not possess the industry benchmark qualification, known as a Diploma in Public Service Interpreting (DPSI).

*Beaumont said: "Instead of having professionals, there's a system of self-certifying which allows them to drag in people from Indian, Chinese and Spanish restaurants.*

*"Many of the interpreters being used aren't even bilingual – they just have a smattering of another language."*

- **Last year, the jury trial of a migrant for assault collapsed after a sheriff discovered the accused's interpreter did not possess the DPSI or previous experience of working on a trial.**

- **Sheriff James Tierney halted the trial of Krzysztof Kucharski at Aberdeen Sheriff Court on the second day after the freelance interpreter admitted her inexperience in open court.**
- **In 2006, an assault trial at Wick Sheriff Court involving a Polish accused and a number of Polish prosecution witnesses collapsed because of mistakes made by an inexperienced linguist.**

George Runciman, director of Global Language Services, told Scotland on Sunday that a "fair number" of the 1,700 interpreters on his books do not possess the DPSI, but stressed that the industry was not a "nice, simple, logically structured profession".

"The DPSI is not available in every language," he explained. "It can be a very expensive qualification for interpreters, so we look for equivalencies ... but we're talking about a profession which isn't as formalised as the legal or medical professions."

*Asked about the danger of miscarriages of justice occurring due to inexperienced interpreters, Runciman said: "I suppose there could be mistakes, but generally this is not the case. It's a bit like driving a car. You could be a driver for 20 years with no problems and occasionally go over a white line or go faster than you should. It doesn't mean it's fundamentally erroneous."*

"People are well aware of the need for training in the etiquette and formality of court. All these things are ongoing.

A Scottish Court Service spokesperson said: "This new contract delivers better value for public money, greater efficiency, and the SCS requires translators to have the DPSI.

"Where this is not possible, written recommendations are required from the employer to state that the translator has equivalent qualifications and experience.

"This must be provided in advance of a case and is made available to the presiding sheriff who can accept or decline the translator offered."

<http://scotlandonsunday.scotsman.com/latestnews/Battle----of.5784353.jp>

## Appendix K: Dossier of evidence

Including email exchanges (under headings)

**NB: To safeguard anonymity, personal names (but not organisations) have been removed.**

### 1. Alleged contractual irregularities/issues

WM 15/8/11

From: nrpsi\_action\_group@yahoogroups.com  
[mailto:nrpsi\_action\_group@yahoogroups.com] On Behalf Of ZW  
Sent: 15 August 2011 17:08  
To: nrpsi\_action\_group@yahoogroups.com  
Subject: [nrpsi\_action\_group] ALS terms and conditions unlawful

Dear all,

The terms and conditions published by ALS contain clauses which contravene the Employment Agencies Standards Regulations 2003 and also raise questions about safe processing of data under the DPA 1998. Regulation 6 of the EAS 2003 regulations puts a restriction on detrimental action relating to work-seekers being able to seek work elsewhere. According to the ALS's contract, the work-seeker would not only be unable to seek work elsewhere during the duration of the contract, but also three years after the contract had finished.

This restriction is unlawful. Anyone who has already signed the contract should make a complaint to the Employment Agencies Standard (now under BIS) by ringing 0800 917 2368.

The DPA 1998 prohibits the export of personal data to countries outside the EEA. ALS has a call centre in India, which is not deemed to be a safe country for the purposes of data processing.

I believe it is completely unreasonable for the MOJ to enter into a monopoly contract with a provider whose contract includes clauses which breach statutory Acts of Parliament. It is equally unreasonable of them to expect freelance interpreters to accept these unlawful conditions.

PIA solicitors have been asked to consider these issues.

From: DEF  
Sent: 10 August 2011 12:29 PM  
To: TS  
Cc: various

**Subject: Disproval of ALS claims of the award of the Framework Contract and ALS claims of close co-operation with NRPSI**

Dear TS

I hope you had a chance to read the open letter PIA sent to Louisa Carrad of the Ministry of Justice on Monday the 08th May and her reply yesterday, which were both copied to you.

Since the 05th July 2011, NRPSI has been E-mailing its registrants and on NRPSI website in News section at [http://www.nrpsi.co.uk/news\\_display\\_item.php?news\\_id=171&range=current](http://www.nrpsi.co.uk/news_display_item.php?news_id=171&range=current)

*There is a statement saying "The Ministry of Justice has recently announced that Applied Language Solutions (ALS) has been awarded a framework agreement by the Ministry of Justice (MoJ)"*

We wrote to you on a number of occasions since 05th July indicating that in fact there has been no announcement by the MoJ that they in fact awarded the Framework Contract to ALS.

All these claims were coming from ALS themselves!

In the E-mail from Louisa Carrad of the 09 August 2011 there is a clear statement "A framework agreement has not yet been signed"

You have no doubt seen publications and communications by ALS since 05 July, where they make repeated claims that they have already been awarded the MoJ Framework Contract and that they will be the sole suppliers of language services to the entire Criminal Justice System and that all interpreters wishing to continue offering their services to CJS must register with ALS.

In the light of the 09 Aug E-mail from Louisa Carrad all these claims look to put it mildly extremely exaggerated, and one wonders if there are trading standards issues surrounding intense publicity around unsubstantiated claims in order to entice interpreters to register with ALS.

We feel it is extremely important for NRPSI to inform all registrants through usual communication channels and through publication on NRPSI website that contrary to previous communications since 05 July, in fact to date there have been no award of the Framework Contract to ALS by the MoJ.

*We also feel that it is extremely important to inform all the registrants that despite their claims ALS will NOT be the sole and exclusive supplier of language services to the CJS. As you are aware there are at least 4 major supplier currently operating in the CJS:*

- 1) CINTRA in East Midlands,
- 2) Language Line in South East
- 3) ITL in North East
- 4) WITS in Wales.

## IN CONFIDENCE

Many of the above suppliers have contracts with police forces well into 2015. Many of the above supplier have contracts requiring them to supply NRPSI registered interpreters to Police.

*MoJ themselves confirmed in E-mails to other interpreters, that the Framework is not mandatory and they expect that in the long term there will be CJS bodies that will not sign up to Framework!*

In order to avoid the confusion surrounding the latest developments of introduction of the Framework delivery model by MoJ and conduct of ALS, we urge you to convey the above information to all the registrants.

We urge all the interpreter organisations who are copied this E-mail to do the same for their members.

