House of Commons
Justice Committee

Interpreting and translation services and the Applied Language Solutions contract

Sixth Report of Session 2012–13

Volume I: Report, together with formal minutes, oral and written evidence

Additional written evidence is contained in Volume II, available on the Committee website at www.parliament.uk/justicecom

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The Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General’s Office, the Treasury Solicitor’s Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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The following Members were also members of the Committee during the Parliament:

Christopher Evans (Labour/Co-operative, Islwyn); Mrs Helen Grant (Conservative, Maidstone and The Weald); Ben Gummer (Conservative, Ipswich); Mrs Siân C James (Labour, Swansea East); Jessica Lee (Conservative, Erewash); Claire Perry (Conservative, Devizes); Mrs Linda Riordan (Labour/Co-operative, Halifax), Anna Soubry (Conservative, Braintree); Elizabeth Truss (Conservative, South West Norfolk) and Karl Turner (Labour, Kingston upon Hull East).

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The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via www.parliament.uk

Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/justicecttee. A list of Reports of the Committee in the present Parliament is at the back of this volume.

The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume. Additional written evidence may be published on the internet only.

Committee staff

The current staff of the Committee are Nick Walker (Clerk), Sarah Petit (Second Clerk), Gemma Buckland (Senior Committee Specialist), Helen Kinghorn (Committee Legal Specialist), Ana Ferreira (Senior Committee Assistant), Miguel Boo Fraga (Committee Assistant), Holly Knowles (Committee Support Assistant), George Margereson (Sandwich student), and Nick Davies (Committee Media Officer).

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Summary

In August 2011, the Ministry of Justice signed a four year Framework Agreement for language services with Applied Language Solutions (ALS, now Capita Translation and Interpreting). From 30th January 2012 when ALS subsequently began delivering interpreting and translation services to HM Courts and Tribunals Service it faced immediate operational difficulties. ALS and more recently Capita have been unable to recruit qualified and experienced interpreters in sufficient numbers, leading to an inadequate volume and quality of interpreting services being available to courts and tribunals. This has resulted in numerous hearings being adjourned or severely delayed and, in criminal cases, unnecessary remands into custody, with potential implications for the interests of justice.

Professional interpreters have largely boycotted the new arrangements; this has contributed to the difficulties in levels of fulfilment but does not entirely explain them. There was significant concern revealed in the consultation process that quality standards could be diminished by the imposition of a tiered system to enable a wider pool of interpreters, and by the introduction of lower levels of pay. This suggests to us that the Ministry of Justice was determined to pursue the new arrangements in the face of evidence that there would be some reduction in the quality of language services to the courts.

The Ministry of Justice has steadfastly defended its decision to procure language services from ALS, and has remained publicly confident that the operating model set out in the Framework Agreement can provide the service that the justice sector requires. Nevertheless our evidence strongly suggests that the Ministry of Justice did not have a sufficient understanding of the complexities of court interpreting work and failed to properly anticipate or address the clear potential for problems with ALS’ capacity to deliver on its promises. In our view the evidence shows that ALS failed to deliver on many aspects of the Agreement and did not implement appropriate safeguards to ensure that the interpreters it provided were of sufficient standard. In particular, ALS clearly needed significantly more resources than it had at its disposal to deliver the service levels required. It also paid lip service to the regulatory duties accepted under the Framework Agreement, and did not have the capacity to cope with complaints or to implement basic vetting procedures. For the organisations that represent professional interpreters the operational difficulties confirmed their concerns about the new arrangements and the company chosen to operate them.

Performance has undoubtedly improved markedly but this has taken a long time to achieve and Capita is not yet being asked to supply interpreters to meet the full demand of HMCTS. The Ministry of Justice has had to monitor ALS very closely to secure the level of improvement necessary to make the Agreement workable, and continues to do so. The judiciary, magistracy and legal professionals were concerned about the quality of interpreting services that Capita were providing, but noted some improvement. The most important priority is for the MoJ and Capita to prove that the Framework Agreement is capable of attracting, retaining and deploying an adequate number of qualified and competent interpreters to meet the requirements of the courts and other justice agencies. We are concerned that existing safeguards of quality may not be fit for purpose, and
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consider it likely that without an independent review and subsequent revision of the tiering system, the confidence of important stakeholders, including the judiciary, magistracy and legal professionals, will continue to be undermined. The existing arrangements may not be financially sustainable as Capita is propping up the continuation of the Agreement, which mean that the Department’s savings, originally projected to be £15million, are effectively being secured at the company’s expense.

The new Minister told us that she had initiated discussions with representatives of the professional interpreter community and we will monitor the outcome of these. Making progress will also require the professional interpreter community to work flexibly with the Department in seeking to find an acceptable way to restore their services to the justice sector. Concrete safeguards will need to be negotiated and we consider that there is a strong case for a review of the rates of remuneration, particularly for highly qualified interpreters.

Our efforts to obtain a full picture of the current effectiveness of interpreting services were hampered by the absence of any substantiation from frontline staff. In the course of our inquiry it became apparent that HMCTS had issued an edict to its staff instructing them not to participate in our online consultation, established to invite direct observations of ALS performance, an approach which we had found productive in previous inquiries. We consider that the actions of the Ministry in this case were unhelpful and contrasted with the approach they took in our previous inquiries. We consider that their actions may have constituted a contempt of the House, but as we have sufficient evidence from other sources to make a reliable judgement, we have not asked the House to take further action on this matter, although we gave serious consideration to doing so.

In this Report recommendations are set out in bold text and conclusions are set out in bold italic text.
1 Introduction

Background to the Committee’s inquiry

1. Interpreters are used by the Ministry of Justice and its agencies throughout proceedings in courts and tribunals, and in prisons and probation. The Law Society suggested that they are particularly important in the areas of crime and immigration. In criminal justice, the area in which we received most evidence, they are used for non-English speaking victims, witnesses and defendants. They are used at all stages in the process during: arrest, interview and charge; official prison visits; solicitors taking instructions; court hearings; trials; sentencing; the creation of probation reports; and post-trial proceedings, such as those related to proceeds of crime. Interpreter services cover a variety of different services including face-to-face and telephone interpreting, written translation, and language services for the deaf and deaf/blind. Interpreting means converting spoken language to another language, or in the case of deaf or deafened people, sign language to spoken language and vice versa. Translation means converting a written text in one language to another written language.

2. The reliance on interpreters in cases involving non-English speaking parties, defendants, victims and witnesses is considerable. John Fassenfelt, Chair of the Magistrates’ Association, explained their value to magistrates: “[…] translators are officers of the court. They are extremely important to the court, and we must have trust and confidence in those translators […] [we] also rely on the interpreter’s skill, experience and knowledge”.

3. In August 2011, the Ministry of Justice (MoJ) signed a four year Framework Agreement for language services with Applied Language Solutions (ALS, now Capita Translation and Interpreting, (Capita TI)). Under that agreement a ‘call-off contract’ enables a range of justice sector bodies to enter into individual contracts with ALS each time an interpreter or linguist is supplied. ALS began operating a five year contract with the MoJ under the Framework Agreement on 30th January 2012. Those bodies already making use of the services of ALS are Her Majesty’s Courts and Tribunals Service, parts of the Crown Prosecution Service and Her Majesty’s Prison Service.

4. When ALS began implementing the Framework Agreement it faced immediate operational difficulties including a lack of registered interpreters, resulting in an inability to deal with the volume of demand. Where interpreters were available they were frequently without qualifications or under-qualified. There was also a lack of transparent or properly functioning processes for recruitment, vetting and complaints. At that time we received a significant volume of correspondence from concerned stakeholders. Following an oral evidence hearing with Peter Handcock, Chief Executive of HM Courts and Tribunals Service (HMCTS), related to our Budget and Structure of the Ministry of Justice inquiry on

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1 Ev 48
2 Ev w25 [Note: references to ‘Ev wXX’ are references to written evidence in the volume of additional written evidence published on the Committee’s website]
3 Q 39
4 Not published
6th March 2012, we wrote to Mr Handcock with further questions. In his response on 31 May he explained steps had been taken which had led to a "significant improvement in performance" since the first few weeks of the full implementation of the contract. He said while HMCTS were still “working through issues”, he was “confident that the Framework Agreement can provide the service that the justice sector requires and the efficiencies forecast". Nevertheless, significant concerns about the operation of the Framework Agreement continued to be raised with us.

5. In view of these concerns, in July 2012, we launched an inquiry on the provision of interpreting and translation services since Applied Language Solutions (ALS) began operating as the MoJ’s sole contractor. Specifically, the inquiry asked for evidence on the following six areas:

i. The rationale for changing arrangements for the provision of interpreter services

ii. The nature and appropriateness of the procurement process

iii. The experience of courts and prisons in receiving interpreting services that meet their needs

iv. The nature and effectiveness of the complaints process

v. The steps that have been taken to rectify under-performance and the extent to which they have been effective

vi. The appropriateness of arrangements for monitoring the management of the contract, including the quality and cost-effectiveness of the service delivered.

6. We received written evidence from the Ministry of Justice, Capita, organisations representing professional interpreters, individual interpreters—most of whom had chosen not to provide services on behalf of ALS but a small number of whom had—and other stakeholders, including the Magistrates Association, Law Society, and individual barristers and solicitors. We did not receive written evidence from Gavin Wheeldon—CEO of ALS at the time the contract was secured—specifically in relation to this inquiry but we did receive evidence from ALS in our inquiry on the budget and structure of the Department, noted above. We also took oral evidence from: Madeleine Lee, Director of the Professional Interpreters’ Alliance; Nick Rosenthal, Chair of the Institute for Translation and Interpreting; Ted Sangster, Chair of the National Register of Public Service Interpreters; John Fassenfelt, Chair of the Magistrates’ Association; Richard Atkinson, Chair of the Criminal Law Committee of the Law Society; Gavin Wheeldon, former CEO of ALS; Andy Parker, Joint Chief Operating Officer, and Sunna van Loo, Public Services Director, Capita Ltd; Peter Handcock CBE, Chief Executive of HMCTS; Ann Beasley, Director General Finance and Corporate Services, Ministry of Justice; and Helen Grant MP, Parliamentary Under-Secretary of State for Justice.


**Interference with witnesses**

7. In the course of our inquiry it was alleged that HMCTS had actively discouraged its staff from submitting formal written evidence. As a result, we established a three week online consultation to invite observations, anonymously if necessary, from people who had direct experience of the provision of interpreting and translation services by ALS during the period September and October 2012. We hoped that this would provide a forum for those who might have been reticent to provide formal written evidence, including court and tribunal service staff. The Ministry of Justice initially refused to provide our secretariat with regional contact details to enable the consultation to be publicised to HMCTS staff. It then became apparent that HMCTS had issued an edict instructing their staff not to participate. We also heard from the chair of a magistrates’ court bench who had been dissuaded by HMCTS from sending data on the performance of interpreters to support his evidence.7

8. We wrote to the Secretary of State, Chris Grayling MP, requesting an explanation and Helen Grant MP, Parliamentary Under-Secretary of State for Justice, who investigated the matter on his behalf, explained:

> “We took this decision as the Department was already giving its evidence to the Committee in written and oral form [...] The Civil Service Management Code and the Osmotherly Rules say that officials should not take part in research projects or surveys designed to establish their personal views on Government policies. In the second half of October, we became aware of some interpreters contacting courts directly with the details of the forum, accompanied by a press release from an interpreters organisation which disagreed with the MoJ’s evidence at the Public Accounts Committee. In light of these emails, we decided to email HMCTS Cluster Managers to give them some guidance on how to respond to these specific emails. […] In my view, this email was an entirely appropriate response to the contact from interpreter groups that staff received and did not interfere with the collection of evidence by the Committee.”8

The email she referred to stated: “You may be contacted by interpreters inviting/encouraging you to join a forum where anecdotal information about this service is being gathered. As the Department has already provided consolidated evidence to the Committee you are requested to refrain from participating, [...].”9

9. In respect of alleged interference with testimony submitted by Mr Beeke, a member of the magistracy, she explained that, as the respondent had wished to include a copy of a local spreadsheet of issues with Capita-ALS which was not possible to verify against ALS’ own data on complaints, it would have been “suggested” to him that such spreadsheets should not be submitted as evidence.10

10. **We consider that the actions of the Ministry in respect both of court staff and of the magistrate may have constituted a contempt. We find the approach of the Department on**
this matter extremely unhelpful, particularly in the light of the very successful use by this Committee of online consultation with their staff in previous reports, such as our reports on the role of the prison officer and the role of the probation service. The Department has not previously resisted the use of a process which gives the Committee a broader understanding of the experience of staff, and which is not in any way designed to challenge the ultimate responsibility of Ministers for the policies of the Department.

11. It is not for the Ministry of Justice to judge whether steps they took in relation to the inquiry did or did not interfere with our collection of evidence. That is a matter for us and for the House of Commons. Any act which obstructs or impedes the House in discharging its functions may be treated as a contempt of the House.

12. In considering this matter we have been mindful of the fact that the House exercises its jurisdiction in cases of contempt sparingly and only when essential to prevent substantial interference with the performance of its functions. In this case it appears that our efforts to obtain a full picture of the current effectiveness of interpreting services in courts were hampered by the absence of any substantiation from frontline staff. However we consider that we have sufficient evidence from other sources to make a reliable judgment. We have relied on evidence from other important stakeholders, including the Senior Presiding Judge, the Magistrates’ Association, and the Law Society, along with the testimony of professional interpreters who were observing court proceedings. We have therefore not asked the House to take further action on this matter although we gave serious consideration to doing so. We expect the Ministry of Justice and its agencies to have proper regard to the rights of Parliament and those who give evidence to Committees of the House, and, as our predecessor Committee demonstrated in 2004, we will not hesitate to refer alleged infringements to the House when necessary.11

The NAO report and the Public Accounts Committee inquiry

13. On 10th September 2012 the National Audit Office published a memorandum The Ministry of Justice’s language services contract which detailed the results of its investigation into the Framework Agreement, commissioned in April 2012 by the Public Accounts Committee. The conclusions and recommendations are listed in the box below. The Public Accounts Committee held its own inquiry into the issue and held hearings on 15th and 29th October 2012. The Committee published its report on 6th December 2012.12

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11 In 2004 the Constitutional Affairs Committee referred a matter to the Standard and Privileges Committee after a CAFCASS board member, Ms. Judy Weleminsky, was asked by the Lord Chancellor to resign for failing “to behave in a corporate manner.” This occurred after she had submitted written evidence to the Constitutional Affairs Committee on her own behalf, much of it critical of the management of CAFCASS. The Lord Chancellor subsequently apologised to Ms. Weleminsky. See Standards and Privileges Committee, Fifth Report of Session 2003–04, Protection of a Witness, HC 447.

The Public Accounts Committee’s recommendations

1. The Ministry lacked management information on the previous use of interpreters and therefore did not have a clear understanding of its requirements under the new system. The Ministry did not know how much it was spending on interpreters, or how many interpreters it required or in what languages. As a result, the system it selected was driven by bidders’ proposals rather than its actual requirements. The Ministry should ensure that it understands the services it needs to procure thoroughly and its cost before commencing future procurement projects.

2. The Ministry did not conduct thorough due diligence checks on Applied Language Solutions (ALS) before signing the Framework Agreement. For example, it commissioned a credit rating report, which suggested that ALS should not be awarded a contract valued at more than £1 million. The Ministry did not act on its findings and although it consulted with stakeholders, including interpreters, it did not take their concerns into consideration. The Ministry should collect all available information on a bid and bidder, and consider the full data set at an appropriate level of seniority, before making final decisions on future contracts.

3. Despite very poor performance, the Ministry only penalised the supplier £2,200 and failed to penalise it at all for the first 4 months, when performance was at its worst. Risible levels of penalties and low expectations of performance allow private companies to get away with over promising and under delivering. The Ministry should draft and implement future contracts so as to minimise transitional problems, for example through piloting and rolling-out new systems gradually and incentivising contractors to meet contractual requirements from the outset; for example, through robust use of the penalties available.

4. The Ministry estimated that it would need access to 1,200 interpreters to meet its requirements; however, the contract went live when the supplier had only 280 interpreters ready to work under the terms of the contract. The Ministry believed that many more interpreters were available to work, in line with contractual obligations, than was actually the case due to over-optimistic assurances from Capita-ALS and confusion over definitions of what important terms such as ‘registered’ actually meant. When implementing future contracts, the Ministry should not rely solely on contractors’ assurances that they are ready and able to deliver the service but should conduct its own thorough testing and have a detailed transition plan to ensure that the service will be delivered before going live.

5. The Ministry was unable to confirm that all interpreters working under the contract had the required qualifications, experience and enhanced CRB checks. Capita was unable to assess and mark all interpreters as required by the Framework Agreement and could not be certain that all interpreters had the required experience. The Ministry did not have sufficiently robust processes in place to ensure that Capita-ALS had checked and recorded qualifications, evidence of experience and enhanced CRB checks. The Ministry should ensure that Capita-ALS now has procedures in place to guarantee that only interpreters with the correct skills, experience and character work under the contract, including agreeing and putting in place an alternative to the assessment regime. It should test the effectiveness of these procedures through a programme of audits and spot checks on individual interpreters.

6. Capita-ALS is still unable to provide sufficient numbers of interpreters to meet all of the Ministry’s language requirements. By October 2012, the Ministry was still using the contingency plans to source some interpreters. The Ministry is responsible for all aspects of the efficient administration of the courts and must work with Capita-ALS to develop a more creative approach to recruiting interpreters across all required languages and geographical locations.

7. The Ministry was unable to provide information on the additional costs to the department of the delaying of trials because of the failure to provide interpreters. There has been an extra cost both to the courts and to prisons caused by the postponement of judicial proceedings. In the future, the Ministry must undertake comprehensive cost and benefit analysis of its new policies.

2 Changing arrangements for the provision of interpreter services

The previous arrangements

14. The Framework Agreement replaced a range of arrangements for the provision of language services in the justice sector. The main model was for registered public service interpreters—freelance, self-employed individuals—to be called directly by courts, police forces and other criminal justice agencies. Interpreters were identified primarily using the National Register of Professional Service Interpreters (NRPSI)—which required registrants to hold a Diploma in Public Service Interpreting in law, health or local government and made them subject to a code of professional conduct—and they were expected to have Criminal Records Bureau (CRB) disclosures. Access to the National Register required payment of a licence fee.13

15. In some courts which chose not to use the National Register local arrangements applied; some interpreters worked without staff knowing whether they had appropriate qualifications and CRB disclosures. Specialist agencies, panel arrangements with a central booking team and ad hoc local arrangements were used by the then Tribunal Service. Although interpreters were paid locally, a fee structure was set through a national agreement discussed below. Thus similar services were being booked, provided and paid for in different ways.

16. The various arrangements were governed by the National agreement on arrangements for the use of interpreters, translators, and language service professionals in investigations and proceedings within the criminal justice system, established in 1997. The Agreement represented the culmination of the recommendations of a series of reviews of civil and criminal justice. The Runciman Royal Commission on Criminal Justice, established after the death of Mrs Iqbal Begum was related to inaccurate court interpreting, recommended in 1993 that only trained and qualified interpreters be used in court.14 In response NRPSI was set up along with a qualifying exam, the Diploma in Public Service Interpreting (DPSI). Lord Woolf’s 1996 review of the civil justice system Access to Justice recognised a need for a “highly qualified interpreting profession that was both accountable and sustainable in order to support public services and in particular the courts”.15 Later, in 1998 the Trials Issues Group16 recommended the exclusive use of NRPSI interpreters when selecting face-to-face interpreters for criminal investigations as well as court proceedings.17

13 This has now been replaced with a registration fee for interpreters.
14 http://wwwofficial-documents.gov.uk/document/cm2222632263.pdf; In the case of Iqbal Begum (R. v. Iqbal Begum; Court of Appeal: 22 April 1985 [1991] 3 Cr.App. R. 96) found that the Appellant’s trial had been a nullity in that the interpreter engaged by the defence had been far from competent in the Appellant’s languages and accordingly that her purported plea of “Guilty” to her husband’s murder had not been a proper one. The conviction was quashed and with the concurrence of the Crown she pleaded “Guilty” to manslaughter and was sentenced in a manner which resulted in her immediate release. See Ev w110
15 Ev 42
16 Membership of the Group included: Association of Chief Police Officers; Bar Council; Crown Prosecution Service; Court Service; HM Customs and Excise; Home Office; Judiciary; Justices’ Clerks’ Society; Law Society; Lord Chancellor’s Department; Magistrates’ Association; Victim Support; and the National Probation Service.
The Chartered Institute of Linguists (CIOL) developed other accredited qualifications, mapped against independent and international standards, including a Diploma in Translating and a Certificate in Bilingual Skills.

17. The Agreement was an evolving document. It was revised in 2002 after a further appraisal of the arrangements conducted as part of Lord Justice Auld’s wider review of criminal courts in 2001 proposed “a review of the levels of payment to interpreters with a view to encouraging more and the best qualified to undertake this work and to establishing a national scale of pay”. It was revised again in 2007 and 2011. The National Agreement required: every interpreter working in courts and police stations to be registered with one of the recommended registers i.e. NRPSI, CIOL, the Institute of Translation and Interpreting (ITI) and the Association of Police and Court Interpreters (ACPI); spoken language interpreters to be registered with the NRPSI; a determined effort to be made to obtain a registered interpreter; and specified alternative arrangements that should be used only if no registered interpreter could be found, and delay or rescheduling was not possible. Where an interpreter was drawn from sources recommended in the National Agreement they were subject to a code of conduct and to disciplinary procedures. There were parallel developments in interpreting arrangements for UK Border Agency and immigration tribunals.

**Problems with the previous arrangements**

18. The MoJ described the rationale for change as stemming from fundamental “shortcomings, inconsistency and inefficiency” in the previous arrangements, leaving the Department and its agencies potentially exposed to “unacceptable risks”. For example, security and quality checks were inconsistent, complaints were not dealt with in a timely or efficient manner, and the booking and payment systems were time-consuming to administer for court staff.

19. An internal audit report in January 2010 criticised some aspects of the then Courts and Tribunals Services' handling of interpreter bookings. Specifically, these services sometimes used interpreters from sources other than the NRPSI; had weak control systems; and lacked accurate financial and management information. Ms Beasley, Director General of Finance and Corporate Services at the Ministry of Justice, explained: “[…] each court and tribunal was booking its own interpreters. They had quite often paper copies of a list that was out of date. There was no proper complaints procedure. There was no ability to influence. If an interpreter had not performed well in one court, there was no system that ensured that they didn’t then operate in different courts.” In July 2011, the MoJ

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19 Office for Criminal Justice Reform, *National Agreement on Arrangements for the Use of Interpreters, Translators and Language Service Professionals in Investigations and Proceedings within the Criminal Justice System, 2007*

20 NRPSI, CIOL, ACPI and ITI all have codes of professional conduct and transparent, published procedures, including for appeals. See Ev 120.

21 Ev 48

22 Ev 30

23 Ibid.

24 Q 213
reportedly told stakeholders that there had been “concerns that NRPSI registration does not necessarily guarantee quality. The evidence is anecdotal, but consistent enough to warrant actions.”

20. Representatives of interpreters and the National Register acknowledged that there were some concerns with the previous system amongst practitioners. In particular, these related to the lack of an independent intermediary for commissioning interpreters, and the adequacy of control and disciplinary procedures within the profession. For example, the Society of Office Metropolitan Interpreters UK Ltd (SOMI), which represents metropolitan police interpreters, told us it had concerns regarding quality standards but had wished to retain existing qualifications and independent regulation. Legal interpreters also sought a properly regulated profession, with corresponding professional standards and safeguards. According to Ms Madeleine Lee of the Professional Interpreters’ Alliance (PIA) and Mr Nick Rosenthal of ITI, similar problems continue to exist in the current system. Notwithstanding these problems, CIOL felt that it was “unfortunate” that the MoJ “took heed of a small group of vociferous interpreters who, for their own reasons, were critical of standards bodies at the time.”

21. Ms Lee believed that problems arose from the National Agreement being only a guidance document, and the existence of a range of routes for commissioning interpreters. As a result there were people working for courts and tribunals who were not registered with the NRPSI, and who were not professionally qualified or experienced. The profession is not statutorily regulated. Anyone who can speak two languages may offer their services as an interpreter.

22. Another problem with the old system was lack of timeliness and inefficiency in the complaints and disciplinary processes related to the National Register. Mr Sangster, Chair of the National Register of Public Service Interpreters, explained how these processes worked:

“a complaint was made to the national register and was put to a screening body made up of lay and interpreter members to identify whether there was a case to be investigated. If there was such a case, it was passed to the disciplinary committee, which sought evidence from all parties and undertook a hearing that all parties were able to attend. A view was then taken as to the validity or otherwise of the complaint and, if it was found to be valid, what penalty was appropriate. Those penalties went from warnings through to suspension and dismissal.”
He admitted that there were administrative inefficiencies in these processes at the time but noted that due process had to be followed in investigating complaints and that this inevitably took time; he also did not believe that immediate suspension by a voluntary regulator while an investigation was conducted was appropriate.  

23. The NAO agreed with the MoJ that there were “strong reasons” for changing the old system, citing systematic inefficiencies and poor controls and shortages of interpreters in some languages. On the other hand, according to the Chair of the Magistrates’ Association, Mr Fassenfelt, magistrates considered that the previous arrangement delivered a reasonable service; their only concerns centred on monitoring of interpreters’ skills, experiences and knowledge. A magistrate from the Suffolk Bench told us that he had been unable to recall a single occasion in the previous 12 years of the bench not being provided with an interpreter. Mr Atkinson, Chair of the Criminal Law Committee of the Law Society, was similarly positive: from his perspective legal practitioners had found that the existing system worked smoothly. He noted, however, a particular problem with delays in what he described as “multi-handed cases” i.e. cases in which a number of defendants and witnesses who spoke the same language were being interviewed, creating an unusually high demand for one particular language. The European Legal Interpreters and Translators Association (EULITA) stated that it regarded the high standards of interpreting in England and Wales, and the National Register and Diploma underpinning it, as beacons of good practice for other countries in the European Union.

24. Notwithstanding clear administrative inefficiencies within the variety of previous arrangements for the provision of interpreting services to the courts, we conclude that there do not appear to have been any fundamental problems with the quality of services, where they were properly sourced i.e. through arrangements that were underpinned by the National Register of Public Service Interpreters, with interpreters qualified in the Diploma in Public Service Interpreting, and under the terms set out by the National Agreement.

34 See also Ev w124
35 The National Audit Office, The Ministry of Justice’s language services contract, September 2012
36 Q 39
37 Ev w17
38 Q 40
39 Q 43
40 Ev w01
3 The new arrangements

The procurement process

25. Under the previous Government, in early 2010, the MoJ joined forces with the Association of Chief Police Officers and the Crown Prosecution Service to develop a new approach to language services in the justice system; at an early stage it was decided that outsourcing the management of such services to a private company would be considered as an option. In September 2010, Crispin Blunt MP, Parliamentary Under Secretary of State for Justice, announced to the House the Government’s decision that interpreting and language services were to be procured using a “competitive dialogue approach”, whereby the MoJ set objectives and explored with potential providers how they would meet them over several stages of dialogue, eliminating bidders at each stage.

MoJ consultation with stakeholders

26. The final round of the procurement process left only ALS in the running for the contract. During this final stage, when substantive plans were already formed, the MoJ invited stakeholders to comment. The consultation, announced in a letter on 30 March 2011, included: a summary of the plans; proposed quality standards which would apply to interpreters and translators; a proposed code of conduct; management information and key performance indicators; and a draft impact assessment.

27. The MoJ received 140 responses from individual interpreters and their various representative groups, service users and the judiciary. Concerns included: the company operating as a regulator and supplier, creating a conflict of interest; the appropriateness of the tiered structure in relation to existing standards, and perceived limited scope to use tier 3 interpreters in the courts; the introduction of assessment centres, which were seen as costly and unnecessary given existing recognition of appropriate qualifications and professional registers; the dilution of qualification requirements, for example, the inclusion of a degree in the target language; and the implications of the changes for future training arrangements. Some respondents from the interpreter community also suggested that they would refuse to be re-assessed and that potential changes to the pay structure—on which they were not consulted due to commercial sensitivities—meant that many interpreters might be unable or unwilling to continue working in the justice sector.

28. The responses reportedly led to some refinements in the model, including to the qualification requirements. When we asked the Ministry of Justice for more detail on these refinements it was clear that they were not extensive; we were told that there had

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41 The National Audit Office, The Ministry of Justice’s language services contract, September 2012, para 1.8
42 HC Deb, 15 September 2010, cols 46WS–47WS; see also Ev 30
43 In February 2011, PIA had sent to the MoJ a pre-action for Judicial Review letter which they believe is the only reason that any consultation took place. See Ev 109.
44 Ev 127
45 Ev w53, Ev 38
46 Ev w53
been additions to the list of interpreter membership organisations recognised and modifications to the applicable standards for deaf interpreters.\textsuperscript{47} The various elements of the Framework Agreement and their impact on the provision of interpreting services to the courts and tribunals and on the interpreting community, and hence on the problems that materialised when the Agreement was implemented, are discussed in more detail later in chapter 5.

**Concerns about the procurement process**

29. Three other themes raised by respondents to the consultation related to the procurement process itself. These were: the use of the competitive dialogue process; the consultation exercise; and the appropriateness of ALS as the MoJ’s choice of contractor.\textsuperscript{48}

**The use of the competitive dialogue process**

30. The Association of Translation Companies (ATC), a professional organisation representing the interests of commercial companies offering language services, told us that a number of its members, including Applied Language Solutions, were involved in the competitive dialogue process. Some of these members had informed the Association that they had decided to withdraw from the process as they viewed the specifications to have been flawed.\textsuperscript{49} Another company, Cintra Ltd, was of the view that the tender process was well designed in its early stages.\textsuperscript{50} The only other bidder that remained in the competition alongside ALS up to the final stage, thebigword, told us that they felt there was less clarity and transparency in the process than they had experienced in similar exercises. For example, the qualification criteria for each stage were not fully defined from the outset.\textsuperscript{51}

**Consultation with the interpreter community**

31. Organisations representing professional interpreters felt that there was insufficient consultation with them, both regarding the decision to procure a new model of provision following the early stages of the review process, and in the development of the model proposed in the draft Framework Agreement. Had they been consulted at an earlier stage, interpreters and their professional organisations say they would have liked to have worked with the MoJ to address collectively the issues that had been identified, and the concerns, whether justified or not. They say that they would like to have worked towards a revision of the existing system, based on the existing National Agreement, Register and associated professional qualifications, rather than having a new system imposed on them.\textsuperscript{52}

32. In particular, the Professional Interpreters for Justice Campaign—comprising eight membership organisations, together representing over 2320 registered and qualified...
interpreters, and other non-membership stakeholders—expressed regret that the MoJ did not attempt to remedy perceived shortcomings with NRPSI registration as a mechanism for quality assurance by providing support or funding to improve the existing system and ensure that the National Agreement was properly enforced.\textsuperscript{53} For example, the MoJ did not look at outsourcing the functions of booking and payroll systems while continuing to use approved lists, including the NRPSI, to provide assessed and vetted interpreters.\textsuperscript{54} Ms Lee felt it was important that any new arrangements built on “decades of policy development, from the Runciman report onwards, through the Auld report and the various incarnations of the National Agreement.”\textsuperscript{55} Witnesses believed that such an approach could have resulted in: stricter implementation of the National Agreement; greater incentive for interpreters to become properly registered; and the ability of organisations to share information about disciplinary hearings.\textsuperscript{56} They felt that membership of a professional organisation with stringent membership requirements would represent a better guarantee of quality than a new assessment.

33. Partially in response to the concerns, the National Register, which was previously part of the Chartered Institute of Linguists, was established as an independent body in April 2011; the register is now freely accessible online.\textsuperscript{57} Other options earlier proposed by the profession, but rejected by the MoJ, included regional not-for-profit units and a partnership approach to working with local language service providers, for example, by building on existing models of best practice such as those used by the Metropolitan and Cambridgeshire police with centralised booking coordinators working with local providers.\textsuperscript{58} Mr Handcock explained that justice sector work represented approximately 10% of a £1bn market; he dismissed the possibility that the MoJ could itself have set up a centralised system as it would have required “substantial investment”.\textsuperscript{59}

34. Some witnesses strongly condemned the Ministry of Justice’s approach to consultation with professional interpreters. Ms Lee described the MoJ’s conduct as a “failure to listen”; she detailed the various ways in which representatives of professional bodies had sought to communicate to the Department their concerns:

> First, the Ministry was warned from about 2009 onwards. It chose to disregard those views. We continued to warn it in the run-up to the contract going live that it was not going to work, and it did not take us seriously.\textsuperscript{60}

35. Mr Rosenthal stated:

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\textsuperscript{53} Ev 109, Ev 120  
\textsuperscript{54} Ev 38  
\textsuperscript{55} Q 12 [Ms Lee], Q 16 [Mr Rosenthal]  
\textsuperscript{56} Ev 120  
\textsuperscript{57} Qq 13–15. See Ev 120. Prior to 2011, NRPSI was funded by subscription fees from end users (police forces, HMCTS, local government organisations, NHS Trusts) as well as by interpreters’ registration fees (around £90). When the NRPSI became independent of the CIOL in April 2011, access to the register was made free of charge for users, whereas interpreters now have to pay a £130 registration fee to fund the NRPSI’s running costs.  
\textsuperscript{58} Ev w36, Ev 83, Ev w70, Ev w115, Ev w124  
\textsuperscript{59} Qq 186–187  
\textsuperscript{60} Qq 19–20
“[…], there is every sign that all consultation with the profession was what one colleague has referred to as “nonsultation” […] I represent an institute with 3,000 members. We are probably one of the largest organisations. You would think that, if it was seriously engaging with the profession, it would be talking with us. We became very concerned in the summer of 2011. Interpreters and translators are fairly shy, retiring, slightly conservative individuals by nature. We took a decision as a professional body that it was right for us to come out to bat for the profession, and we wrote to the Prime Minister and several other Government Ministers in September 2011 […] We did receive replies from Government Ministers. It is because we were concerned by the failure to listen at civil service level that we felt it appropriate to raise the issue with those MPs who were responsible for overseeing it, just to voice our concerns, because they might not be aware of some of the issues that were going on.”  

36. Mr Sangster, Chair of the NRPSI, told the Committee that he had previously dealt with other Government departments and he was “amazed and dismayed” by the MoJ’s behaviour with respect to his organisation’s concerns about the Framework Agreement and suggested it was either “arrogant or incompetent” to treat stakeholders with such “disdain”.  

37. In November 2011, the Minister for the Cabinet Office, Rt Hon Francis Maude MP, announced a presumption against the use of the competitive dialogue procedure except where its use could be justified. Subsequent Cabinet Office guidance states:  

The competitive dialogue procedure is designed to be used for particularly complex contracts. Too often, however, public procurers have relied on it as a means of engaging in dialogue with suppliers, instead of engaging in thorough pre-market engagement to understand the market and supplier offerings prior to going to market.  

38. The professional interpreter community stressed to us that court and legal interpreters require specific skills that are not required in interpreting in other fields. For example, one respondent to the e-consultation said:  

“We need to understand how long it takes to learn a foreign language to a certain standard, in order to be able to interpret from and into it within a specific sector. First of all it takes decades to learn the language itself and later you need to obtain a specific set of skills that are required in order to interpret. You need to be able to translate legal terminology within seconds during a court session and sometimes it is very difficult even for the best interpreters out there. You need to take into account that it is a job that requires due diligence, great listening and verbal skills, ability to

61 Q 21  
62 Q 22  
64 Ev w5
transfer a vast amount of information that is encrypted in a different language within a short time frame.”

A legal interpreter trainer of over 20 years said:

“A seemingly straightforward matter such as bailing a defendant. Only experienced, trained and qualified interpreters have the skills to manage [...] complex communicative situations [...]. Agencies who send untrained so-called “interpreters” to jobs in the belief that the particular procedure in question is “straightforward” or “not complicated” do not understand the science of language nor the ethics of situations in which interpreters find themselves, which can be as unpredictable as the people for whom they interpret. A seemingly “straightforward” matter such as bailing a defendant to appear in court at a future date may be simple procedurally, but difficult linguistically. Defendants may have a regional accent or dialect which is difficult to understand, may use slang or an idiom with which the interpreter is unfamiliar and which requires clarification, may have speech impairment, have mental health problems, or be distressed; s/he may thus speak in a confused way such as not finishing sentences, or speak very rapidly and incoherently. Added to this is the difficulty of understanding the institutional language of the court or the police station; despite their specialised language study, interpreters remain outsiders to the system and must clarify such institutional language for themselves before they can interpret it.”

39. For this reason professional interpreters and NRPSI had been seeking, and continue to seek, statutory protection of title for legal interpreters and translators, as is the case in some other EU states. Interpreters did not believe that the MoJ sufficiently understood the practice of court interpreting or the high calibre of skills required. In their view this resulted in a flawed procurement process which then failed to judge the quality of language services it sourced.

40. It appears there may be some substance to these assertions. In supplementary evidence submitted in early October the MoJ explained that it was now using what it described as “end-to-end process maps of the interpreter process in each jurisdiction” to inform its work to resolve the remaining implementation issues. Mr Handcock of HMCTS rejected a suggestion that the recent emergence of these planning tools perhaps indicated that they did not have sufficient understanding of the complexities of court interpreting work at the time of the procurement process. He stated:

“I don’t think that’s true. We understood it was a complex process and what set us out along the road of changing the system was the complexity that we were dealing with, with a very uneven system, different parts of the system with different practices. One of our key objectives at the beginning of the process was to have a much more

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65 Tomasap, respondent on online forum, see Annex
66 Ev w25
67 Q 7 [Mr Sangster]
68 Ev 109, Q 17
69 Ev 53
We were not convinced by this argument: understanding the complexity of the work and understanding the complexity of arrangements are two very different things.

41. Mr Handcock described the MoJ’s stakeholder engagement with the interpreter community as “extensive”.71 Martin Jones, senior reporting officer for the project, summarised his recollection of the nature of engagement with stakeholders when he appeared before the Public Accounts Committee on 15th October:

“a series of regional workshops were held, and we certainly listened then [...] In terms of ongoing discussions with the interpreters’ organisations, the last meeting that I had with an interpreters’ organisation was in November/December 2011. That conversation was ongoing over time; there was never a point at which I said, “I don’t want to listen to you anymore.” I was continuing to listen, but ultimately, I think we probably got to a point where the information from the majority of interpreters’ organisations was just, “Don’t do this contract”, but the Ministry had obviously been through a competitive dialogue process and we believed that it was the right thing to be doing.”72

42. The NAO concluded that while the MoJ engaged with a range of stakeholders, including the interpreter community throughout 2011, it “did not give sufficient weight to the concerns and dissatisfaction that many interpreters expressed, even though having sufficient numbers of skilled interpreters was essential to the new arrangements’ success”.73

43. Our evidence strongly suggests that the Ministry of Justice did not have a sufficient understanding of the complexities of court interpreting work prior to initiating the procurement of a new service. The competitive dialogue process failed to produce a working model that would enable skilled professional interpreters to continue to service courts and tribunals. The consultation that was undertaken was limited because by the final stage of the competitive dialogue process the nature of the new arrangements had been largely determined and the important concerns that were raised by the interpreter community, and others, even if they were heard, were unheeded.

Due diligence

44. The NAO agreed with the MoJ that “on paper” ALS’ bid was the strongest; it achieved the highest score on non-cost criteria (i.e. service, innovation, quality, supply and sustainability) and was the cheapest.74 On the other hand, while the NAO found that the MoJ ran a fair and competitive process, it concluded that the MoJ was not thorough enough in its due diligence—a standard process that allows prospective customers to check

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70 Q 184
71 Q 185
72 HC (2012–13) 620
73 The National Audit Office, The Ministry of Justice’s language services contract, September 2012, para 1.13
74 Ibid, para 1.11
on a company’s credentials and claims—on ALS’ successful bid. Even though the MoJ had identified many of the risks of working with the company, in the NAO’s view it did not do enough to mitigate those risks, and in some cases give them sufficient weight. Some examples included: a failure to heed a financial report commissioned by the Department that concluded that the company was only suitable for contracts up to £1m; a failure to seek independent advice on ALS’ proposals for the tiered model of qualifications and the new assessments; and a failure to consider sufficiently the impact of interpreters strong dislike of ALS and their concerns about the new arrangements.

45. Our evidence supported this. We heard that interpreters had repeatedly expressed their concern that ALS’ turnover and accounts suggested that it was not sufficiently financially secure to handle a contract of that magnitude. For example, Dr Zuzana Windle told us that, in her capacity as then Director of the Professional Interpreters Alliance, she had sent to the procurement department documentation that she believed provided a clear indication that ALS “was not suitable for a contract of this nature”. This included a dossier of reported problems with ALS’ contract with four North West police forces and credit ratings and official records relating to Mr Wheeldon’s other companies. Dr Windle also drew our attention to the fact that in the early stages of the implementation of the North West police contract ALS had been subject to successful judicial review for underperformance which led to the contract’s temporary suspension.

46. There was clear potential for problems with ALS’ capacity to deliver on its promises which were not adequately anticipated or dealt with either by the Department or by the contractor itself. We share the National Audit Office’s concerns over the weakness of the Department’s due diligence and risk mitigation procedures. This is a cause for concern at a time when the same Department is likely to be responsible for a large complex centralised commissioning programme for implementing the “Rehabilitation Revolution”. In response to one of the recommendations of our report The budget and structure of the Ministry of Justice—which expressed similar concerns and called for an independent review of the Department’s capability in commissioning services—we were told that a strategic approach was being taken to building the requisite skills. We hope that lessons have been learned from this experience, and, given the amount of outsourcing the Department is to be engaged in, we seek further assurances of the Department’s capacity in this area and repeat our call for an independent review before any further major projects commence.

The resulting new arrangements

47. According to Capita Plc—which acquired ALS for £7.5m in December 2011—the Framework Agreement offered the MoJ the following elements:

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76 Ibid.
77 Ev w20, Ev 83
78 Ev w118, Ev w123.
79 HC (2012–13) 97-I
i. Standardised approach to establishing the skill level of interpreters by way of a tier-based system.

ii. Standardised interpreter pay and conditions for all interpreters working as part of the Framework Agreement.

iii. Creation of an online portal through which bookings are made, administered, invoiced and through which payments to interpreters are made.

iv. Implementation of a robust complaint procedure ensuring any complaints raised by the MoJ are dealt with quickly and effectively, including the removal of interpreters from the supplier base who were deemed to be of insufficient quality which was not possible under the previous arrangements.

v. Availability of management information on a nationwide basis which was not previously available.80

48. Mr Andy Parker, Joint Chief Operating Officer of Capita Plc, described how this worked in practice:

We provide a booking portal. We give a service where we have a central complaints service. We ensure all the vetting is done. We ensure all the interpreters are correctly tiered and correctly qualified. We liaise with the court and then we provide a booking service for the courts on our IT. The courts make the request, either by telephone to our call centre or directly on to the portal, and then the interpreters have the ability to take those jobs without intervention by looking at our portal. If a job isn’t fulfilled by the portal, we would phone up a variety of interpreters based on their relevant skill sets. But on the basis that they don’t actually work for us we’re not really controlling who does what; we’re just making the job available.81

49. Financial and time savings were to be achieved as a result of: operational efficiencies through centralised booking; technology-driven job allocation; less administration and more detailed management information.82 The MoJ estimated that its agencies and police forces could save £18 million a year in payments to interpreters alone, with further efficiency savings as a result of reduced administration.83 The original aim of the review had been to reduce costs by 10% i.e. £6 million.84 Ms Beasley was clear that one of the MoJ’s key drivers in proceeding with the Framework Agreement was financial: “we wanted to reduce the cost and we wanted to implement fee regimes that were actually operating elsewhere within the language service market because it would save us money.”85 In the next two chapters we examine how these new arrangements were implemented and have subsequently been operating and consider the extent to which the objectives of the procurement exercise were achieved.

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80 Ev 52
81 Q 147
82 Ev 30
83 The National Audit Office, The Ministry of Justice’s language services contract, September 2012, para 1.12
84 Ev 83
85 Q 206
4 Early operational problems and their impact

Early operational problems

50. When ALS began operating nationally under the Framework Agreement it faced immediate operational difficulties in its provision of services to HM Courts and Tribunals Service, including a lack of registered interpreters, resulting in poor quality of interpreting services and difficulties in responding to demand, and the adequacy and transparency of the complaints process and the systems underpinning the online portal. We sought evidence on prisons’ experience of using the services of ALS but our witnesses reported no problems or difficulties of any significance. Some examples are described in the box below.

Case studies

In the case of R v Rajvinder Kaur at Winchester Crown Court an unqualified man, Mr Lone, stood in for his wife as an interpreter during a murder trial.87

An interpreter working for ALS told us:

“I have been told by the company that if I agree to interpret for counsel/probation/ anyone else outside of the courtroom, it is ‘in my own time’ and I will not be paid for it! How can the system function?! Time down in the cells with a defendant to explain after the decision what the next steps are, appeal etc or outside the courtroom by probation officers is not factored in, and interpreters are expected to try and persuade the court clerk to sign them off at a different time from when the case finishes.”88

Another respondent to the online forum said:

Even the easiest legal terms were totally misinterpreted. The oath was interpreted as “the proof I will give” – “give evidence” is the simplest of the legal terms used in Court; and astonishingly, the Police’s caution (defendant’s recorded interview was read out in Court) was interpreted as “you should not say anything. When legal terms such as “burden of proof is reversed”, “evidence by way of rebuttal”, or even simpler terms as “contemporary notes” were being discussed, Capita’s worker just kept an worrying silence.89

A defence solicitor explained to us:

[My] client could speak little, if any English and after an hour wait for an interpreter (which the Police told the Court Clerk they had contacted) nobody had attended. I was unable to adequately explain the situation to the client and therefore unable to provide any alternative address to the Court. Clearly on a Saturday there was no chance of trying to obtain alternative accommodation which is usually arranged through the Probation Service. Therefore the client had to be remanded in custody until the Monday when through the “Russian” Interpreter who attended he was able to secure bail having put forward an alternative address. It was clear that had he had an Interpreter and being furnished with that information bail could and should have been granted on the Saturday.90

Data Source: Justice Committee e-Consultation

86 Ev 30
87 Ev w9
88 Elsy, interpreter working for ALS, respondent on online forum, see Annex
89 Hirolo1926, self identified as other, respondent on online forum, see Annex
90 Robin123, a Defence Solicitor from the North of England, respondent on online forum, see Annex
Interpreting and translation services and the Applied Language Solutions contract

Underperformance against key indicators

51. Our evidence suggested that ALS’ poor performance could be demonstrated by a range of indicators. In the first week the level of fulfilment against HMCTS’ requirement for interpreters ran at a mere 40%, against a performance target of 98%; the fulfilment rate in the first month was 65%. Over two thousand complaints were received in the first quarter of operation, comprising 13% of assignments that ALS fulfilled. Fulfilment figures simply represent an indicator of the level of supply against demand, not quality. According to the NAO, no quality associated KPIs were included in the Framework Agreement as the assumption was that after checks and assessments only interpreters of the right quality would be supplied to jobs.