### **NRPSI Co-operation with ALS**

One other point we would be grateful if you could clarify:

Please watch the video of David Joseph of ALS (the video link on the right on the <http://www.linguistlounge.com/> or look at the saved copy on Youtube [https://www.youtube.com/v/Wukwenyy-WY&hl=en\\_US](https://www.youtube.com/v/Wukwenyy-WY&hl=en_US)

This video has been online since at least 30th July.

Please note in particular claims made on:

0:45 - 0:51 portion of the video

4:04 - 4:20

8:16 - 8:30

8:48 - 8:55

9:10 - 9:12

In 8:16 - 8:30 segment of the video David Joseph claims "We will be working in close collaboration with the National Register of Public Service Interpreters"

We would like to ask you a question

- Does NRPSI have any plans at this point in time to co-operate with ALS in any way shape or form?
- If not, how would you comment on the claims made by David Joseph above?

### **Re: contract issues from ZXY to HIJ**

One thing I need to know: if the MOJ is saying it will sign it later this month, does it still mean that a complaint to Trading Standards has legs based on ALS's claims which took place beforehand?

HIJ

(Reply from XYZ):

Absolutely right HIJ

**There are 2 legs to (the) complaint**

*1) ALS claiming since 05 July that they have been awarded the Framework Contract whereas in fact as of 09 Aug they still haven't been awarded the contract*

*2) ALS claiming that they will be the sole supplier of language services to CJS, whereas in fact there are at least 4 other major contractors in CJS (CINTRA, LL, ITL and WITS) who have contracts to supply c. 20+ police forces all the way to 2015 and the Framework is not mandatory and there will be CJS bodies who will not contract with ALS under framework.*

The 2) claims above by ALS amount to *enticing interpreters to register with them and to undergo re-assessment by providing manifestly unfounded and misleading information.*

I heard unconfirmed reports that ALS is proposing to charge interpreter £100 for undergoing re-assessment.

If it is true then the 1) and 2) above amount to trying to obtain pecuniary advantage under false pretences / dishonesty etc.

From: XYZ

Sent: 09 August 2011 14:38

To: various

Subject: Fwd: FAO Louise Carrad and Martin Jones requesting confirmation or denial of claims that the Interpreting Framework contract was awarded to Applied Language Solutions.

Dear Colleagues

Please see the response of MoJ to our open letter yesterday.

The Framework Contract HAS NOT YET BEEN AWARDED TO ALS AS OF THE 09 AUGUST 2011 !!!!

Best regards

**To XYZ from MoJ regarding the award of the FWA contract**

IN CONFIDENCE

----- Forwarded message -----

From: Interpretation Project <interpretationproject@justice.gsi.gov.uk>  
Date: Tue, Aug 9, 2011 at 1:48 PM  
Subject: RE: FAO Louise Carrad and Martin Jones requesting confirmation or denial of claims that the Interpreting Framework contract was awarded to Applied Language Solutions.  
To: XYZ  
Cc: Interpretation Project interpretationproject@justice.gsi.gov.uk

Dear XYZ

Thank you for your email. I am sorry that you have not received an earlier reply. *I can confirm that the preferred supplier is Applied Language Solutions (ALS). A framework agreement has not yet been signed, but we expect to sign it this month.* Once awarded, the Framework Agreement will be published on the *Business Link Contract Finder*. Please note that certain parts of the agreement will be redacted. Please use the following link to search for contracts on the website:

<http://www.contractsfinder.businesslink.gov.uk/Search%20Contracts.aspx?site=1000&lang=en>.

Kind regards  
Louisa Carrad  
Justice Policy Group  
Ministry of Justice

**From XYZ to MoJ and others**

---

From: XYZ  
Sent: 14 July 2011 17:15  
To: Interpretation Project; Partner Group  
Cc: (various)

Dear KLM and NOP

On the 5th July last week, a statement appeared on the website of Applied Language Solutions Ltd (ALS) claiming that they were awarded a Framework contract by the Ministry of Justice. This claim is still there on ALS website and you can see it by following this link < Applied Language Solutions awarded MoJ language contract

[http://www.appliedlanguage.com/about\\_us/news/applied\\_language\\_solutions\\_wins\\_language\\_contract.aspx](http://www.appliedlanguage.com/about_us/news/applied_language_solutions_wins_language_contract.aspx)

*However the Parliamentary statement made on the same day did not mention any award of the contract, yet alone to ALS.*

*The main message of the above Parliamentary statement is that Ministers decided to adopt the proposed new Framework contract model of delivery of interpreting services to the Criminal Justice System.*

See Written Ministerial Statement for the 5th July 2011  
<[http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110705/wms\\_text/110705m0001.htm#11070548000006](http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110705/wms_text/110705m0001.htm#11070548000006)

*The letter signed by Martin Jones and circulated by E-mail to stakeholders on the 06th July 2011 does not make any mention of the award of the Framework Contract to ALS.*

The Tenders Electronic Daily (TED) of the Official Journal of the EU under entry for tender 2010/S 163-251285 does not mention any award of the Framework Contract.

*We have spoken to the Ministry of Justice Procurement team over the phone and we were informed that no award of the Framework contract under the above Contract notice has been made to date.*

Can you please confirm or deny whether the award of the Framework Contract to Applied Language Solutions has been made or not?

I am aware that other organizations representing public service interpreters made similar requests for clarification to your project and have had no reply to date.

## **1. Press material**

e: 13 August 2011

### **Speak out to help the law: by Pam McClounie**

Published at 08:56, Saturday, 13 August 2011

LINGUISTS in Cumbria are being encouraged to register with a new national database to receive work from the Ministry of Justice (MoJ).

This covers the police, Crown Prosecution Service (CPS) and probation trusts.

More than 900 linguists have already signed up to the [www.linguistlounge.com](http://www.linguistlounge.com) site since its launch this month.

Tests will take place at assessment centres next month.

Once registered, linguists will be independently assessed by Middlesex University, in order to ensure consistency and quality of services to the MoJ.

## IN CONFIDENCE

Only those registered and approved by the end of September will be assigned MoJ work in the first phase of the contract roll out. The new agreement means that more opportunities for regular work will be available to vetted and qualified freelance linguists in Carlisle, as they will be joining an approved national network where they can be found work more quickly.

The new contract has been awarded to language services company Applied Language Solutions.

Crispin Blunt, junior justice minister, said: "Language services will now be booked through various mechanisms including a secure internet portal, telephone or email.

"This does away with the current time-consuming and inefficient process of making direct telephone contact with each individual interpreter to check their availability for work."

The overall objective of the system is to ensure that anyone interacting with the justice sector will receive the necessary language support to enable them to be fairly represented in society – as a witness, a victim of crime, a detainee or an individual on probation.

Gavin Wheeldon, chief executive and founder of Applied Language Solutions, said: "This new database will mean huge improvements in efficiency that will free front line staff from the current administrative burden of searching for interpreters and translators."

PMcClounie@cngroup.co.uk

Published by <http://www.newsandstar.co.uk>

## 2. Legal issues arising

GB 12.8.11

From: professionalpublicserviceinterpreters@yahoogroups.com  
[mailto:professionalpublicserviceinterpreters@yahoogroups.com] On Behalf Of  
Sent: 12 August 2011 8:58 AM  
To: professionalpublicserviceinterpreters@yahoogroups.com  
Subject: Re: [professionalpublicserviceinterpreters] Fw: MPS Language & Cultural Services' response to Ministry of Justice announcement

I ...saw a message on Translators' Café today that PACE is one of the laws and directives being flouted by the "framework agreement". Certainly, if interpreters are used who cannot read and write (something that happened a lot prior to the introduce of PACE, when many Arabic "interpreters" were Europeans who only knew Egyptian colloquial Arabic and could not read and write Arabic!), and there are many people who might be unqualified interpreters whose written English is virtually non-existent, this will be a breach of PACE which requires statements to be written down in the defendant's own language.

XYZ  
Tamr Translations  
197 Kings Cross Road  
London WC1X 9DB  
Tel: 020 7 278 9490

### 3. Assessment system proposed

#### **Assessing interpreters for public service assignments By AS (on behalf of ALS)**

In the past few years, the non-English speaking population in the UK has increased significantly.

As a result, the language barriers that have arisen create major concerns for public services.

Those concerns stem, understandably so, from the potential consequences of even the slightest of errors with translation and interpreting. There are also other concerns which tend to grab the headlines (and be fuelled by them!), but I won't add to that, since we've been very clear about our stance on the matter. As a former freelance Farsi interpreter, and as the Interpreting Manager for Applied Language Solutions, I am frequently asked about the assessment and development of (our) linguists. I've decided to answer this question and explain how we assess interpreters at ALS in this post.

Before I continue, it has to be said that throughout the ALS blog you will see lots of examples of mistranslations and other language-related gaffes – none of which are ours by the way!

Some are funny, some are embarrassing (notably for whoever is behind the gaffe) and others are, of course, far more serious. The latter is my main reason for this post.

In healthcare, you could put a patient's safety at risk if something is misinterpreted or mistranslated, whereas in legal services, it could even result in a miscarriage of justice or an incorrect plea or testimony.

As a language services provider with many public sector customers, we constantly look to improve standards to counter any such potential risks with our services.

This begins with each and every new candidate that comes to us looking for work as a linguist, or supplier, to use common industry parlance. *Since language services will only ever be as good as the people doing the interpreting/translation, we have to make sure we properly assess our existing talent pool before we can make any improvement suggestions.*

## How to assess interpreters?

There are two key areas for assessing an interpreter. Each comes with its own 'checklist':

### 1- Language Assessment

Fluency: ability to convey the message from English to the target language and vice versa

Listening: ability to demonstrate a good understanding both in English and the target language and respond accordingly

Vocabulary: based on the area of work, candidates should be able to demonstrate a good knowledge of vocabulary in their area of specialty e.g. health or law

### 2- Interpreting Skills Assessment

Accuracy: ability to provide accurate interpretation. It's important that it should convey the correct meaning and the interpretation is done in the first person

Listening and Recollecting: ability to listen and to be able to recall the words in full

Appropriate Intervention: ability to request clarification where necessary to be able to deliver an accurate interpretation

Speech Flow: ability to control the speech flow to provide clear and transparent interpretation

One of the best ways to assess a candidate, in my opinion, is through role-play. This involves the candidate, a first assessor who is fluent in the source language and a second assessor, who is fluent in both the source and target language.

The candidate will perform a role play of a chosen scenario and both assessors can then mark the candidate's performance in both the source and target languages, and also other key interpreting skills.

## Developing Interpreters. A continual process...

Interpreter Classroom: Our constantly updated interpreting resource

In recent years, the role of interpreting has become crucial for effective communication between public services and non-English speakers – to the point where, nowadays, proficiency is no longer measured by language skills alone.

For example, "good hand-hygiene" was, until fairly recently, beyond the concerns of public service contractors – unthinkable now! The recent swine flu pandemic and the subsequent "catch it, bin it, kill it" campaign have profoundly raised awareness of how visitors to hospitals can help maintain best practice. Interpreters are no exception.

So, to keep our interpreters up to date on best practices, any changes in the law (as they happen) and continual development of their language skills, we have developed the interpreter classroom website. It serves as our knowledge hub for the development of all Applied Language Solutions interpreters.

The course material also includes other topics, like introducing new or inexperienced interpreters to working with victims of crime and other vulnerable people within public services – vital for delivering a professional and compassionate service, as well as giving an interpreter the confidence to keep progressing.

By developing our interpreters via an online classroom along with the regular assessments, we can help to improve the standards of our interpreters and thus the value of what we do for our customers.

**What did your interpreting provider say about assessing their interpreters?**

<http://www.interpreterclassroom.com/dokeos/Interpreter%20Classroom%20User%20Guide.pdf>

**4. Judicial Review**

From: ABC

To: PR

Cc: chairman@apciinterpreters.org.uk; secretary@apciinterpreters.org.uk

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The essence is this. There are longer docs available if required.

It is the only possible litigation to object to an administrative decision. Two are not possible, one would be regarded as vexatious and the remaining one might be damaged. One is enough and even though not claimants everybody that has suffered a detriment might benefit. Though advisable it presented several risks as well as negative features.

- **It might be lost**, the cost involving the other sides' costs would be close to £35K
- **It is discretionary**. Even if won the judge might well not cancel the decision taken by the MoJ and indeed take no decision at all, leaving things as they are.
- **In most cases JR required complex follow-ups and negotiations, the results of which are difficult to implement, let alone predict.**

- In any case **the whole process will take months** by which time the MoJ will be implementing the decision the CIO opposes so vehemently.
- **The result often is that the other side then sorts out what is objected to by the claimant or indeed the judge and does the whole thing all over again but “properly”.**

This is the view passed on to me by RR of Collyer Bristow, LLP.