Assessing the quality of provision

52. The majority of the evidence we received about the performance of interpreters booked through ALS related to courts rather than tribunals, and in particular to criminal justice cases. For example, the Law Society explained that it had not received significant concerns from a wide spectrum of the profession but was aware of “significant problems in criminal courts.” The evidence we did receive regarding tribunals, including from the Senior Presiding Judge, indicated that performance in tribunals may be less consistent than in courts. While we received limited evidence specifically related to problems regarding the translation element of the contract, Professional Interpreters for Justice believed that the concerns expressed about the quality of face-to-face interpreting were equally valid to the quality of translation services provided by ALS to the justice sector.

The experience of professional interpreters

53. As Professional Interpreters for Justice noted, it is difficult for the public to assess an interpreter’s performance as they would not have a mastery of both languages. By definition it is unlikely that a defendant, witness, or victim who is being interpreted for will realise that they are not being given accurate translations, although in some cases it has been obvious to them and to magistrates, for example. Since February 2012, interpreter members have been attending courts across the UK as a means of professional development, and, at the same time they have monitored the attendance and performance of ALS workers and compiled dossiers of evidence on underperformance. One interpreter, Yelena McCafferty, established a website, www.linguistlounge.org, to enable court observers and court users, including solicitors, to submit evidence of ALS’ performance. The site received high volumes of complaints regarding a failure on behalf of ALS to provide interpreters and the supply of unqualified, inexperienced and incompetent
interpreters; by August 2012 it had gathered 137 such reports and 178 newspaper reports.\(^98\) She also documented instances gathered from interpreters of: trials being halted and delayed as a result of failure to supply interpreters; verdicts being mistranslated; evidence being distorted; and bail conditions misinterpreted or omitted.\(^99\)

### The experience of the magistracy and legal professionals

54. A few months after the implementation of the Framework Agreement the Magistrates’ Association requested feedback from its members on their experiences of how the new service was working in practice within the magistrates’ court system. Approximately one-third of areas responded and, according to the Association, these represented a wide geographical spread across England and Wales and between rural areas and cities. A small minority (10\%) of respondents thought the service had improved with the new arrangements; they found the system more flexible now and thought it had facilitated the availability of a greater range of languages. The nature of experiences of the vast majority of those who provided feedback, and individual magistrates who provided evidence to us directly, was comparable to the incidents that had been collated by professional interpreters. According to the Law Society and individual barristers and solicitors, legal professionals—who rely on ALS interpreting services to interact with their client and to ensure that their client understands the proceedings of the court and the implications of decisions regarding their plea and bail, for example—had experienced similar problems.\(^100\)

### The impact on court and tribunal proceedings

55. There are a number of areas which the majority of respondents to the Magistrates Association survey and individual magistrates’ courts had found problematic with the ALS contract. Some problems primarily related to organisational issues. For example, interpreters had been unable to stay for the whole duration of court proceedings or had failed to arrive at the right time; moreover some interpreters were directed to the wrong court house.\(^101\) Another key problem for magistrates’ courts, particularly those more distant from large urban areas, has been the location of interpreters, predominantly those with oversubscribed or with less common language skills; the implementation of the contract with ALS has meant that interpreters have had to be brought in from further afield, at the cost of travel expenses and court time, despite the presence of local interpreters who had been used prior to the ALS contract.\(^102\) ALS had also allocated translators who did not speak the required language, or with the wrong language or dialect skills; there are examples of a Kurdish interpreter being sent for a Bengali client and a Portuguese speaker being provided for a Spanish client.\(^103\)

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98 Ev w17
99 Ibid.
100 Ev 48
101 Ev 47, Ev w17
102 Ev 47
103 Ev 48; Apollo, respondent to online consultation, see Annex
56. Another problem was that interpreters were reported as frequently having performed inadequately in their role. Evidence from solicitors and magistrates suggested that some interpreters did not have sufficient language skills, either in the required language or English, necessary to ensure the full understanding of the defendant. In some cases magistrates had been forced to rely on their own language skills, and to use online translation tools.

57. There also appears to have been a lack of knowledge of court etiquette and process, for example, interpreters not informing the court if they were going to be late, not dressing appropriately, or failing to whisper. There have also been cases in which the interpreter has failed to accurately translate everything that has been said to the client and what the client has said to the court. Some interpreters have been unaware that they are required to give precise translations and unaware that they are required to swear an oath to court. Under such circumstances solicitors reported that their clients had been unable to comprehend the decisions and proceedings of the court and had been unable to adequately instruct their advocate as to their desired direction. Mr Jeremy Lynn, a barrister, told us that he had found interpreters unable to cope with the language in court, words which he described as the “everyday fare of a criminal court” like, for example, indictment, joint enterprise, conspiracy, which “leave this new breed of interpreter floundering”. He also expressed concerns about the behaviour of interpreters in court.

58. Mr Fassenfelt raised two consequences of requests for interpreters being unfulfilled that most concerned him. First, an individual may be remanded in custody as a consequence of no interpreter being available and, secondly, a trial may collapse, inconveniencing witnesses and, if the defendant was previously remanded in custody, putting them back there. We heard from a magistrate from South East Suffolk who had personally observed the emotional distress of defendants when he had been unable to communicate with them the reasons for adjournments or remands in custody for lack of information. Mr Atkinson gave examples of delays to a crown court trial and of a defendant with no previous convictions being remanded in custody on three consecutive occasions for lack of an interpreter then being granted unconditional bail. We received evidence of many other examples of repeated adjournments.

59. We have referred above to the Ministry’s efforts to prevent us receiving first hand testimony from court and tribunal staff on the standards of interpreting services. It is clear to us from the evidence we have been able to collect that the quality and effectiveness of court and tribunal interpreting services was seriously hampered by ALS’ performance.
The right to a fair trial

60. The ability to understand criminal proceedings and the prosecution’s case is vital to preparing a defence and receiving a fair trial. The scope for damage as a result of poor quality interpreting is very significant; at worst inaccuracies in interpreting could lead to miscarriages of justice, for example, wrongful conviction. There was some disquiet amongst many witnesses, from the interpreting sector in particular, that the operational problems and reduction in quality of interpreters under the new tiering system had impacted on court proceedings to such an extent to deny defendants a fair trial.

61. We asked Mr Atkinson of the Law Society for his views on the potential for the current quality of interpreting to result in miscarriages of justice or in undermining the right to fair trial. He suggested that the extent would be difficult to ascertain. While he was confident that miscarriages of justice would occur infrequently, he nevertheless felt that it was possible. In his experience more commonly cases had been stopped and restarted. Furthermore he explained that fair trial provision within European jurisprudence looks at the whole duration of the process. He stated: “If one is looking not at the total outcome but at each of those processes, clearly it is impacting. People are being remanded in custody. Perhaps the greatest indictment of the present failures is that people are spending time in custody for no reason other than the lack of an interpreter. Although that would not come into the category of someone being denied a fair trial at the end of the day, when looking at the trial process, I would be very happy to say they had been denied a fair trial process.”

62. Collapsed cases come under two categories: ‘cracked’ trials, where a case is concluded without a court hearing; and ‘ineffective’ trials, when a hearing is cancelled on the day it was scheduled to go ahead and has to be delayed to a later date. The trend for ineffective trials as a result of non-attendance of interpreters is rising. Between 2006 and 2011 the percentages of ineffective trials that were attributed to this were below 1% in magistrates’ courts and 0.5% in crown courts. In 2011, 327 trials in magistrates’ courts and 17 in crown courts were deemed ineffective for this reason. In the first six months of 2012, during which time ALS was in operation for five months, there were 345 such trials in magistrate courts and 17 in crown courts, representing 2% and 0.6% of ineffective cases respectively.

63. We are seriously concerned about the increase in ineffective trials as a result of non-attendance of interpreters, particularly in magistrates courts. We will monitor the quarterly statistics on ineffective trials for the remainder of the year to see whether this is an ongoing trend.

113 Ev 38
114 See Ev w9, Ev w31, Ev w39, Ev w41
115 Q 54
116 Ev 108
117 Compiled from Ministry of Justice, Court statistics (quarterly), relating to Q 1 and Q 2 in 2012
5 Explanatory factors for poor performance

64. Our witnesses described numerous factors that they suggested explained the poor performance described in the previous Chapter, ranging from typical teething problems, to the ineptitude of the Department and the provider it had selected, or the reticence of interpreters to accept the new terms, through to illustrations of the Framework Agreement as profoundly flawed. All of these certainly have some element of truth, and in many areas their impact is intertwined. In this chapter we consider the interplay between these factors as we discuss the nature of the Framework Agreement and how it has been operating in practice.

Ordinary ‘teething problems’?

65. Mr Wheeldon explained that the MoJ was aware that it could expect initial operational problems in scaling up provision:

“We knew it was going to be hard work and we knew—it was something we were open about—that in the first couple of months there would be problems. We saw that with the northwest police forces and we knew it would happen again in this scenario. I don’t think we expected it to the level it ended up at by any means, but we knew that going into it there would be issues and that was something we openly discussed.”\textsuperscript{118}

66. Mr Handcock agreed. He said: “When you implement a contract of this kind and you are making a fundamental change in the way that you deliver a service into any business, you always need to anticipate that it won’t go as smoothly as you planned.”\textsuperscript{119}

Poor preparation for implementation

67. Our evidence strongly indicates that many of the problems encountered were not adequately anticipated and that scant regard was paid to cautionary advice given to the Department regarding the shortcomings of the Framework Agreement and the potential capacity of the provider during the consultation process.

Rushed implementation across the court and tribunal system

68. The contract was initially to be rolled-out regionally over six to nine months. The MoJ later decided on a national roll-out and ALS’ model of delivery was piloted in North West courts and tribunals in December 2011 at the Department’s behest before full implementation on 30 January 2012. In relation to the decision to shift to national roll-out the NAO observed that the pilot in the North-West was unlikely to have been indicative of ALS’ capacity to go operational nationwide. For example, the pilot took place over a six

\textsuperscript{118} Q 73
\textsuperscript{119} Q 202
week period, including Christmas and New Year: a relatively quiet time for courts and tribunals. This was also a geographical area in which ALS had an established pool of interpreters. In addition, there was no formal evaluation by the MoJ of the arrangements tested. The NAO concluded that the MoJ under-estimated risks when it switched from a regional to national roll-out. The NAO went so far as to say there was "nothing to indicate that a single, national implementation would be successful".120

69. We questioned witnesses from the Department about the rationale for the pilot. Ms Beasley explained the decision:

Part of the thinking behind [the regional roll-out] was that we had originally planned to roll out in conjunction with other criminal justice agencies, such as the police and CPS, at the same time. But, when we came to it, it was only the Courts and Tribunals Service that was rolling out, so we anticipated that the roll-out would be less complex...We had undertaken a pilot in the northwest. Bear in mind that we had been working with a number of freelance interpreters for a long time and what we were introducing, if you like, was an outsourced booking process. Previously, that bit was done in-house and we had used freelance interpreters in-house; what we were then moving to was a booking process that was run by ALS. We tested that in the northwest pilot and the results of that were very good.121

70. When questioned about the nature of the evaluation, Ms Beasley further explained that, as the pilot was to test the new arrangements for the booking process, rather than the capacity of ALS to deliver what it had promised in terms of a wider pool of interpreters, monitoring was limited:

"My understanding is that the results of the ability to fulfil bookings were monitored and in the northwest pilot they achieved the 98% service level that is in the contract. There was feedback on the usability of the booking portal, and the feedback on that was that it was very good. There were very few complaints. The bits that were kind of new in the model, which was essentially the booking process, had been tested in the northwest pilot, so we didn’t see at that point any reason to delay rolling it out further, which would deliver us significant savings."122

71. On the other hand Mr Handcock explained that he was conscious of the difficulty for interpreters in moving to new terms and conditions and acknowledged that "perhaps" the pilot should also have involved some “load-testing” of ALS’ capacity.123 Mr Handcock also admitted: "there were a number of questions that we might very easily have asked that we didn’t, and had we asked those questions I suspect we would have taken a rather different course on implementation."124

72. The decision to opt for a regional roll-out was done partly to prevent regional boycotts, suggesting that the MoJ were all too aware of the scale of serious resistance from

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120 The National Audit Office, The Ministry of Justice’s language services contract, September 2012, paras 2.4–2.6
121 Q 196
122 Q 199
123 Qq 199, 207
124 Q 193
amongst the interpreter community. The MoJ was, at best, naïve to view the new arrangements simply as an “outsourced booking process”. Interpreters had repeatedly raised significant concerns about the new terms and conditions under which they were expected to work.

**Difficulties in scaling up delivery**

73. Capita-ALS also attributed some of the early problems to difficulties in immediate scaling up of delivery. Mr Wheeldon told us that, of private sector providers, ALS had the most experience of delivering interpreting services to the justice sector; experience was necessarily limited as a result of the nature of the previous arrangements. It should be noted that most of ALS’ expertise was in translation services rather than interpreting.

74. The NAO believed that the MoJ allowed the contract to become fully operational before it was ready; it found that ALS was held to implementation at the end of January 2012 although it had not by that time registered and assessed sufficient interpreters in line with contractual obligations. Mr Handcock told us that he believed that at the point of roll-out there were more than sufficient interpreters registered to provide the national service. This assumption was based on the number of interpreters that had registered through ALS’ booking portal. In the event, a number of those registered “chose not to work under the framework”. Mr Handcock did acknowledge to us that the MoJ “should have been more cautious” than it was about levels of registered interpreters.

**Limited management information to aid planning**

75. On the other hand, the NAO also established that ALS did not have the volume of interpreters ready to work that was specified in the tender. According to Capita-ALS in February there were only 770 interpreters, comprising 52% at tier 1, 26% at tier 2 and 22% at tier 3. This represented a dramatic decrease in the pool of professional interpreters that were available under the previous system through the National Register. Mr Wheeldon explained ALS’ lack of preparedness on limitations in the management information available. He explained that limited information was available, for example, concerning the demand for interpreting in the justice system by language and geographical area—something that the new arrangements themselves were intended to address—to enable ALS to plan as thoroughly as Mr Wheeldon would have wished. For example, he recalled that the information provided by the MoJ concerned only some parts of the

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125 Ev 52
126 Q 68
127 The National Audit Office, *The Ministry of Justice’s language services contract*, September 2012, paras 2.7–2.11; Under condition 1.5 of the Framework Agreement Capita –ALS is required to have access to sufficient numbers of interpreters to provide 24 hour cover, 365 days a year.
128 Qq 199–200
129 Qq 200–201. See also Ev 83
130 Q 201
131 Ev 57
132 Ev 83
133 Qq 69–71
system, primarily tribunals. Assumptions about the number of interpreters required to service the contract—and the appropriate level of remuneration which we discuss later in this chapter—were therefore based on ALS’ existing work with the police and covering first appearances in courts in the North-West, as well as contracts with the NHS and local government, and fee levels in Scottish courts which were 30–40% lower.

76. Other witnesses were critical of the Ministry of Justice for not properly seeking to ensure that ALS was furnished with adequate evidence to inform its planning for implementation. For example, after Mr Wheeldon’s testimony Mateusz Kiecz drew our attention to freedom of information requests that he had made in January 2012 to a number of magistrates and crown courts in the Yorkshire area which yielded information on the volume of requests for interpreters and the five most frequently and five least frequently used languages in each court. CIOL told us that no attempt had been made to seek data from the National Register and described the assumptions about the number of interpreters required as a “finger in the wind” estimate.

77. The NAO also expressed concerns about the lack of robust data held by the Department regarding the number of interpreters required and what languages were required to properly inform the procurement exercise. We heard that the need for better information had first been drawn to the attention of the Department over 20 years earlier; both the Runciman Commission and Lord Justice Auld reports recommended an audit trail be kept on the use of, and cost of, interpreters and translators by the courts. The Ministry of Justice submitted to us further evidence that explained that some information was made available in the form of snapshot data from a sample of courts captured over a period of a week. In addition, the specific requirements of justice sector agencies were discussed during the competitive dialogue process.

78. In the past the Ministry of Justice failed to act on the recommendations of two important reports that an audit trail be kept on the volume of use of, and cost of, interpreters and translators by the courts. The process of reviewing arrangements for the provision of interpreting services had been in motion for quite some time before the Department began outsourcing the management of this work. The Department should have planned for the need for better information and taken steps to get it at an early stage in this process.

**Contractual compliance**

79. Individual witnesses alleged—with varying degrees of force—that in securing the contract ALS had either misled the Government or acted incompetently. Our evidence

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134 Q 69
135 Qq 64–69, 115
136 Ev w123
137 Ev w124
138 The National Audit Office, The Ministry of Justice’s language services contract, September 2012, para 1.6
139 Ev 120
140 Ev 69
141 Ev w4, Ev w20, Ev w31, Ev w15
suggested that ALS failed to provide full and accurate information to the Department about the level of interpreters available and that the Department failed to carry out satisfactory checks. ALS’ memorandum submitted to our inquiry on the budget and structure of the Ministry of Justice in April 2012 indicated that the company had 2,500 “experienced and qualified linguists […] actively working” in the system.” 142 The numbers given to us by Capita noted above highlight that this was plainly not the case. Neither is this fully explained by the NAO’s revelation that there were differences in understanding between ALS and the MoJ regarding what constituted registration.143

80. On the other hand, it is evident that some professional interpreters had registered with ALS despite having no intention of accepting work, and others had deliberately registered spoof identities, including a pet rabbit; this exposed the fact that ALS were automatically inviting all those who had registered on the supplier database to accept work, despite the company not having sought verification of their identities or credentials.144 This continued to be the case until recently: the MoJ estimated that 50 interpreters who had not verified their credentials remained on the supplier list in October; it was agreed with Capita that they were to be removed by the end of November.145

81. There were also allegations of data theft from the NRPSI; it is claimed that ALS used these data to falsely register interpreters on its own list.146 Around 80 cases of data theft were referred to the Information Commissioner’s Office (ICO) for investigation. The ICO concluded that Data Protection Act compliance by ALS was unlikely, and the Commissioner required ALS to take certain steps to demonstrate that it was bringing its processing of personal data into compliance with its obligations under the DPA.147

82. The NAO found other contractual obligations, some serious, with which ALS were not complying, and that it had not alerted the MoJ to these. These included: server capacity being insufficient to meet demand; a large backlog in assessment and marking after Middlesex University, which designed and was administering assessments, pulled out as a result of difficulties in working with ALS; and many instances where there was no record of qualifications or enhanced CRB disclosures being checked. In addition there was, and remains, no way to assess for interpreting in many languages; ALS’ agreement with Middlesex University was only to make assessments available for 32 languages, a small fraction of the requirements of the justice sector.

83. The quality of interpreters that were being provided exposed major problems either with the Framework Agreement itself or with the quality assurance arrangements that underpinned it. We discuss these matters in more detail as we explore how the Framework Agreement operated in practice and the impact that its implementation had on those interpreters that had been providing language services to the courts and tribunals under the old arrangements.

142 HC (2012–13) 97-II
143 The National Audit Office, The Ministry of Justice’s language services contract, September 2012, para 2.20
144 Ev 109, Ev w36, Ev 83, Ev w83
145 Ev 69
146 Ev 109
147 Ibid.
The interpreter boycott

84. As the MoJ were forewarned during the procurement process, professionally qualified registered public service interpreters who previously served the courts and tribunals previously largely boycotted the new arrangements.148 In May 2012, NAO assessed that only 13% of NRPSI-registered interpreters (301 people) had agreed to work with Capita-ALS; this equated to 20% of ALS interpreters being fully qualified professionals.

85. Capita-ALS described the early operational problems as partially relating to a low level of awareness among stakeholders and a lack of pre-engagement with them, as well as a resistance to the new service.149 Mr Wheeldon believed that the low number of interpreters agreeing to work with the new arrangements was the fundamental issue that hindered implementation.150 He admitted that he was aware of interpreters’ concerns about the framework agreement, but told us that resistance was higher than expected.151 Some effort had been made to engage with professional interpreters. ALS had approached professional interpreter bodies and the National Register in an effort to ease the transition to the new arrangements but Mr Wheeldon found that they were reluctant to engage, with the exception of NRPSI and ACPI.152 Working groups were also held with interpreters that were not members of any of the professional bodies.153 When it was put to Mr Handcock that low participation rates could have been anticipated he remarked: “No plan ever survives engagement with the enemy, does it? That is the way that these things always work.”154

86. Professional Interpreters for Justice characterised the boycott of the new arrangements: “[I]t is not an industrial dispute driven by unions or organisations; instead independent self-employed freelancers are demonstrating the power of market forces because they are under no obligation to work for unsustainable pay rates or unacceptable terms.”155 Involvis Ltd, on behalf of the Association of Police and Court Interpreters and the Society for Public Service Interpreting, conducted an online survey of interpreters in August. Nine hundred and sixty five interpreters responded, 85% of whom were registered with NRPSI and 11% were registered with ALS. According to the survey, 95.7% of NRPSI members refused to register with ALS. The most common reasons for this were: lower standards of professional interpreting; low hourly attendance rates; lack of quality assurance; and a poor assessment process.156 We discuss these issues in more detail later in this chapter.

87. Mr Wheeldon made some serious counter-allegations. He drew to our attention what he described as a “serious problem” with intimidation of interpreters who had agreed to

148 Ev 30
149 Ev 52
150 Q 98
151 Qq 63, 74. See also Q 85: A similar scenario occurred when ALS gained the contract for police forces in the North-West but resistance diminished relatively quickly.
152 Q 74
153 Q 75
154 Q 203
155 Ev 109
156 Ev w68
work for ALS, including assaults, spitting and verbal harassment.\textsuperscript{157} In subsequent evidence Capita TI documented such instances, some of which had been referred to the police, and explained that although the level of intimidation—which included abusive text messages—had now reduced, there continued to be occasional cases.\textsuperscript{158} Ms Lee considered that unqualified or inexperienced interpreters might find it daunting to be observed and monitored by a qualified, experienced, registered professional interpreter, but fully rejected allegations of organised intimidation.\textsuperscript{159}

88. \textit{The professional interpreter boycott undoubtedly contributed to ALS’ difficulties in coping with demand but we do not believe it entirely explains them. The Ministry of Justice and its contractor appear to have buried their heads in the sand. Many of the concerns that interpreters raised regarding the nature of the new operating model were realised during implementation, were utterly predictable, and should have been properly considered from the outset.}

\textbf{The tier-based system}

89. ALS’ tender offered to the MoJ an increased pool of “qualified interpreters” by introducing a tier-based system which provided a standardised skill level structure for the categorisation of interpreters and for the subsequent allocation of jobs. The level of qualifications and experience required for each tier is set out in the table below.

\begin{table}
\centering
\caption{Criteria for working through the Applied Language Solutions justice framework}
\begin{tabular}{|c|c|c|c|}
\hline
\textbf{Tier} & \textbf{Qualifications} & \textbf{Experience} & \textbf{References} & \textbf{Assessment Centre} \\
\hline
1 & At least one of: & At least 100 hours public sector interpreting & References & Pass at tier 1 standard \\
\hline
\textbullet Diploma in Public Service interpreting (DPSI) (English law option) & & & & \\
\textbullet Certificate in Community Interpreting (CCI, the forerunner to DPSI) & & & & \\
\textbullet Metropolitan Police test with DPSI (Health or Local government options) or Hons. degree or higher in interpreting & & & & \\
\textbullet NRPSI registration & & & & \\
\textbullet membership of Association of Police and Court interpreters & & & & \\
\textbullet membership of the Institute of Translation and Interpreting (Police Court Interpreter level). & & & & \\
\hline
\end{tabular}
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\textsuperscript{157} Qq 99–102

\textsuperscript{158} Ev 59

\textsuperscript{159} Ev 120
<table>
<thead>
<tr>
<th>Tier 2</th>
<th>At least one of:</th>
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<tr>
<td></td>
<td>the 'Partial DPSI' (English Law option), comprising all parts of the DPSI except written translation from English</td>
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<tr>
<td></td>
<td>certain English and language-related degrees and diplomas.</td>
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<tr>
<td>Plus:</td>
<td>any degree</td>
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<tr>
<td></td>
<td>exposure to criminal Justice work in the UK or abroad.</td>
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| Tier 3 | Demonstrable experience in the public sector with an appropriate linguistic background |
|        | Formalised basic interpreter training |

|        | At least 100 References |
|        | Pass at tier 2 standard |
|        | 100 hours public sector interpreting experience |

|        | Pass at tier 3 standard |
|        | References |
|        | desirous |

Data Source: National Audit Office analysis of the Ministry’s framework agreement

The impact of the tiered system

90. We encountered fundamental objections to the tiering system, which many of our witnesses believed had resulted in a significant lowering of the standards required of such work. Ms Lee, among others, explained the impact of the introduction of the tiered system:

- The highest level, tier 1, effectively mimics the previous minimum standards, which, under the National Agreement, represented only the first step on a continuous professional development ladder.

- The default setting for HMCTS bookings is now tier 2 interpreters who previously would not have qualified to work in criminal justice interpreting. Tier 2 includes those who are not qualified in written translation—which may be required in the course of interpreting work in this sector—and those who have degrees or language related diplomas which are not recognised interpreting qualifications and which do not constitute training in interpreting legal terminology; this may include those who have failed the written translation part of the DPSI.

- No formal interpreting qualifications are required to operate at the lowest level, tier 3, and neither is it necessary to have built up significant experience of public sector interpreting.

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160 Q 24
161 Ev 120
162 Ev w9
91. Individual interpreters and other stakeholder organisations asserted that the implementation of this system has devalued the profession. For example, the International Association of Conference Interpreters stated:

“Interpreting is a profession which, like any other, requires proficiency in specific skills, acquired through training. Oral or sign language interpretation should not be confused with written translation. Since the profession is not legally recognised in the way that doctors, lawyers or architects are, anyone who speaks two languages may offer their services as an ‘interpreter’. The difference in results according to the level of proficiency is, however, enormous.”\textsuperscript{163}

The University Council of Modern Languages, representing higher education training establishments, did not consider that a tiered system of interpreting provision guarantees the level of quality and rigour the justice system demands.\textsuperscript{164}

92. As mentioned above, we received evidence of many cases in which it appeared that interpreters with limited knowledge of legal proceedings were appearing in court, suggesting that they had little or no experience of interpreting in the justice sector. Mr Wheeldon stated that the initial intention was that tier 3 interpreters would be used for community work for the police. However, he acknowledged that in practice, interpreters in some rare languages would be assessed as tier 3 but would be assigned tier 1 court work, because there is no tier 1 level professional qualification for many rare languages.\textsuperscript{165} He further explained that he saw it as end users’ responsibility to determine the tier of interpreter that was most appropriate to the task.\textsuperscript{166} The third tier also provided an entry level to the justice sector to new interpreters who wished to become more qualified.\textsuperscript{167}

93. Mr Handcock clarified that from MoJ’s perspective:

“"The contract requires an interpreter to be provided from tier 1 or tier 2. Those are highly qualified interpreters and it is very important that interpreters are properly qualified. There is a lower level of qualification required for tier 3, but there are still conditions attached to being in tier 3. There are occasions, particularly with rare languages or in difficult circumstances when the pool of interpreters is very small, when it might be necessary to use someone from tier 3, still qualified but qualified to a rather lower level. Whenever that happens, the court is asked if it is content to have a tier 3 interpreter, so ultimately it’s a decision for the judge. It is always a decision for the judge, actually, whether the interpreting service being provided is adequate, and I am quite satisfied that it is.”"\textsuperscript{168}

94. We asked Capita and MoJ the extent to which tier 3 interpreters were being used, and how often they were rejected by the judiciary. Mr Handcock said that it could be assumed that as the proportion of cases in which tier 3 is offered is only 2\% of the total court

\textsuperscript{163} Ev w5, see also Ev w4  
\textsuperscript{164} Ev w90  
\textsuperscript{165} Ibid.  
\textsuperscript{166} Q 84  
\textsuperscript{167} Q 83  
\textsuperscript{168} Q 226
volume, the judge rejects the use of such interpreters in a very small number of cases, but the MoJ does not keep a record of these instances. Nevertheless, tier 3 interpreters represented 22% of Capita-ALS’ supplier list in February.

95. Another potential indicator of deterioration in quality is the number of interpreters that are able to offer services in two languages. We were told that very few people master a second language sufficiently to pass the DPSI; when including multiple languages the pool of NRPSI interpreters only increases by 17%. Yet, according to Capita 48% of tier 1 interpreters, 47% of tier 2 interpreters and 54% of tier 3 interpreters were qualified to interpret in more than one language.

96. Mr Atkinson of the Law Society gave compelling testimony of the importance of properly qualified interpreters operating in courts and the potential difficulties inherent in operating a tiered system:

> It is very difficult to anticipate properly what is going to happen in a courtroom. You can make a good guess that, most of the time, this is what will happen, but frequently that changes. You can go along for what might be considered a routine procedural hearing and find that the prosecution say, "We have evidence that your client has breached his bail conditions, we want to bring that to the attention of the court, and we will be seeking a remand in custody", or "Additional information has come to light that makes this case more serious. We’ve reviewed the evidence, and we’re changing the charges", and/or, "We want to review his bail." Those are technical issues that need proper translation to the defendant. Sometimes technical aspects of the evidence are mentioned at hearings that are not the trial. It is very important that the client understands exactly what is going on. I do not think you can adequately and safely—I emphasise the word “safely”—try to distinguish in advance at what level the interpreter should be. They should be fully qualified and able to do the job in all circumstances.

In a similar vein, we heard from solicitor Matthew Scott who described the idea that court interpreters did not need competency in written translation as “fundamentally misconceived” as interpreters may be called upon to translate at any stage in proceedings, for example, a witness statement or a document forming part of exhibits.

**Specialist skills and rare languages**

97. On the other hand, we heard that there are some instances when the use of an interpreter from a lower tier, including tier 3, might be justified. Sense explained that for deafblind participants in the justice process, who use a range of communication methods, and for whom there is a shortage of registered interpreters, unregulated but appropriately skilled interpreters were sometimes more suited to their individual needs.
Notwithstanding this point, Sense was concerned that the varying nature of interpreting needs of deafblind people was not sufficiently understood by ALS. The Association of Sign Language Interpreters took the opposite view, believing that use of the register of sign language interpreters was imperative.

98. Under the Framework Agreement there is a KPI to have 95% of all languages catered for within a 25 mile radius, providing an indicator of ALS’ progress in increasing the pool of available interpreters, particularly for less common languages. Interpreters considered that the undertaking in the Agreement was unrealistic, and had raised this with the MoJ during the consultation. For example, Ms Lee described the target as a fantasy sold to the MoJ and Mr Rosenthal of the Institute for Translation and Interpreting attributed it to a failure on the part of MoJ to understand the difficulties of fulfilling requirements for interpreters, even in core languages in some parts of the country. One professional interpreter, Mr Marc Starr, suggested that the scarcity of interpreters was related to the infrequent and unpredictable nature of requirements for particular languages in particular localities at particular times. He did not believe that widening the pool would make any material difference to this:

“I do not believe that the idea that an interpreter can be available anywhere for any language at any time, within an hour, is reasonable, feasible or realistic in the first place. […] while the ideal remains that the person closest to a job will be available, there is no way either the public service can ever expect to know when they require an interpreter, or for the interpreter to know when they will be required […] to get any language available to any location without affecting quality is simply naïve and unworkable.”

The courts regularly require languages that are difficult to source properly. According to the MoJ there were fewer than ten interpreters on the National Register for each of a total of 68 languages or dialects. For some of these languages there may be only three or four qualified interpreters in the country and they may need to travel to where the relevant trials are, just as judges and barristers do, in some instances.

99. We heard from Mr Wheeldon that the target seemed “feasible”, with the assumption made that 95% of requests would be for common languages. He attributed ALS’ failure to meet this target to a combination of higher levels of short-notice bookings and a wider range of languages than expected in the absence of accurate management information.
100. The interpreter community drew the Ministry of Justice’s attention to the wildly unrealistic distance key performance indicator during the consultation process but this was disregarded. The number of languages required, the uneven distribution of interpreters and their language combinations across the country, the irregular schedule of courts and police services, last-minute contracting, and varying language needs, all inevitably make it necessary for interpreters to travel long distances. We are concerned that this is a further factor that deters professional interpreters from working under the Framework Agreement as travel expenses have been reduced. If Capita TI is absorbing higher travel costs than ALS first estimated there may be implications for future cost savings.

An untested system

101. The NAO considered that the tiering of jobs and new assessments were unproven, and therefore risky and was critical of the MoJ for not taking any independent advice on the proposed tiering of interpreters during the procurement process.184 Ms Lee made reference to the fact that the tiering system had been rejected by the independent consultant engaged by ALS during the tendering process, but that this was not communicated accurately to the MoJ who were led to believe he had supported it.185 We sought clarification on this point from Mr Townsley who told us:

“My brief for the consultancy visit was to inspect and comment on ALS plans for the screening of interpreters and their interpreting skills. During this visit, I was asked for my evaluation of their plans for a three tier system for interpreters. I made it clear to Mr David Joseph [then Head of Linguist Relations at ALS] that I did not think the three tier system was appropriate or functional. I gave my reasons for this view. I was told by him that a tiered system for interpreters was required by the MoJ and that it was non-negotiable. Having understood that, I then suggested, in that case, that the least worst option would be a two tier system based on a pass in oral AND written components of the Diploma in Public Service Interpreting (DPSI), or a pass in the oral components of the DPSI exam only. Regarding the proposed tier 3, I made it clear that, in my opinion, it was a nonsense and should not be instituted.”186

102. ALS did not make it clear to the MoJ that the three tier system for interpreters had not been supported by the independent expert it had consulted. The Department has sanctioned, untested, a tiering system that imposes major changes to professional occupational standards and has significant potential to undermine the progress that has been made in professional development and resulting improvements in the quality of interpreting services provided in the justice sector. It would be disastrous if the Department continued to permit the courts to be starved of highly qualified interpreters. Just as the Department had concerns that membership of the National Register did not guarantee quality, we fear that a diminution of quality is an inevitable product of implementing a new system which does not accurately evaluate the skill levels of professional interpreters.

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184 The National Audit Office, The Ministry of Justice’s language services contract, September 2012, paras 1.13 and 3.6
185 Ev w31
186 Ev w127
103. Being able to communicate in a given language does not make someone an interpreter. The National Agreement, the National Register and qualifications that underpinned it were put in place to safeguard the right to a fair trial. The level of concern that arose during the consultation process regarding the potential diminution of quality standards by imposing the tiered system, diluting qualification requirements and imposing lower levels of pay suggest that the Ministry of Justice was determined to pursue the implementation of the Framework Agreement in the face of evidence that it would reduce the quality of language services available to the courts.

104. We are astonished that the pilot was not used to test the tiering system and assess whether interpreters meeting the new standards could perform adequately in court. We are particularly concerned at the decision of the Ministry of Justice not to seek to build on safeguards developed under the previous system whereby interpreters other than those registered by NRPSI were to be used only in exceptional circumstances. We support the National Audit Office’s proposal that the tiered system should be independently evaluated.

105. The use of tier 3 interpreters in courts and tribunals should be reserved for those cases in which it is absolutely unavoidable, such as in rare languages for which there is no relevant professional qualification, or to meet the specific needs of a deafblind person who requires a particular mix of skills in an interpreter. Alongside fulfilment rates, the MoJ should monitor the level of use of particular tiers of interpreters by HMCTS and ensure that any instances of inappropriate use of tier 3 interpreters can be properly investigated and managed.

**The assessment system**

106. The Agreement required all interpreters to undertake online and test-centre based assessments to establish their level, or tier, of competence in their language or dialect. In summer 2011, Middlesex University was approached by ALS to design this assessment system.187 Brooke Townsley, who, on behalf of the university, designed what he described as a quality assessment, explained:

“It was not designed or intended to replace or invalidate the full professional qualifications that interpreters already held. It was designed to be supplementary to those and to confirm that the levels of competency indicated by those qualifications were still valid.”188

107. In respect of assessments in particular it was clear to us that ALS should have been more candid with the Department about the limitations on its capacity to begin delivering services at the end of January. Mr Wheeldon told us:

“My understanding is that, up until probably the [17th] February date, we were still going to be working with Middlesex University. I know they were having problems with capacity and getting the number of assessments through, and we had some

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187 Ev w127. The agreement made was between Middlesex University and ALS. Mr Townsley was tasked by the University with carrying out the technical side of this work; he was not acting as a consultant to ALS at this stage.

188 Ev w122
issues with that. They had concerns about their own ability to deliver the numbers that we required […] I’ve never seen any email, letter or anything from Mr Townsley or Middlesex University that would suggest anything but a good relationship up until the end of January.”189

Mr Parker echoed the view that the problems with Middlesex were related to their capacity to deliver the marking of assessments on schedule.190

108. The NAO found that ALS did not notify the MoJ about the fact that Middlesex University and ALS had formally suspended the agreement for the administration of assessments on 3rd January, several weeks before the contract went live.191 Mr Handcock reiterated to us that MoJ was not aware of the fact that ALS’ agreement for the delivery of the assessment process had been terminated prior to contract launch on 30 January.192 Capita refuted this; they explained that they had first informed the MoJ via a telephone conversation, the date of which was not recorded, but suggested that the issue was evident in risk logs, relating to mid-January, which had been shared and discussed with the Department.193 We were subsequently told that the MoJ had become aware that there was a delay in marking assessments from Middlesex University in mid-January but understood that ALS was in the process of discussion with other institutions to pick up the work; the MoJ was not aware of the date of termination until the NAO’s investigation.194

109. The assessment was also a factor in professional interpreters boycotting the new arrangements as they felt that their proficiency was already proven through the level of skills and experience required to achieve professional qualifications and to register with membership organisations. This frustration was exacerbated by the fact that they were initially expected to pay for their own (re)assessment.

110. Our evidence indicated that a considerable volume of interpreters on the supplier database have not been assessed to ensure that they could perform adequately at the tier to which they were assigned; it is not clear how many of them have provided services under the Framework Agreement. We heard from an interpreter who had registered with ALS and had been both assigned as tier 1 and offered a high volume of work despite: having refused to undertake an assessment; awaiting the results of her DPSI; and not uploading a valid CRB check or copies of qualifications or references. When she subsequently felt unable to accept work due to her lack of experience she drew this to the attention of ALS but the work offers continued.195 In addition, we heard that interpreters who had been assessed to be operating sufficiently at a particular tier were offered assignments at higher tiers.196

189 Qq 104–107
190 Qq 175–179
191 The agreement was officially terminated on 17 February 2012.
192 Q 194
193 Ev 64
194 Ev 69
195 Ev w15
196 Ev 109
Standardised pay and conditions

111. Under the draft Framework Agreement, fees for interpreters were reduced and restructured according to tier. Rates no longer include travel time and are now paid hourly; they are: £22 for tier 1 interpreters; £20 for tier 2 interpreters; and £16 for those operating at tier 3, with higher rates paid for weekends and bank holidays.197

112. Previous rates of pay for court interpreters had been under the control of the Department to some extent as they were negotiated through the National Agreement which continues to operate in some areas of the justice sector not yet signed up to the Framework Agreement. Interpreters were paid a fee of £85 for up to three hours work, including travel time, plus £7.50 per quarter hour thereafter. Higher amounts could be earned by working anti-social hours—as continues to be the case—and by undertaking other interpreting work which was not governed by the Agreement.198 Despite allegations that previous rates of pay were too high—for example by the previous Parliamentary Under Secretary of State, Crispin Blunt MP, who cited six-figure salaries—an ITI survey in 2011 found that the average annual income of an interpreter was £15,000, although for some rarer languages it could be up to £35,000.199 We heard from several individual interpreters who had earned far more modest annual incomes than these.200 Expenditure on interpreting increased slightly after the A8 countries joined the EU in 2004 but had been generally stable since 2008.201 The relative stability of costs may be explained by the fact that there had been no increase in interpreter pay under the Agreement since 2007.202 Most recently costs had fallen: the total spent by the Court Service on interpreters fell by 13% from £49.2m in 2009–2010 to £47.2m in 2010–2011.203

113. Dr Francis Beresford estimated that under the new contract there had been reductions in pay of 28–73% for court work and 33–43% for tribunal work, depending on the length of the assignment and the amount of travel.204 Ms Lee of the Professional Interpreters’ Alliance, supplied us with a sample comparison of the post and pre-rates for a typical case which indicated that fees had been restructured to such an extent that interpreters working through ALS were being paid less than the minimum wage.205

197 The National Audit Office, The Ministry of Justice’s language services contract, September 2012, para 1.13; Mileage rates were increased to 40p per mile and interpreters were offered a £5 incentive for bookings accepted through the portal: Law Gazette online, Interpreter problems ‘unacceptable’ says Ministry, 24 February 2012

198 Ev w28
199 Ev B3, Ev w44
200 See Ev w34
201 Ev B3
202 HC Deb, 10 October 2011, c155
203 Ev w9
204 Ev 107
205 Ev 120
Table 2 Comparison of rates of pay to court interpreters. Applied Language Solutions (ALS) and National Agreement (NA)

<table>
<thead>
<tr>
<th>Distance: 29 miles return Travel time: 2 hrs</th>
<th>ALS</th>
<th>ALS</th>
<th>ALS</th>
<th>NA rates 3 hrs min</th>
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<td>3</td>
<td>4</td>
<td>5</td>
<td>5</td>
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<tr>
<td></td>
<td>10am–11am</td>
<td>10am–12am</td>
<td>10am–1pm</td>
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<td>Travel time: 2 hrs</td>
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<td>£0.00</td>
<td>£0.00</td>
<td>£30.00</td>
</tr>
<tr>
<td>Mileage: ALS 40ppm after first 20m = 9 miles</td>
<td>£3.60</td>
<td>£3.60</td>
<td>£3.60</td>
<td>£7.25</td>
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<tr>
<td>NA 25ppm = 29 miles</td>
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<tr>
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<td>£43.60</td>
<td>£63.60</td>
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<tr>
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<td>Gross income / hour *</td>
<td>£4.44</td>
<td>£8.33</td>
<td>£9.86</td>
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Data Source: Professional Interpreters for Justice, see Ev 71

* Gross hourly rates for self-employed interpreters liable to pay Income Tax and National Insurance, who have no pensions, holiday of sick pay and no job security.


– According to the AA, the cost of running a petrol car costing up to £14,000 is 45.91p per mile; for petrol cars costing between £14,000 and £17,000 this rises to 59.83p (assumed annual mileage of 10,000) (2012 figures).

114. NAO modelling estimated the reduction in interpreter pay under the new arrangements as initially 20% dropping to 8% after Capita-ALS altered the terms.206 Dr Francis Beresford and Ms Lee submitted evidence alleging that there were errors in this modelling. According to Dr Beresford the rates used by NAO did not include travel time, travel expenses or parking which were previously routinely paid but excluded under the new Framework Agreement, in addition they were based on police rather than court work.207

206 The National Audit Office, The Ministry of Justice’s language services contract, September 2012, para 1.13
207 Ev 107
115. Gabrielle Cohen, Assistant Auditor General, subsequently explained that the NAO’s modelling was based on the only available data, those which had been used by the MoJ in procurement. While these data were not as comprehensive as the NAO would have wanted, they did provide a range of possible work scenarios for interpreters, based on, for example, the number of interpreter bookings taken, the length of appointments, and travelling time and distance. She further stated: “We believe that the infinite variability in the different pay levels experienced under different scenarios sufficiently explains the difference between the results obtained from our model and that produced by Professional Interpreters for Justice.”

116. One of the primary means by which ALS sought to achieve the savings it promised was through this reduction in rates of pay to interpreters. Mr Rosenthal was robust in his response to this approach:

In looking at paperwork around this contract, it appears that, during the tender phase, ALS claimed it could make savings of roughly one third, based on management efficiencies. Given that actually it has simply used a cudgel to knock down rates of pay within a monopoly situation that it has been handed from £30 an hour to £20 an hour, I would gently suggest that it has achieved savings of one third by sledgehammering its suppliers.

Others echoed this sentiment, describing the new terms as “frankly insulting” and “unacceptable”, particularly as they had invested significant resources in getting the necessary qualifications and regulation.

117. Mr Handcock considered that quality—in the sense of the provision of sufficient tier 1 and 2 interpreters—and pay rates are matters for Capita. Nevertheless these were sanctioned by the MoJ as they had been agreed between the Department and ALS in formulating the Framework Agreement and, as we noted above, this was done in the full understanding on the part of the MoJ of how the bulk of the savings were to be achieved.

118. According to the NAO, the MoJ did not verify ALS’ claims regarding what would amount to an appropriate reduction in pay rates. We sought further clarification from the Department on this matter. In response to stakeholders’ concerns about rates of pay raised in the April 2011 consultation on the Framework Agreement, the Ministry of Justice explained that it tested bidders in the competitive tendering process to ensure that rates of pay would be sufficient to ensure they would attract and retain suitably qualified linguists. This “test” comprised questioning bidders about market rates, and verifying them using a pay comparison website. As we noted above Mr Wheeldon told us that rates were based on: the work that ALS had been doing for the police in the North West;

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208 Ev w124
209 Q 28
210 See Ev w13, Ev 109
211 Q 192
212 Ev 53
213 Ev 69
their work in other sectors; and rates in the Scottish system which he said were 30-40% lower.

119. Conversely, we were told that as the nature of police and court work differs, the former could yield higher incomes than the latter within the same rates.\(^{214}\) For example, in the majority of police cases work does not last more than two hours, and it can wait for an interpreter, unlike courts; this meant that in the North West ALS could ‘sequence’ jobs relatively easily and do so with a relatively small pool of interpreters. The difficulty of applying the principle of back-to-back assignments to courts is that interpreters are required to be in situ for significantly longer than the actual interpreting time in the court room, due to both the unpredictability of court scheduling and the requirements of legal professionals who need assistance outside the court room. For example, a crown court case may require an interpreter to keep a full day to be kept free waiting for the case to be heard.\(^{215}\) We discuss further in the following section how these changes in remuneration impact on fulfilment rates.