## **5. Detailed objections to proposed new arrangements**

I am writing to withdraw my earlier agreement that my name and other details should be provided to agencies that might or might not participate in any future contracts made in my email of 07-10-10 (copy below). If my data has already gone forward I would ask you to withdraw it forthwith. I have reached this decision after having discussed with interpreter organisations the issue of interpreter participation in MoJ plans for arrangements on the future delivery of services to the CJS.

### **Preferential treatment to agencies**

I find that the decision taken by the MoJ refusing to share with interpreters information on the agencies involved, sent by email to us on 18th October by Louisa Carrad (copy below), is inconsistent with the MoJ's declared intent to incorporate interpreters to the dialogue referred to in emails from MoJ officials included below for ease of reference. Regrettably, I must conclude that the MoJ is giving agencies preferential treatment. You will recall that agencies also attended the road shows. It is baffling that the MoJ should refuse equal treatment to interpreter organisations.

### **Not good value for money**

This improper unequal treatment shows the MoJ to be unreasonable. There is consensus amongst interpreter organisations that this decision militates against providing good value for money to the taxpayer. As evidence of our desire to assist in providing a better, more rational and costs saving service, interpreter organisations have been considering several proposals we hoped to put to you and your colleagues. We had planned to make them available once our deliberations had concluded.

### **Non-sultation**

We now have to wonder, given this further evidence of unequal treatment, if it is worth our while submitting further material that will be ignored in what is quickly turning into a “non-sultation”. This term has been used by Andrew Gilligan in a piece in the Daily Telegraph illustrating how government departments present a decision that has been taken as resulting from a consultation in which the views of those consulted are ignored and manipulated for legitimisation purposes. For

the full text please see

<http://www.telegraph.co.uk/news/newstoppers/politics/7955561/A-Government-ruse-thats-nothing-short-of-an-insultation.html>

### **Equal treatment of agencies required**

Regrettably, it is my belief there is no point in having contact with agencies interested in future contracts until such time as balance is restored by the MoJ affording equal treatment to interpreter organisations. Interpreter organisations have submitted data, obtained under FIA, proving that in most cases agencies provide untrained persons purporting to be interpreters instead of interpreters.

### **Breach of EU and UK legislation**

You and your MoJ colleagues should be well aware of these data and should integrate them into your planning. This mode of outsourcing interpreters is placing the segments of the CJS that use it in breach of the HRA, of the ECHR, of PACE and the EU directive when it comes into force. As Eulita pointed out in writing to the Rt. Hon. Kenneth Clarke ,M.P. on 19th October, why do something precipitately that is known not to have produced economies in other countries that have tried it and without proper evaluation of the changes required to implement the EU directive?

### **Loss of cases**

For what my views may be worth, I hold the MoJ should be concerned if agencies do not wish to contact their prospective workforce. If they were as good as they claim to be agencies should be keen to meet the representatives of interpreter organisations. Why hide and why does the MoJ provide cover that will conspire against assuring quality and value for money to taxpayers? The current MoJ plans seem to ensure the loss of cases as has been happening in Scotland, as well as costly appeals to Strasbourg.

### **Lack of timely response from MoJ**

Furthermore, I note that we have yet to receive replies to the questions raised in our position paper read out during the meeting on 15-09-10. You will remember that as requested I sent a written digitalised copy. Interpreter organisations look forward to receiving your reply in this connection.

Lastly, I should make it clear that copying in the persons and organisations listed below does not indicate their agreement with my letter. They are included for information purposes only.

Yours sincerely,  
ABC

## 6. Exclusion of interpreter representatives from Supplier open days

To ABC from MoJ

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From: Interpretation Project [mailto:interpretationproject@justice.gsi.gov.uk]  
Sent: 18 October 2010 10:52  
To: ABC  
Cc: Interpretation Project  
Subject: Interpretation and Translation - Supplier open day

Dear ABC

You asked to be invited to the supplier open day we are holding as part of the procurement exercise we are undertaking.

*We have now had an opportunity to consider your request and have decided that it would not be appropriate for representatives of interpreter/translator representatives to be present.*

As Richard Mason said in his earlier email, the aim of the supplier open day is to ensure that potential suppliers have a clear understanding of our business needs. We feel that the presence of representatives other than those acting on behalf of the customer and supplier base could potentially alter the focus of the meeting. That would not be helpful and it is a risk we cannot take.

*However, that is not to say that we have moved away from our belief that interpreter engagement in the project is vital and, as a next step, we are keen to facilitate engagement between interpreter and translator representatives and potential suppliers. To achieve this we would like to provide shortlisted suppliers with the names and contact details of the representatives of those organisations who were invited to attend the roundtable meeting on 15 September.*

The Ministry of Justice will not thereafter provide shortlisted suppliers with any further information on representative organisations. It will be for shortlisted suppliers to decide which, if any, representative organisations to contact. It is not yet clear how many suppliers will be shortlisted.

I would be grateful if you could let me know whether you want to make your organisation available to be contacted by shortlisted suppliers. If you do, I would be grateful if you could also provide me with relevant name(s) and contact details. It would be helpful to have a response by 26th October. If I do not hear from you by that date I will assume that you do not wish to be involved.

I have written in similar terms to representatives of all the organisations invited to attend the roundtable meeting.

Kind regards

Louisa Carrad  
Justice Policy Group  
Ministry of Justice

**To MoJ from ABC**

From: ABC  
Sent: 07 October 2010 11:25  
To: 'Mason, Richard'  
Cc: (various)  
Subject: RE: Interpreting project and agencies: meeting 29-09-10

Hi Richard,

Thank you for considering inviting interpreter organisations “into the competitive dialogue process”. We are heartened that our interventions are not seen as coming from an interested party whingeing but as an offer to cooperate using the fund of experience at our disposal. *We are keen to participate and would of course only wish to be involved in an appropriate manner.*

Can I also refer you a link to the NRPSI site under “news” so that you are aware of the progress towards establishing a new NRPSI. The latest communiqué was only approved earlier this morning and may take a couple of days before it is uploaded. The new organisation should be up and running by early January, 2011.

Yours,  
ABC

**To ABC from MoJ**

From: Mason, Richard [mailto:Richard.Mason3@justice.gsi.gov.uk]  
Sent: 29 September 2010 10:57  
To: ABC  
Cc: (various)  
Subject: RE: Interpreting project and agencies: meeting 29-09-10

Dear ABC

Thanks for your email.