120. In addition, if no travel time is paid and the minimum time for a single job is one hour, two police jobs would give a significantly higher hourly rate of pay to interpreters than a one hour magistrates’ court job which may require additional time to be spent with defendants and legal professional outside the court. We were also told that under the North-West police contracts rates paid to qualified interpreters operating at tier 1 had actually been raised from those initially offered to between £30 and £35 per hour.\(^{216}\)

121. Being booked by the hour may also act as a disincentive for interpreters to complete jobs that take longer than planned.\(^{217}\) This may account for the reports we received of interpreters leaving courts in the midst of proceedings to attend other jobs or after the hour assigned.\(^{218}\) This also causes inconvenience to courts. The Senior Presiding Judge noted that as interpreters are booked and paid for only from the moment that the case is listed, they no longer arrive early to assist in pre-conference hearing conferences so these discussions delay proceedings.\(^{219}\) It is unreasonable to expect interpreters to be available for as long as they may be required and not paying for the full time actually required.

122. There is a question over whether pay has actually been standardised in practice. Some individual witnesses, including interpreters and a solicitor, alleged that Capita-ALS was fulfilling some jobs by paying higher fees to interpreters through negotiation.\(^{220}\)

123. We conclude that under any scenario the levels of remuneration available to interpreters servicing the justice sector have significantly reduced. This in part explains why NRPSI interpreters have refused to work under the new arrangements and this in turn impacts on the ability of the contractor to fulfil jobs at a rate which meets demand.

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\(^{214}\) Ev 83

\(^{215}\) Ev w44

\(^{216}\) Ev 83

\(^{217}\) See online consultation report for examples.

\(^{218}\) Ev w44

\(^{219}\) Ev 108

\(^{220}\) Ev w13, Ev 109, Ev w36, Ev w44
The 2001 Auld report recommended a review of the level of payments to interpreters with a view to encouraging more of the best qualified interpreters to undertake work and to establish a national scale of pay. The same interpreters now feel that they have been forced to leave the market.

124. The bulk of the savings accrued in contracting ALS to provide interpreting services appear to stem not from the resolution of administrative issues which were causing inefficiencies, and were a key factor motivating the change, but from a reduction in interpreter pay. In devising the new pay structure the Ministry of Justice and ALS failed to appreciate the differences between court work and police work that would result in court interpreters being unable to achieve a sustainable level of income. We recommend that the MoJ audit the true amounts that are being expended on interpreter pay and travel by Capita TI to establish whether the contractor is providing a level of remuneration that is unsustainable and may already be having a deleterious effect on the quality of interpreters that will be available to the justice sector in future. In order to ensure that the best qualified interpreters are available to courts and tribunals it may be necessary for Capita to further increase the rate of pay for the highest qualified at tier 1.

The online portal

125. The service provided by ALS centres on an online portal with automated systems for: interpreter registration and credentials; bookings and cancellations by justice sector customers; publicising work to interpreters of the appropriate tier; interpreter acceptance and cancellation of bookings via text; payments and their verification; and complaints.

Backlog in complaints

126. The high volume of complaints received during early implementation caused a severe backlog, highlighting inadequacies in the complaints system, which did not have sufficient back-office systems, including staff and server capacity, to cope with data submitted to the online portal.221 This inability to handle the level of complaints resulted in unacceptable delays in their resolution. One magistrate described his complaints as having been “fobbed off for months”.222

Failure of basic vetting procedures

127. We heard that there were similar failures in basic vetting procedures, including systems for recording their verification.223 The intention of the Framework Agreement was to implement a higher level of security checks than under the previous arrangements; interpreters were expected to have an enhanced criminal records bureau disclosure.224 For example, between January and July 20% of applications for vetting by the police were...

221 The National Audit Office, The Ministry of Justice’s language services contract, September 2012, para 3.5
222 Ev w17
223 Q 94
224 Ev 30
turned down. In addition, freedom of information (FOI) requests to Warwickshire Police on the number of applications for vetting by ALS for interpreters indicated that levels of security checks were substantially lower than the number of interpreters purportedly available to work. We heard examples from interpreters registered with ALS, and from those who had created spoof identities, of unverified credentials qualifications, references, personal details, and security checks.

128. **ALS and Capita paid lip service to the regulatory duties accepted under the Framework Agreement. The inability to cope with complaints and the failure of basic vetting procedures are key examples of ALS’ lack of capacity to deliver on its promises to the Ministry of Justice.**

**Perverse incentives within the system**

129. The rates of pay, removal of the three hour minimum booking, the loss of cancellation fees, and the payment of travel expenses only for journeys longer than an hour, together have created a disincentive for interpreters to take court jobs near to where they live, or to accept work at anything other than short-notice, to reduce the risk that they will turn up only for the job to be cancelled. Two responses to our online forum illustrated these tensions:

> I should stress that it only makes financial sense for me to accept bookings for assignments I have to travel to over 100 miles. It does not make sense to accept even longer bookings (i.e. trials) as if they do not last as long as they were supposed to, interpreters are not paid any cancellation fees (but have to make themselves available for the whole length of the trial/refuse other work due to that commitment). We spend most of our time driving/travelling to the venues which must affect our performance.

> Capita often ask me to work a long distance from home and at short notice but I never accept. Travel means such assignments take up an entire day and Capita are unable to offer me what I earn from a day on other projects. They would get closer if they guaranteed more than an hour’s pay for long distance assignments, paid travel costs and travel time in full, and paid for accommodation when they want an interpreter to travel several hundred miles and appear at 10am. A change here appears essential since Capita stated in evidence to the Justice Committee they will never meet the KPI committing them to find an interpreter within 25 miles of the client for 95% of assignments.

130. This is exacerbated by a problem intrinsic to the automated system that all available jobs are texted to relevant interpreters. This provides an incentive to book multiple

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225 Ev 83
226 Ev 109, 83
227 See Ev w9, Ev w20, Ev 109, Ev w36, Ev w82, Ev w83, Ev 53
228 See online consultation report, Ev w34, Ev w39, Ev 83
229 Dmn, respondent to online consultation, see Annex
230 Babelfish, respondent to online consultation, see Annex
assignments and to cancel work at late notice having chosen the one likely to yield the most pay, for example, a job that is further away as above, or that is guaranteed, unlike, for example, a whole day booking for a crown court case that may be adjourned. The system itself thus increases the likelihood that jobs will not be fulfilled. The indirect nature of booking arrangements also makes it harder for the same interpreter to be booked throughout proceedings resulting in a loss of continuity for the other participants in the case and a loss of interpreter knowledge about the entirety of the case which would presumably aid interpreting.
6 Steps taken to rectify under-performance

131. The MoJ, ALS and Capita have taken a number of steps to rectify the underperformance of translation services; these have involved measures taken internally by ALS and Capita and joint steps taken with the MoJ to reduce demand whilst problems are resolved and to enhance the oversight of the contract.

Initial steps taken to rectify under-performance

Restricting the volume of work

132. When operational problems first emerged HMCTS quickly reverted large parts of its business to old arrangements and went back to booking interpreters directly. Mr Handcock explained:

[W]e had a contingency plan; we hadn’t disbanded the teams of people that had been doing the work inhouse. We tracked where they had gone, where they had been redeployed, so that we could reassemble them very quickly. So we still had the capacity across Courts and Tribunals to revert bookings. It became obvious, really about midway through the first week of contract, that it was problematic. We were getting feedback very quickly that bookings weren’t being fulfilled in the right numbers. So we immediately took back all of our short notice bookings; in effect, we took back about 20% of the work. We did that because we were then catching the failures, if you like, so we were wicketkeeping the ALS system for a while, and to a small extent we are still doing that. So within about 10 days of contract problems we were on the problem and we had our own teams of people picking up the slack.233

Enhanced oversight by the Ministry of Justice

133. The MoJ procurement directorate is responsible for oversight of the contract. A recovery team was established which has been closely engaged with ALS and Capita in attempting to resolve outstanding problems.234 Project board meetings have been held regularly to monitor the execution of the Framework Agreement. In the interim the procurement directorate receives updates from Capita TI including: i) a daily email with booking request fulfilments and commentary on language where performance has failed; and ii) a weekly summary report detailing: venues where performance was below 90 per cent; the top five problem languages; top three areas of complaint; performance against complaints; and the actions that have been taken to rectify the problems detailed. Following the NAO report, the MoJ also began monitoring the number of interpreters available to ALS as well as their vetting and skills. The MoJ threatened to rescind the contract on 22 February 2012 and began to penalise Capita-ALS in the following May. The level of penalties applied is discussed further below.

233 Q 203
234 Q 192
Investment by Capita

134. When problems first surfaced, Capita enabled ALS to draw upon Capita’s wider resources and skills to enhance and strengthen its service delivery. In September, Capita estimated that they had invested in excess of £3.5 million to rectify the service inadequacies—which had not been foreseen at the time of the acquisition—by establishing a team of experts to support process implementation and to provide management information. Investment in staffing included the provision of 75 FTE additional staff to work with bookings and improved handling of calls and complaints. Capita also stated that it had: absorbed costs in relation to increased interpreter payments, bonuses and incentives and travel costs which were adjusted after implementation; invested in the IT system; and rectified inadequate processes and procedures.235 By the end of October, the amount invested had increased to £5.4m.236

135. Capita stated that it “do[es] not believe ALS would have achieved the service delivery improvement without Capita’s operational expertise and financial backing.”237 Capita replaced all of the ALS senior management team as it felt that those involved had insufficient experience and capability to deliver the service, or handle and address the issues being faced by service users and the Ministry in its capacity as the commissioning public authority. They were not satisfied with ALS management’s attitude to business process adherence, implementation planning, audit management, and service delivery. Mr Wheeldon told us he saw it “slightly differently”. He said: “[t]he route we may have taken with the Ministry of Justice would have been different had we not been part of Capita. The way we rolled it out and various other things would have been different, so it would be impossible to say, had we been on our own, what it would have looked like.” 238

136. ALS clearly needed significantly more resources than it had at its disposal to deliver the service levels that it promised under the Framework Agreement. The Ministry of Justice was only saved from its failure to conduct proper due diligence, or to take account of the views of consultees, and from the likelihood of subsequently being forced to terminate the contract, by the fact that Capita bought ALS and has been willing to invest heavily in the infrastructure required to salvage an operating model under the Framework Agreement.

The extent to which remedial action has been effective

137. According to the MoJ, its work with Capita-ALS to rectify initial problems with performance and to develop a robust complaints process now meant that it was “of the view that the approach we have taken in outsourcing the booking of interpreters is one that works, and can provide savings to the public”.238 In asserting that the project was succeeding, Helen Grant MP pointed to the improvements and investment that Capita-ALS had made, and the joint work that the Department and Capita had made in relation to
the portal, the use of it and the information that could be usefully taken off it, and cited higher fulfilment rates which were 3% short of the KPI at the time she gave evidence. Both the Senior Presiding Judge and the Magistrates Association noted recent improvements in performance, which the former described as “substantial”. But they had some outstanding concerns, and some witnesses from the interpreter community questioned the extent to which contract compliance had actually been improved by the joint work of Capita and the MoJ.

**Improved fulfilment rates**

138. Between 30 January and 31 August 2012, there were 72,043 ‘completed requests’ for language services. 8,222 (11.4%) of these were recorded as being cancelled by the customer i.e. HMCTS or NOMS. 11% of the remainder of ‘completed requests’ were not fulfilled by ALS, equating to an 89% fulfilment rate over the duration of the contract up to 31 August. By early November the rate was reported to be 95%.

139. We heard that there were some anomalies in these data which suggest that they are likely to represent a significant over-estimate of true fulfilment rates and therefore must be treated with some caution. As discussed above, the old arrangements continued to be in place in part throughout our inquiry. For example, the Involvis survey found that in August almost 80% of NRPSI members who responded were continuing to receive direct calls from courts wishing to book an interpreter. The NAO estimated that use of the old arrangements accounted for approximately one-fifth of interpreting work in courts and tribunals, and this was supported by Mr Handcock who told us this related to short-notice bookings. When we sought verification of the volume of total requirements that ALS were providing at the time of our hearing with Capita in early November, Ms van Loo explained that in September and October they were “quite close” to receiving requests for 100% of the available court work and 85% to 90% of tribunals’ demand.

140. In addition, we heard that cancellations by the customer might include cases where in reality ALS was unable to fulfil the request, for example, if a court rang ALS when somebody attended court too late for them to be of use, or with skills in the wrong language, and HMCTS or NOMS subsequently cancelled the requirement. The NAO established that complaints and material failures were in some cases being logged as customer cancellations. We were assured by Capita and the MoJ that this anomaly was a training issue which had been subsequently rectified.

141. It has been difficult to ascertain what percentage of the total bookings and requirements for the courts service ALS has been operating in each month since the MoJ partially reverted back to the old booking systems. Performance figures clearly do not

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240 Q 216
241 Q 125
242 Q 212; The National Audit Office, *The Ministry of Justice’s language services contract*, September 2012, para 3.10
243 Qq 124–125
244 The National Audit Office, *The Ministry of Justice’s language services contract*, September 2012, para 3.2. See also Q 32
245 Q 133–134 [Ms van Loo]
reflect the company’s fulfilment against 100% of the requirements of HMCTS and they should be altered, retroactively and in the future, to indicate this.

142. *The level of customer cancellations seems rather high.* We recommend that Capita TI reissues guidance to staff regarding the logging of customer cancellations. We also recommend that the MoJ undertakes an audit of fulfilment data with a focus on the reasons for customer cancellations, and uses their findings to seek to reduce the level of these by its agencies’ stakeholders.

**Variation in performance**

143. The Senior Presiding Judge told us that he believed that ALS’ performance in tribunals was more variable than in courts.246 MoJ and Capita acknowledged that there continues to be variance in performance across regions and jurisdictions.247 For example, the lowest rates of fulfilment for courts and tribunals are in the South West and Wales.248 We heard that as data on such variations have emerged, so more targeted recruitment of interpreters has been possible.249 Operational performance within other justice sector agencies appears to have been more positive. For example, the service level within NOMS had been very high, with fulfillment rates often reaching 100%.250 NOMS were reportedly very satisfied with this service; only three complaints had been made up to the end of August.251 Ms Beasley told us that she understood that those police forces using the contract were also satisfied. The intention is that more police forces and the CPS would use the contract in future.252 In addition, the new arrangements are not yet available to solicitors who require an interpreter for meetings with clients outside police stations and courts.253 *We are encouraged that the feedback to MoJ suggests that participants within agencies of the justice system other than courts and tribunals are satisfied with ALS’ performance under the contract.*

**Recruitment of interpreters to the supplier list**

144. On 25th September there were 1135 interpreters on Capita’s supplier list, 932 of whom undertook work in August.254 There had been an overall increase in the number of interpreters used by ALS since February but a decline since the period March to May 2012 when there were over 1000. This is likely to have occurred as checks, for example, on CRB status, and qualifications and experience, have resulted in suspension from the list in the absence of a full audit trial to verify them.255 Capita also reported to us a decline in the use

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246 Ev 108
247 Q 129 [Ms van Loo]
248 Ev 64
249 Q 129 [Ms van Loo]
250 Q 233
251 Ev 69
252 Q 233
253 Ev 48
254 By early November the total number on the database had increased to 1167.
255 Ev 30
of lower tiered interpreters: 170 tier 3 interpreters supplied services for ALS in February and only 60 in August, equating to a 65% reduction. There was a 44% and a 49% increase in the numbers of tier 1 and tier 2 interpreters respectively.256

**Local availability**

145. In August 2012, Capita-ALS’ performance levels against the distance indicator remained low, at 34%.257 Ms van Loo admitted that this KPI was not in reality achievable.258 Our evidence from the Magistrates Association discussed above indicates that the distances travelled by interpreters may have increased in comparison to the previous arrangements. Several respondents to our online consultation supported this. The following comments are indicative:

> There were so many jobs in London and in the southeast of London without interpreter in my language; I live in the North Midlands which is very far from London, but because it is urgent, they were happy to pay me in my terms and condition, plus a train fare which is a fortune for buying a return train fare on the day to southeast of London. I felt it is like a joke as I know there are so many NRPSI in my language living in London but they all refused to work for ALS. The MOJ would save a fortune for taxpayer if using the old system, instead of using ALS.259

> 90% of the work ALS offers me requires me to travel 100–400 miles each way. Usually for a 09:30 appearance, which means I would leave for a job at around 04:00 AM. Travelling at this time for this distance, and not being even paid for the first hour each way is not tenable, and impacts on your alertness.260

146. There appear to have been some improvements in the availability of some less common languages. In August 2012 data from the National Register and ALS’ supplier list were compared and the latter had a higher number of interpreters for nine languages and lower levels than the former in only one language.261 Nevertheless, there may be concerns that those possessing skills in rare languages but who are not on the register of professionals may not be of sufficient quality; no distinction was made by the MoJ as to the tiers at which those on ALS’ list were operating.

**Reduced levels of complaints**

147. There were 3,937 complaints for completed requests over the eight months to the end of August, equating to 5% of completed requests. In July, 6% of complaints related to quality. The Minister told us that performance was “getting better steadily and quite swiftly”. She said complaints were going down. For example, in criminal courts the rate of

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256 Ev 57  
257 Ibid.  
258 Q 130  
259 BELIEVEINJUSTICE, respondent to online consultation, see Annex.  
260 Fred, respondent to online consultation, see Annex.  
261 Ev 53
complaints fell from 9.9% in February to 1.4% in August; in civil and family cases from 5.8% to 0.6%; and in the tribunals from 17.1% to 5.2% over the same period.262

148. Mr Fassenfelt observed that although the Magistrates’ Association continued to receive complaints, especially about the standards of interpreters, the level of comments on performance had diminished, although he was not convinced that this fully reflected a genuine improvement in performance: “…I am not sure whether that is an impact of Capita introducing a different management team, whether the Ministry of Justice has got a better hold on the contract, or whether magistrates have just got fed up with moaning about it.”263 Another witness, an immigration solicitor, similarly believed that complainants had become less likely to object, for example to prevent on-going adjournment and disruption to court proceedings.264

**An improved complaints process**

149. We heard that there is now a single register and a proper complaints system; if there are complaints against particular interpreters and they are upheld, Capita TI remove them from the list. The MoJ saw this as an improvement on the quality assurance processes in the previous system.265 For example, whereas previously court staff would only have been able to prevent an interpreter from working in their own court, the new system ensures that if interpreters are found not to be performing to the right standards, they are not used anywhere else operating under the Framework Agreement.266 On the other hand, if Capita TI suspends an interpreter from their list, that interpreter would still be free to take work from elsewhere, including within the justice system, as the complaint has not been investigated through their membership body. This is one of the factors motivating NRPSI to acquire statutory regulatory status.267

150. The online complaints process for users of the service is now backed up by dedicated staff and field-based relationship coordinators who work with justice agencies to resolve complaints. Capita’s stated aim is now to resolve each complaint within one working week and in the process independent advice is often sought, particularly with regards to the quality of translations themselves. Up to 31 May 2012, the complaints procedure had led to mandatory familiarisation workshops for 120 interpreters; a further 9 interpreters had been told that their services were no longer needed.268 Some of our witnesses believed that there was a fundamental lack of transparency in complaints procedures as complaints made through the online portal went directly to ALS, which is also the service provider.269 This is discussed in the next chapter.

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262 Q 216
263 Q 50
264 Ev w72; See also The National Audit Office, *The Ministry of Justice’s language services contract, September 2012*, para 3.4
265 Q 214 [Ms Beasley]
266 Q 215
267 Ev w124
268 Ev 83, citing a letter from Peter Handcock to Sir Alan Beith, 31.5.12
269 Ev 34
Migrating work back to ALS

151. When the MoJ gave oral evidence they were in the process of piloting a new system for short-notice work at 19 magistrates’ courts and a crown court. The remainder of this work was still being commissioned directly from interpreters under the previous arrangements. The MoJ was sufficiently satisfied with progress on this pilot that the Midlands and Northwest HMCTS regions had begun to return their short-notice bookings to the contract.270 Mr Handcock explained: “We will just watch carefully to make sure that that works and then we will begin to migrate the rest back. By the time we have been right round the country and finished the migration I suspect that almost all of the work will be back on contract.”271 The Senior Presiding Judge, Lord Justice Goldring, informed us in December that performance had improved to such an extent that he had recently agreed that all bookings in all magistrates’ courts in the regions above should be done through ALS.272 He told us that problems remained in courts obtaining interpreters at short notice, particularly for some less frequently spoken languages, and that performance in tribunals may be less consistent that in courts.

152. We are pleased to hear that service levels have improved markedly in recent months and that this will allow HMCTS to book all of the interpreting work it requires through Capita TI in the near future.

Inaction in imposing penalties

153. No fines—known as service credits, which represented a percentage charge which could be levied for each percentage of underachievement against KPIs for the fulfilment of assignments and timely delivery—were imposed on Capita-ALS by the Ministry of Justice in the first three months of operation.273 The Ministry told the NAO that it had taken into account Capita’s additional investment in its decision to waive what amounted to £11,000 worth of penalties.274 The MoJ subsequently told us that it also believed the emphasis was rightly placed on improving service performance at that stage.275 As we noted above, there had also been a threat to withdraw from the contract in February. These fines seem rather low in the context of a Framework Agreement reported to be worth £70 million over five years.276 Ms Lee told the Committee on 23 October 2012 that she calculated that the service credits and other penalties equated to approximately £15 per unfulfilled case which in her view was insufficient incentive for Capita-ALS to improve performance.277

270 Ev 53
271 Q 212
272 Ev 108
273 Ev 109; The National Audit Office, The Ministry of Justice’s language services contract, September 2012, para 3.9
274 Ev 30
275 Ibid.
276 The National Audit Office, The Ministry of Justice’s language services contract, September 2012, para 1.3
277 Q 36
154. The Ministry of Justice also has the power to audit Capita. The NAO was critical of the fact that the Department had not done so by the time of their report, and, at that stage it had no plans to do so.278 The MoJ told us that it is now conducting spot checks and audits as part of its ongoing management of the contract; three sample audits had been undertaken by the end of October and the intention is to continue to audit at monthly intervals.279

The cost of remedial action and implications for cost savings

155. Several of our witnesses raised concerns that lower quality interpreting might increase costs elsewhere in the system, drawing our attention to many examples of: repeated bail and remand hearings, with defendants being remanded in custody unnecessarily in the absence of an interpreter; adjournments and appeals resulting in costs to legal aid; wasted court and police time; and irrecoverable proceeds of crime when prosecutions collapse.280 In instances where an interpreter does not attend, or is unsuitable, such as those described above, the court has had no other choice but to adjourn to a later time or date in the hope that an interpreter will be present. As we also noted above, the impact of this has been to delay progression of cases through the court system, sometimes repeatedly; to cause individuals to be remanded in custody overnight or for longer periods because of the absence of an interpreter; and to increase the overall cost of proceedings as advocates and others, including victims, defendants and witnesses, including expert witnesses such as the police and other public sector professionals, are required to return to court.281

156. Despite the difficulties with the operation of the Framework Agreement, the MoJ claims it will save £15m in the first year, representing 50% of the estimated annual cost of interpreters under the previous arrangements.282 While the annual cost of the contract is estimated at £15 million, Capita TI is only paid for what it delivers; the MoJ has estimated that this is likely to amount to between £6 and £10m over the first year. Mr Parker admitted that Capita TI had not yet made a profit from the contract, although he hoped that they would begin to do so in the next financial year.283

157. The MoJ has projected some direct annual costs that it was likely to incur as a result of the problems with the contract, including £4 million for off-contract payments to interpreters under the old arrangements, primarily for short notice bookings, and £60,000 for increases in ineffective trials in magistrates’ courts.284 Ms Beasley explained why the estimate for ineffective trials seemed low: “Our estimate is that for an ineffective trial in the magistrates’ courts the cost is about £650 and it’s about £1,500 in a Crown court. It depends crucially on the assumptions that you make about what people do when a particular trial is ineffective. If you are the solicitor in the case, you have probably so much work to do that you maybe waste a very short period of time at court and then you would

279 Ev 69
280 See Ev w13, Ev w51, Ev 120
281 Ev w13, Ev 15
282 Ev 53
283 Qq 171–2
284 Ev 53
go on and do other work.” While there has been a doubling of ineffective trials, overall, there are still relatively few. Other assessments place the costs, for example of a Crown Court retrial, significantly higher, for example, for one trial which collapsed after four days following interpreter error, the wasted expenditure was estimated at £25,000. In addition, these calculations do not include the cost of adjournments of court and tribunal hearings that were not related to trials.

158. In October, the Ministry provided us with an update on its expenditure: the actual off-contract payments amounted to £1.55m between February and the end of September. The initial monthly costs of reverting back to the old booking systems were £500,000; by September this had fallen to just over £70,000. Initial estimates did not include any savings on administration and excluded agency administration. The Ministry has not estimated the additional level of administrative expenses that will have stemmed from Capita’s underperformance and dealing with the high volume of complaints and additional monitoring that has been required by HMCTS and the MoJ; these are likely to amount to considerably higher administrative expenses than under the previous system.

159. Several of our witnesses believed that this underestimated the true public cost of underperformance. We heard from one solicitor’s firm that felt there was no option but to obtain Legal Services Commission funding for an independent interpreter to attend all hearings as the quality of the interpreters at the Immigration and Asylum Chambers could no longer be relied on; she estimated that costs to legal aid amounted to £400 in one particular case that has been adjourned, including independent interpreter fees, an additional hearing fee and the travel costs of the advocate. There have also been examples of wasted cost orders being taken against Capita-ALS, for example, a recent case in Cambridgeshire resulted in Capita-ALS being requested to pay £500 for prosecution costs, £160.75 for defence and the bus fare for the defendant.

160. The various ancillary costs appear to have proved difficult to quantify. Neither the Magistrates’ Association, nor the Law Society, were able to provide us with any assistance in quantifying the extent of disruption to court proceedings which has stemmed from problems in implementing the Framework Agreement. The Ministry of Justice was unable to answer a parliamentary question regarding how many civil court cases had been adjourned as a result of a lack of an interpreter.

161. While the contract is delivering significant cost savings to the Ministry of Justice, these are not at the level promised. Additional costs are currently being borne by the contractor and there may be future ramifications for the Department when it comes to re-commissioning interpreting and translation services if these financial issues are not

285 Q 217
286 http://www.bbc.co.uk/news/uk-england-london-17709440; Ev w119; see also Ev 120
287 Ev 69
288 Ev 107
289 Ev w13
290 Ev w28; See Oxford Times, Drink Driver went wrong way down an M40 slipway, 14 December 2012
291 Q 46
292 HC WA, 19 October 2012, col 482W
resolved. We are concerned that the existing arrangements are financially unsustainable in the sense that Capita TI is propping up the continuation of the Agreement, so the Department’s savings are effectively being secured at the company’s expense. There is a distinct risk that the MoJ will not be able to continue to realise the same level of cost savings in the future and that when the time comes to re-tender the contract there may be an insufficient supply of professional interpreters to furnish it. The MoJ would then be left with fewer savings and an enduringly poorer quality of service. The MoJ must get a better grasp of the costs of underperformance. It is unacceptable that existing cost figures do not account for cases that have been (repeatedly) adjourned because of interpreting problems and those in which a defendant has been unable to apply for bail and has consequently been remanded in custody. In its response to this report and at regular intervals thereafter we call on the Ministry to inform us of its updated assessment of its cost savings.
7 Future priorities

162. In assessing the extent to which the Framework Agreement was operating effectively the Minister focused on the fact that the NAO’s investigation had concluded that the MoJ should fully implement the contract: “If the contract was not good, if there was no confidence in it, then surely the National Audit Office would have said leave it”. Nevertheless, she conceded that despite the improvements described in the previous chapter the MoJ continued to have some concerns about performance in certain geographical areas, certain jurisdictions with certain languages, and she recognised there was no room at all for any complacency. She explained that Capita’s priorities were to: devise a new assessment; recruit more interpreters; and to develop career progression within the tiers; as well as to work with the Department to implement the recommendations of the National Audit Office, which also included completing checks on interpreters and the commissioning of an independent assessment of whether the new quality standards are appropriate. She further acknowledged that to get the contract operating to the standard the Department would like to see would require working “creatively and carefully and cleverly”. In this chapter we consider each of these areas and draw our own conclusions about the ongoing priorities for the MoJ and Capita TI.

Further recruitment of interpreters

163. Ms van Loo described what ALS was doing to further improve fulfilment rates by attracting new interpreters based on the information it had collated on the languages required and locations where they are required:

“We have a recruitment plan in place, which we are executing at the moment, which involves building relationships with awarding bodies and universities. We also work with the criminal justice organisations and ask for their support in terms of the interpreters that were working previously within the system. They may contact those interpreters and ask if they would be interested to work for us, so that is another opportunity for us. That has been very successful.”

In the week commencing 5th November 2012, 20 new interpreters were recruited.

164. We are surprised that there is no absolute target of numbers of interpreters for the supplier database. Before the MoJ seeks to rollout the operation of the agreement fully to the Crown Prosecution Service it must ensure that Capita TI has determined a defined minimum necessary to deliver that work. We also consider it necessary for the MoJ to undertake or commission some work to establish more clearly the requirements of the CPS than was done in respect of HMCTS.
The absence of assessments

165. The MoJ described the backlog in assessments as “challenging” to resolve because of difficulties between ALS and its independent contractors in marking assessments, and the lack of qualifications to benchmark against for some of the rarer languages.297

166. As we concluded our inquiry Capita TI and MoJ were in the process of agreeing a new approach to assessment as they conceded that the one in the contract was not feasible. Capita’s proposal is for an interview based approach to the verification of interpreters’ experience within the criminal justice sector, followed by an induction process, including a work shadowing assignment, and adherence to the code of conduct.298 The MoJ gave Capita considerable time to make alternative arrangements for assessment. We support the new approach planned for assessing interpreters provided that Capita TI ensures that any quality assurance elements that underpin it are appropriately tight and rigorously monitored.

Developing career progression

167. Capita is required under the Framework Agreement to ensure that those on its supplier list have access to continuous professional development. This was not compulsory under the previous arrangements but membership of a professional body usually comes with the expectation that an individual will actively maintain and update their skills; this can be time consuming and costly.299 In evidence to our inquiry on the budget and structure of the Department ALS made the following reference to its approach to quality assurance: “Assigning qualified and experienced linguists to assignments and insisting on continuous professional development, while reducing operational inefficiencies, remains our focus. We are determined to get the service running at a level that meets the MoJ’s requirements, provides transparency of opportunity for linguists and fully supports the justice sector.”300 Other than a reference to familiarisation training by the NAO, we received little evidence on how Capita is satisfying this requirement. When we asked Capita for further information on this matter they explained that criminal justice workshops had been introduced for interpreters already familiar with the criminal justice system, and who have previously undertaken work in the sector, for example, those who had been working for the police but not in courts.301 We heard that this constituted very basic training delivered by someone without experience of legal training.302 It appears that no work was under way to provide access to professional development until recently. As we concluded our inquiry we learned that Capita had recently “engaged an industry expert” in identifying and preparing training for interpreters, and we heard that some training needs had been identified through the workshops described above.303 We are dissatisfied that Capita TI has failed to provide for those on its supplier list a proper programme of

297 Ev 30
298 Ev 64
299 Ev w82, Ev 38
300 HC (2012–13) 97-II, Ev 171
301 Ev 64
302 Ev w3; see also Ev w17
303 Ev 64
professional development almost one year after it began operating under the Framework Agreement.

Completing monitoring checks

168. There was apparent uncertainty in our evidence as to whether the aim of the contract was merely to act as a booking system or to provide a quality of service, which would include monitoring the quality of interpreting and managing regulatory aspects as well as the logistics. Mr Parker attempted to explain to us Capita’s role in quality assurance:

“We are responsible for the quality of the interpreter that attends. As part of this, what we can’t actually warrant is what happens when the interpreter is in court. If we then received issues from that court about the quality, we would investigate, and, as has happened in some cases, the ultimate sanction would be to remove the interpreter from the available list” and “…all we are doing is matching someone’s qualification against the tiering that was agreed, [with the MoJ], at the time of the contract.”

169. Since the NAO highlighted numerous difficulties with ALS’ own approach to quality assurance, and the MoJ’s initial failure to provide sufficient arrangements for independent monitoring, there is now regular monitoring by MoJ. For example, the MoJ is now routinely inspecting Capita’s register of interpreters and the work it has done to check qualifications and tiering. Mr Handcock suggested that this gave “a very high degree of assurance about the people on their books and the people that they are supplying. That wasn’t the case in the beginning, but we have put that right.” As we noted above Capita also assured us that its investment had enabled it to rectify inadequate processes and procedures. The Minister hoped that Capita TI would be delivering against its performance indicators by March 2013, the end of the financial year.

170. Nevertheless, Ms Lee and respondents to our e-consultation, among others, continued to express doubt that the criteria for qualifications at the appropriate tiers had been met and verified. These concerns may well have justification. On 24th October 2012, the MoJ audited a sample of 30 interpreters registered with Capita TI; one-third of the sample required further documentation to prove their qualifications at the appropriate tier and one did not have appropriate security checks. Since the oral evidence hearing took place, on 1 November, Capita TI sent emails to some workers registered with it, asking them to provide proof.

171. It is clear that the contractual terms regarding the appropriate qualifications and CRB checks for those servicing the contract continue to have been flagrantly disregarded until very recently. We are dismayed that a contractor should apply such an apparently lackadaisical approach to verifying qualifications and executing appropriate vetting.

304 Qq 164, 167
305 Q 192
306 Q 208
307 Ev 120; see Ed2005 and Dmn, respondents to online consultation, see Annex.
308 Ev 69
While there have been improvements these have taken a very long time to achieve, even with the considerable performance improvement resources at Capita’s disposal. We are concerned that the Ministry of Justice has so recently found evidence that questions persist as to whether interpreters on the supply list are meeting appropriate quality requirements in terms of having properly verified qualifications and experience as defined under the tiered system. We are not yet satisfied that there are sufficient safeguards currently in place to ensure that only suitably qualified interpreters are providing services to HMCTS.

172. We welcome the Department’s efforts to quality assure the work of Capita-ALS in implementing the Framework Agreement, but we believe that, in the absence of an independent regulator, this mechanism should have been in place from the start and we are concerned that regular monthly checks continue to be necessary some nine months or so into the operation of the contract. The Ministry of Justice has shown ALS, and subsequently Capita TI, considerable leeway in not rescinding the contract despite ongoing breaches of their obligations under the Framework Agreement, and has presumably had to devote more resources than expected to close monitoring of the contract. We ask the Ministry of Justice in its response to this report to provide us with an estimate of the administrative costs of providing such a considerable level of oversight of the contract.

Enduring concerns about quality standards

173. While it is probable that the poor quality of services provided stemmed partly from a failure on behalf of ALS to put effective systems in place to underpin its delivery under the Framework Agreement, the evidence indicates that there are more fundamental problems within the new arrangements which could have a more enduring detrimental impact on interpreting in the justice sector. We consider these concerns from the perspective of the judiciary, magistracy, legal professionals and the interpreter community below.

Regaining the confidence of the judiciary, magistracy and legal professionals

174. The Magistrates’ Association and the Law Society were in agreement that the service continues to require improvement with regard to the quality of interpreters provided. Mr Fassenfelt was clear that the existing arrangements did not give magistrates confidence:

“If [confidence] starts to leak away, as officers of the court, we will have serious concerns in the future about interpreting services […] [The Magistrates’ Association] feel[s] that for magistrates to gain that trust and confidence there needs to be some form of divide between the [regulatory and service provision functions] […] There needs to be independent monitoring of the contract. I do not see that happening now. I see the provider—the contractor—doing the monitoring. To me, that does not give the confidence that we need as a magistracy.”

309 Q 57

310 Qq 55–58; see also Ev w17
The Senior Presiding Judge believed that the quality of ALS interpreters remained variable, and that this was continuing to cause disruption to court proceedings, and meant that the general view of tribunals was that arrangements were not yet as reliable as the old arrangements.311 These fears were similarly expressed by other stakeholders. Annette Elder of Elder Rahimi Solicitors, who specialise in immigration and asylum, said: “we are returning to a situation of unskilled and inexperienced interpreters being used which is simply unacceptable and shameful in the context of particularly asylum and human rights protection cases.”312 The Minister felt that the higher fulfilment rates and lower complaint rates should be sufficient to restore confidence.313

175. At the time of the MoJ’s initial memorandum we heard that there were remaining issues for frontline staff and the judiciary which the Department was seeking to resolve with Capita-ALS. We asked for clarification of the nature of these matters and were told that together they were reviewing quality standards and seeking to attract additional qualified interpreters to the work.314 The MoJ has also been working to improve internal processes, for example, relating to financial assurance and guidance on complaints and compensation, and to produce more detailed guidance on appropriate use of interpreters, presumably related to the tiering system.315 We also heard from the Senior Presiding Judge that there were two judicial representatives on the HMCTS project board which is working to manage the contract.316

176. Capita explained that there was a continuous process of improvement, underpinned by ongoing dialogue with MoJ and its customers:

“We continue to work closely with the courts, and, actually, where we have worked very closely with the courts, such as City of Westminster, we are now at 99.5% fulfilment. So we believe the contract is improving all the time. Are there certain things that we’d like to change? We talk to the Ministry of Justice all the time about that, about things both ways, about where we think improvements could be made, but until our customer tells us otherwise we will continue to deliver the service.”317

177. Notwithstanding the progress that has been made, we consider that the Ministry of Justice and Capita TI have much hard work ahead of them to restore the trust of sentencers and the legal profession. We recommend that the MoJ considers negotiating with Capita TI to replace the distance indicator with an indicator of quality, for example, a user satisfaction measure.

311 Ev 108
312 Ev w13
313 Q 216
314 Ev 69
315 Ibid.
316 Ev 108
317 Q 180
Ongoing inadequacies in the complaints mechanism

178. We received criticisms about the absence of an effective accessible complaints mechanism, and were told of instances in which there had been no feedback on complaints that had been made to the MoJ about poor service provision. For example, one of our witnesses, Matthew Scott, a barrister practising in criminal law, explained that he had made a complaint directly to the MoJ but had received no response.

179. Mr Atkinson of the Law Society considered that an alternative mechanism for complaints would be very helpful. He explained:

“It would give some evidence base and alleviate some of the difficulties that we have experienced in giving our evidence, which has been primarily anecdotally based. We would then have a proper basis for looking at and analysing the problems, including the problems for those providing the service. It would allow us to look at whether there are geographical differences in the problems and at the numbers. If there were somewhere that lawyers could complain to, whose specific function was to receive those complaints, it would encourage them to believe that there was a reason to make a complaint, with the hope that that would lead to some improvement. If there were a direct service for them to report to, I think it would also lead to a higher level of reporting of problems.”

180. Mr Handcock considered that the existing system was sufficient in that professional stakeholders could complain through the MoJ:

You have to bear in mind that Capita are our contractors and we don’t think it would represent an appropriate standard of service to people who use the courts for us to invite them to pursue their own complaints with our contractors. We think that’s our responsibility. We think it’s our responsibility too, because when someone has a complaint about the provision of a service around a court hearing there may be any number of explanations for that and it might not be a Capita issue. We need to know that people are raising those complaints, first of all, so that we can ensure that it isn’t some part of the court process that has caused the problem and, secondly, to ensure, for example, that if an interpreter has been found to be inadequate we know that as well. But, where that complaint is made by a legal professional, we will then put that complaint on to the complaints system.

In subsequent written evidence the MoJ committed to including the legal profession in its revised communications strategy and ensuring that they are aware of the best route for raising concerns with HMCTS.

181. As complaints can only be submitted by those with access to the online portal there is no publicised mechanism for solicitors and barristers to register problems with interpreters.

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318 Ev w17, Ev 109, Ev 34, Ev 47
319 Ev w9; it should be noted that Mr Scott’s wife is a professional interpreter.
320 Q 52
321 Q 220
322 Ev 69
supplied by ALS; this also denies end users of interpreting services, including defendants and witnesses, and members of the public, the right of complaint. Those professional stakeholders who do not have access to the online portal are not sufficiently aware that there is an alternative route for complaints directly to the MoJ. We recommend that the MoJ establish a dedicated phone number for registering complaints about interpreter services for those stakeholders who do not have access to the portal, and publicise the existence of this complaint route. Data on the number of complaints received by this route, and the proportion of such complaints that are fed through to the portal, should be published alongside statistics on complaints made directly through the portal itself.

*Regaining the confidence of professional interpreters*

182. Many witnesses from the interpreter community feared that the combination of the tiered system and the reduced levels of pay would have a sustained detrimental impact on the interpreter pool. It was evident from our discussions that there remain fundamental concerns about: the assessment process; remuneration; quality standards; a lack of independent regulation; a lack of transparency regarding control mechanisms; and the sustainability of professional interpreting in the justice sector. The Minister, Helen Grant MP acknowledged that it was “very, very important” for the Ministry to seek to build a “very good and close” relationship with the interpreter community to enable them to “move forward constructively together” and she agreed to do “whatever we can to make that happen”.323 *We welcome the Minister’s willingness to engage in discussion with the interpreter community and we will monitor the outcome of these discussions.*

183. We were told that interpreters would continue to be reluctant to work until both standards and pay issues had been resolved. There is certainly convincing evidence that the sustainability of the system may be threatened. For example, the system was intended to improve the level of continuous professional development, yet some witnesses expressed concerns that reductions in pay would be likely to have the opposite effect as they would reduce interpreters’ incentive to undertake training and development.324 The University Council of Modern Languages counselled that the arrangements had the potential to create an enduring diminution of quality as in the future interpreters were unlikely to go to the expense of training to a high level if it is not requisite of employment in the justice sector.325 Indeed we were informed that there had been a “dramatic fall” in the take-up of the Diploma in Public Service Interpreting in the last year.326

184. When we asked our witnesses representing professional bodies and the national register what could be done to recover the situation, they concurred that in their view the Framework Agreement was “unsalvageable”.327 Mr Rosenthal explained this from ITI’s perspective:

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323 Q 231–232; “Justice Minister invites interpreters to crunch meeting” Involvis press release, 1 November 2012
324 Ev w25
325 Ev w79
326 Ev w82
327 Qq 24–26
“In our professional view, as a professional body, the framework agreement as it stands is unsalvageable. I think it contains many false premises. The bottom line is that, under this framework agreement, existing professional qualifications have been ignored. The rates of pay that are offered under it are so low that qualified professionals are no longer able or willing to continue working in the court system. There are so many different concerns about it that we must recognise that the framework agreement as it stands is part of the problem and must be replaced by something better.”

185. One of the most fundamental concerns expressed to us by NRPSI and PIJ was that they regarded the functions for which Capita-ALS was responsible—work provider; supplier; regulator; assessor of qualifications and competence; registrar of suitably qualified and competent interpreters, and disciplinarian—as fundamentally conflicting; in their view this enabled ALS to dictate recruitment, pay, price, quality and other factors, preventing fair competition and disadvantaging other existing and new suppliers. Furthermore Mr Sangster told us he believed that the resulting lack of independence in the monitoring of quality, competence and qualifications, and dealing with complaints potentially provided an opportunity for the contractor to “cloud, fudge, miss or ignore some or all of these issues” and consequently made it more difficult for the MoJ to monitor the effectiveness of the delivery of the service. In his view the Framework Agreement therefore needed to be “revisited and stripped apart”. Ms Lee stated that she believed that the disciplinary function and the regulatory function, in particular, were not appropriate functions for a commercial agency and that these should be exercised independently, by independent bodies. PIJ went as far as to propose that the previous system be reintroduced, while a feasible alternative was developed in proper consultation with interpreters’ organisations and the NRPSI.

186. One example of a potential problem relating to the disciplinary function is that professional witnesses are called upon to review interpreting when quality or accuracy has been questioned; where a reviewing interpreter is reliant for work on the same agency that engaged the professional interpreter whose work is subject to review, there may be perceived pressure not to provide a negative report as this could impact on future work opportunities. Another example of the potential problems of ALS being self-regulating related to the complaints system which we discussed in the previous chapter. Ms Lee told us:

The professional institutes have codes of ethics and disciplinary frameworks and procedures in place. Those disciplinary frameworks include an appeals procedure. The full framework and procedure is published; it is transparent, and all parties know what to expect. Moreover, anybody is in a position to make a complaint to

328 Q 24
329 Ev 109, 42, Q 24
330 Ev 57
331 Q 29
332 Q 24; see also Mr Sangster Q 29
333 Ev 109
334 Ev w28
those professional bodies. With the new regime, under Applied Language Solutions/Capita, as far as we are aware and have been able to ascertain, there is no facility for anybody who is not a court employee to put in a complaint. The only channel for complaints is through the online portal.335

187. Not surprisingly Capita TI did not agree that the contract was unsalvageable. Ms van Loo told us that she saw the various functions Capita provided as complementary.336 The Minister similarly rejected this notion as the National Audit Office’s investigation had concluded that the Department had very good reason to change the original contract and that the new arrangements should be fully implemented: “If interpreting organisations are saying it’s unsalvageable and it is not good, then I am a little bit mystified now.”337

188. Our witnesses representing the professional interpreter community and the national register also suggested that there must be a separation of some of the functions currently undertaken by the contractor. For example, Mr Sangster wished to see “an independent registrar to vet and approve the qualifications of interpreters employed under the FWA, and to deal effectively and impartially with complaints.”338 One interpreter drew parallels with the Office of the Immigration Services Commissioner for immigration advisors or the Financial Services Authority for those providing mortgage and financial services.339

189. When we put these suggestions to the MoJ they stated:

“the Framework Agreement requires all interpreters to be qualified dependent on the tier. These qualifications are obtained independent of Capita/ALS from recognised educational institutes, examining boards or regulatory bodies. The customer and its stakeholders are a key element of overseeing the services. If the customer (MoJ, ACPO etc) is not content with the quality and skills of an interpreter then they can remove them from the register. However, interpreting and translation services cover many sectors and there would be many issues in regulating interpreters and translators. Whilst we have not given full consideration to the possibility of an independent regulator and arbitrator, the NAO recommendations were for the contract to be implemented fully with independent advice on the quality assessment to be obtained. We are working to implement these recommendations with Capita and the interpreting community, as well as other justice sector partners.”340

190. The failure of Capita-ALS to implement appropriate safeguards until, following the National Audit Office recommendations, they were required to do so by the Ministry of Justice, has reinforced the concerns of the interpreter community about the fact that the service provider is responsible for almost all functions. It has certainly taken some time, and the impetus of the NAO’s investigation, followed by more rigorous monitoring by the MoJ, to highlight exactly where the problems lie and to see real progress in performance.

335 Q 33
336 Q 135
337 Q 222
338 Ev 57
339 Ev w14
340 Ev 69
191. Our evidence suggests that the most important priority for the MoJ is to establish whether the strengthening of quality assurance arrangements, and other work that has been done to remedy other problems, are sufficient to improve the quality of interpreting services provided to HMCTS under the Framework Agreement. We share the National Audit Office’s concern that the existing safeguards of quality within the system may not be fit for purpose; if this is not addressed it is likely that the confidence of important stakeholders, including the judiciary, magistracy and legal professionals, will continue to be undermined, and that many professional interpreters will continue to be reluctant to provide their services. We support the National Audit Office’s recommendation that these standards should be independently reviewed and look forward to seeing the results of that assessment.

192. Our evidence suggests that the concerns of many members of the interpreter community will not be dispelled by insipid and general responses from the MoJ on such issues as remuneration, and rebuilding trust, for example. It is likely that concrete safeguards will need to be negotiated, for example, following the independent review of the tiered system of qualifications proposed by the NAO, a proposal that we also endorse. The language used by the Minister in describing the path that the MoJ must take to move forward, appears to illustrate the Department’s acceptance that the Framework Agreement requires some renegotiation, albeit through careful and creative cooperation with Capita TI. The Ministry and Capita TI must prove that the Framework Agreement is capable of attracting, retaining and deploying an adequate number of qualified and competent interpreters to meet the requirements of the courts and other agencies. This will also require the professional interpreter community to work flexibly with the Department in seeking to find an acceptable way to restore their services to the justice sector. It is essential that this is achieved before fully extending the reach of the contract to other justice agencies.

193. We believe that ultimately there should be a regulation system that is independently organised to select and classify interpreters for the appropriate level of court and tribunal work, assuming that some form of tiering remains in place following the review, and ensure that they are held accountable for delivering to the standard required. In the meantime it is important that the functions of Capita TI in delivering quality assurance are clarified, and if necessary, further strengthened. In addition we consider that there is a strong case for a further review of rates of remuneration and modelling of the potential impact of increasing these rates, particularly for highly qualified interpreters, on registration rates.

The European Directive

194. The National Agreement complies with Articles 5 and 6 of the European Convention on Human Rights (ECHR) i.e. the right to be informed in a language one understands of the reasons for arrest and the right to a fair trial incorporating the right to have the free assistance of an interpreter.\textsuperscript{341} PIJ and NRPSI expressed concern that under the Framework Agreement, the UK might be in breach of the requirements of EU Directive on the right to interpreting and translation during the criminal justice process \cite{Ev 42}
which must be transposed into domestic law by 27 October 2013.\textsuperscript{342} In particular their concerns related to the ability to adhere to Articles 2, 3 and 5 of the Directive, which ensure that interpreting and translation is of a quality sufficient to safeguard the fairness of the proceedings and that a register or registers of independent translators and interpreters who are appropriately qualified is established. This view was supported by Fair Trials International, barrister Matthew Scott, the European Legal Interpreters and Translation Association (EULITA), whose members include ITI and ACPI, and the International Association of Conference Interpreters.\textsuperscript{343}

195. The NRPSI—which is already recognised by the European Commission as an independent register and voluntary regulator—proposed that, in order for the UK to comply, the Framework Agreement would have to be amended to the effect that face-to-face interpreters should be registered with NRPSI.\textsuperscript{344} The Minister told us that she was “quite satisfied” that the current contract met the standard that will be required under the EU directive.\textsuperscript{345}

196. \textit{The transposition into UK law later this year of EU Directive [2010/64/EU] on the right to interpreting and translation during the criminal justice process will prove a timely test of the appropriateness and robustness of quality safeguards embedded in the Framework Agreement and the efforts that have been made to strengthen them in the light of the reports of the National Audit Office and two parliamentary select committees.}

\begin{footnotesize}
\begin{enumerate}[\bfseries 342]  
\item Ev 109, 42  
\item Ev w1, 5, 9, 76  
\item Ev 42  
\item Qq 224–225  
\end{enumerate}
\end{footnotesize}
Annex: e-consultation

Introduction

The Committee set up a web forum entitled the Court Language Services Forum in support of its inquiry into Interpreting and Translation services and the Applied Language Solutions contract. The purpose of the online forum was to encourage contributions from current interpreters providing services for ALS; the interpreting community in general; court and tribunal service staff; legal practitioners; members of the judiciary and magistracy; and defendants who have used ALS services. The Committee felt that due to the nature of the inquiry, some stakeholders would be reticent to provide formal written evidence and an online forum would provide greater scope for reflection on the provision of interpretation in the court and tribunal services by ALS. Following this, as in other e-consultations exercised by Select Committees, users were invited to give anonymous contributions to enable the fullest disclosure of experience.

Practicalities

The forum opened on the 17 October 2012 and ran until 5 November 2012.

The site was designed and created by the Parliamentary web-centre. During the registration process, users agreed to a set of discussion rules. The forum was moderated by Justice Committee staff- messages were checked to ensure that they adhered to the discussion rules before they were published on the forum. Posts that were moderated included a note drawing forum users to the attention of the fact that it had been amended.

Contributions to the forum were used by members of the Committee to inform their questioning of the witnesses who attended hearings as the inquiry progressed as well as during the process of drafting and agreeing a report.

Outreach

The forum was announced by the Committee via a press note which was sent to a number of organisations including Law Society Gazette; National Register of Public Service Interpreters NRPSI; Association of Police and Court Interpreters; Society for Public Service Interpreting; Institute of Translation and Interpreting; Professional Interpreters Alliance; Chartered Institute of Linguists; Capita; Ministry of Justice; PCS Union; UNITE; UNISON Police and Justice Service Group; Individual courts; Magistrates Association; HM Council of Circuit Judges; Law Society; Bar Associations; Guardian. The e-consultation was advertised on the UK Parliament website as well as their twitter feed. Stakeholders and various organisations shared a link to the e-consultation forum on social media, particularly Twitter.

Forum questions

The web forum posed the following three questions:

Q 1 What are your experiences of ALS service provision?
Q 2 What are your views of efficacy of steps taken to rectify under performance?
Q 3 What are your experiences of the complaints resolution service?

Profile of respondents

The e-consultation received a total of 4195 views and 88 distinct users posted on the forum. The question relating to ALS service provision received 65 posts; steps taken to rectify under performance received 19; and experiences of the complaints resolution service received 10 posts. 21 respondents identified themselves as interpreters providing services on behalf of ALS; 14 as legal practitioners or other practitioners; 1 defendant in a criminal case or party in civil and family cases; 45 as others; 7 would rather not say.
Summary of responses

Distance travelled by interpreters

Interpreters have reported that ALS has asked them to travel long distance to attend court and tribunal sessions, often the other side of the country.

I try to tell it on every forum that this is what ALS/Capita doing. I talked to an interpreter who has no DPSI qualification, lives in [Scottish town] and is regularly sent to all parts of England. One day to Cornwall, another day to Bradford. And he feels extremely proud of himself what an important person he is! I live in [Scottish town]. I used to be the only person in my language who worked for the Tribunal Services in Scotland. I used to get one-two jobs per month. Since ALS got the contract they give all the jobs to people living in England. I talked to somebody who had a tribunal case in [Scottish town]. Her interpreter who had no qualification and worked for ALS came from Birmingham.346

90% of the work ALS offers me requires me to travel 100-400 miles each way. Usually for a 09:30 appearance, which means I would leave for a job at around 04:00 AM. Travelling at this time for this distance, and not being even paid for the first hour each way is not tenable, and impacts on your alertness. 347

They report that this is not due to lack of interpreters in the area, but that those more conveniently located refuse to work for ALS.

There were so many jobs in London and in the southeast of London without interpreter in my language; I live in the North Midlands which is very far from London, but because it is urgent, they were happy to pay me in my terms and condition, plus a train fare which is a fortune for buying a return train fare on the day to southeast of London. I felt it is like a joke as I know there are so many NRPSI in my language living in London but they all refused to work for ALS. The MOJ would save a fortune for taxpayer if using the old system, instead of using ALS.348

Interpreters, who used to work within a small radius of their local courts, only occasionally having to travel further afield, are now seldom offered assignments in these courts, but rather offered work in other parts of the country. The travel expenses are a waste of public money and if an interpreter has to travel 4 hours each way to a job that may only be for an hour, that means that they are unable to accept another job for the afternoon, as they would not have time to get to it. An interpreter cannot live on this. Are the interpreters who are servicing the local courts of that interpreter actually themselves too coming from a different part of the country?349

Perverse incentives and pay

To some extent, interpreters have attributed long distance travel to a pay structure which incentivises accepting only cases which are further away.

I should stress that it only makes financial sense for me to accept bookings for assignments I have to travel to over 100 miles. It does not make sense to accept even longer bookings (i.e. trials) as if they do not last as long as they were supposed to, interpreters are not paid any cancellation fees (but have to make themselves available for the whole length of the trial/refuse other work due to that

346 Anna0703
347 Fred
348 BELIEVEINJUSTICE
349 Elsy
commitment). We spend most of our time driving/travelling to the venues which must affect our performance. 350

Others disagree, saying that for them the uncertainty of a day’s work means that they cannot afford to travel long distances for short term work.

Capita often ask me to work a long distance from home and at short notice but I never accept. Travel means such assignments take up an entire day and Capita are unable to offer me what I earn from a day on other projects. They would get closer if they guaranteed more than an hour’s pay for long distance assignments, paid travel costs and travel time in full, and paid for accommodation when they want an interpreter to travel several hundred miles and appear at 10am. A change here appears essential since Capita stated in evidence to the Justice Committee they will never meet the KPI committing them to find an interpreter within 25 miles of the client for 95% of assignments. 351

Despite ALS’s willingness to cover large travel expenses, some have reported strict regulation on the time spent working by interpreters.

I have been told by the company that if I agree to interpret for counsel/probation/ anyone else outside of the courtroom, it is ‘in my own time’ and I will not be paid for it! How can the system function?! Time down in the cells with a defendant to explain after the decision what the next steps are, appeal etc. or outside the courtroom by probation officers is not factored in, and interpreters are expected to try and persuade the court clerk to sign them off at a different time from when the case finishes. Court clerks, it is clear, are under strict instructions from ALS/Capita to sign only to when the case ended. 352

Some have reported that poor levels of pay are undermining a profession in which years of training are required.

We need to understand how long it takes to learn a foreign language to a certain standard, in order to be able to interpret from and into it within a specific sector. First of all it takes decades to learn the language itself and later you need to obtain a specific set of skills that are required in order to interpret. You need to be able to translate legal terminology within seconds during a court session and sometimes it is very difficult even for the best interpreters out there. You need to take into account that it is a job that requires due diligence, great listening and verbal skills, ability to transfer a vast amount of information that is encrypted in a different language within a short time frame. 353

Let’s look at what is happening now. “Capita” are trying to obtain these sets of skills at a fraction of the price they were provided before. How can you expect to have any self respecting specialist to work for the amounts they are offering? £20 per hour, it would be a great salary if you would be working a full 40 hours week. It would amount to £41,600 per year before tax. In my opinion that would be right remuneration for such type of work. But reality is a bit different. They do not offer a salary to the interpreters along with guarantees like sick pay, pensions, holiday pay. They expect them to be available 24/7 without offering any incentives. In order for people to survive they need to earn at least the minimum wage. And let's not forget about the market principles of supply/demand and opportunity cost. We are not talking here about unskilled labour. They are people with distinctive skill sets that just cannot be replaced by anyone of the street. 354

This risks, according to respondents, pushing highly skilled workers out of the court interpreters market.

350 dmn
351 babelfish
352 Elsy
353 Tomasap
354 Ibid.
In light of these facts we are facing a decline of quality and the contract can only be sustained by introduction of a monopoly to the provider of such services. This is exactly what had happened here. There are no incentives that are created for the interpreters to work for them. They will chose other career opportunities and move away. So we will be left with no other choice but to give this monopoly to "Capita". The problem with this contract was that "Capita" and MOJ assumed that it will be able to replace the workforce or force them to work for nothing. That did not work out as planned but there was no contingency plan in place. So the whole system started collapsing and we need to stop that before it is too late to salvage what's left.355

**Administrative failure and the use of freelancers**

Serious concerns were raised about ALS’s ability to administer interpreting services on a large scale.

All the jobs they phoned me is always at the last minute. Sometimes in one day there were 5 jobs without interpreter. They bombarded me with phone calls asking me to calculate this or that, and by the time I work it out it is too late to be at court. So it ended up job was cancelled or adjourned.356

The allegation that interpreters in numerous occasions failed to attend courts at which they were booked, or were late to proceedings is prevalent throughout the responses.

Following a no-show at the end of August, when a witness and barrister turned up in court from far afield (plus a number of local friends who had taken the day off from work), only to find that ALS had not provided an interpreter, there was a reconvened hearing in October. I phoned ALS regularly to check on the provision of an interpreter, only to find, three days before the hearing, that again there would be no interpreter. They said they were unable to find one. I phoned the court asking for their help. They obtained ALS’s agreement that they could not provide this service, whereupon the court undertook to find a suitable interpreter, which they did with great professionalism. If I had not made these telephone calls, there would have been a second aborted court hearing, with hugely expensive, wasted effort from a witness and barrister (both of whom had to travel long distances and stay overnight to be at the court in time), friends and the whole court (Judge, officials etc.).357

On 5th October 2012 I attended [a] Magistrates’ Court to represent a client who required an interpreter; the matter was relatively straight forward and should have been dealt with more quickly than it was. The reason for the delay was that despite an Interpreter being booked by ALS to arrive for the morning no interpreter arrived until 2pm, the interpreter who dealt with the matter had been to another matter at [a] Magistrates’ Court in the morning before arriving to deal with the matter. The end result was that effectively my client was deprived of his liberty for longer than he should otherwise have been.358

Some legal practitioners have commented on the implications of this; that their clients were held on remand and denied their liberty as a result of the delay caused by absent interpreters.

I am a criminal defence Solicitor working in [a north England] region on Saturday 29th September was Duty Solicitor covering a local Magistrates Court. One of the three clients in custody on that date was a Lithuanian national requiring the services of the Court Duty Solicitor having not previously been represented during his interview. He had been charged with an allegation involving domestic violence. However, the Prosecutor had stated that provided he was able to supply a separate address away from his former partner there was going to be no objection to bail. That was the easy part! The client could speak little, if any English and after an hour wait for an interpreter

355 Tomasap

356 BELIEVEINJUSTICE

357 LAK

358 Blackaby
(which the Police told the Court Clerk they had contacted) nobody had attended. The best answer that could be obtained is that an interpreter would be sought and would "probably" be able to attend by mid afternoon. Understandably, the Magistrates and Court Clerk were not prepared to wait that long certainly where there was no definite answer given. I tried therefore to assist as best as I could. Eventually I tried to utilise the Google translate app on my IPhone. However there was no signal in the cells and this meant having to go outside the Court building, put the question whatever I was trying to say to the client into the phone, go back and show him it through the Perspex and hope that he understood what was being asked. Unfortunately, it turns out that the Google translate app is perhaps not the most accurate as far as Lithuanian is concerned. I was unable to adequately explain the situation to the client and therefore unable to provide any alternative address to the Court. Clearly on a Saturday there was no chance of trying to obtain alternative accommodation which is usually arranged through the Probation Service. Therefore the client had to be remanded in custody until the Monday when through the "Russian" interpreter who attended he was able to secure bail having put forward an alternative address. It was clear that had he had an Interpreter and being furnished with that information bail could and should have been granted on the Saturday.359

On occasions when an interpreter has been provided, however, legal practitioners report that in some cases they do not speak the required language.

There are cases where ALS booked a wrong dialect, I went to a Kurdish interpreting but shockingly my client was a Bengali speaker not Kurdish, the case was adjourned. But who knows if actually it was the ALS who made the mistake! The chances are 50/50 it could be the MOJ person who requested the booking made a mistake.360

In order to resolve this issue courts and tribunals have resorted to the use of freelance interpreters under the pre-framework agreement arrangements.

In the last month my wife, who has refused to work for ALS for professional reasons has undertaken a number of interpreting tasks for the Immigration tribunal. These were offered to her by an interpreting agency as ALS could not find an interpreter. She was paid the standard court rate by the agency who will charge the MoJ the same rate plus a suitable mark up for their own expenses - say 20%.361

We have seen that when ALS/Capita could not provide suitable interpreters, we were then thought of as a 'rescue measure' to the incompetence of that agency who has no knowledge whatsoever of what court interpreting actually involves and is only motivated by what profit 'this lucrative market' can bring for them. We know that Capita is still unable to provide suitable interpreters and NRPSI colleagues are still being contacted by the courts.362

**Mistranslation and a lack of qualifications**

The quality of interpreters provided by ALS has been called into question; numerous respondents report instances of serious mistranslation with implications for court proceedings.

An unqualified ALS interpreter told me in a court case that I join in the last day, that she found herself mis-interpreted a statement of the defendant, which lead to the jury having the impression that the defendant evidence is not creditable. She doesn't realize it should be declared to the judge immediately in the court. I encouraged her to talk to the barrister she work with, but no action was taken then.363

359 Robin123
360 Apollo
361 NDM1953
362 N6
363 Ed2005
I am also Italian and my client could not speak any English therefore required the service of an Italian interpreter. One of the two interpreters booked for the hearing, as there were two Defendants both Italian nationals, was utterly incompetent to the extent that she mistranslated the whole of the conversation between Counsels and Judges. I had to intervene and alert Counsel that she was misquoting and wrongly translating what was being said in Court.364

On 31 October a trial was set down for an Italian national at a Court in London. The interpreter supplied by ALS arrived late, she then spoke to me using words which did not exist in the Italian language. She sat in the dock with my client and did not translate anything; she then told the Defendant she could not hear what was being said that is why she did not translate. I subsequently spoke to my client who told me she was totally useless. Had it not been for me, a native Italian, being in Court and knowing my client, it would have been a complete disaster.365

Further to this there have been allegations that the interpreters lack knowledge of court procedure and etiquette.

I had a chance to observe a Russian interpreter in a Magistrates’ Court. With regard to the quality of interpreting, I will give a couple of examples. She translated the legal advisor’s “Are you willing to indicate a plea?” as “Are you guilty?” and she struggled with some simple terms, e.g. “unconditional bail” was translated just as “release”. When I spoke to her after that short hearing, she told me she was working for ALS for pocket money.366

On 20th October 2012, I was duty solicitor at [a] Magistrates’ Court, on that day I represented a client who appeared before the court in custody. Indeed as it was a Saturday on remand prisoners appeared in court, the Interpreter arrived late that day, which was not a particular problem since I had to represent other clients. Eventually I had to take instructions from the client on serious charges without the assistance of the Interpreter, since when the interpreter did arrive she did not inform the cells of her arrival which was unacceptable given the fact the only defendants appearing before the court were remand prisoners.367

Even the easiest legal terms were totally misinterpreted. The oath was interpreted as “the proof I will give” – “give evidence” is the simplest of the legal terms used in Court; and astonishingly, the Police’s caution (defendant’s recorded interview was read out in Court) was interpreted as “you should not say anything”. When it came to the more complex legal terminology, Capita’s worker simply stopped interpreting as she seemed completely lost; when legal terms such as “burden of proof is reversed”, “evidence by way of rebuttal”, or even simpler terms as “contemporary notes” were being discussed, Capita’s worker just kept an worrying silence. Capita’s worker also failed to comply with one of the most important aspects of an interpreter: she was clearly interpreting in a partial way towards the defendant. Victim’s family members, who could also speak both languages, complained to the Prosecution but he decided not to take action as he was confident he had enough evidence to the jury (defendant was eventually found guilty).368

The court interpreter was terrible. Her Bulgarian was not very good at all, I don’t think it was her first language. There was a great deal of legal terminology that she did not translate but kept using the English words instead.369

Concerns have been raised by the level of qualifications held by interpreters and whether their qualifications have been verified.

364 gio
365 Ibid.
366 Observer
367 Blackaby
368 hiroko1926
369 Sophia
I cannot justify the contract can ensure the safety of information and foreign language speakers are rightfully represented in courts under the new system. I have met many interpreters from ALS over the last few months, many of them does not have any relevant qualification. For examples: retired shop keepers and overseas students and local born Asian ethnicity but out of job law student seeking court experience. Having been talking to 2 of the overseas students with student visa, they were not aware themselves being not entitle to work as freelance interpreters. However, ALS staff told them that they can work after seeing their passports during assessment.

I received my first job offer several hours after I registered on their portal. I do not believe that my qualifications, security checks and references were checked. At that time I was not even able to upload my certificates / security checks onto the portal. In fact I know that my referees were only contacted by ALS some 3 or 4 months later. From my experience it seems that ALS is allocating assignments on a “first come - first served” basis without taking professional qualifications into account. The jobs that come up in my language on the ALS portal are immediately taken by a few regional “Tier 2” interpreters who do not work as professional interpreters and therefore have time to sit in front of their computer/phone and check for new assignments.

This is clearly a joke. I know at least one Polish Tier 2 interpreter in Devon qualified to Tier 2 who has absolutely no degree in languages, does not have a DPSI. This one has also attempted to pass the Met Test last year and failed 3 of 4 parts.

Positive experiences

Respondents however have reported positive experiences in relation to the ease of use of the online portal.

ALS runs a modern operation based on a ‘one-shop’, Linguist Lounge portal. All Courts and Tribunals job assignments are paperless and job details can be viewed on a secure profile. At the end of each of my MoJ job assignments the financial reconciliations are performed online within 72 hours with weekly BACS transfers into my bank account. I have to admit, I am quite familiar with the online office type of work and I also have bags of IT experience gained from previous employment. This probably helped me grasp much quicker the new way of doing business.

From my direct experience of working both directly and through ALS, I wish to say that it is not plainly correct that everything is bad. For example, the online system is very good in principle and payments are received quickly by BACS rather than by cheques. Also when it comes to the new rates, I suspect it may have been perfectly acceptable rate per hour if you were employed in a professional capacity of an interpreter full or part-time with guaranteed payment. However, with the system as is, the work is random and not guaranteed, very seldom capable of yielding more that 15-20 hours per week interpreting on average with bookings being scattered all over the country with travelling time involved. Perhaps some courts could consider employing the most common language interpreters on a part-time/full-time basis. This would give the interpreters this much needed stability, pension and holidays and the courts will get the reliability and value for money.

Steps taken to rectify under performance

Some respondents have suggested that interpreters were still not being properly vetted to check their CRB status and their qualifications.

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370 Ed2005
371 dmn
372 JMP
373 mickydon
374 NRPSInterpreter
As of 25 October 2012, ALS continue to use or offer work to interpreters who have not provided a current security clearance to the company. Following the NAO report, Ministry of Justice promised that by the beginning of September all interpreters would be properly vetted and Solicitor General is repeating more or less the same thing now. This is not true. ALS continues to this day to offer work to interpreters who are not properly assessed or security vetted. By failing to do so, they are putting public at risk and are in breach of the framework agreement. It is about time that this matter is brought in front of a court by judicial review and the contract stopped until they get their act properly together.375

Others disagreed, saying that the assessment centre run by Middlesex University for ALS provided suitable verification of interpreting skills.

The assessment carried out by ALS and Middlesex University was in line with DPSI requirements, i.e. simultaneous and consecutive interpreting were as hard as the DPSI examination, the written translation on the other hand was much easier than DPSI standard. In my opinion it is a good idea to assess interpreters from time to time in order to guarantee high standards although I can understand why many interpreters were reluctant to undertake this assessment.376

In the absence of that arrangement there is doubt amongst respondents regarding the assessment process.

The only steps that I have noticed are completely ineffectual. Re under-performance of interpreters - I (a professionally qualified interpreter working over many years) have seen some instances of other interpreters who have not interpreted everything said and who should not be working as interpreters, although if they were taken on by ALS it is not ultimately their fault. The 'assessments' were a farce, with equipment not working, and many problems voiced by most of the interpreters that took it, but which were never responded to.

Interpreters working in the judicial system are mostly professional with real, proven qualifications and experience. The majority are registered with a professional organisation such as the NRPSI (National Register of Public Interpreters), the APCI (Association of Police and Court Interpreters) or other reputable ones. Qualification procedures are rigorous, and standards are therefore high. Technical terms have to be mastered, and court proceedings require you to interpret jargon-laden legal language in real time. Many interpreters have to retake tests/exams many times before they qualify. The payoff for the courts is that all NRPSI-registered interpreters can do the job properly. The same cannot be said of the ALS 'test', which is frankly a joke. ALS claimed their system was better as qualification was easier and cheaper, and not all interpreters wanted to sit the DPSI or MET tests or pay for NRPSI registration. The truth is people did not want to sit the test because they would not be able to pass it. And those are the people who are now working for ALS – the only people who will work for it, given the insulting rates of pay on offer.377

Aside from this concerns were raised regarding quality assurance of interpreting services

I am concerned that standard of interpreting for the police and courts is slipping, and that there is no system in place for monitoring the quality of interpreting provided by individual interpreters. In its tender document ALS made much of its quality control systems, but I have neither seen nor heard of any monitoring of interpreters’ performance. I have come across ALS interpreters working in the courts who do not have the qualifications required for Tier 2, and whose interpreting has been very poor. I have heard reports from many advocates and others involved in court proceedings of poor interpreting by ALS interpreters, and several defendants have told me that on previous hearings they had interpreters whom they could scarcely understand, and who didn’t bother to interpret much of what was being said in court.378

375 AJ
376 B52
377 artemis
378 nuthatch
The complaints system

The e-consultation received no reports of the complaints system used by court staff. Legal practitioners have reported difficulty with the system, however, and a reluctance by ALS to take responsibility for interpreters who do not attend court sessions when they have been booked.

I am very angry at ALS’s response to a request for repayment of wasted costs, due to their not providing an interpreter at an asylum hearing in the North East. I had paid for a vital witness to come from London and stay overnight in a hotel, to testify on behalf of my friend who is an asylum seeker. I then had to pay all over again at the reconvened hearing – the same thing nearly happened, but this time I found out in time (by continuously ringing them) that ALS were not going to be able to provide an interpreter, and I was able to alert the court who saved the day by providing one. Several days after my email to ALS requesting repayment of the costs, a brusque lady from their payment queries section phoned me, said the costs incurred were not their responsibility and that I should contact the interpreter who did not turn up (whoever they are). She stated, ‘If you want to save the world, that’s your prerogative’. When I replied that I was happy to pay for the witness to come once, whatever the outcome, but not to cover for their lack of provision, and that the government contract to provide the interpreter service was with ALS and not with individual interpreters, she put the phone down on me.379

Interpreters have also been unable to seek redress for complaints that they have had.

I am a fully qualified interpreter. I have worked for ALS/Capita since it started. There have been many problems since the start. I have tried writing e-mails, speaking to a number of different members of staff at their offices and also to a manager in person and by text, phone and e-mail. None of the issues I have brought to their attention have ever been resolved. It is very rare that I get a reply. When I do it is only to say that the Ministry of Justice will not agree! All the points I try to make, including suggestions of how things could work better, are like talking to a brick wall, because it is as if they deliberately do not want to understand what I am saying. The only exception is the manager I have contact with, who at least is sympathetic and understanding, but although they say they will take it further, nothing has ever been resolved. My working situation is getting tougher and tougher. Currently I have no work. The last time I complained they not only did not reply but promptly made jobs inaccessible to me, thus withholding work. They reply that they do not have my qualifications documents which they have had since the start. I have re-sent them to no avail. All my attempts to sort the situation have resulted in nothing.

379 LAK
Conclusions and recommendations

Interference with witnesses

1. We consider that the actions of the Ministry in respect both of court staff and of the magistrate may have constituted a contempt. We find the approach of the Department on this matter extremely unhelpful, particularly in the light of the very successful use by this Committee of online consultation with their staff in previous reports, such as our reports on the role of the prison officer and the role of the probation service. The Department has not previously resisted the use of a process which gives the Committee a broader understanding of the experience of staff, and which is not in any way designed to challenge the ultimate responsibility of Ministers for the policies of the Department. (Paragraph 10)

2. It is not for the Ministry of Justice to judge whether steps they took in relation to the inquiry did or did not interfere with our collection of evidence. That is a matter for us and for the House of Commons. Any act which obstructs or impedes the House in discharging its functions may be treated as a contempt of the House. (Paragraph 11)

3. In considering this matter we have been mindful of the fact that the House exercises its jurisdiction in cases of contempt sparingly and only when essential to prevent substantial interference with the performance of its functions. In this case it appears that our efforts to obtain a full picture of the current effectiveness of interpreting services in courts were hampered by the absence of any substantiation from frontline staff. However we consider that we have sufficient evidence from other sources to make a reliable judgment. We have relied on evidence from other important stakeholders, including the Senior Presiding Judge, the Magistrates’ Association, and the Law Society, along with the testimony of professional interpreters who were observing court proceedings. We have therefore not asked the House to take further action on this matter although we gave serious consideration to doing so. We expect the Ministry of Justice and its agencies to have proper regard to the rights of Parliament and those who give evidence to Committees of the House, and, as our predecessor Committee demonstrated in 2004, we will not hesitate to refer alleged infringements to the House when necessary. (Paragraph 12)

Previous arrangements for interpreter services

4. Notwithstanding clear administrative inefficiencies within the variety of previous arrangements for the provision of interpreting services to the courts, we conclude that there do not appear to have been any fundamental problems with the quality of services, where they were properly sourced i.e. through arrangements that were underpinned by the National Register of Public Service Interpreters, with interpreters qualified in the Diploma in Public Service Interpreting, and under the terms set out by the National Agreement. (Paragraph 24)
The procurement process

5. Our evidence strongly suggests that the Ministry of Justice did not have a sufficient understanding of the complexities of court interpreting work prior to initiating the procurement of a new service. The competitive dialogue process failed to produce a working model that would enable skilled professional interpreters to continue to service courts and tribunals. The consultation that was undertaken was limited because by the final stage of the competitive dialogue process the nature of the new arrangements had been largely determined and the important concerns that were raised by the interpreter community, and others, even if they were heard, were unheeded. (Paragraph 43)

6. There was clear potential for problems with ALS' capacity to deliver on its promises which were not adequately anticipated or dealt with either by the Department or by the contractor itself. We share the National Audit Office's concerns over the weakness of the Department's due diligence and risk mitigation procedures. This is a cause for concern at a time when the same Department is likely to be responsible for a large complex centralised commissioning programme for implementing the "Rehabilitation Revolution". In response to one of the recommendations of our report The budget and structure of the Ministry of Justice—which expressed similar concerns and called for an independent review of the Department’s capability in commissioning services—we were told that a strategic approach was being taken to building the requisite skills. We hope that lessons have been learned from this experience, and, given the amount of outsourcing the Department is to be engaged in, we seek further assurances of the Department’s capacity in this area and repeat our call for an independent review before any further major projects commence (Paragraph 46)

Early operational problems

7. We have referred above to the Ministry’s efforts to prevent us receiving first hand testimony from court and tribunal staff on the standards of interpreting services. It is clear to us from the evidence we have been able to collect that the quality and effectiveness of court and tribunal interpreting services was seriously hampered by ALS’ performance. (Paragraph 59)

8. We are seriously concerned about the increase in ineffective trials as a result of non-attendance of interpreters, particularly in magistrates courts. We will monitor the quarterly statistics on ineffective trials for the remainder of the year to see whether this is an ongoing trend. (Paragraph 63)

Explanatory factors for poor performances

9. The decision to opt for a regional roll-out was done partly to prevent regional boycotts, suggesting that the MoJ were all too aware of the scale of serious resistance from amongst the interpreter community. The MoJ was, at best, naïve to view the new arrangements simply as an "outsourced booking process". Interpreters had repeatedly raised significant concerns about the new terms and conditions under which they were expected to work. (Paragraph 72)
10. The professional interpreter boycott undoubtedly contributed to ALS’ difficulties in coping with demand but we do not believe it entirely explains them. The Ministry of Justice and its contractor appear to have buried their heads in the sand. Many of the concerns that interpreters raised regarding the nature of the new operating model were realised during implementation, were utterly predictable, and should have been properly considered from the outset. (Paragraph 88)

11. The interpreter community drew the Ministry of Justice’s attention to the wildly unrealistic distance key performance indicator during the consultation process but this was disregarded. The number of languages required, the uneven distribution of interpreters and their language combinations across the country, the irregular schedule of courts and police services, last-minute contracting, and varying language needs, all inevitably make it necessary for interpreters to travel long distances. We are concerned that this is a further factor that deters professional interpreters from working under the Framework Agreement as travel expenses have been reduced. If Capita TI is absorbing higher travel costs than ALS first estimated there may be implications for future cost savings. (Paragraph 100)

12. ALS did not make it clear to the MoJ that the three tier system for interpreters had not been supported by the independent expert it had consulted. The Department has sanctioned, untested, a tiering system that imposes major changes to professional occupational standards and has significant potential to undermine the progress that has been made in professional development and resulting improvements in the quality of interpreting services provided in the justice sector. It would be disastrous if the Department continued to permit the courts to be starved of highly qualified interpreters. Just as the Department had concerns that membership of the National Register did not guarantee quality, we fear that a diminution of quality is an inevitable product of implementing a new system which does not accurately evaluate the skill levels of professional interpreters. (Paragraph 102)

13. Being able to communicate in a given language does not make someone an interpreter. The National Agreement, the National Register and qualifications that underpinned it were put in place to safeguard the right to a fair trial. The level of concern that arose during the consultation process regarding the potential diminution of quality standards by imposing the tiered system, diluting qualification requirements and imposing lower levels of pay suggest that the Ministry of Justice was determined to pursue the implementation of the Framework Agreement in the face of evidence that it would reduce the quality of language services available to the courts. (Paragraph 103)

14. We are astonished that the pilot was not used to test the tiering system and assess whether interpreters meeting the new standards could perform adequately in court. We are particularly concerned at the decision of the Ministry of Justice not to seek to build on safeguards developed under the previous system whereby interpreters other than those registered by NRPSI were to be used only in exceptional circumstances. We support the National Audit Office’s proposal that the tiered system should be independently evaluated. (Paragraph 104)
15. The use of tier 3 interpreters in courts and tribunals should be reserved for those cases in which it is absolutely unavoidable, such as in rare languages for which there is no relevant professional qualification, or to meet the specific needs of a deafblind person who requires a particular mix of skills in an interpreter. Alongside fulfilment rates, the MoJ should monitor the level of use of particular tiers of interpreters by HMCTS and ensure that any instances of inappropriate use of tier 3 interpreters can be properly investigated and managed. (Paragraph 105)

16. It is unreasonable to expect interpreters to be available for as long as they may be required and not paying for the full time actually required. (Paragraph 121)

17. We conclude that under any scenario the levels of remuneration available to interpreters servicing the justice sector have significantly reduced. This in part explains why NRPSI interpreters have refused to work under the new arrangements and this in turn impacts on the ability of the contractor to fulfil jobs at a rate which meets demand. The 2001 Auld report recommended a review of the level of payments to interpreters with a view to encouraging more of the best qualified interpreters to undertake work and to establish a national scale of pay. The same interpreters now feel that they have been forced to leave the market. (Paragraph 123)

18. The bulk of the savings accrued in contracting ALS to provide interpreting services appear to stem not from the resolution of administrative issues which were causing inefficiencies, and were a key factor motivating the change, but from a reduction in interpreter pay. In devising the new pay structure the Ministry of Justice and ALS failed to appreciate the differences between court work and police work that would result in court interpreters being unable to achieve a sustainable level of income. We recommend that the MoJ audit the true amounts that are being expended on interpreter pay and travel by Capita TI to establish whether the contractor is providing a level of remuneration that is unsustainable and may already be having a deleterious effect on the quality of interpreters that will be available to the justice sector in future. In order to ensure that the best qualified interpreters are available to courts and tribunals it may be necessary for Capita to further increase the rate of pay for the highest qualified at tier 1. (Paragraph 124)

19. ALS and Capita paid lip service to the regulatory duties accepted under the Framework Agreement. The inability to cope with complaints and the failure of basic vetting procedures are key examples of ALS’ lack of capacity to deliver on its promises to the Ministry of Justice. (Paragraph 128)

**Steps taken to rectify under-performance**

20. ALS clearly needed significantly more resources than it had at its disposal to deliver the service levels that it promised under the Framework Agreement. The Ministry of Justice was only saved from its failure to conduct proper due diligence, or to take account of the views of consultees, and from the likelihood of subsequently being forced to terminate the contract, by the fact that Capita bought ALS and has been willing to invest heavily in the infrastructure required to salvage an operating model under the Framework Agreement. (Paragraph 136)
21. Performance figures clearly do not reflect the company’s fulfilment against 100% of the requirements of HMCTS and they should be altered, retrospectively and in the future, to indicate this. (Paragraph 141)

22. The level of customer cancellations seems rather high. We recommend that Capita TI reissues guidance to staff regarding the logging of customer cancellations. We also recommend that the MoJ undertakes an audit of fulfilment data with a focus on the reasons for customer cancellations, and uses their findings to seek to reduce the level of these by its agencies’ stakeholders. (Paragraph 142)

23. We are encouraged that the feedback to MoJ suggests that participants within agencies of the justice system other than courts and tribunals are satisfied with ALS’ performance under the contract. (Paragraph 143)

24. We are pleased to hear that service levels have improved markedly in recent months and that this will allow HMCTS to book all of the interpreting work it requires through Capita TI in the near future. We call on the Ministry of Justice to keep us apprised of fulfilment rates, and their estimation of the volume of work demanded by HMCTS that Capita TI are being asked to fulfil, on a monthly basis until we can be satisfied with the extent of improvement. (Paragraph 152)

Costs of remedial action and implications for cost savings

25. While the contract is delivering significant cost savings to the Ministry of Justice, these are not at the level promised. Additional costs are currently being borne by the contractor and there may be future ramifications for the Department when it comes to re-commissioning interpreting and translation services if these financial issues are not resolved. We are concerned that the existing arrangements are financially unsustainable in the sense that Capita TI is propping up the continuation of the Agreement, so the Department’s savings are effectively being secured at the company’s expense. There is a distinct risk that the MoJ will not be able to continue to realise the same level of cost savings in the future and that when the time comes to re-tender the contract there may be an insufficient supply of professional interpreters to furnish it. The MoJ would then be left with fewer savings and an enduringly poorer quality of service. The MoJ must get a better grasp of the costs of underperformance. It is unacceptable that existing cost figures do not account for cases that have been (repeatedly) adjourned because of interpreting problems and those in which a defendant has been unable to apply for bail and has consequently been remanded in custody. In its response to this report and at regular intervals thereafter we call on the Ministry to inform us of its updated assessment of its cost savings. (Paragraph 161)

Future priorities

26. We are surprised that there is no absolute target of numbers of interpreters for the supplier database. Before the MoJ seeks to rollout the operation of the agreement fully to the Crown Prosecution Service it must ensure that Capita TI has determined a defined minimum necessary to deliver that work. We also consider it necessary for
the MoJ to undertake or commission some work to establish more clearly the requirements of the CPS than was done in respect of HMCTS. (Paragraph 164)

27. We support the new approach planned for assessing interpreters provided that Capita TI ensures that any quality assurance elements that underpin it are appropriately tight and rigorously monitored. (Paragraph 166)

28. We are dissatisfied that Capita TI has failed to provide for those on its supplier list a proper programme of professional development almost one year after it began operating under the Framework Agreement. (Paragraph 167)

29. It is clear that the contractual terms regarding the appropriate qualifications and CRB checks for those servicing the contract continue to have been flagrantly disregarded until very recently. We are dismayed that a contractor should apply such an apparently lackadaisical approach to verifying qualifications and executing appropriate vetting. While there have been improvements these have taken a very long time to achieve, even with the considerable performance improvement resources at Capita’s disposal. We are concerned that the Ministry of Justice has so recently found evidence that questions persist as to whether interpreters on the supply list are meeting appropriate quality requirements in terms of having properly verified qualifications and experience as defined under the tiered system. We are not yet satisfied that there are sufficient safeguards currently in place to ensure that only suitably qualified interpreters are providing services to HMCTS. (Paragraph 171)

30. We welcome the Department’s efforts to quality assure the work of Capita-ALS in implementing the Framework Agreement, but we believe that, in the absence of an independent regulator, this mechanism should have been in place from the start and we are concerned that regular monthly checks continue to be necessary some nine months or so into the operation of the contract. The Ministry of Justice has shown ALS, and subsequently Capita TI, considerable leeway in not rescinding the contract despite ongoing breaches of their obligations under the Framework Agreement, and has presumably had to devote more resources than expected to close monitoring of the contract. We ask the Ministry of Justice in its response to this report to provide us with an estimate of the administrative costs of providing such a considerable level of oversight of the contract. (Paragraph 172)

31. Notwithstanding the progress that has been made, we consider that the Ministry of Justice and Capita TI have much hard work ahead of them to restore the trust of sentencers and the legal profession. We recommend that the MoJ considers negotiating with Capita TI to replace the distance indicator with an indicator of quality, for example, a user satisfaction measure. (Paragraph 177)

32. We recommend that the MoJ establish a dedicated phone number for registering complaints about interpreter services for those stakeholders who do not have access to the portal, and publicise the existence of this complaint route. Data on the number of complaints received by this route, and the proportion of such complaints that are fed through to the portal, should be published alongside statistics on complaints made directly through the portal itself. (Paragraph 181)
33. We welcome the Minister’s willingness to engage in discussion with the interpreter community and we will monitor the outcome of these discussions. (Paragraph 182)

34. The failure of Capita-ALS to implement appropriate safeguards until, following the National Audit Office recommendations, they were required to do so by the Ministry of Justice, has reinforced the concerns of the interpreter community about the fact that the service provider is responsible for almost all functions. It has certainly taken some time, and the impetus of the NAO’s investigation, followed by more rigorous monitoring by the MoJ, to highlight exactly where the problems lie and to see real progress in performance. (Paragraph 190)

35. Our evidence suggests that the most important priority for the MoJ is to establish whether the strengthening of quality assurance arrangements, and other work that has been done to remedy other problems, are sufficient to improve the quality of interpreting services provided to HMCTS under the Framework Agreement. We share the National Audit Office’s concern that the existing safeguards of quality within the system may not be fit for purpose; if this is not addressed it is likely that the confidence of important stakeholders, including the judiciary, magistracy and legal professionals, will continue to be undermined, and that many professional interpreters will continue to be reluctant to provide their services. We support the National Audit Office’s recommendation that these standards should be independently reviewed and look forward to seeing the results of that assessment. (Paragraph 191)

36. Our evidence suggests that the concerns of many members of the interpreter community will not be dispelled by insipid and general responses from the MoJ on such issues as remuneration, and rebuilding trust, for example. It is likely that concrete safeguards will need to be negotiated, for example, following the independent review of the tiered system of qualifications proposed by the NAO, a proposal that we also endorse. The language used by the Minister in describing the path that the MoJ must take to move forward, appears to illustrate the Department’s acceptance that the Framework Agreement requires some renegotiation, albeit through careful and creative cooperation with Capita TI. The Ministry and Capita TI must prove that the Framework Agreement is capable of attracting, retaining and deploying an adequate number of qualified and competent interpreters to meet the requirements of the courts and other agencies. This will also require the professional interpreter community to work flexibly with the Department in seeking to find an acceptable way to restore their services to the justice sector. It is essential that this is achieved before fully extending the reach of the contract to other justice agencies. (Paragraph 192)

37. We believe that ultimately there should be a regulation system that is independently organised to select and classify interpreters for the appropriate level of court and tribunal work, assuming that some form of tiering remains in place following the review, and ensure that they are held accountable for delivering to the standard required. In the meantime it is important that the functions of Capita TI in delivering quality assurance are clarified, and if necessary, further strengthened. In addition we consider that there is a strong case for a further review of rates of
remuneration and modelling of the potential impact of increasing these rates, particularly for highly qualified interpreters, on registration rates. (Paragraph 193)

**European Directive**

38. The transposition into UK law later this year of EU Directive [2010/64/EU] on the right to interpreting and translation during the criminal justice process will prove a timely test of the appropriateness and robustness of quality safeguards embedded in the Framework Agreement and the efforts that have been made to strengthen them in the light of the reports of the National Audit Office and two parliamentary select committees. (Paragraph 196)
Interpreting and translation services and the Applied Language Solutions contract:

Draft Report (Interpreting and translation services and the Applied Language Solutions contract), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 196 read and agreed to.

Summary agreed to.

Annex agreed to.

Resolved, That the Report be the Sixth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 16 October and 21 November.

[Adjourned till Tuesday 29 January at 9.15am.]
Witnesses

Tuesday 23 October 2012

Madeleine Lee, Director, Professional Interpreters’ Alliance, Nick Rosenthal, Chair, Institute of Translation and Interpreting, and Ted Sangster, Chair, National Register of Public Service Interpreters Ltd Ev 1

John Fassenfelt, Chairman, Magistrates’ Association, and Richard Atkinson, Chair, Criminal Law Committee, Law Society Ev 8

Tuesday 30 October 2012

Andy Parker, Joint Chief Operating Officer, Capita, Sunna van Loo, Public Services Director, Capita, and Gavin Wheeldon, former CEO, Applied Language Solutions Ev 12

Helen Grant MP, Parliamentary Under-Secretary of State, Ann Beasley CBE, DG Finance and Corporate Services, and Peter Handcock CBE, Chief Executive, HM Courts and Tribunals Service, Ministry of Justice Ev 22

List of printed written evidence

1 Ministry of Justice Ev 30, 53, 57, 64, 69
2 Professional Interpreters’ Alliance Ev 34, 120
3 Institute of Translation and Interpreting Ev 38
4 National Register of Public Service Interpreters Ltd Ev 42, 57
5 The Magistrates’ Association Ev 47
6 Law Society of England and Wales Ev 48
7 Capita Ev 52, 55, 57, 64
8 Professional Interpreters for Justice Ev 71, 109, 120
9 Dr Francis Beresford Ev 83, 107
10 Rt Hon Lord Justice Goldring, former Senior Presiding Judge for England and Wales Ev 108
List of additional written evidence

(published in Volume II on the Committee’s website www.parliament.uk/justicecom)

1 Jeremy Lynn Ev w1
2 EULITA (European Legal Interpreters and Translators Association) Ev w1
3 Sarolta Melania Lillywhite Ev w3
4 Laura Orsini Ev w4
5 International Association of Conference Interpreters Ev w5
6 Matthew Scott Ev w9
7 Elder Rahimi Solicitors Ev w13
8 Colvin de Silva Ev w14
9 Susanna Garcia Ev w14
10 Zornista Stoyanova Ev w15
11 SE Suffolk Bench Ev w17
12 Yelena McCafferty Ev w17
13 Saadia Ahmad Ev w20
14 Orsolya Mance Ev w20
15 Eszter Fejes Ev w22
16 Dr Yvonne Fowler Ev w25
17 John McCarthy Ev w27
18 Magdalena Taylor Ev w28
19 Marketa Moskvikova Ev w31
20 Miguel Llorens Ev w32
21 Mrs Jennifer Hogg Ev w34
22 Marie Adamova Ev w36
23 Society of Official Metropolitan Interpreters UK Ltd Ev w39
24 Klasiena Slaney Ev w41
25 Ranjeeta Johnson Ev w43
26 Kasia Beresford Ev w44
27 Chartered Institute of Linguists Ev w51, w135
28 Sitta K. Sittambalam Ev w59
29 Elvana Moore Ev w62
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31 Ian McGarr Ev w65
32 Jennifer Smith Ev w66
33 Rekha Narula Ev w67
34 Amanda Clement Ev w69
35 Association of Sign Language Interpreters Ev w70
36 Dr Christopher Stone Ev w71
37 Mrs Thuy O’Shea Ev w72
38 Carita Thomas Ev w72
39 Emery Johnson Solicitors Ev w73
40 Prison Reform Trust Ev w74
41 Fair Trials International Ev w76
42 University Council of Modern Languages, Open University  Ev w79
43 Peterborough Magistrates’ Court  Ev w80
44 Irina Jefremova  Ev w81
45 Yvonna Swanson  Ev w82
46 Bogumila Kolbus  Ev w83
47 Elena Irimescu  Ev w93
48 Association of Translation Companies  Ev w93
49 Marc Starr  Ev w95
50 Involvis Ltd  Ev w98
51 Cintra Ltd  Ev w108
52 Dennings LLP  Ev w110
53 The Reverend Michael J Slade  Ev w115
54 thebigworld  Ev w115
55 Dr Zuzana Windle  Ev w118, w123
56 Gonul Ekmekci  Ev w119
57 Dev Rajasansi  Ev w119
58 Pawel Nalewaj  Ev w120
59 Ligia Xavier  Ev w121
60 Amjad Parvez  Ev w122
61 Brooke Townsley, Senior Lecturer Interpreting and Translation, Middlesex University  Ev w122, w127
62 National Register of Public Service Interpreters Ltd  Ev w123
63 Mateusz Kiec  Ev w123
64 National Audit Office  Ev w124
65 Chartered Institute of Linguistics  Ev w124
66 Geoffrey Buckingham  Ev w125
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Madeleine Lee: I will start with Ms Lee.