Today's event - a supplier open day, the purpose of which is to ensure that potential suppliers have a clear understanding of our business needs - has been rescheduled. *Happy of course to consider your request for an invitation.*

We are thinking about whether and how we might build interpreter expertise into the competitive dialogue process. *This will require careful thought so as to ensure that we do not undermine the integrity of the process.*

Richard Mason  
Head of Better Trials Unit  
7th floor, zone C  
102 Petty France  
Tel: 020 3334 6068  
Mob: 07867 996 560

**From MoJ NOMS to ABC**

From: Anderson, Graham [NOMS]  
[mailto:Graham.Anderson@NOMS.gsi.gov.uk]  
Sent: 29 September 2010 09:40  
To: ABC  
Subject: Supplier Open Day

ABC,

I have been made aware of your request to attend the Supplier Open Day that was to have taken place today in London. This event will now be rescheduled for a later date. Please also be aware that the Ministry is considering your request and will advise in due course.

On another matter, when we last met I did agree to share my email address with you and it wasn't until I had sight of this that I recalled the matter. Please accept my apologies. I believe you were going to share some information with me and I look forward to receiving anything you care to share.

Kind regards,

Graham Anderson MCIPS, Senior Category Manager - HR Services  
Ministry of Justice  
Procurement Directorate  
Units 8 & 9, Fryersway, Ossett, West Yorkshire, WF5 9TJ  
Tel: 01924 205718; VPN: 7261 5718; Fax: 01924 205702  
e-mail: graham.anderson@noms.gsi.gov.uk

**7. Reported police views/action on FWA**

**240811 ABC to PR**

**"Paul Reeves" <reeves707@yahoo.co.uk>**

**Cc:**

**(various)**

*At the 02-08-11 meeting organised by ACPO for all Chief Constables to promote the FA, two sources that attended the meeting tell me that ACPO and MoJ officials laughed interpreter opposition off and said that the CloL and ITI would not oppose the FA. As a member of the CloL Council I wish to point out that however the Council of the CloL instructed the Chair, Tony Bell, to write to the MoJ as set out below in terms publicly available on the CloL site (news). Who is telling porkies?*

**Link: [http://www.iol.org.uk/news/news\\_article.asp?r=OXFW2E42272](http://www.iol.org.uk/news/news_article.asp?r=OXFW2E42272)**

### **CIOL respond to MoJ decision on Interpreting and Translation provision 2011-07-15**

Ministry of Justice decision on interpreting and translating in the justice sector  
The arrangements for translation and interpreting in the justice sector are important to many members of the CIOL, as well as the organisation itself. The CIOL continues to have grave misgivings about the arrangements being put in place by the MoJ. The need to make savings has to be acknowledged, but there is a serious risk that protection of the public interest will be jeopardised by the abandonment of an independent system to safeguard professional discipline and standards.

On 5 July it was announced, in a parliamentary written statement from the Ministry of Justice, that the new arrangements for the provision of interpretation and translating services in the justice sector would be based on a framework agreement with a single supplier. The statement says, in part, "The Ministry of Justice will contract under the framework on behalf of Her Majesty's Courts and Tribunal Service and the National Offender Management Service. Other justice sector organisations, including police forces, have indicated that they intend to sign contracts under the framework agreement as soon as they can. In some cases this will be when pre-existing contracts come to an end."

The CIOL deeply regrets the intention to create a new register as part of these arrangements. The existing National Register of Public Service Interpreters (NRPSI) is a valuable and unique national resource, developed over many years on the basis of accredited qualifications and professional regulation, with the collaboration of and in consultation with the justice system. Since April 2011 it has been an independent company, with the clear aim to perform the functions of an independent professional regulatory body in the public interest. Through the National Register, it has been recognised that the UK is well to the fore in international comparisons of the development and implementation of effective and professionally-based interpreting and translation in the public services, particularly in the justice sector. Replication of this effort by the creation of a new register, in disregard of an established track record, seems contrary to good sense. We have to hope that implementation of this aspect of the new arrangements will be carefully, responsibly and collaboratively worked out.

The NRPSI is linked very closely with the DPSI (Diploma in Public Service Interpreting), a "flagship" vocational qualification of the IoL Educational Trust, and the only such qualification that is nationally validated by Ofqual. The CIOL is concerned to maintain the value of this important and unique national qualification, developed in tandem with the National Register. The CIOL remains committed to the importance of high-quality interpreting and translation in the public sector, in justice, health, local government and elsewhere, and is proud of the contribution it has made to the UK's

internationally respected achievements in this area. The CIOL is determined that the highest possible standards should be maintained, and that the standard-setting qualifications of its members should continue to be properly valued.

## 8. European issues and contact

### Email from LK to NOP

From: LK  
Sent: 18 August 2011 12:01 AM  
To: NOP  
Subject: AW: PRIVATE AND CONFIDENTIAL RE: Confidential inquiry

Dear NOP

I keep my fingers crossed that the survey will help you. We will certainly talk about it at great length in Ljubljana. If the company wants to contact EULITA, please go ahead. Shall I put any mention of the interpreters' strikes on the EULITA website? – Thanks for the correspondence from Henry Liu. He is a good guy, but sometimes more words than action (like who would pay his trip to the UK?) – Keep up the fight, I know what it is like being regarded with contempt. It's exactly what happened to us here in Austria when talking to the minister of justice.

LK

### Reply to LK from NOP

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Von: NOP  
Gesendet: Mittwoch, 17. August 2011 16:57  
An: LK  
Cc: (various)  
Betreff: PRIVATE AND CONFIDENTIAL RE: Confidential inquiry

LK, you are a genius...

*We have commissioned exactly such a survey through a major UK company with considerable expertise. Focus Groups have already begun and are ongoing, and they shall shortly be issuing a questionnaire to RPSIs where an analysis will form another important part of the final report. A meeting is already brokered between the decision makers (Ministers) and the company preparing the report. To ensure that there is no contamination, we are staying at arm's length from these two processes, since the report needs credibility for maximum effect.*

Once available, I shall ensure that you receive a copy, also various other contacts. It will need to be "talked up" for maximum effect, and I am certain will

IN CONFIDENCE

be of assistance at the Ljubljana meeting, and if you wish to discuss a second more detailed study next year.

*Let me say that this is just phase one. Phases two and three will involve parliamentary lobbying and dealing with the press. You will know that we take all of this very seriously, and of course it represents a considerable financial commitment, and XYZ are helping us with meeting the costs.*

Best wishes,  
NOP

**To NOP from LK**

From: LK  
Sent: 11 August 2011 9:39 PM  
To: NOP  
Subject: Confidential inquiry

Dear NOP,

*In SFO I spoke to some EU people and raised the question whether they would be able to conduct a study on the impact of outsourcing LIT services, especially for the courts and police.*

I mentioned that there are several countries in Europe that are suffering from such government activities and that it may be good when talking to authorities to be able to show them a neutral study, as we often get the reply that it is envy, or that we want to protect our little turf that is making us say that outsourcing is bad.