Nick de Bois: Could I stop you there to ask one other question on that? Are you therefore sympathetic to the argument that trying to centralise the process on a more conforming, consistent basis was a good thing, in principle?

Madeleine Lee: We are sympathetic to the principle, but the way it was executed bypassed all of our professional structures.

Q4 Nick de Bois: Thank you. Mr Rosenthal, could I ask you to comment on the same question?

Nick Rosenthal: You can. I will start a little further back, if I may. There is a Dylan Thomas book that talks about everything you want to know about the wasp except why—and the why is often important. Why was court justice interpreting in the UK regulated? Why did Government take a keen interest? Why was it not served. That is really the heart of the whole matter—justice must always be served. Quite rightly, Government and the professional bodies talked with one another, and there was a mood of “What can we do here to improve this?” You will have to forgive me, as it slightly predates my close involvement, but we had things like the Runciman report from 1994, I believe. We then had Lord Justice Auld’s report in 2001. We have mentioned the National Agreement and have done so as if it were one thing. Actually, it was an evolving, moving, regularly reviewed thing. I believe it was reviewed in 2004 and 2007. There were ongoing and
constant efforts to make it better. No one ever claimed that any system can be perfect.

Q5 Nick de Bois: How did the complaints that you were receiving from members materialise? What sort of level of complaints were you getting? Can you provide more examples of why people were dissatisfied? I am really trying to establish the level of dissatisfaction.

Nick Rosenthal: Within my own organisation, the Institute of Translation and Interpreting, we were not getting massive levels of complaint, but bear in mind that we are a broader church than just court and police interpreters, although we certainly have a number of those among us. I think the main concern among our members was and always has been about interpreters who are not fully professionally qualified and not appropriately experienced working in the courts. Even under the old system, where the idea was that people must be registered with the National Register of Public Service Interpreters—NRPSI—there were still too many instances of people working in the courts who were not appropriately registered with NRPSI, which set a clear bar in terms of qualifications in that respect.

Q6 Nick de Bois: So it was a register, rather than a qualification level.

Nick Rosenthal: Again, that question slightly predates me, but I believe that we would best describe NRPSI as a register that recognised qualification levels. That is more Ted’s area.

Q7 Nick de Bois: Thank you. I turn to Mr Sangster.

Ted Sangster: I will give a straightforward answer to your original question and repeat what Madeleine has said. Interpreters then wanted the same as they do now. We want a profession that uses and provides access to highly and appropriately qualified interpreters. At that time, in the context of the National Register, there was a particular concern among interpreters about the system that was in place, which allowed access to the register on payment of a licence fee to appropriate bodies. Concern was expressed to the register about that, in that it gave the opportunity to indicate that they had access to over 2,000 interpreters and to promote themselves. That has now changed. Now, as then, interpreters and the register are seeking longer-term statutory protection of title for legal interpreters and translators, as is the case in other EU states. From the point of view of the MoJ, these expressions of concern, a few years ago included anecdotal statements—or evidence, if you can call anecdotal statements evidence—which were used by Martin Jones to explain and promote the reason for making some improvements—a complaint was made to the National Register and was put to a screening body made up of lay and interpreter members to identify whether there was a case to be investigated. If there was such a case, it was passed to the disciplinary committee, which sought evidence from all parties and undertook a hearing that all parties were able to attend. A view was then taken as to the validity or otherwise of the complaint and, if it was found to be valid, what penalty was appropriate. Those penalties went from warnings through to suspension and dismissal.

Q10 Nick de Bois: There is some criticism that it was not timely and somewhat inefficient—a bit of a laborious process. Is that fair?

Ted Sangster: There are two aspects to that. I will deal first with the second one—that it takes a lot of time. It takes time because we are a voluntary regulator. We do not employ the interpreters, so we do not have the ability to say to the interpreter, “This allegation has been made, so we are not using you.” We go through a due process, the bones of which I have outlined, which gives protection both to the interpreter and to those making use of interpreters, because to reach a conclusion any investigation needs to be done through a due, fair and just process. It can take time to gather the evidence—particularly, for example, if a judge has made known his view that a complaint needs to be made. A clerk would make that and we would need to seek evidence on it, which might involve some further dialogue with the judge or others involved. That can take a bit of time.

On the other point—your first one—yes, we hold our hands up. In the previous organisation, we had let things fall behind, and things were taking longer than they should have done, for a variety of reasons.

Q11 Nick de Bois: Finally, I have a question for Ms Lee. Do you think that you encouraged the MoJ to try to fix what was wrong with the old system? Did you make this point clear enough before the new framework agreements were put in place, or was it the case that at the time—I know looking back is difficult and hindsight is a wonderful thing—you accepted the principle of a completely new framework agreement and contract?

Madeleine Lee: Interpreters approached the Ministry of Justice and the OCJR, which at the time was running the so-called interpretation project, in good faith, because we hoped that a partnership could be brought about between the Ministry and the professional bodies, to make things better for everybody and to move towards statutory protection. Nothing was ever mentioned to us, at any rate, about
outsourcing or a potential framework—certainly not at the 2009 road shows.

Q12 Chair: Can you be careful about how you use the word “outsourcing” here? It is not so much outsourcing or not outsourcing; it is outsourcing to what I take to be freelance interpreters or outsourcing to a company that then employs people in an employed capacity. Is that right?

Madeleine Lee: Yes, indeed. The difference between then and now is that previously, registered public service interpreters—all of whom are freelance, self-employed individuals—would be called directly by courts, police forces and other criminal justice agencies and would be paid directly. Now that is all done through one centralised portal. We were told that the Ministry of Justice wanted to centralise the whole system, so that it was to save money and time and money. In that case, you outsource the payroll function and the booking function as discrete functions and continue to use the approved lists that have been established through decades of policy development, from the Runciman report onwards, through the Auld report and the various incarnations of the National Agreement.

Nick Rosenthal: May I clarify Sir Alan’s comment? Sir Alan, you said that the old version was self-employed interpreters and the new version is one outsourced private company that employs people. That is not quite correct. There is an outsourced company that, in turn, continues to use self-employed interpreters.

Chair: Thank you for that clarification.

Nick de Bois: Thank you, Chairman. I sense people might be a little confused about the word “outsourcing” here? It is not so much outsourcing or not outsourcing; it is outsourcing to a company that, in turn, continues to use self-employed interpreters.

Q13 Steve Brine: Good morning. Let us talk about the procurement process. My question is for all three of you. What outcome would you like to have seen from the procurement process, had you been involved, as you would see it, properly and substantively from the outset? Let us start with Mr Sangster.

Ted Sangster: We have just been exploring what the problems were for the Ministry of Justice and both sides. It has been acknowledged that there were some problems. That is the essence of my response to your question of how we would have preferred things to have gone. We would have preferred to have addressed collectively the issues and problems that were in evidence and the concerns, whether justified or not, at the time, and to have worked towards a revision of the existing system, based quite securely on the National Agreement, to address the concerns and to bring in some of the improvements and efficiencies that have just been touched on.

The profession and the organisations have done that. The National Register was previously part of the Chartered Institute of Linguists, which was very much engaged with these concerns and had the courage to make a change and to respond to them. It set up the National Register as it now is—a completely independent body—in April last year. We are made up of a board of lay members and practitioner members. We have made a number of changes, partly in response to some of the previous concerns. We have sought to engage with the Ministry of Justice and others, working together, in our view, to achieve a common solution, rather than having one imposed on the profession—as has happened, unfortunately—with just a spurious attempt to have a consultation.

Q14 Steve Brine: Can I check something? I presume that, rather critically, your register has people with specific specialisms in different areas—law, for instance—which is not necessarily the case with the interpreters who have been placed in court settings under the new contract?

Ted Sangster: Yes. There are three prime areas of specialism within the register—law, health and local government—in terms of the recognition provided by the DPSI, which is the primary qualification to get on to the register. The register now has free and open access. Anybody wishing to make use of an interpreter can access the register and do a search for somebody in the area with the language and appropriate skills and qualifications that meet their requirements.

Q15 Steve Brine: Is it accessible online to any member of the public?

Ted Sangster: It is.

Q16 Steve Brine: Mr Rosenthal, do you want to add to that?

Nick Rosenthal: You asked what we would like to have seen. We would like to have started, in order to ensure that justice was served at all times, by making absolutely sure that any revision to the existing system made sure that interpreters going into the courts were fully and appropriately qualified, not just somebody who speaks “a bit of the foreign”. I speak a bit of the foreign myself, and you would have good reason to be absolutely terrified if I were to interpret for you in a court of law, because it is outside my specialist areas. We would like to have seen something that made sure that existing professional qualifications were recognised and worked with, and something that maintained an independent register of fit and appropriately qualified persons. We accept that there was plenty of scope and potential for some management efficiencies in terms of a centralised booking system, perhaps. Courts are not necessarily the most high-tech environments, and there is certainly scope for some sort of centralised booking system.

We would like to have seen something that recognised the worth and value of fully qualified professional interpreters who were working in a court environment. Several members of the Committee are barristers and solicitors and will know far better than I what those people earn. Under the old system we had these qualified professionals—the interpreters—earning the princely sum of £30 per hour, which has now been heavily reduced. I am not saying that we were looking for £100 per hour for all interpreters, but we certainly were not looking for the rate to go down, because we knew that the effect of that would be that experienced professionals would quite simply leave the profession, go elsewhere and do something where, using their skill set, they can indeed earn £30 an hour. Those are
the things we were looking for. I could wander off into realms that—

Q17 Steve Brine: No, let us give Madeleine Lee a chance to come in here.

Madeleine Lee: I do not have a great deal to add to what Nick and Ted have already said, except that the outcome should have been a register that truly was for the public services, was used by the public services and was supported by the public services, because all the work that has been done by professional institutions over the last three decades in this field has been largely materially unsupported by Government. However, I would like to add that, had proper notice been taken of what the profession was saying right from the word go, you would not have ended up with a situation whereby, first, a procurement department did not actually understand the complexities of the niche markets from which it wanted to commission services, and consequently, a decision on a procurement level has meant that, effectively, the standards of qualifications required for interpreters used in the courts have been watered down. That was not a decision that the procurement department was qualified to take, and it is impacting on justice policy now.

Q18 Steve Brine: Why were the discussions that took place with the MoJ before and during the process not very constructive? In other words—let me be brutal about this—why was there such a failure of influence on your part?

Nick Rosenthal: Can I answer that?

Steve Brine: Let Ms Lee start.

Madeleine Lee: There are two points of view. If I can speak for interpreters, you can speak from the organisations’ point of view. I do not believe there was a failure on our part to communicate in any way whatsoever.

Q19 Steve Brine: With respect, you are sitting here and telling us that it has gone wrong—it is an “I told you so” message—and that it would have been very different if you had been involved. That suggests to me that you did not have much influence.

Madeleine Lee: Not only did we tell them so, but we continue to tell them so. Under the current contract, we are carrying out the Ministry of Justice’s due diligence for it. Interpreters are the only people who are monitoring what is actually happening on the ground with the delivery of this contract. I am sorry, but I cannot agree with you that professional organisations in some way did not carry enough clout to be listened to. Clearly, an early decision was taken by the people who we were contacting, who were different people over the years; we never quite knew who we were supposed to be talking to. We have sent hundreds of letters. There were also unprecedented petitions from freelancers who had signed up individually, saying, “I do not support this framework agreement, I will not support this framework agreement and, if this framework agreement goes ahead, I will not give my services to it.”

First, the Ministry was warned from about 2009 onwards. It chose to disregard those views. We continued to warn it in the run-up to the contract going live that it was not going to work, and it did not take us seriously. It thought that, by sending the contract live in January, it could bully us into coming into line and on board with something that we fundamentally disagree with, not just because the rate of pay is low but because the professional standards in our field are effectively being razed to the ground by a commercial agency that has no stake in standards and regulation. Since the inception of the framework agreement, we have continued to write to the Ministry of Justice. We have sent it evidence of what practices are going on and things that have been communicated in the National Audit Office report.

Chair: I think we are rather moving on from Mr Brine’s question.

Q20 Steve Brine: It is great; I love to stir it up. That was a good response. So, Mr Rosenthal, it was not so much a failure of influence—there were hundreds of letters and e-mails and, no doubt, meetings—

Madeleine Lee: There was a failure to listen.

Nick Rosenthal: A failure to listen.

Q21 Steve Brine: You are saying, then, that a decision had been taken, minds had been made up and, no matter what process went on, you were just window dressing.

Nick Rosenthal: I cannot read the minds of the MoJ, but there is every sign that all consultation with the profession was what one colleague has referred to as “nonsultation”. We had serious concerns over a length of time and had written to various different people at the Ministry of Justice—to Richard Mason, to Louisa Carrad and to Martin Jones—and often we did not receive the courtesy of a reply. We do not know who to write to at the Ministry of Justice. I represent an institute with 3,000 members. We are probably one of the largest organisations. You would think that, if it was seriously engaging with the profession, it would be talking with us. We became very concerned in the summer of 2011. Interpreters and translators are fairly shy, retiring, slightly conservative individuals by nature. We took a decision as a professional body that it was right for us to come out to bat for the profession, and we wrote to the Prime Minister and several other Government Ministers in September 2011; you have a copy of this letter in the submission from ITI. We did receive replies from Government Ministers. It is because we were concerned by the failure to listen at civil service level that we felt it appropriate to raise the issue with those MPs who were responsible for overseeing it, just to voice our concerns, because they might not be aware of some of the issues that were going on.

Q22 Steve Brine: We will give Mr Sangster a chance to conclude.

Ted Sangster: I came new to the interpreting profession when I was appointed to the National Register in April last year. During my career I have dealt with many different Government Departments but never before the Ministry of Justice. I have been absolutely amazed and dismayed by the way in which the Ministry of Justice seeks to deal with its
Madeleine Lee: We have already said a great deal unsalvageable, in your opinion? ALS. Is there anything about the framework not many of the interpreters are engaging and working about the framework agreement. As we understand it, 20 years of policy development in this area. appropriate to lower the standards when we have had the early stages of the tender. It should never even been rejected by the consultant who was consulted in them as "our consultant has approved this in both content and structure". That is clearly misleading. In its official tender submission, those views had been changed to the exact opposite; it reported that he produced said that he had profound reservations about the three-tier system and about the assessment. When Applied Language Solutions reported that information back to the Ministry of Justice in its official tender submission, those views had been changed to the exact opposite; it reported them as "our consultant has approved this in both content and structure". That is clearly misleading. Q23 Yasmin Qureshi: Good morning, I want to talk about the framework agreement. As we understand it, not many of the interpreters are engaging and working with it; I think that only about 20% are working with ALS. Is there anything about the framework agreement that is salvageable, or is it completely unsalvageable, in your opinion? Madeleine Lee: We have already said a great deal about the standards and how they were changed by a commercial decision. It may interest you to know— you may not have picked up on it in your reading of the National Audit Office report—that during the tendering process ALS engaged the services of an independent consultant, who in his day job is employed at Middlesex University. The expert report that he produced said that he had profound reservations about the three-tier system and about the assessment. When Applied Language Solutions reported that information back to the Ministry of Justice in its official tender submission, those views had been changed to the exact opposite; it reported them as "our consultant has approved this in both content and structure". That is clearly misleading. Q24 Chair: If you would like to let us have a note on that very specific point, which is of some factual importance, we would be rather glad to have it. That may free you to deal with Ms Qureshi’s question about whether the present structure is unsalvageable. Madeleine Lee: I was just coming to that. The present structure is founded on something that had already been rejected by the consultant who was consulted in the early stages of the tender. It should never even have made it on to the table. It is simply not appropriate to lower the standards when we have had 20 years of policy development in this area. Nick Rosenthal: In our professional view, as a professional body, the framework agreement as it stands is unsalvageable. I think it contains many false premises. The bottom line is that, under this framework agreement, existing professional qualifications have been ignored. The rates of pay that are offered under it are so low that qualified professionals are no longer able or willing to continue working in the court system. There are so many different concerns about it that we must recognise that the framework agreement as it stands is part of the problem and must be replaced by something better. Madeleine Lee: May I add something else? Fundamentally, one big reason why this framework agreement is flawed is that it has given the provider all sorts of different functions that should be exercised independently. Each one of these functions is in conflict with the others. Currently, Applied Language Solutions is carrying out the disciplinary function. At the same time it is a work provider, so it has a relationship with the people it disciplines. Obviously, it is also a supplier to criminal justice bodies. It is now a setter of standards within our profession, which is entirely inappropriate. It is a de facto regulator, in that it is supposedly assessing qualifications and competence and deciding who goes on its register. It is also its own auditor, because it is reporting its own performance figures on this contract. A lot of those functions, particularly the disciplinary function and the regulatory function, should be exercised independently, by independent bodies. Q25 Yasmin Qureshi: Mr Sangster, do you want to add anything before I come on to my next question? Ted Sangster: I totally reinforce that. The existing situation with the framework agreement is unsalvageable. It is dangerous, if you like, in terms of the interests of public safety, if it is allowed to carry on. It is not delivering to the standards of quality. The profession is dwindling away because the rates of pay are a nonsense; no highly qualified interpreter is going to engage, as has been demonstrated. There are internal inefficiencies as well. It is down to the MoJ to deal with those with its contractor. However, the basic framework itself is significantly flawed. Q26 Yasmin Qureshi: In that case, I come on to my next question. From what you have said, it is not so much the provider that is at issue: the framework agreement itself is the problem. Madeleine Lee: It is the fact that all the functions, some of which are not functions for a commercial agency, have been entrusted to the commercial agency, as has the quality control on this contract. We do not believe it is equipped to carry out that quality control. Q27 Yasmin Qureshi: So you would say that the company providing the service is also not very competent or did not do the job properly. Madeleine Lee: As you know, Applied Language Solutions is the small Huddersfield-based company 1. 1 Note by witness: ALS Ltd was originally based in Huddersfield but since moved to premises at Huddersfield Road in Oldham.
that tendered for and won the contract. It was awarded the contract in August last year. In December last year, Applied Language Solutions was snapped up by Capita plc. Now, nearly a year later, Capita plc has dispensed with the senior management team of Applied Language Solutions; it has also recently gone through a name change. I do not know whether the fact that there are two ongoing inquiries into the company is related to that name change, but Capita Translation and Interpreting is the new trading name of ALS. It is difficult for us, looking in from the outside, to know how much of ALS’s in-house expertise—if it ever had any—has been taken over by Capita. Capita certainly does not have a background in language services.

Q28 Chair: It is very helpful to us to distinguish between two quite different problems. One is the quality of the contractor that has been provided. The other is whether there is a structure that satisfies your concerns about the maintenance of professional standards, for example, which, you are arguing, should exist independently of the contractor.

Madeleine Lee: We would very much support that view. There are substantial problems with the assumptions on which the framework agreement is based, but a lot of concern has also been voiced by practitioners about the company and how it delivers. In looking at paperwork around this contract, it appears that, during the tender phase, ALS claimed it could make savings of roughly one third, based on management efficiencies. Given that actually it has simply used a cudgel to knock down rates of pay within a monopoly situation that it has been handed from £30 an hour to £20 an hour, I would gently suggest that it has achieved savings of one third by sledgehammering its suppliers.

Q29 Yasmin Qureshi: In the light of what you are saying, it would not be sufficient for Capita Translation and Interpreting to increase the payment rate for interpreters, in your opinion, because of the way it operates and things are done. I can see everybody indicating that that is right. What can Capita Translation and Interpreting do to satisfy you that it is offering a proper service to the court system?

Ted Sangster: I do not think it is down to Capita. It is down to the MoJ, because the existing framework agreement is unworkable, in our view. It needs to be revisited and stripped apart. As for the elements that are appropriate to be dealt with and managed by a commercial body, such as those that Madeleine has outlined, fine—put those together. However, there needs to be independence in terms of qualifications and discipline. Systems need to be put in place so that those are managed appropriately, to provide the monitoring and ensure that the standards required are delivered.

Q30 Mr Buckland: Before I begin, I should declare that I am a Crown court recorder. I want to look at some of the detail on performance under the framework agreement since the beginning of the year. We now have some figures from the MoJ itself that demonstrate that on what I regard as two key indicators—performance and attendance—there are some matters of concern. First, the rate of complaints about requests has been as high as 23% in one month—March. Can I deal with attendance and ineffective trials? The evidence this year shows that the trend for ineffective trials as a result of non-attendance is rising. I know that representatives of your professional bodies have been going to court and monitoring some of these indicators. I wonder what evidence you have as a result of your attendance. Mr Rosenthal, I am happy to start with you.

Nick Rosenthal: Can I ask a small question back? You say you have the figures from the MoJ itself; I would like to offer congratulations on achieving that, because it is more than we have been able to achieve. Are the figures actually from the MoJ itself, or are they figures that the MoJ has asked its own contractor for?

Q31 Mr Buckland: Let me be fair. I have them, first, with regard to ineffective trials. They are quarterly court statistics published by the MoJ, the latest of which relate to quarter 2 and were published on 17 October. With regard to complaints, as I understand it, they are statistics from the MoJ that have been provided to the Committee in recent days. I am grateful to the Committee Clerk for that information.

Chair: It is information that has been freshly obtained.

Nick Rosenthal: I am not sure everybody is to be forgiven if we have not had immediate sight of them.

Madeleine Lee: I have.

Q32 Mr Buckland: Good. The question I had was about the work your professional bodies have been doing to monitor performance and attendance. Do you have that information for us?

Madeleine Lee: It is not something that professional bodies, in particular, have been doing. It is something that out of work court interpreters have been doing by way of continuous professional development or, indeed, carrying out the Ministry’s due diligence for it. These new figures on ineffective magistrates court trials, in particular, show that Capita managed to clock up 182 in the first quarter. Let us bear in mind that Capita operated during only two months of that quarter, because the contract did not start until the end of January. The way those figures have shot up is quite impressive; you can probably see visually that they have gone up significantly since Capita took over.

Nick Rosenthal: I go back to the figures provided by the Ministry of Justice, which need to be taken with a large pinch of salt. As the National Audit Office report has already established, there is a large anomaly to do with the category of customer cancellations—when, in practice, Applied Language Solutions sends somebody to a court far too late for them to be of use, or sends somebody with the wrong language, or the person goes to the wrong place, turns out to have a criminal record, or is turned away for whatever reason. Applied Language Solutions will log those instances as “customer requirement cancelled”. In other words, if a court rings and says, “Where’s the
interpreter you promised me at 9 am? It’s now 4 pm,”
ALS will say, “Oh, are you cancelling the requirement?”, and that goes down in that column. So there is a very large anomaly.

Q33 Mr Buckland: Let me be clear—you are saying that, in effect, complaints and material failures are being logged as cancellations.
Madeleine Lee: Yes. That was established by the NAO report.

There are three further points I would like to make about the presentation of the performance figures. First, they only tell you something about attendance. They do not tell you a great deal about quality, probably because it is a truism that not everybody will be in a position to judge whether an interpreter is competent. If you do not speak both languages, it is very difficult to make a judgment about that. That is why you need to minimise your risk by using only registered professional people in the first place. What we do not know—these are the figures that we are not getting from the Ministry and have repeatedly asked for—is what percentage of the total bookings and requirements for the Courts Service ALS is handling. We know it is not handling 100% of the requirements, because direct bookings are coming to our members, and courts are ringing interpreters directly. Secondly, we know that they are not fulfilling the Crown Prosecution Service contract, for example. That has not yet gone live nationwide, because the company simply cannot cope with the demand. When you are looking at those figures, it is very important to establish what they are a percentage of. If they are only a percentage of 60%, clearly the performance is a lot lower than before.

Could I say a little bit more on the subject of the complaints procedure? As Ted has already explained, the professional institutes have codes of ethics and disciplinary frameworks and procedures in place. Those disciplinary frameworks include an appeals procedure. The full framework and procedure is published; it is transparent, and all parties know what to expect. Moreover, anybody is in a position to make a complaint to those professional bodies. With the new regime, under Applied Language Solutions/Capita, as far as we are aware and have been able to ascertain, there is no facility for anybody who is not a court employee to put in a complaint. The only channel for complaints is through the online portal. The only people who have access to that online portal are court listings clerks and court clerks. Solicitors, barristers, witnesses, the witness care service—you name it—and the public are not able to submit complaints. The Professional Interpreters’ Alliance has put in one complaint to Capita that listed 320 incidents that we felt needed looking into. They have not been dealt with. We had an acknowledgment—that was all. We were told to go away, because we are not a party to this contract.

Q34 Mr Buckland: Is it the position that, because of the shortcomings and particular limitations you mentioned, claims that performance is improving are impossible to substantiate?

Madeleine Lee: Absolutely. A lot of claims by the company have been taken at face value, and they should have been checked.

Q35 Mr Buckland: I think you have already touched on the point about ALS not covering the entire gamut of work in the courts, but how frequently are members of your professional associations being asked to find substitutes for ALS interpreters who fail to attend or are not up to the job?
Madeleine Lee: More frequently than should be happening, if this framework were operating properly. We are now on day 266, I think, of the framework agreement, and consequently, day 266 of interpreters individually deciding whether they will boycott Applied Language Solutions or work for them. There is also the separate decision of how they feel about direct bookings when the courts ring them as a second choice and ask them to come and clear up a mess that an ALS linguist has made. Individual freelancers occupy a spectrum, if you like, as to whether they will or will not come out for direct bookings. I could give you a figure for how many calls have been logged by Professional Interpreters’ Alliance members and other professionals since the inception of the contract, but I am not sure it is particularly meaningful. I believe as well that, if direct calls to interpreters are now diminishing, it is because those interpreters are known for having said no over the last eight months.

Q36 Mr Buckland: I see; I just wanted to double-check. Obviously, Capita took over a couple of months ago. Has there been any diminution since it took over, or is it difficult to plot?
Madeleine Lee: There has been absolutely no difference. One thing I would like to note about these direct calls is that they are often from courts at the other end of the country. I, for example, live in East Yorkshire. I am regularly called by Ipswich Crown court because ALS has let it down and it would like to travel from Hull to Ipswich—and the court would be perfectly happy to reimburse me under the old National Agreement rates to do so. I turn down those jobs on principle. If you analyse the penalty payments that have been imposed on Capita and divide that by the number of failed jobs—I think you ought to look into this in terms of the numbers—you come to a rate of £2.75 by which it is being penalised each time it fails to send somebody. If you bear in mind that, obviously, it is also losing the proportion of the linguist’s pay that it would be top-slicing if it had sent somebody, it makes a loss of maybe £15 each time it fails to provide for a job. If you weigh that up against its other option—to send somebody, say, from Liverpool to Ipswich, and pay their travel expenses—you can see why sometimes Capita may find it easier to take a £15 penalty on the chin and deliberately not supply somebody, because the only other option would cost them a lot of money. It is really something that should be looked into.

Q37 Mr Buckland: Capita has given us information that in August this year 34% of interpreters were attending work requests within a 25-mile radius. The
key performance indicator under the framework agreement is 95%. I think.

Madeleine Lee: I think it is 98%.

Q38 Mr Buckland: Do you have any comment on that disparity?

Madeleine Lee: My comment would be that it is an absolute nonsense to expect to have all languages provided for within 25 miles of every police station, every court and every location in the country. There is such a thing as supply and demand. There is also such a thing as over-saturation of a particular market. There were never any problems in servicing the criminal justice sector when we had 2,500 registered interpreters doing it, through the National Register. We do not know where this perceived need to have every language catered for on the doorstep of every court and every police station came from. It is another one of the fantasies that ALS sold to the Ministry in the course of the tendering.

Nick Rosenthal: Or the Ministry itself used a false premise.

Madeleine Lee: It did not understand.

Nick Rosenthal: Even in the core languages, there are wide parts of the UK where there is no qualified interpreter living within 25 miles of a police station. I will use Truro as an example. When you get on to some of the rarer languages, there are not a huge number of interpreters. I believe Thai is an example.

Madeleine Lee: Twi.

Nick Rosenthal: For some languages, quite plainly, logic itself says that there may be three or four qualified interpreters in the country and they may need to travel to where the trials are, just as judges and barristers travel to where the trials are, in some instances.

Madeleine Lee: There also needs to be enough work to go round for professional interpreters to remain professional and for it to be attractive for them to stay active in this field and to continue to work in this field. We have to be able to make a living. If you over-saturate the market with a large number of unqualified people who are available within a 25-mile radius, that is not doing anybody any favours. It is certainly not serving justice.

Chair: Thank you very much. We need to move on to hear from court users. Otherwise, I am sure we could spend a lot more time going through some of these details. If there is anything you feel that we missed in the questioning that you wanted to draw to our attention, do not hesitate to drop us a line after this session.

Examination of Witnesses

Witnesses: John Fassenfelt, Chairman, Magistrates’ Association, and Richard Atkinson, Chair, Criminal Law Committee, Law Society, gave evidence.

Chair: Welcome, Mr Fassenfelt, the chair of the Magistrates’ Association. I think it is your first session before us; we are very glad to have you. Mr Atkinson, you chair the Criminal Law Committee of the Law Society; we welcome you also. I think Mr Fassenfelt heard some of the preceding evidence, but obviously it is your experience of the language situation in court we want to find out about. I ask Mr Brine to open the questions.

Q39 Steve Brine: Good morning. Thank you for coming. What was your impression of the previous arrangements for interpreting and translation services in the justice sector?

John Fassenfelt: As far as the Magistrates’ Association is concerned, the pressure to change did not come from us. We felt we had a reasonable service as far as translation is concerned. As the Committee will understand, translators are officers of the court. They are extremely important to the court, and we must have trust and confidence in those translators. There were some concerns about the service that we were being given before the changes, but those concerns focused on monitoring. As you will understand, as a magistrate, I am no linguist. You also rely on the interpreter’s skill, experience and knowledge, and I am not in a position to check that in any great detail. I would say that there was not pressure from the magistracy to change the system. Obviously, I cannot comment on the cost angle.

Q40 Steve Brine: Okay, the pressure did not come from you. Mr Atkinson, would you care to comment on what went before?

Richard Atkinson: From a practitioner perspective, what went before seemed to work very smoothly. There did not appear to be difficulties in obtaining interpreters. The only time that there were difficulties was on the odd occasion when the police, who were responsible for booking an interpreter for a first hearing, had some breakdown in communication and one was not obtained. Usually, one would be found in the course of the morning in a magistrates court, if necessary. In my experience, difficulties in relation to interpreters not turning up were unheard of before the change.

Q41 Steve Brine: Let me jump back to Mr Fassenfelt. As a magistrate, can you recall any problems under the previous system where court proceedings were adjourned, collapsed or were made ineffective due to problems with the appropriately qualified interpreters not being in the right place at the right time?

John Fassenfelt: With any system, it will always happen that interpreters do not turn up, but I understand that this percentage was very small. We are talking about low single figures.

Q42 Steve Brine: That is interesting. Some of your members thought the service for provision of interpreters had improved under the new
arrangements. Can you tell the Committee about any specific improvements that they mention?

Richard Atkinson: The Committee should recognise that was a low minority of our members—in the order of 10%. They felt that the system was more flexible now and that a greater range of languages was available. It was a nationally based system, rather than a locally based system, which did perhaps add some difficulties. Some 10% of those who responded felt that it worked well. Of course, we have to recognise that 90% felt it did not work well.

Q43 Steve Brine: Finally, Mr Atkinson, have members of the Law Society noted any improvements under the new system that you would care to share with us?

Richard Atkinson: As opposed to the old system?

Steve Brine: Yes.

Richard Atkinson: No, not that I am aware of. I am not aware of anyone saying that they have noticed any improvements on the old system. As I said, no one reported to me difficulties in the past in relation to the old system. Generally, interpreters were available on the day and in the place where they were required. There were sometimes difficulties in obtaining a sufficient number of interpreters, particularly at the police station, with what we describe as multi-handed cases, in which a number of defendants were being interviewed, with, possibly, witnesses who spoke the same language being interviewed at the same time, so the same interpreters could not be used. You might have a high demand in one particular case for one particular language. It would not be unknown for six interpreters to be involved with the same language. In those circumstances, under the old system, there were delays, but I am afraid they have become worse, not better, under the new.

Q44 Steve Brine: You both seem rather bemused that we are in this position and that, because of the demand for this change, we have ended up in the position of having an inquiry, here in the House of Commons Justice Committee, into interpreting services? Is that your opinion, has there been a fall in the quality of interpreters not turning up. My next question is about the competence of the interpreters who do turn up. In your opinion, has there been a fall in the quality of interpreters? You may well say that you are not an expert in the languages and may not be aware of whether somebody is translating things properly, but one of the concerns that some Members of the Committee have is that, even under the old system, there is a real concern. But, on an empirical basis, I cannot assist with defining the breadth of the problem.

Q47 Yasmin Qureshi: I was not expecting empirical evidence from you; it is a question of what you see happening in court on a regular basis. Both of you have said that the problem seems to have been interpreters not turning up. My next question is about the competence of the interpreters who do turn up. In your opinion, has there been a fall in the quality of interpreters? You may well say that you are not an expert in the languages and may not be aware of whether somebody is translating things properly, but one of the concerns that some Members of the Committee have is that, even under the old system, there is a real concern. But, on an empirical basis, I cannot assist with defining the breadth of the problem.
being interpreted, but we can look for signs. I shall not go into details, for obvious reasons, but I had an example recently involving a Russian interpreter. The defendant said something, but the interpreter did not interpret it. In my view, that should ring a bell straight away with the chairman of the court. This person’s job was to interpret; it was not to say, as she said in English, “That’s not important.” I chose to ask her what the individual said. The piece of information given to the court was substantial and did affect the sentence. I can give you that practical example of my experience in court—and I sit very regularly—and also the experience of my colleagues in other courts. However, it is anecdotal.

Q48 Yasmin Qureshi: Can I follow on from that? Capita—or ALS—is operating a tiered system for booking provision of interpreters. Do you see interpreters who are not professionally qualified legitimately fulfilling any role in the criminal justice context?

Richard Atkinson: No. I will qualify that. It is very difficult to anticipate properly what is going to happen in a courtroom. You can make a good guess that, most of the time, this is what will happen, but frequently that changes. You can go along for what might be considered a routine procedural hearing and find that the prosecution say, “We have evidence that your client has breached his bail conditions, we want to bring that to the attention of the court, and we will be seeking a remand in custody”, or “Additional information has come to light that makes this case more serious. We’ve reviewed the evidence, and we’re changing the charges”, and/or, “We want to review his bail.” Those are technical issues that need proper translation to the defendant. Sometimes technical aspects of the evidence are mentioned at hearings that are not the trial. It is very important that the client understands exactly what is going on. I do not think you can adequately and safely—I emphasise the word “safely”—try to distinguish in advance at what level the interpreter should be. They should be fully qualified and able to do the job in all circumstances.

John Fassenfelt: I fully support everything Mr Atkinson has said on that. I would add one further point of concern to the magistracy, which is that there is no independent monitoring of the interpretation service. I rely on the skills, experience and qualifications of the individual, but I would feel much safer and happier if there were independent monitoring of the skills. I am not saying that every interpretation should be monitored, but there must be a system of independent monitoring.

Q49 Yasmin Qureshi: Can I go on to the issue of transitional arrangements? The question is specifically for you, Mr Fassenfelt. As we know, the Ministry of Justice and Capita have been operating a pilot for short-notice work in 19 magistrates courts. Have you had any feedback from any of the courts involved regarding that pilot?

John Fassenfelt: The straight answer to that is no. There has been no feedback at all. All I will say is that when the local system was introduced, magistrates were pleased that an alternative system was available to them.

Q50 Yasmin Qureshi: You may be aware that in July this year Capita replaced the senior management team at ALS, which originally got the contract. Do you see any improvement, or have any of your members noted any improvement, in the interpreting and translation services in the last few months?

John Fassenfelt: The number of comments that we receive in the association has certainly gone down. But I am not sure whether that is an impact of Capita introducing a different management team, whether the Ministry of Justice has got a better hold on the contract, or whether magistrates have just got fed up with moaning about it. I would like to feel that the Ministry of Justice has got a better hold on the contract.

Q51 Yasmin Qureshi: I have a little final question. Are you aware of the extent to which the courts are using the old arrangements for getting interpreters into court?

John Fassenfelt: No, I am not in a position to give you any figures on that. It is just that, when magistrates have commented to me about it, they have been pleased that we have a local system that works.

Q52 Mr Buckland: I turn to the complaints process for legal professions. It is really a question to Mr Atkinson. Do you believe that there needs to be a proper complaints process for legal professions to register any complaints or concerns about problems with interpreters supplied by ALS?

Richard Atkinson: Yes, I think that would be very helpful. It would give some evidence base and alleviate some of the difficulties that we have experienced in giving our evidence, which has been primarily anecdotal based. We would then have a proper basis for looking at and analysing the problems, including the problems for those providing the service. It would allow us to look at whether there are geographical differences in the problems and at the numbers. If there were somewhere that lawyers could complain to, whose specific function was to receive those complaints, it would encourage them to believe that there was a reason to make a complaint, with the hope that that would lead to some improvement. If there were a direct service for them to report to, I think it would also lead to a higher level of reporting of problems.

Q53 Mr Buckland: I am glad you have focused on the need for hard evidence. I wonder whether you can help us in your representative capacity. I do not know whether you or the Law Society have conducted any estimates of the average costs that are incurred when cases are adjourned either because of a failure by an interpreter to come up to the mark or because of non-attendance.

Richard Atkinson: No, I am afraid to say that we have not. It would be very difficult, in any event, because you are looking at such a wide range of matters. If you are talking about all hearings, you would need a lot more analysis, because a Crown court trial—as I...
described with the example in Leicester—would be extremely expensive and measured in the thousands of pounds, if not more. If you are talking about a brief magistrates’ adjournment of a remand hearing, it might be a very small amount of money indeed—and difficult to measure, as fixed fees are paid to practitioners. It would be quite a task to be able to measure it. It would need to be broken down and looked at in some detail.

Q54 Mr Buckland: Again, this may be a difficult question to answer. Obviously, there are concerns about potential miscarriages of justice, breach of article 6 and everything that flows from that. Are you able to help us to determine whether a body of evidence is being gathered on whether some of the failures are now affecting that fundamental right?

Richard Atkinson: No, because it is very difficult to look at how such a scenario would arise. I think you are focusing on the trial?

Mr Buckland: Yes—the trial process.

Richard Atkinson: Indeed. So the trial will have taken place and been completed, and then someone will have seen that something went wrong with it, which is very difficult and does not happen frequently. One hopes that many do not slip through the net, but clearly it is possible. Obviously, those that are pulled up and stopped before they get to that point do not result in what you are suggesting is a miscarriage of justice. What happens is that cases are stopped or restarted. More particularly, fair trial provision within European jurisprudence looks at the whole duration, from beginning to end. If one is looking not at the total outcome but at each of those processes, clearly it is impacting. People are being remanded in custody. Perhaps the greatest indictment of the present failures is that people are spending time in custody for no reason other than the lack of an interpreter. Although that would not come into the category of someone being denied a fair trial at the end of the day, when looking at the trial process, I would be very happy to say they had been denied a fair trial process.

Q55 Mr Buckland: We all have a right to bail, don’t we?

Richard Atkinson: Indeed.

John Fassenfelt: There is another aspect that I mentioned earlier—the aspect of trust and a feeling of confidence in the interpreter. If that starts to leak away, as officers of the court, we will have serious concerns in the future about interpreting services. I think it must influence your reactions in court.

Q56 Chair: A suggestion was made in the preceding evidence session that, in cases where the court did not have the interpreter in front of it, got in touch with ALS to ask what had happened to the interpreter and was told, “He’s very late, and won’t get there until tomorrow”, or something, that was recorded as customer cancellation. I do not know whether the Magistrates’ Association would be aware of whether that was being done—in other words, that actual failures by the company were being recorded as cancellations by you, the courts.

John Fassenfelt: As I said earlier, the magistracy, as a judicial post holder, has a responsibility to ensure that the complaint—which, as was mentioned earlier, goes through the justices’ clerk—is properly registered. I think we have a responsibility to instruct the justices’ clerk, the legal adviser, that the complaint is made in a proper context. We have a responsibility to sharpen up that side of the business. Having heard what has been said today, I will ensure that guidance is issued to our members on that particular aspect.

Q57 Chair: On a wider point, is it your view that this system and this contract, which has some years to run, are improvable or salvageable? Our previous witnesses took a different view—that, really, we have to start from scratch and build a different kind of system. Are there things that could be done within the framework of the contract that would meet the sort of concerns that you have?

Richard Atkinson: It is very difficult for us as end users, if I may use that phrase, to be able to comment effectively on that. We can see the consequences of the new contract. We are aware anecdotally of what some of the causes of the problems are. For example, interpreters are saying that they will not travel long distances because of the rates that they are paid for travel. Others are saying that the rates being paid for the job itself are no longer sufficient to induce them to undertake the work. However, it is very difficult from the outside to say whether or not that is redeemable. Clearly, it is very much linked to the funding. I think it depends on how much flexibility there is in relation to that.

John Fassenfelt: I agree with Mr Atkinson. It is difficult for us as end users, particularly because, basically, we have no knowledge of the contract. The only knowledge we have is what comes in front of us, and that is not as good as it was. We would urge and have been urging, the Ministry of Justice to look at the issues—the complaints issue, all the issues that have been mentioned by other people, and the monitoring side—in order to improve the service to the court, bearing in mind that it is a service to the court.

Q58 Chair: Do you have a view on the idea that the process of certifying and registering should be independent from the provision of service under the contract?

John Fassenfelt: As an association, we feel that for magistrates to gain that trust and confidence there needs to be some form of divide between the two. I always liken it to the relationship between the contractor and the contract side. There needs to be independent monitoring of the contract. I do not see that happening now. I see the provider—the contractor—doing the monitoring. To me, that does not give the confidence that we need as a magistracy.

Chair: I thank both of you for your evidence. We are very grateful to you. That ends our proceedings this morning.
Tuesday 30 October 2012

Members present:
Sir Alan Beith (Chair)
Steve Brine
Mr Robert Buckland
Jeremy Corbyn
Nick de Bois
Seema Malhotra

Examination of Witnesses

Witnesses: Andy Parker, Joint Chief Operating Officer, Capita, Sunna van Loo, Public Services Director, Capita, and Gavin Wheeldon, former CEO, Applied Language Solutions, gave evidence.

Q59 Chair: Mr Parker and Ms van Loo from Capita, welcome. Mr Wheeldon, formerly of Applied Language Solutions, welcome. We have some questions to ask you today. The amount of interest that is aroused by this issue is illustrated by the fact that, as you will be all too aware, there are two Commons inquiries going on—one by the Public Accounts Committee and one by us—into this subject at the moment.

The Public Accounts Committee obviously has a particular focus on value for money. We have a focus on issues that affect the capacity of the Department to manage major contracts and we want to learn some lessons about that, but we also have a particular concern about the future effective operation of our courts and the other services to which language services are provided. We will want to look at where we can go from here, so our interest is not merely in what happened but also in where we go from here.

Could I start with Mr Wheeldon and ask how the framework agreement was modified after the Ministry of Justice’s consultation in June 2011?

Gavin Wheeldon: I don’t think there was any framework agreement in place before then, so—

Q60 Chair: There must have been a draft, wasn’t there?

Gavin Wheeldon: No, or at least if there was I certainly don’t remember seeing it.

Q61 Chair: If there was, you didn’t know about it.

Gavin Wheeldon: No.

Q62 Chair: So you don’t know, really, whether the Ministry changed the basis on which they were going to work with you as a result of their consultation?

Gavin Wheeldon: Yes, absolutely. From my recollection, I don’t think I ever saw any framework agreement at that point, so what was happening in the background I don’t know.

Q63 Chair: How aware were you of the concerns of professional interpreters about the framework agreement?

Gavin Wheeldon: Obviously I was very aware of the concerns of the interpreters, both directly to us through the Ministry and through other channels of social media, where there was a lot of chatter.

Q64 Chair: How then did you base your assumptions about how many interpreters you would need to service the contract and what would be the appropriate level of fee for each tier of interpreters? What were you using as the basis for making those decisions?

Gavin Wheeldon: The basis for that was predominantly on our experience with the north-west contract we already had, with all the police forces and also doing court work through that.

Q65 Chair: How much court work were you doing in the north-west?

Gavin Wheeldon: It was all first appearances, so—

Q66 Chair: Just first appearances.

Gavin Wheeldon: Yes, it was. So the vast majority was the police forces. We also had a number of contracts across the NHS and local government as well, so, although not a direct comparison, it is still the same market.

Q67 Chair: Do you recognise that court processes are quite significantly different in their interpreting requirement?

Gavin Wheeldon: Of course, yes. I think every area of interpreting is quite different.

Q68 Chair: You haven’t really told us a lot about what you had to work on. You had some experience in the north-west—significant experience, from what you say, of police, NHS and other areas, and limited court experience of first appearances—

Gavin Wheeldon: Yes.

Chair:—where there would be very little exchange between the court and the person for whom you are interpreting, as compared to a trial.

Gavin Wheeldon: It is fair to say that nobody had any real experience. In terms of a private sector business with interpreting contracts, we had by far the biggest experience in the justice sector because of the way the prior contract was run or the prior arrangements were run.

Q69 Chair: Looking back on it, do you think the Ministry of Justice failed to give you information you should have had?