*The answer I received was that the EU could not commission such a study directly, but I was given the name of a US company that has conducted – inter alia – various studies of the interpreting market and alike.*

I am now in the process of negotiating such a survey (either on behalf of EULITA or the AIC Commission on Court and Legal Interpreting) with that company and was wondering whether APCI would be able to join this group and share some of the financial burden. I cannot say at the moment what the price will ultimately be, I am thinking of a two-stage process, i.e. *one first brief survey in time for Ljubljana, and a second, more detailed study next year.* I will discuss the project in more detail next Wednesday. – Looking forward to hearing from you, LK

**Email exchange re TRAFUT, EULITA and EU Directive breaches**

From: QRS  
Sent: 10 August 2011 9:06 AM  
To: NOP  
Cc: Various

IN CONFIDENCE

Subject: Re: IN CONFIDENCE RE: FIT response to MoJ interpreting decision

Dear NOP

Thank you for your kind e-mail and the confidential and comprehensive documents. Surprisingly, they are available online, I am not sure if you are aware. *However, please be reassured that irrespective, I treat all documents and information in the strictest of confidence.*

Despite being officially on holiday, over the last few days, I have been reviewing your documents and in combination with what I know of the situation as well as that of what is available online. I consider this a very important issue that I cannot defer considering this until I return from holiday. Also, I do believe that FIT should respond to situations like this more promptly. This certainly will be my position as VP. And I hope we can make a difference.

I am fully aware of the actions taken by FIT Europe and EULITA. As discussed with NNN, I do believe that letter writing is not long effective in the current situation. *I do understand the need to seek an urgent reversal of decision and to stem the tide of damage. However, I am not sure if a PR company + campaign would achieve this.*

Being very familiar with the process of government and the mindset of civil servants, *I do think that the best means to achieve a positive outcome, in the form of reversing a seemingly fait accompli, is covert negotiation.* This is the only way I can envisage which would save face of all parties with Interpreting and the Non-English speakers the winner of this process.

*As NNN has mentioned, I am prepared to advocate on behalf the interpreters and our professional organisations, and FIT members, even in the form of physically being part of / or lead the negotiation.*

Clearly I need good information and briefing, especially the inner motives of the parties. Whilst my schedule does not allow me to fly to the UK right now (riot or otherwise), I suspect you and your colleagues would need some time to organise the meetings with the relevant officials or senior policy advisors for the negotiation to be effective and productive.

I will leave you and your colleagues to ponder on this, and please feel free to ask me questions.

At this stage, to help me understand, I'd answers to a few critical questions:-

(1) irrespective of one's ideology of commercial outsourcing, I understand there is a public safety issue regarding the current agency. Fully aware that some of which may be hearsay, *I'd like to*

IN CONFIDENCE

*know what concrete evidence is there that this agency has not performed, or has acted adversely against the profession?*

(2) I understand that there will be *de novo* testing of all interpreters under this new policy. As unnecessary and unacceptable this may be, what is the method of testing it proposes, and what is involved in Middlesex University?

(3) apart from the commercial aspect, who is benefiting from this new arrangement? I understand there are multiple stakeholders in the UK regarding registration and provisions and testing, and not all are in agreement over all issues. Is any of the stakeholder(s) likely to gain (no matter how small) from this arrangement?

I look forward to hearing from you.

Kindest regards,  
QRS  
URL <http://www.nzsti.org/>

**From UNETICA (French Interpreters' organisation)**

24.8.11 GB

PR,

A response from our French colleagues at UNETICA.

NOP

From: NR

Sent: 10 July 2011 10:07 AM

To: NOP

Subject: ALS

Thanks for the info NOP

Only one word comes to my mind: appalling!

Monique

Monique ROUZET LELIEVRE

Expert Traducteur agréé par la Cour de Cassation

Expert Traducteur Interprète près la Cour d'Appel de Versailles

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Co-présidente Comité FIT traduction juridique et interprétation près les tribunaux

Membre de l'U.N.E.T.I.C.A - [www.unetica.fr](http://www.unetica.fr)

(Union nationale des experts traducteurs interprètes près les cours d'appel)

**Re: TRAFUT**

Thursday, 25 August, 2011 10:08

From: NOP

To: LK

Hi LK,

Can you tell me whether EULITA has yet received any response from anybody in the UK? The responses may be confidential, but I hope you can tell me whether you have yet received any reply at all.

Best wishes,

NOP

From: LK

Sent: 03 June 2011 2:29 PM

To: NOP

Subject: TRAFUT

Dear NOP,

This is just to let you know that the TRAFUT team held its preparatory meeting in Paris and agreed on the venues, dates and participating countries for the 4 workshops.

The UK will be invited to take part in WS 1, to be held in Ljubljana, Slovenia, from 24 to 26 November 2011. A maximum of 10 to 12 persons per country will be asked to attend (at own expense).

*The participants should be senior officials or office holders in the ministry of justice, the bar association or law society, police authorities, judicial staff and professional associations.*

The TRAFUT team will contact the respective organizations in the EU member states, and this is where I will need your help and advice. Can you give me the addresses of such organizations and/or can you give the names of persons who – in your view – should be invited to attend.

*We are currently in the process of contacting the experts who will speak in the course of the different modules which will cover the various aspects of the Directive and its implementation. DG Justice, the EP and the Commission have been asked for endorsement of the TRAFUT project. I will send you further details of the program once they are available. – We would like to send out letters of invitation by mid-June, so your input is highly appreciated.*

Best regards, LK

**Regarding UE take on the FWA**

IN CONFIDENCE

CONFIDENTIAL FW: ejustice portal  
Thursday, 25 August, 2011 10:02  
From: NOP  
To:  
reeves707@yahoo.co.uk

ATT: Questionnaire-summary.doc

Hi Paul,

Here is a summary document where MS responses are collated to a questionnaire sent out by the Council of the EU. Note the obfuscation by Scotland, and the deliberate twisting of the truth by England. Whoever completed this document knew what they were doing and deliberately focussed on "now" and ignored the FA since it would be immediately clear that they were about to breach it.