Gavin Wheeldon: There was a serious lack of management information; that is something that everybody was aware of. If we had had that management information, it would have been much easier to do the planning, but obviously it just didn’t exist. None of the courts or any other parts really recorded any information at all, so all we were able
to do was use what was available from certain parts, like the tribunals, and try and extrapolate out what we thought it would look like across the court system.

Q70 Chair: Is that a judgment made with hindsight or were you aware at the time that you were flying blind?

Gavin Wheeldon: Obviously we pushed and tried to get as much management information as we possibly could, but if it just doesn’t exist there is very little you can do to make it appear. So, once we got into the contract and were able to look at some of the management information, it provided a lot of insight that, had we known prior, would have allowed for better planning, but if it doesn’t exist you can’t make it appear.

Q71 Chair: What about information the other way? Do you think you gave enough information to the Ministry of Justice or, indeed, that they asked for enough information about what your real capacity was, and particularly your capacity to expand from the limited service you provided in the north-west to a national roll-out of a completely new system for organising court interpreting?

Gavin Wheeldon: They’ve obviously asked the questions about how we would do that and we put together quite detailed project plans of how we would roll it out and scale up, ready for that level of service.

Q72 Chair: When you gave them those project plans did you say, “Well, you haven’t given us enough management information, but, on the basis of the limited knowledge you have given us, here is what we think”?

Gavin Wheeldon: Yes, absolutely. At all points we did push for more management information to try and get that, and I know the Ministry did make endeavours to get that. I believe they approached a number of courts, so we did push for that. Obviously all of our assumptions were made on the basis of, “This is how we believe it will look.”

Q73 Chair: At any stage in that did you feel, more than you might usually do in a business venture, that this was getting very risky?

Gavin Wheeldon: We knew it was going to be hard work and we knew—it was something we were open about—that in the first couple of months there would be problems. We saw that with the north-west police forces and we knew it would happen again in this scenario. I don’t think we expected it to the level it ended up at by any means, but we knew that going into it there would be issues and that was something we openly discussed.

Q74 Chair: Could you have negotiated your way out of some of the problems with professional interpreters?

Gavin Wheeldon: I’m not sure. The resistance that was there from the interpreter community was obviously a lot more than we expected and that we saw from the north-west. I am not sure what else we could have done. I think it’s fair to say that for the interpreter community, or certainly a small element of it anyway, it’s a fairly binary decision for them; it’s either the old arrangements or no arrangements. We made a number of approaches to all of the professional bodies to try and have discussions and to make this transition in a sensible manner, but the level of engagement was not what I thought you would expect from a community.

Q75 Nick de Bois: On that point, specifically which bodies did you contact and was it a two-way dialogue?

Gavin Wheeldon: Yes, it was. We approached NRPSI, APCI—and I can’t remember who else. We also held working groups with interpreters that are members of none of the professional bodies, which is actually a large amount.

Q76 Nick de Bois: So it was two professional bodies. How many professional bodies are there?

Gavin Wheeldon: In terms of the justice sector there are probably only really two—those two—that have any influence. There are a number of professional bodies that have a tiny amount of members. I personally can’t remember which ones we approached. I know the only two that engaged with us were NRPSI and APCI.

Q77 Jeremy Corbyn: What do you mean by “resistance by the interpreting community”?

Gavin Wheeldon: They didn’t want to see this contract go ahead. The arrangements that were in place they were more than happy with and they didn’t want to see this contract go ahead.

Q78 Jeremy Corbyn: Do you think they were justified?

Gavin Wheeldon: No, I don’t.

Q79 Jeremy Corbyn: Why not?

Gavin Wheeldon: The old system was very broken and it needed fixing, on a whole host of fronts. So there had to be change and that community didn’t want to see any change whatsoever.

Q80 Jeremy Corbyn: Is your company doing it better?

Gavin Wheeldon: It’s not my company, so—

Q81 Jeremy Corbyn: Is your contract doing it better then?

Gavin Wheeldon: Obviously I don’t have the figures. I left in July.

Q82 Jeremy Corbyn: Why not? Why don’t you have the figures?

Gavin Wheeldon: Because I no longer work there, so I wouldn’t have access to those types of figures. My understanding is that, certainly when I left and from what I hear, it has improved dramatically. So, yes, I do believe it’s been done better and I do believe that for the long term it will be a much better system.

Q83 Chair: There was one other specific question before I turn to Mr Buckland and it is just about the Tier 3 work. What was Tier 3 supposed to be for?
What kind of work were Tier 3 recruits supposed to do?

**Gavin Wheeldon:** Tier 3 was generally aimed at community work within the police forces. That was the main thing that we discussed around the usage of that particular tier. It was an opportunity for new interpreters coming through the system to get some exposure in the justice sector and be able to work through the ranks. One of the things that the framework was designed to do was to bring new blood into the system and give them experience. This was a way of doing that and for us to encourage them to go and get the appropriate qualifications to move up from a Tier 3 to a Tier 2, to a Tier 1.

**Q84 Chair:** But they were not expected to do either court work or police interview work.

**Gavin Wheeldon:** All we did was to set the tiers. We said, “Look, these are the tiers; these are the qualifications that they have.” The end user was then tasked with who is most appropriate. We expected, within the court system, to only see Tier 1 and 2. It’s worth saying though as well that, with rare languages, a lot will be a Tier 3 and therefore will be assigned Tier 1 work because that is simply the way the system is designed.

**Q85 Mr Buckland:** Mr Wheeldon, 30 January 2012 was the date of full national implementation. Did you have any concerns that things were not as they should be?

**Gavin Wheeldon:** It’s hard to remember back, I am sure. We knew, going into this, there were going to be some issues. I think it was around January. I can’t remember the exact date. Sunna will probably be able to answer that better.

**Sunna van Loo:** I think it was around January. I can’t remember the exact date.

**Q86 Mr Buckland:** What issues did you think were going to arise after implementation initially?

**Gavin Wheeldon:** If we looked at the north-west police forces, there was an initial resistance by interpreters in the hope that the contract would be squashed. Certainly within the north-west, within a matter of weeks, that resistance melted away and people started to join the contract and therefore we were able to hit the numbers expected. So we knew that that was going to happen. Obviously, with hindsight, there are all sorts of other things you might see, but at the time, walking into that at that point, we had appropriate systems and—

**Q87 Mr Buckland:** With hindsight, do you wish that you had said to the MoJ, “Look, we are not ready for a national roll-out on 30 January. Can we pause this?”

**Gavin Wheeldon:** With hindsight, I’d have said a whole host of things. I don’t know if that would have been one of them.

**Q88 Mr Buckland:** You don’t know whether that would have been one of them. There were a number of issues that you didn’t alert the MoJ, weren’t there, relating to the capacity of ALS being able to comply with the contractual obligations? What about server capacity? There was insufficient server capacity, wasn’t there, to meet the demand?

**Gavin Wheeldon:** No, not that I know of. Do you mean server capacity as in IT servers?

**Mr Buckland:** Yes.

**Gavin Wheeldon:** I wouldn’t say so, no.

**Q89 Mr Buckland:** What about the problem with Middlesex University? They were administering assessments, weren’t they, and then they pulled out? Did you notify the MoJ about that?

**Gavin Wheeldon:** They hadn’t pulled out at that point.

**Q90 Mr Buckland:** When did they pull out?

**Gavin Wheeldon:** I can’t remember the dates. Sunna will probably be able to answer that better.

**Sunna van Loo:** I can’t remember the dates. Sunna will probably be able to answer that better.

**Q91 Mr Buckland:** Around January but before national implementation. Was it before 30 January?

**Sunna van Loo:** I would have to check. I think it was around January/February-time where that happened.

**Q92 Mr Buckland:** Perhaps you would let us know subsequently.

**Sunna van Loo:** Yes.

**Q93 Mr Buckland:** There was a failure to notify the MoJ about instances where there was no record of a check of qualifications or enhanced CRB disclosures of individual interpreters. That’s right, isn’t it?

**Gavin Wheeldon:** It probably is, yes. Some of those issues weren’t flagged up the chain internally straight away. I know that some staff failed to record or photocopy appropriate certificates, and that probably wasn’t flagged straight away.

**Q94 Mr Buckland:** Shouldn’t that have been a matter that would have been dealt with before a national roll-out so that you were absolutely ready? Would that be a fair comment?

**Gavin Wheeldon:** I think we believed that, with the amount of people who were registered, if you make the assumption—which you naturally would—that if somebody is registered and has been through a process they are going to do the work, we would have been in a much better position going into the roll-out.

**Q95 Mr Buckland:** Just to remind ourselves of some of the statistics that Mr Corbyn asked about, in February 2012 the level of fulfilment ran at only 65% and the performance target was 98% in that first month.

**Gavin Wheeldon:** Correct.

**Q96 Mr Buckland:** In the first quarter of the operation, 13% of assignments were the subject of a complaint. That was 2,232 complaints.

**Gavin Wheeldon:** I can’t remember the exact numbers, but that sounds—

**Q97 Mr Buckland:** Hardly satisfactory.

**Gavin Wheeldon:** No, it isn’t. It is far from satisfactory.
Q98 Mr Buckland: You have conceded some points, but are you able to pinpoint what it is that meant that for those early months of 2012, after implementation, things were far from satisfactory? What things would you have done differently now to remedy those problems?
Gavin Wheeldon: It is very difficult to say if there is one particular point. The main issue was the level of interpreters that were agreeing to work for us. There were an awful lot, as I am sure that people are aware, of intimidation around this contract and encouragement—strong encouragement, shall we say—for interpreters not to do the work, even where encouragement—strong encouragement, shall we say—for interpreters not to do the work, even where they had registered or taken some assignments and then decided not to work. If you took that—

Q99 Chair: If you are alleging intimidation, you would have to produce some evidence of that for us.
Gavin Wheeldon: There are plenty of police reports of interpreters who have reported these incidents to the police. There have been interpreters working for us—NRPSI interpreters—who have been assaulted, spat on, and threatened. The list of things that went on was quite horrendous. Honestly, if we had not seen the level of resistance that we had in interpreters, the other issues, which were probably much smaller, would have been the teething problems of any contract that you go into.

Q100 Nick de Bois: Did you ever report that to the MoJ?
Gavin Wheeldon: Yes, we did.

Q101 Nick de Bois: How did they respond?
Gavin Wheeldon: Report it to the police. They took it very seriously. They were looking—I believe they put posters up in some of the courts around intimidation, but they were very aware of it.

Q102 Chair: Was anybody charged with any offence?
Gavin Wheeldon: A number of people have reported this to the police. I don’t know how those panned out in terms of criminal proceedings, but it was a serious problem.

Q103 Mr Buckland: If you do have any written or documented evidence, we would be very obliged if you could send it in.
Gavin Wheeldon: I don’t personally, but I am sure there must be some available.

Q104 Mr Buckland: Can I come back to the Middlesex University problem? The date that we have is that the decision by Middlesex to terminate the agreement with your then company was 10 October 2011, and then it was on 3 January 2012 that your former company and Middlesex agreed to suspend their relationship under that agreement, with a final signature on that agreement to suspend being received from your former company on 17 February. So this was a problem that first emerged in October 2011. Why didn’t you notify the MoJ of it?
Gavin Wheeldon: I don’t believe it did emerge then. My understanding is that, up until probably the February date, we were still going to be working with Middlesex University. I know they were having problems with capacity and getting the number of assessments through, and we had some issues with that. They had concerns about their own ability to deliver the numbers that we required, but I am definitely not aware of anything in October.

Q105 Mr Buckland: This is evidence that comes from Brooke Townsley, who is the senior lecturer in interpreting and translation at Middlesex University. These are the dates we have been given.
Gavin Wheeldon: Have you seen any written evidence to back that up, because—

Q106 Mr Buckland: I have it in front of me. It has been sent to the Committee as CI78.
Gavin Wheeldon: I mean an e-mail, a letter or anything that was sent.

Q107 Mr Buckland: This statement, made by the witness, is dated September 2012.
Gavin Wheeldon: I appreciate it is a statement, but I’ve never seen any correspondence from Mr Townsley or Middlesex University that would suggest anything but a good relationship up until the end of January.

Q108 Mr Buckland: So your evidence is that you have no knowledge of any decision by that university to end the agreement with you in October.
Gavin Wheeldon: Correct.

Q109 Steve Brine: Mr Wheeldon, I am sorry to come back to you but you are in the hot seat this morning. Obviously you sold the business to Capita. How do you respond to their belief that ALS would not have achieved the service delivery improvements without their operational expertise and investment? You are a person like the rest of us; how does that feel?
Gavin Wheeldon: Obviously I’d see it slightly differently. The route we may have taken with the Ministry of Justice would have been different had we not been part of Capita. The way we rolled it out and various other things would have been different, so it would be impossible to say, had we been on our own, what it would have looked like.

Q110 Steve Brine: But you resigned by mutual consent—those famous words. I am just thinking, was the deal with Capita in the pipeline before you signed the contract with the MoJ?
Gavin Wheeldon: No.

Q111 Steve Brine: No conversations had gone on at all between you and Capita.
Gavin Wheeldon: I am almost certain. I don’t have, obviously, the dates in front of me but—

Q112 Steve Brine: I’m not looking for any specific dates: I’m just talking in general terms. Were there any conversations between your company and Capita before the deal was signed with the Ministry of Justice?
Gavin Wheeldon: No.
Q113 Steve Brine: Mr Parker, if I can bring you in— you have been sitting very patiently—what due diligence did Capita undertake prior to obtaining ALS?

Andy Parker: We did our standard due diligence when we acquire companies. That is a combination of financial due diligence and legal. We brought in HR people and external reporting accountants. Obviously the operation was more than just the MoJ contract, which had not started, because there was another side to the business around translation that was obviously very attractive to us. But we looked at things such as the operation of the north-west police forces to see how that had worked. We were also aware of the fact that the Scottish courts had done something similar and it appeared to work. So we looked at what evidence there was at the time and it appeared that similar services were being delivered on a much smaller basis.

Q114 Steve Brine: But you had to invest quite significantly, didn’t you—£3.5 million, according to my notes here—to rectify service delivery issues? You factored that into your due diligence but it was still worth you spending £7.5 million.

Andy Parker: We are still pleased we bought the business, if that’s the question, yes. As I said, there was more than just the interpretation side to the business. ALS owned some proprietary software, which has no use on this contract but is used on the global translation market, so the value of that IPR alone had a substantial value.

Q115 Steve Brine: Mr Wheeldon, did you want to add something?

Gavin Wheeldon: I was just going to say a reminder to the Committee can hear?

Q116 Steve Brine: Just going back to you, Mr Parker, why then did Mr Wheeldon leave by mutual consent? Why not buy the company, have him in charge running the gig and everybody is happy?

Andy Parker: Because by mutual consent we agreed to part company.

Q117 Steve Brine: Why?

Chair: Can I ask you to speak up a bit so that all members of the Committee can hear?

Steve Brine: Was the conversation not had that Mr Wheeldon might continue working with the project but under your banner? I know what the words “mutual consent” mean in the dictionary, but why? What was the story behind it? Let us in.

Andy Parker: It was a private conversation with me and Mr Wheeldon, really. We agreed that we would go our separate ways at that point. It was four or five months into the year and we agreed to part company.

Q118 Steve Brine: You don’t wish to let us into those private conversations.

Andy Parker: I am more than happy to do that in private or in written evidence, but I don’t think a conversation between staff is appropriate in a public forum. I am sorry.

Q119 Nick de Bois: As part of an acquisition arrangement it is normal practice that senior management are required, under the contract, either to leave immediately or stay on for a certain period of time. Did your agreement to mutually part company come before any part of the contract that had a predetermined period that Mr Wheeldon would stay on?

Andy Parker: There was never any predetermined period. There was a subsequent period of time where, if Mr Wheeldon left, he couldn’t work in the language business.

Q120 Nick de Bois: There was a gardening leave clause or something similar.

Andy Parker: Just around the language business, but there was no predetermined period in which he was expected to remain with the Company.

Q121 Nick de Bois: It may not have been part of the agreement, but did you negotiate a new employment contract with Mr Wheeldon that subsequently you decided to terminate early? So, when you set out to do this, you would have said, “Oh, we’ll keep Mr Wheeldon for a year or two years.”

Gavin Wheeldon: The employment contract I had was a standard employment contract.

Q122 Nick de Bois: So you just TUPE’d it over.

Gavin Wheeldon: Yes.

Andy Parker: Because it was an acquisition it wasn’t a formal TUPE, but it was the equivalent. We assumed all of the contractual obligations of the company and continued with the contracts of employment. For new members of staff that we took on they took on a Capita standard contract, but for the remainder they carried on with their old ALS contracts of employment.

Q123 Steve Brine: I am sorry to be a bore—I will take your advice, Chair, on this—but if Mr Parker is offering to give us something in writing after this evidence session, we would always be grateful. With regard to the conversations that went around the acquisition, was it said, to put a blunt point on it, “Yes, we’ll buy your company but there’s the door”?

Gavin Wheeldon: No.

Andy Parker: No.

Steve Brine: That happened after the acquisition was signed.

Q124 Seema Malhotra: My question relates to performance under the framework agreement through this year. Between 30 January and 31 August this year there were 72,000 completed requests for language services. About 11.4% of those were recorded as being cancelled by the customer—that is either the Courts Service or NOMS. Since July I am just
At the moment we have some Sunna van Loo: At the moment, in September and October we are quite close to delivering 100% of the available court work. I am by no means suggesting that we are filling all of those bookings. We are running at round about 95%, but almost all the court work booking requests are made to ALS, and it is around 85% to 90% of tribunal bookings, again, which are requests made to ALS for the fulfilment. So there are a number of tribunal bookings that are short notice, which currently aren’t provided for by ALS, but we are in the process of moving those back under the framework agreement.

Q125 Seema Malhotra: So 85% to 90% of tribunal work you think you are fulfilling. Sunna van Loo: Of the volume of requests that we get in, the tribunals ask us to fill their bookings in round about 85% to 90% of cases. The fulfilment rate we have against those requests is about 95%.

Q126 Seema Malhotra: You have 1.135 interpreters on your database. Some 932 provided services in August this year and you are not yet providing a full service against the 98% fulfilment rate. Are you needing to do any more work to attract new interpreters to help that fulfilment and what sort of work are you doing? Sunna van Loo: Yes, absolutely. I guess the information that we have gathered over the previous months gives us very good detail around the languages that we require and where we require them. That is extremely helpful for us in terms of understanding what the requirements are. We have a recruitment plan in place, which we are executing at the moment, which involves building relationships with awarding bodies and universities. We also work with the criminal justice organisations and ask for their support in terms of the interpreters that were working previously within the system. They may contact those interpreters and ask if they would be interested to work for us, so that is another opportunity for us. That has been very successful.

Q127 Seema Malhotra: Over what timetable are you looking to undertake this recruitment? Sunna van Loo: We are recruiting on a continuing basis, so there is no—

Q128 Seema Malhotra: But do you have any targets? Sunna van Loo: At the moment we have some specific targets around specific languages and regions where we know there is a shortfall, but in terms of the interpreting requirements going forward, we don’t have a defined maximum at this moment because there are a number of criminal justice organisations who have expressed an interest in joining the framework agreements. We would work with them, really, to understand what their volumes and language requirements are, to make sure that we can fulfil those requests.

Q129 Seema Malhotra: Just coming back to not having particular targets, there are variations in performance, particularly across regions and jurisdictions. Could you just tell us a little bit more about the extent of those variations and whether you have any specific plans for addressing those? Sunna van Loo: Yes. There are variations in the performance on a regional basis and, again, the information that we have collected over previous months shows us that. That information is also available to the Ministry to review. That really equips us with a good understanding of the regional variations that there are, such that we can put particular focus on those areas where that is required. I guess, geographically, the location of certain areas and the population from within that region dictates that there might only be a certain number of interpreters available, but, again, what we are able to do is to look in the surrounding regions and cities to see what the interpreter availability is in particular languages.

Q130 Seema Malhotra: Could I just ask one question in relation to availability? There is a KPI under the framework agreement to have 95% of all languages catered for within a 25-mile radius. What is your view of how realistic that actually is and what did you think when you signed up to that? Sunna van Loo: My view, knowing what I know now, is that that is not something that is achievable. I know it is a KPI in the contract. We obviously try to make sure that interpreters go to particular assignments that live close by, but certainly in the information we’ve provided to you, we show that that isn’t the case. I guess I can’t comment on why that KPI specifically was put into the framework, but what I can say is that I don’t think it’s realistic to expect the language requirements and the variety of language requirements that are across the country to be within 25 miles.

Q131 Seema Malhotra: You say knowing what you know now, but you must have had a view on that at the time that you agreed to that and you signed the contract, and yet performance levels against that stood at 34% rather than 95% in August. Was this raised at all at the time? Gavin Wheeldon: It’s probably easier for me to answer that.

Q132 Chair: Mr Wheeldon, can you help us with that? Gavin Wheeldon: I’ll try. Given the lack of MI that we had at the time, if you look at it on the face of it, 95% of people within a 25-mile radius seemed perfectly feasible. It was that the vast majority would be more common languages and therefore we would be able to get them locally, and the ones that would most likely need to be moved around the country would be those of rarer languages. Without any MI, I don’t think we realised the amount of short notice bookings, which has an influence on the need to move people around. We were expecting somewhere in the
Q133 Chair: I live in Berwick-upon-Tweed and there is not a wide range of interpretation facilities within 25 miles of Berwick magistrates court. There was one issue relevant to this that was put to us that I would like clarifying. It was suggested to us that, on occasions, a telephone conversation takes place in which the court is saying, “We want a interpreter”, and the supplier is saying, “I am sorry but we can’t get you one until tomorrow or the end of the afternoon.” Of course they say, “That won’t do for us because we’ve got another case then.” That is then booked as a customer cancellation and wouldn’t appear in your figures as a failure. Can you refute that?

Sunna van Loo: Yes, absolutely. That’s not the case. Right at the start of the contract, in the first couple of weeks, there were some issues because one of the things that we did was to ramp up the back office staff by about 75 people, so there was quite an increase in staff and there were some—Chair: Sorry, could you just say that again a little louder?

Sunna van Loo: Sorry. In the first few weeks of the contract we brought in a lot of new back office staff and there were a few issues surrounding training around what is a cancellation, what is unfilled, but we have always been open that that was a training issue that occurred right at the beginning and it isn’t something that is occurring now. I can be quite clear on that.

Q134 Chair: So it might have happened before your back office staff were fully trained and up to speed.

Sunna van Loo: It may have happened. It probably has happened on occasions and I think, also, one of the things that we needed to set with the Ministry was a very clear definition around when it is a cancellation and when it is an unfilled booking, depending on the time that the booking was made, for example.

Q135 Jeremy Corbyn: Representatives of professional interpreters—this is for all of you—believe the framework agreement is unsalvageable because the contractor is performing regulatory monitoring and disciplinary functions as well as supplying interpreters and there are unsatisfactory pay arrangements. Don’t you think you need to explain what you would say to professional interpreters if that was put directly to you?

Sunna van Loo: In terms of the contract being unsalvageable, I disagree with that. At the moment we are delivering 95% of service, which I appreciate is not in line with the contractual commitment. I also think that the functions carried out by ALS, which are obviously done at the request of the Ministry, address some of the functions that weren’t carried out previously. Previously there wasn’t in place a standardised skill level or standardised pay rates. A central booking system, for example, wasn’t previously available and management information was not something that was previously available. I know the Ministry were also very keen to have a complaints process in place, which of course is something that ALS also manage. In terms of those functions being incompatible, I personally would say that they actually complement each other in the provision of the overall service that the Ministry was looking for.

Q136 Jeremy Corbyn: What do you mean by the skill level?

Sunna van Loo: In terms of the definition around the skill level of the interpreters that is defined in the framework contract.

Q137 Jeremy Corbyn: You seem to allude to the fact that the previous skill level before you took over was bad.

Sunna van Loo: No, I am not alluding to that. What I was saying is that it’s standard at the moment. My understanding is—and I don’t want to speak on behalf of the Ministry—that I believe previously there are instances where interpreters did not all come from the National Register of Interpreters, which was one of the organisations that was supplying interpreters.

Q138 Jeremy Corbyn: Do you think the framework agreement needs to be modified?

Sunna van Loo: No.

Q139 Jeremy Corbyn: Not so that registered interpreters could operate to a sufficient standard, where you know what that standard is.

Sunna van Loo: Sorry, I don’t understand.

Q140 Jeremy Corbyn: Don’t you think that there ought to be a change in the framework agreement so that we know the quality of the translation and the quality of the people you are employing is?

Sunna van Loo: The standards are defined in the framework.

Q141 Jeremy Corbyn: But the performance doesn’t seem to indicate that to be the case.

Sunna van Loo: The performance of?

Q142 Jeremy Corbyn: Your company.

Sunna van Loo: In terms of the quality?

Q143 Jeremy Corbyn: Yes.

Sunna van Loo: I don’t think that’s the case. We’re delivering 95% of the standards, which isn’t sufficient; I appreciate that, but—

Q144 Jeremy Corbyn: Do you think it’s satisfactory—this is to all of you—that Capita should be the supplier of interpreters as well as the regulator of the service and, after all, what is a vast amount of public money that’s spent on this?

Andy Parker: We don’t actually control which interpreters take the job though; we just make the job available. The interpreters don’t actually work for us; they’re all self-employed. Effectively, we’re just creating for that part of the role a booking service.
We don’t know which interpreter, providing they are correctly qualified. If they’re a Tier 1 interpreter and a Tier 1 job is being offered, they can book that without any intervention by ourselves.

Q145 Jeremy Corbyn: Isn’t that a very convenient way out for you, because you’re getting paid for this, aren’t you?
Andy Parker: And we’re providing a service around—

Q146 Jeremy Corbyn: But you’re telling me now that the service is done by somebody else and you’re just getting the fee.
Andy Parker: Sorry, that’s not what I actually said.

Q147 Jeremy Corbyn: Just explain yourself then.
Andy Parker: We provide a service around providing the standardisation approach. We provide a booking portal. We give a service where we have a central complaints service. We ensure all the vetting is done. We ensure all the interpreters are correctly tiered and correctly qualified. We liaise with the court and then we provide a booking service for the courts on our IT. The courts make the request, either by telephone to our call centre or directly on to the portal, and then the interpreters have the ability to take those jobs without intervention by looking at our portal. If a job isn’t fulfilled by the portal, we would phone up a variety of interpreters based on their relevant skill sets. But on the basis that they don’t actually work for us we’re not really controlling who does what; we’re just making the job available.

Q148 Jeremy Corbyn: To me that seems extraordinary. You are saying that somehow or other you are not responsible when you have the contract— it is 95% only fulfilled, and then you are telling me it is the responsibility of individual interpreters that you yourselves phone up and ask to come and work. Why don’t you employ them directly?
Andy Parker: That would create many issues. In yourselves phone up and ask to come and work. Why don’t you employ them directly?
Andy Parker: That would create many issues. In

Q149 Jeremy Corbyn: You clearly have a monopoly. There’s no doubt about that.
Andy Parker: I don’t believe we do have a monopoly because we don’t actually control the labour. They are all self-employed. We’re making the jobs available across a whole range of agencies.

Q150 Jeremy Corbyn: I am sorry to interrupt you, but does that mean a self-employed interpreter could not go into a court and work other than through Capita?
Andy Parker: No, because it’s not an exclusive arrangement.

Q151 Jeremy Corbyn: So that means you do control it then.
Andy Parker: Sorry, no. That’s not—

Q152 Chair: The courts are not empowered by the Ministry of Justice to bypass you. They do occasionally do so. If you fail, then they may find themselves looking elsewhere for an interpreter, but they can’t simply ignore the contract, can they?
Andy Parker: It is a non-exclusive contract.

Q153 Jeremy Corbyn: You’re the gatekeeper, are you not?
Andy Parker: We are the gatekeeper of the contract, but, given that it’s a non-exclusive contract, we can’t be the gatekeeper of the non-exclusive bit.

Q154 Jeremy Corbyn: I think you need to explain that.
Gavin Wheeldon: I was going to say, if you look at the overall size of the UK market for language services, this is a very small proportion of it. The NHS, I would say, is a much bigger market, so it’s by no means a monopoly.

Q155 Jeremy Corbyn: We are not talking about the NHS here; we are talking about the Ministry of Justice.
Gavin Wheeldon: You could say as well—I am talking obviously from when I was there—that, if we won, say, for example, Dudley NHS Trust, do we have a monopoly over Dudley NHS Trust? Of course we do. We are the supplier of the contract to that particular customer. It is not a monopoly over the UK market, and we would also regulate the agreed quality standards for that particular customer. It’s still not the regulator of the UK market. It’s a very small amount of a much bigger market in the UK and the wider.
Jeremy Corbyn: Mr Wheeldon, you seem to miss the big point.

Q156 Chair: Can I just get something clear from what you’ve just said? What would be the situation if you discovered that courts all over the country were bypassing your service and hiring interpreters separately? Wouldn’t you have a conversation with the Ministry of Justice in which you drew attention to the contract you had with them?
Andy Parker: We’d want to talk to the Ministry of Justice about working closely with the courts as to why they are doing that, but we have no exclusive right for their bookings. That is what the contract states.
Chair: I think we are working with two completely different understandings of what the current reality is.

Q157 Jeremy Corbyn: I am getting very confused here. Mr Wheeldon brings in the issue of the NHS, which is completely irrelevant to the inquiry we are undertaking at the moment. We are talking about the Ministry of Justice contract for court interpreters. That’s all. If a court wants an interpreter, must they come through Capita or can they employ somebody themselves?
Andy Parker: They could employ someone themselves.

Q158 Jeremy Corbyn: How would they do that?
Andy Parker: Sorry, they could employ someone themselves.
Q159 Jeremy Corbyn: Do they do that? Andy Parker: In some cases they do, yes.

Q160 Jeremy Corbyn: If you found lots of courts were doing that, what would you say to the Ministry of Justice?
Andy Parker: I am not sure what we would say. They do that today. We’d look to work with that court as to why they felt it was necessary to not use the framework and we would try and explain the benefits that we believe are on the framework. But do we have a right to stop them doing that? We do not.

Q161 Jeremy Corbyn: Are you comfortable with being the regulator as well as the supplier?
Andy Parker: Yes.

Q162 Jeremy Corbyn: Do you think there is a contradiction here?
Andy Parker: From my perspective I don’t.

Q163 Jeremy Corbyn: You are supposed to be regulating yourself then, aren’t you?
Andy Parker: No, because—
Chair: Seema Malhotra wants to come in.
Jeremy Corbyn: Sorry, Chair.

Q164 Seema Malhotra: I just want to be clear on what it seems that you are saying. It seems like you have been saying that you are responsible for the provision of a service but not necessarily for the quality of the service being provided.
Andy Parker: We are responsible for the quality of the interpreter that attends. As part of this, what we can’t actually warrant is what happens when the interpreter is in court. If we then received issues from that court about the quality, we would investigate, and, as has happened in some cases, the ultimate sanction would be to remove the interpreter from the available list.

Q165 Seema Malhotra: Who is ultimately accountable for the quality of the service being provided?
Andy Parker: Ultimately that would be ourselves.

Q166 Chair: You have left a strange paradox there. Wouldn’t you actually be in a better position if you recognised an independent qualification system, not organised by you and those in it not selected or classified by you, and those are the only people you employed for the appropriate level of court work?
Andy Parker: The qualifications are independent of ourselves. We are just checking that people have these qualifications. The most common qualification or the most commonly known one is the DPSI qualification, which is the Diploma in Public Service Interpreting, but that is not something we issue. We are not in control of that. That is a recognised diploma.

Q167 Chair: But you have your own tiering system.
Andy Parker: Our tiering system was agreed by the MoJ, which they cross-checked against nationally recognised standards. So all we are doing is matching someone’s qualification against the tiering that was agreed, I believe, at the time of the contract.

Q168 Nick de Bois: But you are the validator. If they don’t get past you as the validator, they can’t work for you. That’s the bottom line isn’t it? They may have the independent qualification, but it sounds like to me you are validating this.
Andy Parker: We are checking that they have that qualification and are appropriately vetted. Once they have that, then they would be on the register and would be available for work.

Q169 Nick de Bois: While you are arguing that your contract is not exclusive, and I accept what you are saying, the reality is in practice that it is a significant hurdle for anyone to overcome not to go through you. They would have to make their own arrangements with individual courts; they wouldn’t be able to say they have the same validation because you do validate them. So, in practice, you have an exclusive arrangement but not in law. Is that fair?
Andy Parker: That’s fair, and the intention of the Ministry of Justice, by putting this framework in place, was to get over all of those issues.

Q170 Nick de Bois: So the only question then is whether you are delivering or that is actually in the interests of the taxpayer.
Andy Parker: Yes.

Q171 Seema Malhotra: Could I just ask a question as well? This contract has obviously been running this year. What level of profits would you say you have made from the contract so far?
Andy Parker: To date we have not made any profit.

Q172 Chair: When do you expect it to go into profit?
Andy Parker: We would hope to get into profit next year.

Q173 Seema Malhotra: Is that in line with your forecasts at the time of signing the contract—that you may make investment in the first year?
Andy Parker: No; the performance has been less than what we expected.

Q174 Nick de Bois: Are you satisfied with your due diligence, because I know when I was running a company I would be absolutely furious. So, for example, the Middlesex issue didn’t emerge during your due diligence, despite the fact we have conflicting statements about it.
Andy Parker: We were aware of the Middlesex arrangement because it was a key part of the delivery.

Q175 Nick de Bois: But you weren’t aware of any complications with that.
Andy Parker: No. The first complication that we were aware of was when we chased for the marking by Middlesex University. It was after we chased because
we thought that they were behind schedule and there appeared to be an issue.

Q176 Nick de Bois: Did your due diligence effectively contradict what Mr Wheeldon said—that he was completely oblivious to what was going on in his company and his supply chain?

Andy Parker: No.

Q177 Nick de Bois: So due diligence was complete, and then lo and behold suddenly you have a problem with Middlesex. It is extraordinary.

Andy Parker: At the time the marking was being carried out. It was only when there was a large backlog—an increasing backlog—and from my understanding we pressed for a speeding up of the process that we appeared to fall out with the establishment.

Gavin Wheeldon: It’s safe to say—and, Sunna, you would probably answer better—that there were a number of conversations with Middlesex prior to this where they were saying that they were going to improve performance and get more through; so there was no suggestion at any point that there was an issue.

Q178 Mr Buckland: But the agreement ended in February 2012, signatures were received and by 1 March the agreement to suspend had been reached. This agreement with Middlesex was suspended months before you bought the company.

Andy Parker: No. We bought the company in December of last year.

Mr Buckland: Sorry, December 2011.

Andy Parker: Yes.

Q179 Mr Buckland: But this was an ongoing issue because the initial indication about termination had come as long ago as 10 October 2011. You weren’t aware of it. Capita weren’t aware of it at all.

Andy Parker: It was not that we weren’t aware of it but it never came up in any of the conversations with Middlesex University.

Gavin Wheeldon: Even after that date into January.

Andy Parker: So into January we were still chasing for the marking, so it’s very difficult to say now why—we have never seen any information from this. We have been asked several times now about a report that was made. We have never seen a report; we never knew it was available. We have still never seen it and neither has the National Audit Office—about the queries about the assessment centre and the marking.

The first we knew there was a problem was when we wanted better performance by the university and then suddenly there appeared to be an issue.

Gavin Wheeldon: There were several conversations in January, not just the one, around improving their performance, which they were unable to do.

Q180 Chair: We will give you the opportunity to reflect on that and clarify by letter what the situation really was. We have other witnesses coming and I want to just ask one last question, which is this, and it is to Capita. Are you content to carry on as you are, having made appropriate risk assessments of where you go from here, or have the Ministry of Justice in your view got to do something about the situation?

Andy Parker: We are in regular dialogue with the Ministry of Justice around improvements, suggestions from both us and from themselves. We continue to work closely with the courts, and, actually, where we have worked very closely with the courts, such as City of Westminster, we are now at 99.5% fulfilment. So we believe the contract is improving all the time. Are there certain things that we’d like to change? We talk to the Ministry of Justice all the time about that, about things both ways, about where we think improvements could be made, but until our customer tells us otherwise we will continue to deliver the service.

Chair: Mr Wheeldon, Mr Parker, Ms van Loo, thank you for your help this morning.

1 Note by witness: Capita was not aware of an indication about termination in October 2011.
Examination of Witnesses

Witnesses: Helen Grant MP, Parliamentary Under-Secretary of State, Ministry of Justice, Ann Beasley CBE, DG Finance and Corporate Services, and Peter Handcock CBE, Chief Executive, HM Courts and Tribunals Service, Ministry of Justice, gave evidence.

Q181 Chair: Mrs Grant, welcome back to the Committee, on the other side of the table. Mrs Grant: Thank you very much, Chair. It’s lovely to be back here.

Q182 Chair: I know you’re looking forward to it very much indeed.

Mrs Grant: Very much so.

Q183 Chair: Mr Handcock, you have answered questions from us on this subject at a much earlier stage in this process when we expressed our concern. Peter Handcock: Yes.

Chair: Ms Beasley, thank you also. We are glad to have you because we have quite a lot of questions to ask on a situation about which there are surprisingly different views about who is responsible for what. Perhaps I should make clear, as I did at the beginning of the earlier session, that there are two inquiries going on—ourselves and the Public Accounts Committee. There is a slightly different focus in that the Public Accounts Committee must look to the value for money issues that are involved. We have particular concerns about the Department’s capacity to manage large contracts and draw up the specifications for large contracts. We have particular concerns about where we go from here, what the future for the court interpretation system is and whether any fundamental change is required at this stage. I am going to ask Mr Buckland to open the questions.

Q184 Mr Buckland: Yes. It is a question to Ann Beasley and Peter Handcock initially. We are grateful for the MoJ evidence, dated this month, which has explained that you are now using what you call an end-to-end process map for understanding the rather complex issue of how interpreters work in the system. That suggests to me that perhaps at the time of procuring these services there wasn’t a sufficient understanding of the complexities of interpreters’ requirements and their work. Would you agree with that statement?

Peter Handcock: Perhaps I could start and then Ann can answer it from a procurement perspective. I don’t think that’s true. We understood it was a complex process and what set us out along the road of changing the system was the complexity that we were dealing with, with a very uneven system, different parts of the system with different practices. One of our key objectives at the beginning of the process was to have a much more consistent and straightforward system. We will no doubt come to this later, but we acknowledge that we had a much more difficult implementation than we expected and that has coloured what has happened since, but we understood perfectly well that we had overly complex arrangements in place.

Q185 Nick de Bois: Do you think there was enough collaboration with the representative bodies of interpreters at the time of the procurement process?

Peter Handcock: We did an extensive round of stakeholder engagement with the interpreter community at large. If you look at the NAO report into the procurement process, it acknowledges that that was a very open and engaging process.

Q186 Mr Buckland: Looking back, you wanted to try and streamline or simplify the system. Perhaps another way of looking at it would have been to maintain the use of the national register, with safeguards, and then outsource payroll. Wouldn’t that have been a simpler way to try and achieve your laudable aim of consistency?

Peter Handcock: We considered a wide range of options. One of the important things to recognise here about language services generally is that we are a very small part of a very large market. It is not far off a £1 billion market, of which the framework that we are now talking about is about £90 million. It would have required a huge amount of work and procurement processes to make it happen in the way that you describe.

Q187 Nick de Bois: That is 10%.

Peter Handcock: About 10% of the total market. It would have required pretty substantial investment from us to set up a system that could tap the potential critical mass of the whole market. So it seemed to us then, and, actually, it still seems now, that the right way to do this was to contract the booking service comprehensively.

Q188 Chair: That phrase is interesting because there was a stage during the questioning of our previous witnesses from Capita and ALS in which they seemed to see their role just as a booking agency. Is that how you saw it?

Peter Handcock: We see them as a straightforward contractor for the provision of language services across the justice system.

Q189 Chair: That is not the same thing. A booking agency is what it says. I go to a booking agency for a theatre ticket. They have no role in deciding whether it is a good play or not; they just make sure I have a theatre ticket. They have no role in deciding whether it is a good play or not; they just make sure I have a ticket for that theatre on that night. That is a very different role from a monopoly supplier.

Peter Handcock: I don’t think they are a monopoly supplier.

Q190 Chair: A near monopoly supplier.

Peter Handcock: Well, 10% of the market probably—

Q191 Chair: No, of the supply of language services to the courts.

Peter Handcock: They operate the booking service for the courts, but, of course, the interpreters who choose to register with Capita ALS are still

Note by witness: Questions 186–190: The numbers used by Peter Handcock were incorrect. The figures should have been a £1 billion market with a £30 million framework, which is 3%. These are the figures per annum. The £90 million figure used originally (10%) was an error.
independent individuals, who are free to work either within that framework or anywhere else across the whole demand for language services. You are right that it probably isn’t right to characterise ALS as a straightforward booking service because they book against a set of qualifications. There are minimum standards for those that they can book, so, in a way, they have to guarantee to us that the play we are going to see is a good one.

Q192 Mr Buckland: Question marks were raised from a fairly early stage about the maintenance of standards, so, as a Department, what additional safeguards then did you put in place with regard to those obvious concerns that were being raised, not just about standards but also about rates of pay?

Peter Handcock: We have a contract with Capita, and Capita have an obligation to fulfil our requirement for interpreters with Tiers 1 and 2 interpreters under the contract. It is a matter for them to ensure that they pay market rates that enable them to fulfil that contract. If they were not doing so, then we would expect to be having a conversation with them across a wide range of things. It isn’t necessarily just pay that impacts on potential supply.

From the beginning of the contract, after we had a rather rocky implementation, we put in place very quickly a recovery team. We took back a proportion of the bookings to take the weight off the system, but we have also been very closely engaged with Capita. For example, we are now routinely inspecting their register of interpreters; we are routinely checking the work that they’ve done to check qualifications and tiering so that we have a very high degree of assurance about the people that they have on their books and the people that they are supplying. That wasn’t the case in the beginning, but we have put that right.

Q193 Steve Brine: The lesson for the future is that those sorts of checks need to be put in place right at the beginning of any procurement process, which I am sure you understand.

Peter Handcock: I absolutely do. With the benefit of hindsight, at the point where we believed we were ready to implement the contract there were a number of questions that we might very easily have asked that we didn’t, and had we asked those questions I suspect we would have taken a rather different course on implementation.

Q194 Mr Buckland: Could you help me as to one detail? We have been made aware of a conflict of evidence about the issue of Middlesex University and their withdrawal or suspension of a contract between them and ALS. You know they had a role in terms not of providing a substitute set of qualifications but an additional system. By early January, the evidence that we had received from Middlesex University was that, by 3 January, they had indicated there were problems to ALS and then the agreement was formally suspended in February. Were you made aware of those problems by ALS?

Peter Handcock: We certainly knew by—well, we didn’t actually understand that the assessment process wasn’t continuing until after we had launched the contract. I think that is right.

Mr Buckland: Right.

Peter Handcock: We believed the assessment process was still running.

Q195 Mr Buckland: So on 30 January, when it was rolled out, your understanding was that things were still hunky-dory and things were still working, as far as you were concerned, and you had not been made aware of any issue about suspension.

Peter Handcock: No.

Q196 Nick de Bois: However, the National Audit Office suggested that, when the decision was taken—

I am not sure whether this is for Ms Beasley or you—to shift to the nationwide roll-out, this was done partly to prevent regional boycotts. That suggests that you were aware of a scale of serious resistance from amongst the interpreter community, and this was of course before the contract was actually put in place, if it was coming to this decision to roll out. What put you on to that and why was it left so late to recognise that problem? Shouldn’t you have envisaged this coming up and dealing with it in a slightly more satisfactory way, because it obviously has led to greater problems? It didn’t solve the lack of supply of interpreters.

Ann Beasley: The original intention, as you will know from the NAO report, was to go for a regional roll-out. Part of the thinking behind that was that we had originally planned to roll out in conjunction with other criminal justice agencies, such as the police and CPS, at the same time. But, when we came to it, it was only the Courts and Tribunals Service that was rolling out, so we anticipated that the roll-out would be less complex.

We had undertaken a pilot in the north-west. Bear in mind that we had been working with a number of freelance interpreters for a long time and what we were introducing, if you like, was an outsourced booking process. Previously, that bit was done in-house and we had used freelance interpreters in-house; what we were then moving to was a booking process that was run by ALS. We tested that in the north-west pilot and the results of that were very good.

Q197 Nick de Bois: Was that a formal evaluation though? I am led to believe there wasn’t a formal evaluation of the north-west pilot before the decision to proceed to the roll-out took place.

Ann Beasley: No, I don’t think it was written up as a formal evaluation of a pilot.

Q198 Nick de Bois: Was that a good thing?

Ann Beasley: There was an assessment of the results that were achieved in that and the results—

Q199 Nick de Bois: Sorry, can I explore that? If it wasn’t written up, what was it—a chat? Did a few people get together and decide? There must have been evidence.

Ann Beasley: My understanding is that the results of the ability to fulfil bookings were monitored and in
the north-west pilot they achieved the 98% service level that is in the contract. There was feedback on the usability of the booking portal, and the feedback on that was that it was very good. There were very few complaints. The bits that were kind of new in the model, which was essentially the booking process, had been tested in the north-west pilot, so we didn’t see at that point any reason to delay rolling it out further, which would deliver us significant savings.

**Peter Handcock:** Your starting point was that we should have understood from the level of opposition that there was in the interpreter community that we ought to adopt a different process to rolling out. So far as we were concerned, at the point of roll-out there were more than enough interpreters registered to provide the national service. That was the overwhelming consideration for us. We were conscious of the fact that, if we undertook a regional roll-out, interpreters might simply choose not to work in that region. I perfectly well understand the difficulty for interpreters in moving to rather different terms and conditions. We were conscious of that, but none the less we still wouldn’t have rolled out nationally on any basis other than an understanding that there were enough people registered with ALS to provide the service.

**Q200 Nick de Bois:** Where did you get that information from? Was it coming from ALS then or did you look beyond that, because quite clearly some of the evidence seen from ALS is, in my opinion, extremely suspect?

**Peter Handcock:** We now acknowledge, as we did in our evidence to the PAC, that the evidence that we had from ALS about the number of interpreters who were registered—actually, the data they gave us was accurate. What they told us was the numbers of people who had put their names on the booking portal as potential decline in the quality of service to the courts? It is fair to say they were anticipated, weren’t they?

**Peter Handcock:** When you implement a contract of this kind and you are making a fundamental change in the way that you deliver a service into any business, you always need to anticipate that it won’t go as smoothly as you planned.

**Q203 Nick de Bois:** Particularly with the reduction in the fees.

**Peter Handcock:** No plan ever survives engagement with the enemy, does it? That is the way that these things always work. So we had a contingency plan; we hadn’t disbanded the teams of people that had been doing the work in-house. We tracked where they had gone, where they had been redeployed, so that we could reassemble them very quickly. So we still had the capacity across Courts and Tribunals to revert bookings. It became obvious, really about midway through the first week of contract, that it was problematic. We were getting feedback very quickly that bookings weren’t being fulfilled in the right numbers. So we immediately took back all of our short notice bookings; in effect, we took back about 20% of the work. We did that because we were then catching the failures, if you like, so we were wicket-keeping the ALS system for a while, and to a small extent we are still doing that. So within about 10 days of contract problems we were on the problem and we had our own teams of people picking up the slack.

**Q204 Chair:** I have a point about taking back. It wasn’t clear to us in the previous session what the position would be if either the Ministry of Justice collectively or individual courts removed a very substantial part of the work that Capita was being expected to do and engaged quite large numbers of interpreters independently of that. How do you see the contract applying to that situation?

**Ann Beasley:** The contract is actually a call-off contract. There is no volume requirement in it. Capita have no redress if we choose not to put work through them and they only get paid for those assignments that they fulfil.

**Q205 Chair:** So they could invest quite substantially. **Ann Beasley:** That is their risk.

**Q206 Chair:** You could take away three quarters of the work and they would have no redress.

**Ann Beasley:** We could. We had a number of reasons why we wanted to get into this project because there were problems with the previous system, but it is fair to say that one of the drivers was that we wanted to reduce the cost and we wanted to implement fee regimes that were actually operating elsewhere within the language service market because it would save us money.

**Q207 Seema Malhotra:** I want to explore very briefly the reason why a decision was made to run a pilot in the north-west. The reason I ask is because the decision about where a pilot is done is going to lend itself to having good information or not for a

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3 Note by witness: The reference to registering on the portal is incorrect. The portal is the booking tool; interpreters register on the Linguist Lounge website.
30 October 2012  Helen Grant MP, Ann Beasley CBE and Peter Handcock CBE

roll-out. There are some criticisms in that it was over a six-week period, including Christmas and new year; it was quieter; it was where ALS had a larger pool of interpreters. Was it a recommendation by ALS to run the pilot there or was that an MoJ decision?

**Peter Handcock:** It was our decision. It was our decision to run there. It is important to recognise that in piloting we weren’t—perhaps we should have been—load-testing, if you like, ALS’s capacity. What we were really testing was the effectiveness of the portal and the effectiveness of the booking system. The thing that gave us the problem on implementation was capacity; it was the number of interpreters who were signed up. But the purpose of the pilot really wasn’t to test that. It was just a question of looking at the number of people ALS had registered and allowing for some variance when the pilot was set up. When we did that we had a proper data specification for what we wanted to see from the portal, we measured the success of the portal and concluded that it worked. What it didn’t test for us was when we got to national roll-out whether those people who had registered on the portal nationally would actually sign up for work.

**Q208 Steve Brine:** I want to ask the Minister especially. We have just had the previous people in from Capita and the former CEO of ALS. In July of this year Capita replaced the senior management team in ALS, and the expression is that Mr Wheeleldon resigned by mutual consent. They have promised us in writing, in private, the detail of what that really meant, which we look forward to with great interest.

**Ann Beasley:** Yes.

**Q209 Steve Brine:** I have a very quick question to Ann Beasley. Did Capita ever come back and say, “We’ve incurred quite a lot of extra cost”—£3.5 million, as the Minister says—and say, “This is all terribly awkward. We need something else from you”? **Ann Beasley:** No.

**Q210 Steve Brine:** What if they had come back and said that? What would be your response?

**Ann Beasley:** Probably no—possibly more expansively but the gist of it would be no. Capita are in this for the long haul. They recognise that this is a good business to be in, they are looking forward to a long-term relationship with the Ministry of Justice and they need to invest up front. But over the lifetime of the contract, which is five years, they expect presumably to get back into profit.

**Q211 Steve Brine:** Do you think they are happy with their acquisition?

**Ann Beasley:** They seem to be.

**Q212 Steve Brine:** Can I just ask Mr Handcock what your estimate was of the extent then to which Courts and Tribunals are resorting to old arrangements to cover gaps?

**Peter Handcock:** I think what we took back—the short notice staff—would average about 20% of the total work load, certainly at the beginning, because, if there is a high level of failure for the longer-term booking, more falls back into the short notice stuff. At the beginning, when we intervened first, we were spending about £500,000 a month on short notice bookings. That spend is down by 80% now. We are spending about £90,000 per month on short notice bookings and it’s going down all the time. We have a plan; we are already migrating two regions—the midlands and the north-west—fully back into the contract. We will just watch carefully to make sure that that works and then we will begin to migrate the rest back. By the time we have been right round the country and finished the migration I suspect that almost all of the work will be back on contract.

**Steve Brine:** Just finally, Chair, if you would just indulge me, we had a magistrate in last week who was talking about whether it was broke in the first place. His exact words were, “Well, it wasn’t.”

**Chair:** We are going on to that in a moment. Mr Corbyn had a supplementary question.

**Q213 Jeremy Corbyn:** It was on that sort of point. Ann Beasley said that the previous system had been very poor—a rather sweeping remark. What do you mean?

**Ann Beasley:** I don’t recall using the words “it had been very poor”. I was just saying that there had been a number of problems with the previous system because each court and tribunal was booking its own interpreters. They had quite often paper copies of a list that was out of date. There was no proper complaints
procedure. There was no ability to influence. If an interpreter had not performed well in one court, there was no system that ensured that they didn’t then operate in different courts.

Q214 Chair: Is there now?  
**Ann Beasley:** There is now, yes. Because we have a single register and a proper complaints system, if there are complaints against particular interpreters and they are upheld, Capita remove them from the list. They have actually removed a number of interpreters following complaints. So that gives you a much better process for ensuring quality.

Q215 Jeremy Corbyn: Are you comfortable that so much of your authority has been handed over to Capita?  
**Ann Beasley:** I am not sure we had that authority previously. At the moment it is people in the courts who probably would be the ones who instigated complaints against interpreters. Previously they could have done that for their own court and stopped them being used. Now they have an opportunity to make sure that if interpreters don’t perform to the right standards they are not used anywhere else. That seems to be a better system.

Q216 Seema Malhotra: This first question is to the Minister, Helen Grant. There has been an increase in ineffective trials during the course of the contract over 2011–12, as against the five previous years, and that is as a consequence of interpreter unavailability issues. The Magistrates’ Association have told this Committee that the new arrangements do not give magistrates confidence. How would you respond to these concerns?  
**Mrs Grant:** I can honestly completely understand those concerns if they were expressed in February of this year. The situation, we have accepted, was bad, and a contingency plan was put in place very quickly to improve the situation. If the Magistrates’ Association are saying that that is the position now—that at this point they still do not have confidence in the system—then I have to say I am surprised and a little disappointed as well, because the figures that have been mentioned today already speak for themselves. We are at a 95% success rate level; complaints have reduced dramatically. I can perhaps give you a few numbers here on complaints as well, if it would be helpful: criminal courts, from 9.9% in February down to 1.4% in August; civil and family, 5.8% to 0.6%; and in the tribunals from 17.1% to 5.2% over the same period. So, clearly, performance is getting better steadily and quite swiftly; complaints are going down.

Then, of course, we have the fact as well of the period of poor performance, was 11 in quarter one of 2012 and in the equivalent quarter of the previous year that were ineffective in the Crown court, through the period of poor performance, was 11 in quarter one of 2012 and in the equivalent quarter of the previous year it would have been seven. So you are talking about four cases that were ineffective because we weren’t able to field an interpreter. The reason the overall cost is quite low is both because the court is still busy and all the people who would otherwise be in the court on that case are still busy, and the overall numbers are relatively low.

Q217 Seema Malhotra: This question is to Ms Beasley. What progress have you made in assessing ancillary costs that will arise from ineffective trials, where that has wasted police time, and have you made any progress in the assessment of those costs of underperformance, particularly since the NAO report? There are some suggestions that the full cost of the ineffective trials as a result of unavailability—I appreciate that may have been going down—remains an issue and it is not fully costed as a result, in terms of the impact.  
**Ann Beasley:** Yes. We don’t monitor, obviously, the actual costs. It will depend very much on the circumstances of any individual case. The estimates that we have of the cost of an ineffective trial are probably surprisingly low. Our estimate is that for an ineffective trial in the magistrates courts the cost is about £650 and it’s about £1,500 in a Crown court. It depends crucially on the assumptions that you make about what people do when a particular trial is ineffective. If you are the solicitor in the case, you have probably so much work to do that you maybe waste a very short period of time at court and then you would go on and do other work. That obviously critically—

Q218 Chair: This is a new idea from the Ministry of Justice—that ineffective trials aren’t as expensive as we used to think.  
**Ann Beasley:** There is an NAO report—I think it dates back to 2006—that confirms similar sorts of numbers for the cost of an ineffective trial, because the world doesn’t completely stop if a particular trial does not go ahead at the exact hour that it was planned. Our estimates are that the costs are not that high.  
**Peter Handcock:** But the numbers are quite small as well. That perhaps offers an additional explanation. In absolute numbers, for example, the number of trials that were ineffective in the Crown court, through the period of poor performance, was 11 in quarter one of 2012 and in the equivalent quarter of the previous year it would have been seven. So you are talking about four cases that were ineffective because we weren’t able to field an interpreter. The reason the overall cost is quite low is both because the court is still busy and all the people who would otherwise be in the court on that case are still busy, and the overall numbers are relatively low.

Q219 Seema Malhotra: I am assuming that you would be including in that additional time spent on remand and how long it takes to reschedule the court date.  
**Peter Handcock:** It is all of those costs, and, as I said, we are quite encouraged by the fact that our estimate of cost is remarkably close to the estimate of cost that the NAO made when it published its report on ineffective trials in 2006. The methodologies come very close together.
Q220 Seema Malhotra: Mr Handcock, there have been concerns raised that there isn’t a complaints system for legal professionals and other stakeholders. Are you intending to work with Capita to implement such a complaints procedure?

Peter Handcock: We think there is one and we think it is our complaints process. You have to bear in mind that Capita are our contractors and we don’t think it would represent an appropriate standard of service to people who use the courts for us to invite them to pursue their own complaints with our contractors. We think that’s our responsibility. We think it’s our responsibility too, because when someone has a complaint about the provision of a service around a court hearing there may be any number of explanations for that and it might not be a Capita issue. We need to know that people are raising those complaints, first of all, so that we can ensure that it isn’t some part of the court process that has caused the problem and, secondly, to ensure, for example, that if an interpreter has been found to be inadequate we know that as well. But, where that complaint is made by a legal professional, we will then put that complaint on to the complaints system.

Q221 Seema Malhotra: What communications have been undertaken with organisations like the Law Society, who, for example, have told this Committee that they think there should be a complaints system? Would they be aware that they should be coming to you directly?

Peter Handcock: If they are not, we need to make sure that they are. But there is no question about it. If legal professionals have a complaint about the service that has been provided, we will take that complaint into the formal Courts Service complaint system.

Mrs Grant: Could I just add as well that any solicitor or barrister or anyone who is concerned can simply make the complaint at a court office or tribunal office and it will be passed through?

Q222 Nick de Bois: Minister, we have had suggestions rather forcefully put to us that interpreters believe the framework agreement is unsalvageable. Have you had those representations and how do you respond to that?

Mrs Grant: I don’t accept that position; I don’t accept those representations. Personally that has not been put to me, to my knowledge, but of course I am a relatively new Minister. But I disagree with the allegation. The performance figures in relation to this contract are considerably better, as I have already explained quite carefully with the statistics. The complaints are going down. The National Audit Office have said that we had very good reason to change the original contract and have said that we should go on and implement it. If interpreting organisations are saying it’s unsalvageable and it is not good, then I am a little bit mystified now. I would also like to add, too, that I don’t think we should be under any illusions or misapprehensions about what the old system was like. As some of the Committee know, I was a family lawyer for over 20 years prior to becoming an MP and I worked in a pretty needy, edgy London urban borough where there was high, high need for interpreters and translation services. I have to say I have distinct memories of turning up on various mornings, looking through the glass of the court office and seeing frantic court staff phoning round, using books and scrappy pieces of paper to try and find translators and interpreters for cases. I also have actual recollection of interpreters not turning up, turning up late or turning up and unfortunately not being of the quality that we would have liked. I also have personal experience as well of interpreters turning up for a full day and receiving a full day’s pay for perhaps a trial and then leaving after 10 minutes because the case was adjourned. Of course, that’s no fault of theirs but it is quite common.

Q223 Nick de Bois: Minister, I appreciate that, but there is some concern—

Mrs Grant: So I do think it’s important, when comparing what is salvageable and what is not salvageable, not to be under any illusion about what the old system was like—just let me finish, please, if I may—because, although I had good relationships with some excellent interpreters, it was by no means uniform and it wasn’t perfect.

Q224 Nick de Bois: My issue is not whether there should have been change, and thank you for your lengthy context position there. My point is about whether this particular change is salvageable, and obviously others have made representations that they don’t think it is. Thank you for your answer. However, picking you up on one point, I don’t think there was any doubt, under the former national agreement, that it complied with articles 5 and 6 of the ECHR, which is all about providing translation services as a right for those in the justice system. Given that the interpreters themselves and Fair Trials International are suggesting that as a result of the tiering system there might be some issues here where, potentially, we are not fulfilling our obligations—it is rare for me to use the ECHR in this context, I agree—I would ask you whether you think that there are any necessary legislative or other steps that are required to ensure that we do fulfil our current obligations under the EU Directive on the right to interpreting translation services?

Mrs Grant: Of course I am aware of the EU Directive and I am quite satisfied that the current contract meets that standard. There is a small team at the MoJ who work closely with European counterparts to look at implementation issues in relation to the Directive and to talk through ideas.

Q225 Chair: Mrs Grant, there are two issues here. There is the ECHR issue—the Article 6 fair trial issue—but there is also, as you correctly point out, the EU Directive on which we have issues as well.

Mrs Grant: Yes. Thank you, Chair. In relation to the Directive, yes, I am quite satisfied that the current contract meets that standard. I am also quite satisfied that when the transposition date comes, which I believe is 27 October 2013, we will be in compliance as well with all the various requirements.
Q226 Nick de Bois: Mr Handcock, do you think there is ever a case of unqualified interpreters being approached in the justice sector?

Peter Handcock: The contract requires an interpreter to be provided from Tier 1 or Tier 2. Those are highly qualified interpreters and it is very important that interpreters are properly qualified. There is a lower level of qualification required for Tier 3, but there are still conditions attached to being in Tier 3. There are occasions, particularly with rare languages or in difficult circumstances when the pool of interpreters is very small, when it might be necessary to use someone from Tier 3, still qualified but qualified to a rather lower level. Whenever that happens, the court is asked if it is content to have a Tier 3 interpreter, so ultimately it’s a decision for the judge. It is always a decision for the judge, actually, whether the interpreting service being provided is adequate, and I am quite satisfied that it is.

Q227 Nick de Bois: How many of those do we know that a judge may have rejected?

Peter Handcock: If a Tier 3 interpreter is offered and the court says, “No, that’s not satisfactory”, I don’t think we have a record of that.

Q228 Nick de Bois: Do you think we should find out, to back up the very reasonable assertion you are making?

Peter Handcock: It’s a very small—we may—I am reluctant to say—

Nick de Bois: No.

Peter Handcock:—when we don’t have anything from the data, but I am certainly happy to have a look and see if we have a record. The proportion of cases in which Tier 3 is offered is only 2% of the total court volume. The offer is only made in 2% of cases, so it is a very, very small number.

Q229 Nick de Bois: Each case is very important to the individual.

Peter Handcock: Absolutely, absolutely, but I am completely happy and completely satisfied that there are no circumstances in which a judge would go ahead with a case where he or she was not satisfied that there was an adequate interpreter.

Q230 Nick de Bois: It would be useful if you think you could ascertain that.

Peter Handcock: I’ll see if I can find that information for you.

Q231 Chair: Minister, there are a couple of things I would like to ask you—one general and one very specific. The first question is what thought you and your ministerial colleagues have given to whether the Ministry needs to do anything new to regain the confidence of that substantial section of the interpreting community that has not participated under the new contract and remains very concerned about it.

Mrs Grant: It is very, very important indeed that we rebuild this important relationship between the Ministry of Justice and the interpreting community. It’s critical; it’s essential. We need to engage; we need to talk; we need to move forward constructively together. There are huge opportunities for the interpreting community and also huge opportunities for the Ministry of Justice in that engagement, so much so that I have already agreed to meet some of the umbrella organisations, namely, Professional Interpreters for Justice, whom I have suggested we should meet and have a chat and talk things through after this Committee hearing today.

Q232 Chair: Are there not perhaps two kinds of things that could be looked at? One is whether there are things that can be done in the remaining time of the existing contract, and the other is whether there are features, when the contract comes up again, which ought to be incorporated in it.

Mrs Grant: Yes. As recommended by the NAO, we have to work carefully and creatively. We have to find more interpreters as well and we are forever looking, with Capita, at different ways that we can innovate. We are looking at coming up, possibly, with some sort of new assessment process for rare languages, and we are also considering whether there might be some career progression within the Tier system effectively to move interpreters in Tier 3 up to Tier 1 or Tier 2. There is lots happening. We want this to work, we want to continue to have a very good and close relationship with this community, and we will endeavour to do whatever we can to make that happen.

Q233 Chair: I have a very specific question for Ms Beasley. We have been talking about court interpreting, but this contract covers a great deal more than that. What assessment have you made and what awareness do you have of the level of complaints or the level of satisfaction with the service provided by, now, Capita, for example, to NOMS and to the many institutions that have to use the service within NOMS?

Ann Beasley: My understanding is that the service level within NOMS is very high. In fact, it quite often reaches 100%, as the Minister said earlier. The feedback I have had is that they are very satisfied with the service that they are getting, and, as always envisaged, there were a number of police forces that also use the contract. My understanding is that they are also satisfied and the intention is that more police forces will use the contract in future.

The feedback that we have is that most of the participants within the justice system are satisfied with the contract. That is not to say that we are happy with the 95% level within Courts & Tribunals, and obviously we need to build that up and get it nearer to the 98% that is in our contract.

Q234 Chair: Have you any figures that you could subsequently let us have that give an indication of the situation in the non-courts area of this contract?

Ann Beasley: We can certainly supply some figures. Do you mean in terms of service levels?

Q235 Chair: Service levels, compliance and complaints levels—

Ann Beasley: Yes, we can certainly provide those.
Q236 Chair:—things that we are using as indications in the courts context. 
Ann Beasley: Absolutely; we will certainly do that.

Q237 Chair: We also need to look at how they are working out in the other areas to which the contract applies.

Ann Beasley: Yes, we will do that.
Chair: Thank you very much indeed for your evidence this morning. That ends our session.
Written evidence from the Ministry of Justice

EXECUTIVE SUMMARY

1. This response relates to both Framework Agreement of Language Services and, more specifically, to the MoJ’s contract which was signed under the terms of the Framework Agreement and addresses the Committee’s Terms of Reference.

2. Due to shortcomings, inconsistency and inefficiency in the way in which language services were provided to the Ministry of Justice (MoJ), the Department introduced a change to the provision of interpreter services. Interpreters are now booked through Applied Language Solutions (ALS) via a call-off contract under the Framework Agreement which went live on 30 January 2012.

3. During the initial stages of the contract there were significant difficulties with the provision of interpretation services to Her Majesty’s Courts and Tribunals Service (HMCTS). Interpreters used to the old system have been concerned about the changes, and this has led to fulfillment difficulties.

4. Since then performance has improved; statistics published in May 2012 show that just over 90% of bookings (excluding short notice bookings) were filled in April, compared to an original fulfillment rate of 65% in February. There was also a drop in complaints from 11.95% of completed requests to 4.85%. The Department accepts that there is more work to be done to achieve an acceptable level of performance for HMCTS but despite the difficulties encountered with the contract the Department is on track to achieve £15m savings in the first year. A greater level of savings is anticipated in future years.

5. In order to continue to improve the levels of performance HMCTS has established a project, working in partnership with ALS, to focus on a number of areas of concern. The Department closely monitors the performance of ALS under the contract, in particular the number of interpreters available to ALS and their vetting and skills.

6. In April The Right Honourable Margaret Hodge MP, Chair of the Public Accounts Committee commissioned the National Audit Office (NAO) to investigate the language services contract. The NAO is due to publish its report shortly. The NAO investigation has helped us to focus on the areas of concern, both within the Department and ALS.

7. We remain of the view that the approach we have taken in outsourcing the booking of interpreters is one that works, and can provide savings to the public. While the contract is still in its early stages, indications thus far are that it is working; costs have been reduced and the service is improving.

THE RATIONALE FOR CHANGING ARRANGEMENTS FOR THE PROVISION OF INTERPRETER SERVICES

8. Interpreter services in the justice sector cover a variety of different services, including face to face and telephone interpreting, written translation, and language services for the deaf and deaf/blind. The previous system was inconsistent across the justice sector, including the different delivery areas of the Department, meaning that similar services were being provided in a variety of different ways. There were fundamental and long-standing issues with quality and efficiency. The services did not represent value for money and the use of different booking systems meant that security and quality checks were inconsistent and in many cases unreliable. This exposed the Department and others in the justice sector to unacceptable risks.

9. An MoJ internal audit report in January 2010 highlighted some of the deficiencies of the interpretation and translation services. This report found that:
   
   — there were no systems in place to provide accurate financial information in respect of the amount spent on interpreters’ fees and disbursements and as a result the amounts spent on interpreters across the different parts of HMCS (now part of HMCTS) were not known because of different accounting systems;
   
   — control systems were not sufficiently robust to identify and prevent duplicate payments or to identify errors;
   
   — the sourcing of interpreters varied across the courts and tribunals. Guidance stated that HMCS should source interpreters from the National Register of Public Sector Interpreters (NRPSI), however specialist agencies, panel arrangements, and ad-hoc local arrangements were also used and were used by the then Tribunal Service. Qualification and security checks were not consistently performed; and
   
   — governance and control arrangements were not sufficiently developed to provide management with sufficient assurance.

1 ALS is now part of Capita.

10. Concerns had also been expressed anecdotally by police forces and others that complaints were not adequately followed up in a timely and efficient manner. In some instances interpreters who were the subject of complaints were allowed to work while being investigated.

11. Inefficiencies with the system included a time consuming booking mechanism which required staff to contact individual interpreters to check availability, and the lack of interpreters in some languages and in some areas of the country.

12. When taken together, the inefficiencies with the system, the concerns raised by the audit report, and the difficulties with language supply in some languages demonstrated the need for change.

**The Nature and Appropriateness of the Procurement Process**

13. As a result of the problems with the previous systems Ministers decided to engage with the market to see how services could be better and more efficiently delivered. This led to a procurement competition using the competitive dialogue approach, carried out in accordance with EU procurement rules.

14. The pre-tender engagement exercise included over 200 suppliers to raise interest in the project and to raise awareness with existing language providers and those suppliers with the possible scope to diversify into this market. 126 suppliers were invited at the pre-qualification stage; 77 accepted the invitation and 58 fully completed a pre-qualification questionnaire. 12 suppliers were invited to participate in further dialogue.

15. Using the competitive dialogue process the Department set objectives and invited suppliers to explain how they would meet them. This was refined over several stages of dialogue, to ensure that all mechanisms for provision of the service could be explored fully with the market.

16. This iterative process, through which bidders come up with potential solutions, allowed the Department to gradually refine the requirements and the terms of the draft framework through a series of stages, eliminating bidders at each stage. This allowed maximum scope for efficiency and innovation in the delivery of the service. The process was led by MoJ Procurement working closely with policy leads and representatives from the Police, HMCTS, the Crown Prosecution Service and the National Offender Management Service (NOMS). The breadth of involvement was important to ensure that the needs of the business were met and the project has credibility with users.

17. The award of the Framework Agreement was on the basis of the most economically advantageous tender. The non-price criteria (set out below) and the affordability and price were evaluated. The Department would accept the lowest priced, affordable and non-price criteria compliant tender. This threshold was set at 80% (representing an “acceptable” tender standard). Any tenders received which did not meet this level following Invitation to submit Detailed Solution were rejected.

<table>
<thead>
<tr>
<th>Criteria</th>
<th>% Weighting</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service</td>
<td>30</td>
</tr>
<tr>
<td>Innovation</td>
<td>10</td>
</tr>
<tr>
<td>Quality</td>
<td>25</td>
</tr>
<tr>
<td>Assurance of Supply</td>
<td>30</td>
</tr>
<tr>
<td>Sustainability</td>
<td>5</td>
</tr>
</tbody>
</table>

18. As part of this process officials undertook a consultation exercise on the model which arose out of the competitive dialogue with a wide range of stakeholders including individual interpreters and their various representative groups, service users and the judiciary, which yielded over 140 responses. This led to refinements in the model then under discussion.

**The Experience of Courts and Prisons in Receiving Interpretation Services that meet their needs**

19. Under the previous arrangements MoJ delivery areas were often receiving interpretation services that did not meet their needs for a number of reasons which have been set out.

20. The framework agreement offers benefits over the previous arrangements as it is intended to provide a national prime contractor with a single point of contact, available to staff 24/7, through which the provision of face-to-face interpreting, telephone interpreting, written translation and language services for the deaf and deafblind can be obtained. Management information collected under the framework allows analysis of trends.

21. It is important that interpreters have the right skills and qualifications for the job and the appropriate security checks. The framework enables the Department to specify a more stringent security check than had been used in previous arrangements—under the contract interpreters are required to have an Enhanced Criminal Records Bureau (CRB) check. In the course of the recent NAO investigation, it became clear that some

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*This term encompasses not only interpreters using British Sign Language (BSL) but also lip speakers (who convey a speaker’s message to lipreaders accurately using unvoiced speech), speech to text reports (who produce verbatim record of what is said, using a phonetic keyboard, to be shown instantly on a monitor or screen) and deafblind manual Language service professionals (who, through the deafblind manual alphabet, relay at an appropriate speed, what is said by a third party to a deafblind person).*
interpreters on the ALS register had not confirmed their (CRB) record status. The Department requires a full audit trail for security checks for all interpreters, therefore, those interpreters who had not supplied documentation were removed from the register until such time as an audit trail could be provided. Interpreters with Enhanced CRB checks in place were asked to provide further evidence of this; those without Enhanced CRB status submitted evidence to gain it. ALS is confident that a full audit trail for Enhanced CRB clearance will be available for all interpreters assigned to MoJ jobs by early September 2012.

22. In relation to qualifications and skills, the contract requires all interpreters to undertake assessments to establish their competence in their language or dialect. This process has been challenging because of difficulties between ALS and its independent contractors in marking assessments, and a lack of qualifications for some of the rarer languages. The Department is working with ALS to resolve this.

23. Whilst a number of interpreters used by ALS are new, it should be noted that this is not the case for all interpreters. Some have previous experience of working in the justice sector and some are NRPSI registered. All interpreters used by ALS, whether new to the sector or not, are required to confirm their Enhanced CRB status and qualifications and be evaluated.

24. During the first month (30 January to 29 February 2012) of the contract ALS was only able to fulfil 65% of requests for translations services; this caused significant difficulty for the justice system and steps were immediately taken both by the Department and ALS to improve this. Overall performance increased to 82% in March and just over 90% in April, although there was variance across regions and jurisdictions.

25. HM Prisons Service has been using the services of ALS for interpreting (face-to-face and telephone) and translation requirements since 30 January 2012. The main requirement for prisons is for telephone interpreting, followed by translations, with a small need for face-to-face interpretation. Apart from a small number of initial service transfers issues there have been no problems or difficulties of any significance or concern reported to NOMS HQ by prisons about the ALS service.

The Nature and Effectiveness of the Complaints Process

26. The Framework has a robust complaints mechanism by which justice sector staff record complaints about the quality of the service provided by ALS on the booking system. The complaints system allows HMCTS staff and judiciary to communicate any concerns as soon as they arise, and to monitor the progress of a complaint. Any complaint or issue is acknowledged by ALS within one hour of receipt.

27. Some complaints, most often related to the quality of the interpretation require an independent check. Where this is the case feedback is provided within 24 hours and the proposed resolution is discussed with the body making the complaint within three working days. This is documented in writing with the resolution confirmed via email to all relevant parties within 24 hours of agreement. All parties are kept informed of progress throughout the investigation, which normally takes one working week from the time the complaint is raised until the resolution is formalised.

28. The Department receives data on all complaints on a weekly basis and identifies and discusses any trends in regular performance review meetings with ALS. This was not possible under the previous arrangements where there was no centralised complaints mechanism.

29. Between 30 January and 30 April 2012, there were 26,059 requests for interpreters covering 142 different languages, 18,719 requests were delivered against. There were 2,232 complaints relating to completed requests within this time period, a complaint rate of 11.95%. The complaint categories cover attendance, quality and other issues. The Department responded swiftly to the initial problems and demanded improvements in performance from ALS.

30. Overall, there has been a downward trend in the level of complaints since the start of the contract. The overall complaint rate has reduced over the first three months of the contract and in April 2012 it was 4.8%. Further statistics are due to be published on 13 December 2012 and will provide an opportunity to look at the data for nine months of operation.

The Steps that have been taken to Rectify Under-performance and the Extent to which they have been Effective

31. The HMCTS project board ensures that there is formal project governance in place, ensuring the continuing accountability of both ALS and HMCTS, and the proper assessment of risk and change management. ALS is represented on the project board as a Senior Supplier and partnership working is an important principle for improvement.

32. In response to the Department’s actions ALS has provided additional staff to deal with bookings, targeted their recruitment of interpreters in key languages and made improvements to the call handling and complaints

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4 There were around 300 NRPSI interpreters on the ALS register in July 2012.
5 Complaint categories: interpreter did not attend; interpreter quality; interpreter was late; no interpreter available; operational issue; other interpreter issue; time sheet error; unknown.
6 See MoJ publication schedule at http://www.justice.gov.uk/statistics/statistics-publication-schedule; further statistics will be published on 28 March 2013 for the first year of operation of the contract.
process. ALS continues to recruit new interpreters and is working with the Department to address those languages where the number of interpreters remains low, particularly with rare languages. In a small number of languages, the number of registered interpreters has already increased in comparison to the former arrangements.

33. HMCTS directed magistrates’ courts and tribunals to revert to the old booking system for short notice bookings where ALS was unable to provide an interpreter for these, in order to ensure courts and tribunals had ongoing provision and to allow ALS to focus on improving its service and resilience. However, a pilot involving a number of criminal courts in different regions has returned these bookings to ALS, with success. Overall, the courts have been happy with the communications that they have been receiving throughout the pilot and the interpreters that were sourced for the bookings attended the courts on time and conducted themselves appropriately within the court setting. Learning from the implementation of the contract, the project board is currently considering how best to roll back the provision of short notice bookings to ALS over the coming months.

34. Service credits have been applied by the Department from June 2012, according to the terms of the contract. ALS has invested additional resources into service improvement and MoJ took the view that prior to June the emphasis should be on improving service performance at that stage. This outweighed the likely applicable penalties under the contract of approximately £11,000 in service credits. We are now aware that Capita supported ALS with investment of approximately £3.5 million.

35. In order to help improve performance, HMCTS and Capita-ALS have committed to looking at the end to end business process to see if changes could help improve the implementation of the contract. This includes looking at the different models of booking short notice interpreters with a regional or location approach, for example, whilst acknowledging that the same system might not work across all jurisdictions. Any queries which have been raised by either MoJ staff or ALS are being collated to incorporate into new editions of guidance.


36. The contract management for this service is monitored by MoJ Procurement. Detailed management information is received on a weekly basis from the Contractor which includes fulfilment of assignments, complaints data, and general management information on face to face and telephone interpretation, as well as transcription and translation services. The weekly summary report shows:

— venues with performance below 90% and action taken;
— top five problem languages for that week and action taken;
— top three areas for complaint and action taken;
— performance against complaints overall;
— performance against complaints on interpreter quality; and
— performance against failures to attend bookings.

37. MoJ Procurement also receives a daily email with the overall headline performance figure, including a commentary on languages where performance failed. Additional reporting is available on demand. All business areas are encouraged to highlight any particulars areas for concern, including unsatisfactory complaints resolution and urgent, high profile requirements and notify MoJ Procurement.

38. All billing information is available with a breakdown of management information for business account holders, by site. The contract has provided visibility of spend across business areas and jurisdictions that was not available to the MoJ under the pre-framework operations. The contract management is robust, performance driven and pro-active.

CONCLUSION

39. The previous system for booking interpreters was inefficient and risky. The MoJ was right to seek changes to the system and has been supported in this view.

40. We accept that there have been problems with the service; any process of reform will face challenges. Interpreters used to the previous system have been concerned with the changes and this has led to fulfillment difficulties.

41. Performance levels were inadequate when the contract commenced, and while the service is not yet where we would like, the service has made sustained improvements over a relatively short period and complaints have fallen. This view is fully supported by our most recent management information. However, we are committed to remaining vigilant, and will continue to work with our supplier very closely until we are content with the service provided.

42. We remain of the view that this is an approach that will work and can provide savings to the public.

September 2012
The Justice Select Committee has already published (in the report into the Budget and Structure of the MoJ) a short briefing document prepared by PIA.

PIA is a member of the Professional Interpreters for Justice Steering Committee, on behalf of which campaign group extensive submissions were made to this inquiry.

**Abstract**

1. From 2009 onwards, PIA has communicated relevant information about outsourcing and interpreting standards to the Ministry of Justice. We warned the MoJ that the Framework Agreement was flawed.

2. The Ministry of Justice was left in no doubt from early on in its procurement exercise that Registered Public Service Interpreters would not work for ALS Ltd.

3. The Ministry of Justice arbitrarily made a wide-reaching policy decision to the effect that interpreters for non-English speakers in H.M. Courts and Tribunals Service could be less qualified and experienced than they were required to be in the past.

4. The failure of the ALS Ltd provision and the widespread boycott by NRPSI interpreters demonstrate in practice that the courts cannot function effectively without the services of professional interpreters.

1. The Professional Interpreters’ Alliance came into being in January 2009, in response to the threat presented to freelance self-employed legal interpreters’ livelihoods by six police forces in the North West of England deciding to outsource the provision of translation and interpreting services to a commercial supplier. This contract, which was awarded to Applied Language Solutions Ltd, was effectively a precursor to the Ministry of Justice Framework Agreement with ALS Ltd.

2. The resistance by Registered Public Service Interpreters who served the police forces to the proposed outsourcing was emphatically communicated to the police forces concerned and to the Ministry of Justice’s “Interpretation Project”. PIA pleaded for professional interpreters’ organisations to be consulted, and a petition was submitted by interpreters who pledged to withhold their services from any commercial supplier of interpreting and translation services. In March 2009, a House of Commons adjournment debate took place on the subject of quality concerns surrounding the outsourcing of police interpreters.

3. When the police contract was awarded to Applied Language Solutions Ltd without the proper procurement procedure having been followed, in breach of the Race Relations Act, PIA challenged the ALS/Policie contract through Judicial Review proceedings funded by donations by hundreds of interpreters. The defendants admitted they had breached the Race Relations Act by not carrying out an Equality Impact Assessment (EIA) and the ALS Ltd contract was technically quashed in February 2011.

4. It was brought to the MoJ’s attention that hundreds of NRPSI registered interpreters signed an unprecedented petition to North West Police forces in 2009, and again in 2010, stating that they would boycott working for ALS Ltd.

5. It is against this background of fierce resistance by self-employed qualified professionals and legal challenge that the Ministry of Justice announced, in a Ministerial Statement on 15 September 2010, its intention to outsource interpreting and translation services in the Criminal Justice Sector. The original timescale envisaged for implementation of the new Framework Agreement was for it to be signed in early 2011.

6. The Professional Interpreters’ Alliance entered into the pre-action protocol for Judicial Review with the Ministry of Justice in February 2011. We believe it is only as a consequence of our Pre-Action Letter of February 2011 that the MoJ carried out any consultation at all.

7. In the event, the “consultation” that was carried out in May 2011 was no more than a window-dressing exercise, being neither meaningful nor at a time when the proposals were at a formative stage. By now, ALS Ltd was the sole supplier still under consideration, and the proposed model was of ALS Ltd’s design. English public law and case law (Capenhurst 2004) state that if the public body does decide to consult, the consultation has to be meaningful and effective. The draft Equality Impact Assessment carried out during this stage was also deeply flawed. Neither the EIA nor the consultation was included in the original tendering timetable, which envisaged the Framework Agreement being in place by April 2011.

8. The outcome of this highly unconventional “consultation” was the MoJ’s “letter to stakeholders” of 6 July 2011, in which Deputy Director of Crime Martin Jones roundly dismissed the concerns raised by stakeholders

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in their comments. The assurances given in July 2011 rang hollow then, and with the benefit of the experience of seven months of ALS Ltd providing to HMCTS, ring even more hollow now. Some minor changes were made to the Equality Impact Assessment and a final version was presented to Ministers in June 2011, but the EIA remained flawed and did not adequately assess the policy’s impact on the service’s main users or providers.

9. In August 2011, PIA sent a further pre-action letter to the MoJ, challenging the award of the Framework Agreement. The MoJ stringently denied acting unlawfully. In response to allegations the Equality Impact Assessment was not properly carried out, the MoJ’s solicitor wrote on 23 September 2011: “As for the likely impact on livelihoods, Ministers were expressly informed that the move to the proposed contractual model was expected to mean lower hourly rates for most linguists, a substantial number of whom are non-nationals or from black and minority ethnic groups. [...] It is denied, therefore, that the decision was taken without due regard to the equality objectives in this regard.”

10. With regard to the UK’s obligations under EU Directive on the right to interpreting and translation in criminal proceedings, the MoJ’s solicitor wrote on 23 September 2011: “With respect to Article 5(2) of the Directive, the UK Government is presently considering how the obligation will be met.” It is not known what progress has been made since then but it is clear that the Framework Agreement does not meet the obligation.

11. On 3 December 2011, the MoJ was provided with a list of names and registration numbers of 1167 Registered Public Service Interpreters who had individually registered their refusal to work for ALS. Since the inception of the contract, Registered Public Service Interpreters have clearly not engaged with ALS Ltd, its dubious standards and unacceptable terms and conditions: of the workers registered with ALS Ltd, only 301 are also registered with NRPSI, meaning that ALS Ltd has managed to attract just 13% of the people who used to perform the important duty of police and court interpreting. It should be clear that H.M Courts and Tribunals Service is no longer being served by experienced and qualified professionals.

12. After the inception of the ALS Ltd contract, when HMCTS returned within weeks to the system of booking NRPSI interpreters directly alongside ALS Ltd provision, many of those interpreters boycotting ALS Ltd decided they would also boycott direct bookings from courts, or else the failings by ALS and its workers would not come to light. It is fair to say a marked difference in quality has been the result, as exemplified by the unprecedented number of media reports about court delays and disruption, collapsed trials, and farcical situations caused by ALS Ltd’s workers.

13. As part of their Continuous Professional Development while they are out of work, PIA’s members and other NRPSI interpreters have been attending court hearings to monitor cases where an interpreter is used. The observations thus reported give rise to grave concerns about the credentials and competence of ALS Ltd workers sent to interpret in courts and police stations. Evidently, the checks and assessments that ALS Ltd is contractually obliged to carry out are simply not being done.

14. Based on the reports received from PIA members, other NRPSI interpreters and independent legal professionals, PIA submitted a formal complaint to ALS Ltd/Capita plc on 22 May 2012, detailing 320 separate incidents for investigation. We also expressed our concern that no formal Complaints Procedure was published, and nor were any Disciplinary Framework and Procedures and the related Appeal procedures, and we requested a copy of the same. PIA has still not received the documents requested from ALS Ltd nor any feedback on the complaints submitted.

15. On 29 August 2012 PIA sent a further complaint to ALS Ltd/Capita plc detailing a further 100 incidents for investigation.

16. We believe that PIA’s experience of our complaints effectively being ignored by ALS Ltd/Capita plc is typical of the experiences of most. There is no facility to complain other than through the ALS Ltd online portal used by courts. Complaints go directly to ALS Ltd and there is no transparency of process for ALS workers. For other court users, such as defendants, witnesses, barristers and solicitors and members of the general public there is simply no facility to complain.

In practice we have seen that ALS workers who have caused trials to collapse are back working in courts within days. We understand from court clerks who expressly requested that a particular incompetent ALS worker is not sent to that court again, that ALS Ltd ignores the request. We were also told that instructions have been issued to HMCTS employees forbidding them undermining the ALS interpreter provision in any way. Members of the Judiciary have shown ALS workers great indulgence and allowed them to muddle along, or, in many cases, simply proceeded without an interpreter.

17. We have grave concerns that one commercial supplier has been given a monopoly contract under which it fulfils the conflicting roles of recruiter, work provider, disciplinarian and regulator. A commercial agency

8 Martin Jones “Letter to Stakeholders”, 6 July 2011
9 NRPSI interpreters refusing to work for ALS, summary statistics
10 Crispin Blunt MP’s letter to John Leech MP, 13 July 2012
11 Since February 2012 there have been more than 150 articles in print media criticising ALS Ltd.
12 Reports of defaults by ALS Ltd were collected using an online form at http://rpsi.name/default/
13 A copy of the complaint dated 22 May 2012 was already provided to Justice Select Committee members on 12 June 2012.
14 A copy of the complaint dated 29 August 2012 is included with this submission.
with vested interests is effectively dictating what standards are appropriate for interpreters in the Criminal Justice System and is exposing British taxpayers and the Justice System to huge financial risk by denying non-English speakers the right to a fair trial.

18. ALS Ltd has repeatedly been exposed as a company that cuts corners, is not complying with the contract, has not carried out appropriate checks of its workers, cites wildly varying figures in response to how many workers are on its books, was found to have registered NRPSI interpreters without their consent and to have made untrue statements about its corporate memberships. Complaints made to Trading Standards and the Information Commissioner’s Office have been upheld. A complaint was recently submitted to the Association of Translation Companies, alleging breaches by ALS Ltd of nine out of the ten items of ATC’s Code of Ethics.

19. In addition to the conflict of interests inherent in the above functions contracted to ALS Ltd, the entire control environment (including the complaints procedure) has been outsourced to ALS Ltd. The contractor is responsible for collating the performance data, and to a large degree, for its interpretation. For example, the data published by the MoJ on 24 May 2012 makes no mention of the volume of bookings being handled by HMCTS and AIT call-centre staff booking interpreters directly and bypassing ALS Ltd. If the official figures are to be believed, ALS serviced 81% of all bookings. Yet it didn’t, it only managed to service a percentage of whatever volume of bookings was entrusted to it. There are further examples of how the figures have been skewed in their presentation.15

20. Direct calls to NRPSI interpreters and the use of other agencies alongside the ALS Ltd contract have not diminished. In appendix we include evidence of direct calls reported by PIA members and other NRPSI interpreters through the online form.16

Conclusion

The MoJ’s failure to safeguard professional standards for interpreting in the Criminal Justice System could have been averted and is a direct consequence of its refusal from 2009 onwards to enter into dialogue with the interpreting profession. For our part, we are satisfied we continued to seek dialogue with the MoJ and provided relevant information that was of interest to the MoJ interpreting project continually from PIA’s creation in 2009.

If it is important that non-English speakers receive equal access to Justice, Registered Public Service Interpreters should be used by HMCTS as they were before.

August 2012

APPENDIX

EVIDENCE FOR JUSTICE SELECT COMMITTEE

Interpretation and Translation Services and the Applied Language Solutions (ALS) contract

I am a Registered Public Service Interpreter and director of the Professional Interpreters’ Alliance, my name is John Podvoiskis (NRPSI 13415). I collate reports from interpreters of direct calls to them outside of ALS.

The reports are provided through a webform at http://rpsi.name/defaults/calls.html. Each report has a tick-box declaration by the sender that the information is true. The emails generated from the form are available by request.

The reports are compiled and summarised in an Excel spreadsheet. The results show the trend of direct calls to interpreters since the 1 February 2012. This analysis does not include all such calls.

15 For further examples of how the figures have been skewed in their presentation, see “Lies, damned lies and statistics” by Kasia Beresford.
16 Reports of direct calls bypassing ALS Ltd were collected using an online form at http://rpsi.name/default/calls.html
From the chart, the first quarter-year (days one to 91) show a classic “learning curve”. The main slope of this section (days eight to 59) is 4.75 calls per day. The flattening near day 90 represents a significant fall in calls that suggests ALS supply almost all of the demand.

However, the section of the curve from day 100 to day 211 rises at about 3.14 calls per day with no trend to the right. So the direct calls dropped to 66%, from 4.75 to 3.14 calls per day. This clearly indicates ALS are failing to supply for court and police bookings and so calls direct to interpreters are continuing to be made.

Who requests interpreters directly?

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<th>JOB</th>
<th>Q1</th>
<th>Q2</th>
<th>All calls</th>
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</thead>
<tbody>
<tr>
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<tr>
<td>Tribunal</td>
<td>25</td>
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<td>65</td>
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</table>

Direct calls to interpreters originate from these main organisations (table above). There is evidence in the reports that sometimes the police call an interpreter for a first appearance at Magistrates Court and pay themselves. Previously, the police ordered the interpreter who was subsequently paid by HMCTS.

Which languages are in demand?

<table>
<thead>
<tr>
<th>Language</th>
<th>Q1</th>
<th>Q2</th>
<th>All calls</th>
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The table above shows the 15 most popularly requested languages, according to those who reported direct calls. Note that inconsistencies between quarter-years (Q1, Q2) may reflect natural fluctuations in cases.

**Conclusion**

ALS are still unable to supply after half a year of trying.

*John Podvoiskis*

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**Written evidence from the Institute of Translation and Interpreting**

I am writing on behalf of the Institute of Translation and Interpreting (ITI). With a membership of over 3,000 members, we are one of the largest professional bodies for translators and interpreters in the UK, and we also have corporate members (translation companies, universities, etc). In that respect, our Institute represents the broad interests of the profession.

**Executive Summary**

The MoJ consulted the Institute of Translation and Interpreting (ITI) at an early stage of developing the Framework Agreement, but appeared to pay little heed to anything that we said.

On 3 May 2011 we submitted a clear list of our organisation’s concerns about the Framework Agreement plans to the MoJ (appended at the end of this document), which focused on the following areas of concern:

(i) The importance of interpreters/translators being members of a recognised professional association.

(ii) The omission of ITI from the list of recognised qualifications.

(iii) The proposed three-tier structure.

(iv) The monopolistic conditions to be created by the use of prime contractors.

(v) The level of rates to be earned by translators and interpreters and the issue of quality of service to the justice sector.

(vi) Ownership of the planned register and complaints process.

(vii) The pool of available translators/interpreters and the future training of suitable people.

(viii) Range of management information planned.

(ix) The assessment of interpreters and translators.

(x) Code of conduct.