NOP

From: LK  
Sent: 19 April 2011 10:09 PM  
To: NOP  
Subject: AW: ejustice portal  
Hi Geoffrey,  
Here is the summary of the questionnaires. – That's all for today, Liese  
LK

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To: NOP  
Subject: AW: ejustice portal  
Hi NOP

I suppose what I sent you was the replies to the questionnaire. The UK was the most detailed one. I will send you the summary of the replies, although they are not very helpful, I find.

I need to draft a reply to your MoJ and will send you the text before sending it off in case you want me to use specific arguments.

*The ruling stated that once a directive is in force MS must refrain from action during the transposition period "liable seriously to compromise the result prescribed" It is a preliminary ruling of the ECJ no. 61996J0129 of 18 December 1997. I can scan in the important pages and send them to you if you cannot find the text on LexUriServ.*

*For YOUR information: I spoke to Diane Wallis in Budapest last week and voiced EULITA's deep concerns over measures taken by several countries (including the UK) to outsource language services for courts. She asked me to give her a written statement on that. So, perhaps the EP will get involved. TRAFUT (our EU project) seems to be getting good EU support. Originally, I was thinking of grouping MS together according to geographical parameters,*

*but I am beginning to wonder whether it would not be better to have "exposed" countries as participants of the first workshop in October. This could mean that the UK could be asked to come to Slovenia this fall instead of to Belgium in the fall of 2012. What do you think of this idea?*

So much for now, LK

## **9. PIA Actions planned to demonstrate against the FWA implementation**

"ALS Spies"

Thursday, 25 August, 2011 3:25

From: TUV

To: RPSI

Dear colleagues,

It is good, and necessary to our survival, that we share as much information as possible.

*On Tuesday of this week, I received an email from the NW Police Alliance (Greater Manchester, Lancashire, Merseyside and Cumbria) confirming that they will be awarding their interpreter provision contract to ALS, after all!*

(In the following, a reference to 'interpreter' (in quotes) means someone who ALS considers to be qualified enough to perform duties, *but who is not qualified or experienced in real terms to perform such duties*).

I replied to the sender, asking him to forward my response to:

Supt Catherine McKay

Criminal Justice and Custody Branch Lead

Greater Manchester Police

*I included that since ALS has recently lost several of their NRPSI interpreters (those recently joining the PIA due to their dissatisfaction with being exploited by ALS, although I did not specify this to be the cause) the point is now very close, where ALS will be physically unable to fulfil their contractual agreement of supplying experienced public service interpreters, and thus the police forces comprising the NW Police Alliance will initially (and extremely importantly) find themselves on the wrong side of Code C of the PACE Codes of Practice.*

I also pointed out that unprofessional 'interpreter' and 'translator' services could end up costing each constituent police force huge amounts of cash and/or credibility, in terms of:

1) Litigation by victims when prosecutions of offenders have been unsuccessful, due to being compromised by the use of inexperienced, part-time, amateur people masquerading as 'interpreters'.

2) Accused persons being detained for far longer than necessary to investigate an allegation, because poorly-paid 'interpreters' were unwilling/unable to attend

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in a timely manner (whereas, in my experience, most serious NRPSI freelance interpreters have always worked on a flexible 24/7 basis).

3) The cost of mistrials at both Magistrates' Court and Crown Court levels, due to poor or questionable interpretation services.

I await their considered response!

Further...

IT IS IMPERATIVE THAT INTERPRETERS ATTENDING ASSIGNMENTS WITH HM TRIBUNALS SERVICE, REFUSE TO PERFORM WHILST IN THE PRESENCE OF ALS 'OBSERVERS', AND TO VOICE OBJECTION TO THEIR PRESENCE IN THE MIDST OF THE TRIBUNAL... IF THE TRIBUNAL REFUSES TO EXCLUDE THE ALS 'OBSERVER', THE INTERPRETER SHOULD POLITELY APOLOGISE TO THE TRIBUNAL PANEL, AND IMMEDIATELY WITHDRAW, LODGING THE REASON FOR DOING SO (being prepared not to be paid for the assignment, of course).

Together, we stand! Divided, we fall!

## 9. Migrant disenfranchisement issue

**Polish Int 23.8.11**

**Forwarded message -----**

**From: RD**

**Date: 23 August 2011 21:00**

**Subject: Point to make**

**To: reevs707@yahoo.co.uk**

**Cc: XX,NOP**

Dear Paul

Please have a look at the link enclosed. It might be worth while in potential stage 2 to contact employers' organisations such as CBI and convey the new changes to them. Improper interpreting services disenfranchise new migrants who are needed and welcome by the British industry. At least statistically some of them will end up being witnesses, victims and suspects. Being newly arrived, not fluent in the new localities, new to the law and vulnerable they are in fact more likely than well adjusted locals to experience Criminal Justice System.

**<http://www.guardian.co.uk/business/2011/aug/23/overseas-workers-unskilled-school-leavers>**

## 10. Parliamentary representation

-----Original Message-----

**From:** SB

**Sent:** 09 August 2011 21:50

**To:** OFFORD, Matthew

**Subject:** Letter from your constituent SB

**Tuesday 9 August 2011**

**Dear Matthew Offord,**

I am a qualified, registered (NRPSI) and security vetted Public Service Interpreter writing to express my concern about the UK placing itself in breach of *PACE (Code C) 1984, the European Convention on Human Rights 1953, the Human Rights Act 1990 and the Directive 2010/64/EU of the European Parliament and of the Council of 20-1-2010 on the right to interpretation and translation in criminal proceedings*, because of the impending implementation of the Ministry of Justice new arrangements for the provision of foreign and sign language interpretation and translation services across the justice sector.

I am also writing to request to meet you as soon as possible. I will then produce further written documentation, if required, and explain the situation in details so that you can advise me and we can work out the manner in which you are prepared to support me in view of my concerns which are raised interest of justice and aware of the catastrophic consequences of the MoJ framework agreement with a commercial agency providing linguistic services to all of the CJS agencies.

*Awarding the contract for the provision of foreign language services to a commercial agency creates a wasteful and unprecedented monopoly and, despite the principle of non-regression, the existing National Register of Public Service Interpreting required by the 2010 EU Directive will become obsolete.*

As you may be aware, in line with government guidance, as from 01-04-11, the National Register of Public Service Interpreting is a fully independent regulator of the profession and run purely in the public interest.

The quality of services now provided by qualified, experienced individuals with a strong commitment to their communities will be a thing of the past at an economic cost that is far greater than the current spending and at a likely human and social cost that, in multicultural Britain and in the age of police and judiciary international cooperation, is set to expose the entire UK justice system to unfathomable risk.

*Data collected using the Freedom of Information Act since 2006 to 2010 shows that commercial agencies use unqualified and inexperienced and non-vetted interpreters and in Scotland, since the award of a three-year contract to a single translation and interpreting agency, collapsed court proceedings are already a reality due to lack of competence of interpreters. Under the Scottish arrangement, self-employed interpreters with the right qualifications and years of experience are rewarded a maximum £ 36 for a day's work inclusive of travel costs.*

I have reliable information that the rate of pay in England and Wales offered by the MoJ contracting agency to self-employed court interpreters may be in the region of £25 in total per day.

*Current rates for court interpreting are £28 per hour, which makes us the lowest paid professionals in a court of law.*

*The planning and implementation of the MoJ framework agreement is already costing money rather than making any savings.*

*Moreover, the Professional Organisations representing interpreters in England and Wales have received advice that the MoJ procedure and the framework are legally flawed.*

EULITA (the EU Legal Interpreters and Translators Association) has, in a letter to Mr Jones of the MoJ, stated that the scheme's expectations of savings are naïve.

This misguided scheme will result in inflated expenditure in obtaining a third rate of service that is not in the public interest and in fact, in breach of the Human Rights Act, PACE and tramples over the ancient British right to a fair trial.

Interpreters' Professional Organisations have offered and continue to offer evidence of being able to provide workable and cost-effective alternatives to a private monopoly and, though ignored thus far, are still seeking a dialogue with the MoJ in order to ensure savings and quality within a system that is in full compliance with UK and European Law and that is in the public interest.

I am proud to say that as a result of the collaboration between Cambridgeshire Constabulary and interpreters, the Constabulary achieved a 30% cut in interpreting costs last financial year.

In bringing my concern to your attention, my hope is that you and your colleagues will listen and support us in stopping the MoJ ill-advised scheme by asking questions in the House as to its real costs, whether it is in the public interest and compliant with EU Directives.

**10. Police matters**

**From: ABC**

**Sent: 29 July 2011 17:29**

**To: ACC Douglas Paxton; 'jean.bristo@staffordshire.pnn.police.uk'**

**Cc: Various**

**Subject: Reasons provided by interpreter organisations for their opposition to the MoJ proposal**

**Dear Deputy Chief Constable Douglas Paxton,**

Interpreter organisations in England and Wales, representing foreign language and sign language interpreters, met yesterday and agreed to set up a body to be known as the Council of Interpreter Organisations (CIO). I have been commissioned to write to you on their behalf. They are all being cced in above.

We all oppose the changes announced by the Ministry of Justice.

We write to list the potential consequences of its implementation;

1. We are advised that the procedure and the framework are fundamentally and legally flawed. They will be robustly challenged. We understand that the MoJ proposal is in breach of PACE, the HRA and the European Directive. Insisting as the MoJ does that they are confident that this is not the case is not persuasive.

2. Viviane Reding, Vice-President of the European Commission responsible for Justice, Fundamental Rights and Citizenship wrote to EULITA's President Ms Liese Katschinka on 29 June 2011 (copy attached) states, "The commission, in its role as guardian of the Treaties, will deploy all necessary resources to make the legislation is fully transposed and implemented by all member states..." . She continues, "However instead of offering you further arguments in writing I would like to invite you and [...] to take part in a project (TRAFUT – Training for the Future) for which EULITA and Lessius University College Antwerp have obtained EU funding." Eulita proposes that senior police officers should be invited . We hope these invitations will be accepted.

3. Expectations of savings are naïve. This has been pointed out by EULITA. A copy of the letter to Mr Martin Jones is attached. We are advised by our retained consultant that the likely costs are going to be close to £95 million. Expansion of expenditure as will surely result from the misguided MoJ scheme only to obtain a second rate service is not in the public interest.

4. Press reports quote that the GMP contract with ALS "hampers investigations". It is not in the interests of ACPO and in the public interest to use

the same company and spread the problem of hampered or lost investigations more widely.

5. The same monopoly imposed in Scotland has resulted in over 14 court cases being thrown out. Losing cases because of poor interpreting is not in the public interest.

6. Data obtained using the Freedom of Information Act (FIA) shows that quality suffers whenever commercial agencies are used.

7. Setting up a private monopoly that regulates and qualifies profession is misguided. There is no precedent for this. Monopolies are by definition inefficient and not in the public interest.

8. In the written proposals previously submitted we made it clear we expect no extra cost to the taxpayer other than the payment of the services of each interpreter for each assignment. The costs of regulation, web searches and ultimately set up a call centre that would include payroll facilities are intended to be free to the user. Surely this is in the public interest as it secures quality, the saving of valuable police time and secures interpreter availability at no extra cost.

9. It is clear from meetings with large numbers of colleagues that professionals will not work for ALS or for any alternative monopoly. Processing of cases from the point of arrest right through to court appearances will collapse very quickly. The cost will be enormous. This is not in the public interest.

10. The Cambridgeshire Constabulary model shows how the police and interpreter organisations can work together to secure substantial savings.

11. We understand that the new framework will be described as mandatory. The CIO, having taken expert advice believes this term to be dangerous without ministerial sanction backed by parliamentary authority.

12. Leigh Day & Co is already working on a Judicial Review which we are all prepared to fund as we have pointed out to Mr Jamie Beagent of Leigh Day & Co. We have also sought the advice of Rhory Robertson, partner, of Collyer Bristow LLP. If Leigh Day & Co currently setting up the JR for the PIA do not take the JR on, Mr. Robertson, who led the successful JR against GMP, has already offered a Conditional Fee Agreement. In other words the CoIO is prepared for long-term opposition to the framework and is laying the ground for it. Funds have also been earmarked by the various governing bodies.

13. Lastly, you should be aware the new NRPSI is fully independent of the Chartered Institute of Linguists (CioL) and it will work independently as a regulator should. You should perhaps know I am an elected member of Council of the CioL and have worked on the subcommittee setting the new NRPSI up. I am however not writing as a member of Council of the CioL.

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We hope your deliberations will bring about the dialogue we wish for with a view to ensuring savings within a system that is in full compliance with PACE, ECHR, the HRA and the EU Directive and that is in the public interest.

Please reply to the Council of Interpreter Organisations (CIO) c/o The Society for Public Service Interpreting Ltd. (SPSI), Wellington House, East Road, Cambridge CB1 1BH. The operative email is the one used to send this communication: [infospsi.org.uk@btinternet.com](mailto:infospsi.org.uk@btinternet.com). For telephone numbers please see below.

**Yours sincerely,  
ABC**