This also appeared to be ignored by the officials at the Ministry of Justice. ITI was sufficiently concerned that the Framework Agreement’s proposed changes might lead to a reduction in the quality of court interpreting, to witnesses and defendants not receiving clear interpretation, and to possible miscarriages of justice, that we subsequently raised our concerns with government ministers.

On 14 September 2011, we therefore wrote to the PM, deputy PM, to Crispin Blunt MP and to Chris Grayling MP. A copy of the letter that ITI sent to them is also appended at the end of this document.

Subsequently, we note with regret that many of the concerns that ITI voiced have turned out to be very valid. ITI still has the same concerns that we voiced in the letter to government ministers in September 2011, which I will not repeat here since they are all in the appended letter.

Throughout the entire process, ITI’s concerns have been that:

— Although the MOJ sought ITI’s views, they appear to have taken no notice of them at any stage. It appears to have been the semblance of consultation, rather than real consultation.

— In the desire to save money, quality was thrown out of the window. With proper consultation with professional bodies, it would have been possible to explore ways of saving money whilst at the same time maintaining quality.

— There has been no awareness at all on the part of the MoJ or of government ministers that court interpreting is a highly skilled profession. Simply speaking a second language or having a languages degree does NOT make someone a qualified interpreter, nor make them suitably skilled to interpret in a court environment.

*August 2012*
FOR JUSTICE SELECT COMMITTEE: COPY OF LETTER THAT ITI SENT TO THE PRIME MINISTER, DEPUTY PM, TO CRISPIN BLUNT MP AND TO CHRIS GRAYLING MP ON 14 SEPTEMBER 2011

I am writing on behalf of the Institute of Translation and Interpreting, a professional body that represents professional translators and interpreters in the UK. We have a membership of over 3,000 members, and our professional journal (the ITI Bulletin) has an international circulation of over 7,000 readers.

In the UK, the Ministry of Justice is proposing making changes to how interpreters for courts and police stations are recruited, assessed and paid. ITI is deeply concerned about these proposed changes, feeling that they ignore existing professional qualifications, that they will reduce pay to levels where many fully-qualified interpreters are forced out of the profession, and that there will therefore be a deterioration in the standards of interpreting in courts and police stations, with an associated risk of serious miscarriages of justice. Furthermore, we believe that the full costs of this project have not been properly assessed, and that the planned changes will result in reduced tax income for the British government and in higher social costs as existing experienced, qualified professional interpreters become forced to rely on state financial support.

The consultation carried out by the Ministry of Justice has taken little or no account of the representations made by our Institute.

I would therefore like to take this opportunity to share our deep concerns with you, and to enclose the September 2011 issue of our professional journal, the ITI Bulletin, so that you might read for yourself the depth of the concern within our profession. May I in particular draw your kind attention to pages 6, 9 (which summarises the submission we made to the MoJ on 3 May 2011) and 13.

We will look forward to hearing back from you.

Yours sincerely,

Nick Rosenthal
Chair, ITI Council

FOR JUSTICE SELECT COMMITTEE: COPY OF ITI’S SUBMISSION TO MOJ ON 3 MAY 2011

Institute of Translation & Interpreting 3 May 2011

ITI response to Ministry of Justice letter of 6 April 2011 regarding new proposals for provision of interpreting & translation services in the justice sector

(a) Introduction

ITI would like to respond as follows to the letter of 6 April 2011 from the Better Trials Unit at the Ministry of Justice (MoJ) seeking comments on the proposed, new arrangements regarding the provision of interpreting and translation services in the UK justice sector.

The Institute’s comments below are based on a direct, updated consultation amongst its members over the middle of April 2011. Senior representatives from ITI will be pleased to elaborate on and discuss any points with the MoJ at any time over the coming weeks.

Our comments are made under the following sections:

(i) The importance of interpreters/translators being members of a recognised professional association.

(ii) The omission of ITI from the list of recognised qualifications.

(iii) The proposed three-tier structure.

(iv) The monopolistic conditions to be created by the use of prime contractors.

(v) The level of rates to be earned by translators and interpreters and the issue of quality of service to the justice sector.

(vi) Ownership of the planned register and complaints process.

(vii) The pool of available translators/interpreters and the future training of suitable people.

(viii) Range of management information planned.

(ix) The assessment of interpreters and translators.

(x) Code of conduct.

(b) ITI’s comments and advice

(i) Membership of a recognised professional body

ITI would urge that the MoJ and all appointed contractors aim to ensure that all translators and interpreters engaged are members of a recognised professional membership association, not just that they have a suitable qualification or a level of experience. Such membership means that not only is the translator or interpreter
suitably qualified and tested or has had to provide evidence of appropriate training and experience, but—very importantly—that he/she is additionally bound by a professional code of conduct which can be enforced by way of disciplinary proceedings. Also, membership of a professional body normally expects the individual to actively maintain and update their professional skills via a continuing professional development programme (CPD).

Membership of a recognised professional body means that the interpreter/translator has already been appropriately assessed and that their work would be of a quality sufficient to ensure a safe, reliable, and fair contribution to relevant proceedings.

(ii) Need to include ITI in list of recognised qualifications for interpreting and translating

In the Quality Standards document supplied with the letter, ITI is only included as a recognised membership body under the (very short, final) section referring to translators, and not at all in the dominant section covering interpreters.

ITI considers this to be a serious omission because the MoJ has previously recognised that its MITI, FITI and, specifically, its PCI (police & court interpreter) categories of membership are all appropriate. Although they do not have formal external accreditation, all are awarded on the basis of very stringent knowledge, skill, experience and referee criteria. More to the point, though, these ITI qualifications were actually—as the MoJ will appreciate—already in the Revised National Agreement, 2008 and in the (amended) appendix list of suitable qualifications issued by the MoJ in November 2010.

(iii) The proposed tier structure

ITI would caution against adoption of a tiered structure for classifying interpreters and the type of work they may perform in the justice sector. The first reason is that there is a strong risk that this approach would lead to a lowering and greater inconsistency of standards of interpreting and outcomes achieved because there is a risk contractors would be tempted to use interpreters from a tier where there is a lower engagement/hire fee payable. We believe that all quarters of the justice system should be assured of the same level of interpreting/ translating service. It is not reasonable, for example, to view the quality of interpreting at an initial police interview or in a lower court as less important than the quality of interpreting to be provided in a higher court. That would be a real risk, if interpreters with different levels of qualifications/professional expertise are used.

The second reason is that it is not always possible to know in advance the actual level of skill needed in an interpreting situation and, in particular, to assume that lesser-experienced/qualified interpreters will be adequate in some situations. The level of difficulty of any interpreting assignment is very unpredictable, depending on a wide range of variables such as accents, vocabulary used, the state of mind of the people whose words are interpreted, audibility, clarity of enunciation and expression of all the parties involved. It is surely only fair and just that everyone in the justice sector is provided with the same level of service and expertise by the interpreter engaged to help them.

(iv) Use of prime contractors causing a monopolistic situation

If the MoJ’s new arrangements lead to just one or two “prime” contractors to meet areas of need in the justice sector, ITI would have strong misgivings about seeing such a monopolistic situation. Any procurement solution, of course, has to strike a balance between competition—which generally leads to more economical prices—and having a decent number of providers who have adequate scale to be able to invest in required systems and achieve streamlined processes. Our fear is that the proposed arrangements might go too far by creating too much power and reliance on just a very restricted number of commercial contractors who (inevitably) would be primarily profit-driven: such a situation is not generally good for the overall health and development of any sector.

If and where prime contractors go on to engage “sub-contractors”—perhaps regionally or for more specific services—and they in turn engage individual freelance translators or interpreters, ITI feels this would still leave a multi-layered supply structure in the justice sector, with each stage of the supply chain needing to factor in its own layer of cost. We can certainly see that some streamlining of areas of overall administration in the supply chain will save costs to some extent, but we wonder how much of a net cost saving will actually be achieved overall?

(v) Rates paid to interpreters/translators and risk to quality of service

We fear that the planned procurement approach, with a restricted contractor base, could lead to a lowering of fees paid to individual interpreters and translators, as commercial companies naturally seek ways to drive down costs to increase their profits. Such professionals are already under great financial strain as they see the status and income level from their work steadily decrease. Many ITI members working in the sector have already indicated they will have to give up working in the justice sector completely and seek better terms of work elsewhere. This is a great worry. More to the point, potential new entrants to the sector will be deterred from starting work in the justice system at all—and that endangers the long-term assurance of adequate supply of appropriately skilled translators/interpreters for the UK justice system.
To help protect this provision of interpreters and translators, ITI believes that a national, guideline structure of professional rates to be paid to freelance translators/interpreters by contractors should be defined and adopted as an important component in the new procurement approach.

As part of their natural inclination to pursue higher profits, there is an inevitable risk that some contractors may seek on occasions to engage an interpreter or translator who is lesser qualified/experienced than the assignment calls for because such an individual costs less. In such a situation, there is the risk that the quality of work provided by that individual could be less than what should be fairly and reasonably expected by the client needing their services.

(vi) Ownership of the planned register and complaint processes

One of the requirements indicated in the framework agreement is for the contractor to build and maintain a register of suitably qualified interpreters and translators and to make this accessible across the justice sector. ITI believes that open accessibility is important because such information is a matter of public information and no commercial company should be allowed to “own” or gain unfairly from such data.

Relating to this register is the need for a high level of fairness and transparency regarding procedures for managing complaints about individual translators/interpreters and taking disciplinary action against them. ITI would urge, likewise, that it is only fair and reasonable that there is a channel to enable translators and interpreters to voice any complaints or grievances in relation to contractors/agencies. In all types of complaint process, it is important that there is involvement or representation from all key stakeholder groups, in order to help ensure a fair and balanced result.

(vii) Pool of available translators/interpreters and future training

The framework agreement calls for contractors to increase the local numbers of suitably qualified and vetted interpreters and translators. ITI believes that this is a noble aim but we fear that some commercial suppliers will more concerned with controlling costs and streamlining processes rather than funding the development of future translators/interpreters.

We would also take issue with the belief indicated in the document that the pool of suitable interpreters/ translators can be increased simply by hiring more people who speak two languages and that a degree in the target language is adequate. This fails to recognise, in particular, that a competent interpreter needs more than just an ability to speak two languages. Interpreting is a highly skilled activity which calls for very practical verbal skills, training in the process of interpreting, lots of actual experience, and education in relevant topics and vocabulary.

An additional point on this issue of raising availability; ITI believes that it is not at all realistic to have the performance target of 95% for contractors offering all languages within a 25 mile radius. For several, less common languages (eg Vietnamese) in many areas of the UK, such a level of local availability is simply not going to be possible—unless the quality of the “interpreter” engaged is very much lowered and, in which case, the quality and reliability of interpreting provided will be compromised greatly.

(viii) Range of management information

ITI welcomes the intention to get contractors/suppliers to report a range of management information in relation to their operating performance. The list indicated in document 4 suggests a good, core range.

A particular suggestion we would make—given the concern and worry amongst freelance interpreters/ translators over rates they will receive under the new arrangements—is that contractors/suppliers should be encouraged to include in their management reporting some data about average rates/fees they have paid. It would not be reasonable to expect commercial companies to divulge detailed data for every aspect of their work (eg per assignment, per region, per tier, per language, per collaborative partner), but some “top-line” average figures of rates paid would go a long way to reassure freelancers and help the justice sector overall to track the market better.

(ix) Assessment & development of translators and interpreters

ITI was surprised to see the intention to require candidate interpreters to attend an “assessment centre” to ensure adequate competence. We wonder who is going to organise and carry out such assessments, what is going to be the cost, who is going to pay, and is this intention not going to create excessive/unnecessary new bureaucracy and also duplicate to some extent existing qualifications and vetting/assessment/validation standards and processes already applied by relevant professional and educational organisations (including CIOL, ITI)?

Especially for certain, less common languages, we wonder simply if enough suitably qualified individuals could be found easily and regularly enough to be able to carry out the sort of assessment outlined.

We think this part of the Quality Standards document (document 2) needs further thinking: we feel it is not sufficiently detailed for ITI to be able to comment on much further.
We do welcome the requirement in the framework agreement (document 1) for all interpreters and translators to follow “a continuous development programme”. That said, however, it is a very broad aspiration at this stage, lacking any detail, and we consider that a lot more work will be needed to define exactly what should be involved. This requirement will require a lot of time and work on the part of companies to set up and/or maintain suitable activities and processes.

ITI believes that it and other relevant professional bodies could play a potentially very valuable role here by capitalising on their existing CPD processes and helping to define, organise and support suitable arrangements for the overall benefit of the profession and saving commercial firms a lot of time and duplication of effort.

(x) Code of conduct

ITI welcomes and supports the requirement for contractors/suppliers to oblige their interpreters/translators to follow a Code of Conduct. We have reviewed the suggested twenty-two clauses and consider that they cover a good spread of professional and ethical obligations/standards. We believe that such a code should be closely allied to the corresponding codes of professional bodies such as ITI and CIOL. We would welcome the opportunity to work together in more detail with the MoJ to ensure that such codes are developed in suitable alignment.

(c) Conclusion

ITI hopes that the above ten areas of comment and feedback will be taken on board by the MoJ as it finalises details of the new, proposed procurement arrangements.

In particular, we would mention again our request for the MoJ immediately to address the omission of ITI from the list of recognised qualifications for interpreting and translating.

Written evidence from the National Register of Public Service Interpreters

INTRODUCTION

1. The National Register of Public Service Interpreters (NRPSI) welcomes the opportunity to respond to the Justice Select Committee’s inquiry on the provision of interpretation and translation services and the Applied Language Solutions contract.

2. NRPSI is the UK’s independent voluntary regulator for the interpreting profession having been formed in 1994 from The Nuffield Interpreters Project. NRPSI became independent from the Chartered Institute of Linguists (CIOL) in April 2011 to fulfil its role as independent voluntary regulator.

3. NRPSI maintains a register of 2,200 professional, qualified and accountable public service interpreters in 101 languages with specialist areas in law, health, local government and other public sectors. The Register is open access and free to search.

4. Membership organisations in the interpreting profession, also require their members to be registered with NRPSI.

OVERVIEW

5. On the 31 October 2011 under the Framework Agreement (FWA), the Ministry of Justice (MoJ) contracted interpretation and translation services to Applied Language Solutions (ALS). Formerly the provision of interpretation and translation services was governed by National Agreement (NA) established in 1999. The NA complied with Articles 5 and 6 of the European Convention on Human Rights (ECHR) including, “the right to be informed in a language one understands of the reasons for arrest” and “the right to a fair trial, incorporating the right to have the free assistance of an interpreter”. The NA requires spoken language interpreters to be registered with the National Register of Public Service Interpreters (NRPSI).

6. NRPSI was established on the recommendations of Lord Woolf’s review of the civil justice system, “Access to Justice 1996”. The review followed a case where inadequate interpreting services led to a serious miscarriage of justice and the suicide of the victim. Lord Woolf recognised the need for a “highly qualified interpreting profession that was both accountable and sustainable in order to support public services and in particular the Courts”.

7. The development of an accountable and sustainable interpreting profession requires the functions and role of an independent regulator and arbitrator. We hope the Justice Select Committee inquiry will recognise this requirement and make recommendations to ensure the development of such a role as well as to comply with Article 9 of the EC Directive 2010/64/EU to “bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 27 October 2013.”
1. **The Rationale for Changing Arrangements for the Provision of Interpreter Services**

8. NRPSI recognises MoJ’s responsibility to improve efficiency and effectiveness. We accept that outsourcing was the MoJ’s immediate solution to achieving savings and streamlining. However, cost savings should not be made at the expense of quality and public safety.

9. We understand and support improving efficiency and effectiveness, but we have a direct interest in the core underlying principle of maintaining the quality and fitness for purpose of public service interpreting provision. The ALS contract also commenced operations without a defined transitional trial period for testing the new arrangements.

10. The current FWA is patently and demonstrably unsuccessfully being delivered through the ALS contract. (See web links given below for examples.) Concerns are daily raised from the Courts and other users, and our registrants inform us of the very real problems interpreters are facing and the difficulties being encountered by their clients in the Justice sector.

11. Whilst the MoJ contract with ALS will run until 30th October 2016, given the endemic failure to deliver an effective quality service, NRPSI calls for an urgent comprehensive review of the FWA to focus particularly on the failure of the ALS contract to protect the public and the hidden costs of the poor interpreting support provided to the Judicial system.

12. We believe it is essential that the review be conducted with the full participation of all relevant stakeholders, including NRPSI and representatives of service users and service providers to examine the operation of FWA in the key areas of:

   - Quality.
   - Consistency.
   - Inclusiveness.
   - Cost.
   - Transition, trial and training.
   - Compliance with ECHR.
   - Maintenance of a viable interpreting profession for the future.

2. **The Nature and Appropriateness of the Procurement Process**

13. NRPSI acknowledges MoJ’s assurances to comply with UK and EU legal procurement requirements. However, we contend that the research and design stages, and the consultation process used to develop the FWA were not undertaken with due diligence. The consultation process lacked inclusion and involvement of relevant sector participants, including ourselves and other key stakeholders. This resulted in fragile and insufficiently robust procurement criteria which failed to specify measurable deliverables to judge the quality of language services being sourced.

14. Although representative UK bodies, international interpreting and translating organisations and individual interpreting practitioners have made detailed and evidenced submissions, these contributions were neither successful nor acknowledged. NRPSI provided written information and met with MoJ on several occasions prior to the award of the ALS contract. We have sought to establish and encourage a constructive dialogue. We have written on several occasions both to the MoJ officials and the Justice Secretary but regrettably our efforts were ignored and our correspondence unacknowledged.

15. The MoJ procurement process resulting in the appointment of a sole supplier which lacks experience in providing to the scale and requirements of the UK’s judicial system represents a threat to the judicial system and an endorsement of a monopoly. Being the sole provider for the MoJ gives ALS dominance to dictate recruitment, pay, price, quality and other factors, preventing fair competition and disadvantaging other existing and new suppliers.

16. NRPSI requests a review of the FWA incorporating cohesive inclusion and involvement of relevant sector participants and stakeholders.

3. **The Experience of the Courts and Prisons in Receiving Interpretation Services That Meet Their Needs**

17. The Justice Select Committee is better placed to acquire hard information from the MoJ on the experiences of the courts and prisons in receiving the interpretation services provided by ALS.

18. From the below sources it is very clear that there is a massive failure of the FWA both in the way in which it was set up and most particularly in its application by ALS.

   - Information from the public domain and media.
   - Direct feedback from our registrants.
   - Discussions with interpreting organisations.
   - Regular judicial contact.
19. NRPSI is regularly asked by Court staff to find substitutes for ALS interpreters who failed to attend court or who are not suitably qualified.

20. Based on the information received we would like to raise key areas of concern:

3.1 QUALITY SERVICE

21. NRPSI has closely monitored the operation of the ALS contract. Our major concern is that quality requirements are not being met resulting in the justice system failing to deliver to expectations. We have serious concerns that the MoJ will continue to process this demonstrably failing system, without making significant changes to ensure quality is achieved and overseen by an independent representative body.

22. ALS’s failure to meet many of its contracted performance KPIs resulted in the numerous complaints from judges and other judicial staff covering:
   - Failure to provide interpreters.
   - Supplying unqualified, inexperienced and incompetent interpreters.
   - Causing disruption and delays to criminal trials, adding expenses.

23. Inaccuracies in court interpreting can lead to wrongful conviction, which is detrimental to public protection and will inevitably breach the UK’s Human Rights obligations.

24. As of July 2012 only 301 out of 1,500 ALS interpreters are registered with the NRPSI. This can translate as only 20% of ALS interpreters are fully qualified and only 13% of NRPSI registrants are enlisted with ALS. The majority of NRPSI registrants and a large proportion of qualified professional interpreters have refused to register with ALS due to the lack of quality assurance and very low rates of remuneration. We recognise the rights of our registrants not to register with ALS but also recognise that consequently, the MoJ and the public have only limited access to qualified professional interpreters through the ALS contract. The ALS contract has undermined the Woolf’s rationale for establishing NRPSI “to ensure a sustainable interpreting profession to meet the needs of the UK public service”. As a result, the standards and sustainability of the interpreting profession are threatened.

25. To ensure equality and access to the legal system for the entire public, the provision of qualified professional interpreters must be acknowledged as fundamental to open and effective communications which are key components in delivering justice. Assurance of service quality is the primary factor in procuring interpreting and translating services.

26. The National Audit Office (NAO) is also currently conducting an investigation into the ALS contract, the findings of which will have relevance to this inquiry.

3.2 COST SAVING

27. As highlighted, many interpreters contracted by ALS have inadequate qualifications. Since the FWA fails to provide clear quality control mechanisms and is predominantly cost driven, ALS is forced to compromise on the quality of service being provided.

28. The unsatisfactory and unreliable services by ALS have resulted in extensive disruption, delay and inaccuracies to judicial proceedings, incurring considerable costs.

29. The FWA’s arrangement adds an additional tier in the courts’ sourcing system by requiring ALS to set up a supplementary list of interpreters increasing complexity and cost. The National Register already exists, is known and trusted by those commissioning interpreters and is publicly available free of charge providing a list of qualified accountable professional interpreters who have met its stringent quality criteria.

30. NRPSI supports public bodies in making savings but asserts that reduction in costs should not result in reduction of quality and public protection. By continuing to implement the FWA in its current state, the MoJ and the public will result in a false economy. No information is available on how the cost savings will be achieved by the FWA or more importantly if savings are being achieved.

31. We assert that whilst increasing efficiency and reducing costs is necessary, with increasing globalisation and the importance of migration the provision of language support is a legitimate and necessary cost, central to accessing all public services including the legal system.

32. We believe that choosing inadequate suppliers in the long-run will result in inferior quality interpreting services. It is necessary for the MoJ and other government bodies to make sufficient budget provision and establish effective quality control for interpreting and translating services to ensure effective delivery.

3.3 PUBLIC PROTECTION AND EUROPEAN UNION

33. Complementary to complying with Articles 5 and 6 of the European Convention on Human Rights (ECHR), the UK has agreed to implement European Commission Directive 2010/64/EU, on ‘the Right to Interpretation and Translation in Criminal Proceedings’ by October 2013.
34. Under the current FWA and ALS contract, the UK may not fulfil Articles 2, 3 and 5 the EC Directive 2010/64/EU, to provide “interpretation of a quality sufficient to safeguard the fairness of the proceedings” and “to establish a register or registers of independent translators and interpreters who are appropriately qualified”.

35. NRPSI proposes that serious considerations be given to reinstate in the FWA, Section 1.3 of the National Agreement (NA) which emphasises that “face-to-face interpreters used in this context should be registered with NRPSI”. This will ensure that MoJ has sufficient professional qualified interpreters registered with an independent register to resolve the above concerns. NRPSI is already recognised by the European Commission as an independent register and voluntary regulator.

4. THE NATURE AND EFFECTIVENESS OF THE COMPLAINTS PROCESS

36. In order for service users to have confidence in the quality and reliability of a language services provider it must vet interpreters, establish levels of qualification, manage costs, and provide and implement complaints procedures.

37. Currently the FWA lacks detailed prescription of an adequate complaints management system.

38. NRPSI is the UK’s only independent voluntary regulator for the interpreting profession. Our register is recognised as independent, transparent and credible. Registrants are vetted against stringent quality criteria and subject to a Code of Professional Conduct. We are the only body that operates an open and transparent complaints procedure whereby our registrants are accountable if they breach our Code being subject to discipline proceedings and ultimately, exclusion. No other organisation in the interpreting field has a comparable Code of Professional Conduct.

39. We recommend that only interpreters on the National Register are used in the judicial sector as they are appropriately qualified, have the level of competence claimed, have relevant security checks, employ best practice and are accountable.

5. THE STEPS THAT HAVE BEEN TAKEN TO RECTIFY UNDER-PERFORMANCE AND THE EXTENT TO WHICH THEY HAVE BEEN EFFECTIVE

40. NRPSI does not know what immediate steps the MoJ and ALS have taken to rectify the failure of the FWA/ALS contract. However we have, together with the staff associations, closely monitored the unsatisfactory services provided by ALS which has caused disruption and delays in the courts.

41. If the MoJ retains the contract with ALS or any other supplier, they must demonstrate and provide concrete assurances that will prevent the services from putting public security in jeopardy.

42. As a measure of assurance, NRPSI calls for the MoJ to ratify the arrangements to be robust, efficient and effective to avoid ongoing poor service and public abuse. The key criteria given below will need to be included in the FWA to secure competent interpreting service and public protection.

— For high quality standards and qualification based selection—Only use qualified professional interpreters on the NRPSI’s Register.
— For professional suitability and technical ability—Set clear recognition of appropriate qualification.
— For credibility and accountability—Establish robust complaint resolution and redress procedure.
— For real cost effectiveness—Set secure assurance measures for cost control and monitoring procedures.
— For efficiency of the process and arrangements—Incorporate KPIs along with independent verification or audit.
— For sustainability of the services—Incorporate a detailed transitional trial period which include training of relevant staff and users.

43. Additional long term actions are needed for public protection and to ensure equality and access to public services for those with language barriers. To establish a sustainable interpreting and translating profession, it is necessary to develop a regulated language profession, with a statutory protection of title, supported by standardised systems for selection, training, assessment, registration and good practice. NRPSI has been working with Universities, higher education establishments, professional membership bodies, trade unions, service providers and beneficiaries towards this end. However the three essential requirements needed to ensure quality in interpreting and translation are: political will, standard setting bodies and training programmes.

44. We would like to propose that consideration be given to recommending a draft bill on the interpreting and translating profession which will require the relevant programmes and services to be responsive to the needs of all UK citizens by providing access to quality interpreting and translating services while complying with the requirements of any present or future EU measure on interpretation and translation.
6. The appropriateness of arrangements for monitoring the management of the contract, including the quality and cost-effectiveness of the service delivered

45. To deliver an effective and efficient outcome, the FWA must include clear guidelines and policies with performance standards and means for monitoring and evaluation outcomes. Applying robust monitoring systems is essential to facilitating cost effective provision of language support.

46. Monitoring performance of public service interpretation and translation services can be clearly defined through KPIs based on both quantitative and qualitative data.

47. Emphasis must be given to ensuring social inclusion for those with limited English proficiency to have equal access to the justice system. Language support monitoring is linked to the monitoring of all components of a service. Hence feedback from service users, stakeholders and public is essential, as are third party independent verifications, which can contribute to obtaining accurate and transparent performance results.

48. The current status of the FWA monitoring and management specifications focus totally on KPI reports based on quantitative data supplied by the Contractor (ALS) which may not be considered as verifiable or reliable. The current structure of the audit is also financially focused.

49. NRPSI recommends that the FWA incorporates additional requirements of KPIs based on qualitative data, including feedback from all relevant stakeholders, and a third party independent service performance verification/audit conducted at appropriate intervals.

CONCLUSION

50. NRPSI is gravely concerned at the evidenced deterioration in the quality of public service interpretation since the application of the ALS Framework Agreement. This not only relates to the poor quality of services provided by using unqualified interpreters in the Justice system, but also to the long-term sustainability of the profession with the number of highly qualified interpreters leaving the profession resulting in the loss of valuable experience.

51. We emphasise that whilst supporting the need for the MoJ to be more cost effective and efficient by streamlining and outsourcing its language services, the FWA at its current state is not yet an effective or comprehensive resolution. We recommend that the FWA be reviewed with immediate effect, and in particular to recognise and restrict usage to only qualified professional NRPSI registered interpreters in the judicial process in order to affirm high quality standards and much needed public protection.

52. Our recommendations support the development of a sustainable interpretation and translation service which meets the needs of the UK’s culturally and linguistically diverse population and the MoJ’s operational requirements. Adopting our recommendations would demonstrate the MoJ’s and Government’s commitment to equality and individual rights, while acknowleding the key role of interpreters and translators. The MoJ would be setting a benchmark standard for all other government agencies and government funded departments both in the UK and EU to follow.

53. Most importantly, removing language barriers to secure equal access to the legal system for people who lack language proficiency has an overriding social and moral imperative: Justice.

54. NRPSI is happy to provide further information if required and to assist in the review. We believe that, we have a pivotal role in maintaining the appropriate level of quality legal services and public protection and would be happy to work with others to ensure this is achieved in any interim system required while the review of FWA takes place to replace the current ALS contract.

August 2012

RELATED INFORMATION AND LINKS

The National Register of Public Service Interpreters (NRPSI)
(NRPSI)
Professional Interpreters for Justice Campaign
(Professional Interpreters for Justice campaign)
Related press articles
(Linguist Lounge)
Access to Justice
(Lord Woolf Report—Access to Justice)
Written evidence from the Magistrates’ Association

Summary

Early in the summer, after implementation of the new service the Courts and Courts Practice Committee of the Magistrates’ Association requested and received feedback from our members on their experiences of how the new service was working in practice within the magistrates’ court system. Areas which responded represented a wide geographical spread across England and Wales and between rural areas and cities. If required full details of the comments received can be supplied to the Committee.

Our summary of the comments can be seen below and are therefore addressing point 3 in the terms of reference of the Select Committee:

“the experience of courts and prisons in receiving interpretation services that meet their needs.”

In general, most areas reported a variety of problems with the service particularly at the commencement of the contract. Two main difficulties were experienced: firstly mistakes in the organising or booking of interpreters ie, an interpreter of a language different to that booked arrived at court or the interpreter had to leave earlier than required. And secondly the location of interpreters, including problems with finding interpreters with experience of less common languages.

The other area of comment centred around the quality of the interpreter’s actual performance on the day. Comments were also made about issues raised in dealing with the service provider.

There was however a small minority of respondents who thought the service had improved with the new arrangements but this represented only about 10% of all comments received: although as some two thirds of all areas did not respond this satisfaction level may be much higher.

Since these early days it has become apparent that considerable efforts and resources have been applied to remedy the many problems described below. The level of comments has diminished although complaints are still received by the Association especially about the standards of interpreters. It would appear therefore that the level of service is slowly returning to that experienced before the new contract commenced.

1. Organising/Booking of Interpreters

This was probably the most common subject of complaints from our members. Specific issues were:

(i) interpreters being booked for inadequate timeframes ie, an interpreter arrived at court but could not stay for the whole duration of the case(s) for which (s)he is needed;
(ii) interpreters arrived late or failed to arrive at all;
(iii) interpreters with the wrong language or dialect to that which had been booked;
(iv) multiple interpreters having been booked for the same language/dialect;
(v) interpreters having been sent to the wrong court house; and
(vi) that the system for confirming the booking request is inadequate.

2. Location of Interpreters

There were several problems experienced on the day which meant that new interpreters had to be sent from another area, including:

(i) delays, cancellations and court time wasted whilst waiting for a interpreter to be sent from another area;
(ii) the expense involved—particularly when interpreters were sent long distances eg London to Somerset; and
(iii) there was frustration that it was not now possible to use local and able and known interpreters, especially when the new interpreter’s work was seen as inadequate.

3. Performance of Interpreters

There were many problems reported about performance, including the quality of the interpreter’s language skills, organisational abilities, and knowledge of the legal process. Specifically, problems reported were:

(i) interpreters were late, “disorganised” ie, failing to inform the court of expected lateness;
(ii) the level of language skills or interpretation skills were inadequate, either in the required language or knowledge of English. “It was a domestic violence case. The interpreter’s own English was almost incomprehensible. After several attempts... to actually interpret the questions...(the witness seemed to have difficulty in understanding the interpreter speaking in her own language anyway) I decided that the matter couldn’t go ahead.”

One respondent commented that the interpreters “don’t seem to know what’s required ie if client speaks a little English [they] just sit and listen rather than interpreting” and an experience
was reported that: “it became apparent that the interpreter was answering the questions before having translated them for the witness.”

Some interpreters offer several languages and this may suggest the interpreter was not as skilled in interpreting nuance in each language.

The issue was also raised of how carefully the quality of the interpreters is checked; and

(iii) knowledge of the court process or etiquette was inadequate. “We had an interpreter who did not understand the demeanour and tone of the courtroom and started by cracking jokes and grinning at the bench.”

4. **Issues in Dealing with Service Provider**

There were a number of problems experienced initially with the service provider, namely:

(i) inadequate central point of contact or guidance on reporting problems;

(ii) no apparent standard reporting mechanism; and

(iii) a lack of detailed confirmation of bookings received.

5. **Other Issues**

Various other comments of interest were received:

(i) there were several comments that it should be clarified that the need for the interpreter was real—particularly in cases where the client had been resident in the UK for many years;

(ii) magistrates were not given sufficient advice and guidance on the changes regarding the new system;

(i) there does not seem to be adequate data on the use of interpreters;

(iii) an impact assessment should be carried out in courts on the changes;

(iv) the advice on payment of fines is not always in the appropriate language; and

(v) the remote interpretation service used in Westminster was seen to work well.

*August 2012*

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**Written evidence from the Law Society of England and Wales**

**JUSTICE SELECT COMMITTEE INQUIRY INTO INTERPRETATION AND TRANSLATION SERVICES AND THE APPLIED LANGUAGE SOLUTIONS CONTRACT**

The Law Society of England and Wales (“The Society”) is the professional body for the solicitors’ profession in England and Wales, representing over 150,000 registered legal practitioners. The Society represents the profession to parliament, government and the regulatory bodies and has a public interest in the reform of the law.

1. The Law Society is aware of the controversy in relation to the provision of interpreters since the single contract with Applied Language Solutions (ALS) came into effect in February 2012. While the Society has not received significant concerns from a wide spectrum of the profession, the Society is aware that there were significant problems in the criminal courts, in particular, in first few months of the operation of the new arrangements.

2. The Government has a clear duty to ensure that all non-English speaking people who come into contact with the justice system are able to understand and participate in interviews and court proceedings. The efficient delivery of translation services is vital for the smooth running of the justice system. It is also important for this service to be delivered in as cost-effective a way as possible, taking into account the need for terms and conditions that include the provision of sufficiently well-qualified interpreters to ensure adequate coverage where necessary. Clearly, there is a significant risk of miscarriages of justice occurring where the standard of interpretation is inadequate.

3. The Society’s members rely on language interpreters to communicate with their non-English speaking clients, as well as sign language interpreters for clients impaired of hearing. Language interpreters are particularly important in the areas of crime and immigration.

4. The new ALS arrangements are not yet available to solicitors who require an interpreter for their meetings with clients outside police stations and courts, and the old “National Agreement” continues to apply in this context. However, the Society is aware of reports in the media suggesting that the new arrangements to obtain interpreter services for courts and tribunal hearings have meant that a number of courts, legal practitioners and their clients have been significantly affected by ALS interpreters being late for hearings or not appearing at all. The Society is also aware of instances where an interpreter has attended, but they have been unsuitable for the particular assignment.
5. On the announcement of the Committee’s inquiry in July, the Society sought information from its members about the extent of the problem. Submissions were received from four members, three of whom practise in the criminal jurisdiction, and one who is an immigration and asylum solicitor. All four submissions are appended to this memorandum.

6. The Society does not have sufficient evidence to take a view on whether or not there is a major structural problem caused by the ALS contract. However, it is clear that there have been some problems which have caused individual distress, unnecessary adjournments and inconvenience and which suggest that there may be a wider difficulty. The Society is not aware of problems such as these occurring prior to the change in the arrangements.

7. The Society cannot comment on the reasons for the problems, but would endorse concerns, in principle, about the inherent risk in granting a monopoly to a single provider of language services. In particular, the submissions of Law Society members suggest that the Committee may wish to look at:
   7.1 The contract and service level agreement with ALS.
   7.2 The procedures used by ALS for recruiting and assessing the competence of their interpreters.
   7.3 The extent to which ALS is actually able to meet the needs of the justice system.
   7.4 Its overall performance compared with the previous system.

APPENDIX 1

SUBMISSION BY OLIVER BARRETT OF RICHARD BROWN AND CO.

PETERBOROUGH CROWN COURT


Subsequent to hearing, attended prison with National Register of Public Service registered interpreter as had been receiving letters from client indicating there had been a problem with the interpreter at the Plea and Case Management Hearing.

When spoke to client in custody regarding this he said he had not understood what had happened at court as the interpreter supplied had actually translated very little of what was being said at the hearing. They only translated the odd sentence of what the advocates and Judge were saying but without any real order and it did not make much sense.

When he asked the interpreter what was going on the interpreter told him that they could not follow the hearing and so they could not tell him.

Client was therefore unaware of what was going on with his case or that a bail application had been made on his behalf as the interpreter was not translating what was happening at the hearing.

At trial on the 27 June 2012 Applied Language Solutions sent another interpreter.

Interpreter had to be advised several times in conference to actually translate what the barrister was saying to the client.

When the trial commenced it became clear the interpreter was not translating what was happening.

The Judge had to tell her that her job was to interpret everything that was said in court so that the defendant understood what was going on.

30 AUGUST 2012, PETERBOROUGH MAGISTRATES COURT

Client was a Latvian national. 20 years old. Charged with assault and criminal damage. One previous conviction. Had been refused bail by the police and placed before the Magistrates. Applied Language Solutions unable to supply Latvian interpreter. Defence advocate unable to get proper instructions from the client regarding his plea and more particularly bail. In the end he had to be remanded in custody overnight.

The reason for this was that the defence were unable to get any real information out of him with the limited English he spoke as to a bail address or as to his plea.

The following day a Latvian interpreter did attend. Instructions regarding bail address were obtained and the client was then granted bail and released.

However that same day there was another case before the court involving a prisoner being brought from the Police Station. On this occasion it was a Lithuanian. Once again Applied Language Solutions could not supply an interpreter. The prisoner had to be remanded over night until the following day when Applied Language Solutions said they would hopefully be able to get a Lithuanian interpreter to court.
25 June 2012, Peterborough Magistrates Court

Client Polish national arrested for breach of bail conditions. Applied Language Solutions could not provide a Polish interpreter. Instead they sent a Russian interpreter who spoke a degree of Polish on the basis that he would have to be good enough.

The interpreter did advise the defence and the court that Polish was not his first language but as long as it was kept simple he should be able to manage.

Peterborough Magistrates Court

Polish national. Initially charged with common assault and bailed to court on the 2 March 2012. No interpreter attends.

Case adjourned.

12 March 2012 the client bailed to attend court at 10.00 am. No interpreter attends. Message that interpreter will be available at 2.00 pm. Court tried to explain to client that he should come back at 2.00 pm but without the benefit of an interpreter it was unclear whether he understood. At 2.00 pm the client fails to appear.

Case adjourned to the 16 March 2012 to tie in with another matter.

Later in the same case on the 13 April 2012. Client’s case listed at 11.30 am. Interpreter attends but said they are only booked for 30 minutes despite the court having told Applied Language Solutions the interpreter may be required for much longer than that.

After 30 minutes interpreter walked out of court to attend another booking before client’s case was heard.

When case called on no interpreter in attendance. Situation explained to court. Case adjourned to another date in the hope that an interpreter would actually attend and remain long enough to deal with the case on that occasion.

16 April 2012

Applied Language Solutions contacted to provide a Slovak interpreter. They indicated they would arrange for one to be there that day.

At lunch time no sign of interpreter.

At 3.00 pm court telephone interpreter assigned who explained there had been no chance of getting into Peterborough that day because of the traffic conditions. Case therefore had to be adjourned for a week to a time when an interpreter was going to be available.

APPENDIX 2

SUBMISSION BY ISH HUSSAIN, MULLENDER LAW

Dear Sir,

Staines Magistrates Court booked an interpreter on the 20 July 2012 at the end of a court session to attend court on the 23 July 2012. This was done through the sole contracting agents, Applied Language Solutions. On the 23 July 2012, after numerous attempts by the court no interpreter attended or was sent. The difficulty the court encountered was that it was not allowed to instruct an alternative interpreter of its own choosing without booking one through this agency. As a result this had a severe impact on the case as the matter had to be adjourned for an additional nine days because the court was not confident that the defendant would understand the implications of a sentence imposed without an interpreter being present. This also meant that the defendant had to spend an additional nine days on remand as a result through no fault of his own but that of the agency. Of course, matters have now been resolved.

Nonetheless, it is clear that by giving one agency sole contract is risky because: 1) It allows complete monopoly by that organisation taking away fair competition by other organisation; 2) Services delivered by an organisation with a complete monopoly will often decline overtime as there profit margins are not determined by the level of service provided or efficiency as shown in the above example; and 3) In terms of interpreters, what happens to them should they have a fall out with the agency? what alternatives do they have?

Ish Hussain, Mullender Law

APPENDIX 3

SUBMISSION BY ANNETTE ELDER, ELDER RAHMI SOLICITORS

I would like to respond to this. We are a Chambers ranked firm of solicitors specialising in immigration and asylum. The bulk of our clients are legally aided. We have on average 10–20 appeal hearings listed each week before the Immigration and Asylum Chamber, mainly in London but also before the regional Courts.
Since the provision of interpreters at the Immigration and Asylum Chamber was taken over by Applied Language Solutions the quality of interpreters has dropped significantly and unacceptably given the serious issues being determined by the Immigration and Asylum Chamber (IAC). In addition to the distress caused to our clients, the inconvenience to the Tribunal and our already over stretched stuff, the costs to the Legal Services Commission (LSC) are also higher. We have no option now but to obtain LSC funding for an independent interpreter to attend all hearings as the quality of the interpreters at the IAC cannot be relied on. Additionally a significant number of hearings adjourn due to problems with the interpreter becoming evident. This increases to the costs to the legal aid fund, in addition to the increased costs to the Ministry of Justice relating to adjournment of hearings.

A simple and representative example is the case of appeal—AA/05798.2012. The full hearing of this asylum appeal was listed at the Taylor House hearing centre on 20 July 2012. A Lingala interpreter had been booked. Lingala is only spoken in the Democratic Republic of Congo (DRC). An asylum appeal is a stressful matter where the Appellant is likely to have to give oral evidence of torture, mistreatment, loss of family members etc. Our clients are often extremely vulnerable in the run up to hearings. As far as possible so as to minimise this stress we do what we can to ensure that hearings are effective and that adjournments are not needed. Early on in the hearing the client made clear that she was having problems with the interpreter who was using many French words. Not all DRC nationals speak French, in fact probably the majority do not. The interpreter was asked not to use French words. However shortly it became clear that the interpreter could not interpret adequately and the hearing was stopped. Investigation disclosed that the interpreter was in fact from Cameroon. Nowhere in Cameroon is Lingala spoken. Clearly the view had been taken that an interpreter from any Francophone African country would do. The hearing was adjourned and has been re-listed for 6 August 2012.

This would not have happened in the past at the IAC. The quality of the Lingala interpreters was generally high and we would not have routinely booked an independent interpreter to attend the hearing. Usually the fee for this is £80-£120 depending on how long the hearing lasts. The additional cost to the legal aid fund in this case due to the Applied Language Solutions contract is likely to be in the region of; 2 x independent interpreter fees estimated at £100—so £200, the additional hearing fee paid by the LSC due to the adjourned hearing £175—the additional travel of our advocate—say £10, so a total of roughly £400 on the basis that the next hearing of the appeal is effective. There is of course the additional costs to this firm in organising the adjourned hearing and dealing with the client and advocate in relation to it, to the IAC in organising the adjourned hearing, the cost to the National Asylum Support Service of funding the appellant’s travel to the IAC for the additional hearing and generally the stress to the client.

I could provide you with many other similar examples. The routine booking of Farsi interpreters when a Dari interpreter is requested—these are not the same languages! Afghan Pashu interpreters for Baloch Pashtu speakers—they can barely understand each other!

From the point of view of the interpreters affected by the Applied Language Solutions contract, many of the highly skilled and experienced interpreters that this firm has worked with over the last decade are no longer able to make a living. They are asked to work for frankly insulting rates of pay by Applied Language Solutions. There is a complete lack of transparency and fairness in the Applied Language Solutions procedures. Interpreters of similar levels of experience are being paid different rates, individual interpreters who have agreed to work with Applied Language Solutions have negotiated individual rates of pay above the advertised Applied Language Solutions rates etc.

Years of effort went into trying to improve the quality of interpreters for this firm’s client group, at United Kingdom Border Agency and at the Tribunal. Interpreters were encouraged to train and to register with professional bodies. Many paid large sums to obtain the necessary qualifications and registrations. All prisons now insist that registered interpreters are used on visits as do all best practice standards. These requirements did improve the quality of the interpreter pool and were positive. The move to the Applied Language Solutions contract reverses all these gains. The Applied Language Solutions requirements for the interpreters they use are frankly laughable. We are returning to a situation of unskilled and inexperienced interpreters being used which is simply unacceptable and shameful in the context of particularly asylum and human rights protection cases.

Please include the above in your consideration of this issue.

Annette Elder, Elder Rahimi Solicitors

APPENDIX 4

RECENT CASE AT BRISTOL CROWN COURT

One of the Society’s leading members was recently appearing in the Crown Court at Bristol representing a Spanish national, charged with importing four kilos of cocaine. The court had requested a Spanish interpreter, for what was, fortunately, a relatively straightforward Plea and Case Management Hearing, rather than a full trial. After a few minutes of the case commencing, the defendant started to make utterances in Spanish, which fortunately both the solicitor and the judge, with their basic Spanish understood as to be him saying that he
could not understand the interpreter. On enquiry, that was perhaps not surprising, because Applied Language Solutions had sent a Portuguese interpreter.

Written evidence from Capita

Further to your call for written evidence on the provision of interpretation and translation services provided by Applied Language Solutions ("ALS") to the Ministry of Justice ("the Ministry"), I am writing to you on behalf of Capita plc. Capita plc acquired Applied Language Solutions on the 23 December 2011.

The Ministry's contract was designed to address the weaknesses, lack of transparency and disproportionate costs of the previous service and was awarded to ALS in August 2011. The rationale and the procurement process which led to the award of the contract to ALS pre-dated Capita's ownership and it is therefore not possible for me to comment on these aspects.

ALS' proposal for providing interpreters under the framework agreement offered the Ministry the following benefits:

1. Standardised approach to establishing skill level of interpreters by way of a tier based system.
2. Standardised interpreter pay and conditions for all interpreters working as part of the framework agreement.
3. Creation of an on-line portal through which bookings are made, administered, invoiced and through which payments to interpreters are made.
4. Implementation of a robust complaint procedure ensuring any complaints raised by the Ministry are dealt with quickly and effectively. This would include the removal of interpreters from the supplier base who were deemed to be of insufficient quality—something that was not previously possible under the previous arrangements.
5. Availability of management information on a nation-wide basis, again, something which was not previously available. Ahead of the contract start date the Ministry was unable to share with ALS any statistics on usage, language requirements or otherwise.

The national roll-out of the framework contract took place on the 30 January 2012 and significant issues were experienced by the Courts, Tribunals and Police Authorities immediately after this date. The Ministry's decision to roll-out nationally was based on an earlier successful roll-out of the North West Courts, Tribunals and a number of Police Authorities in November and December 2011.

The roll-out of the new service was affected by a combination of factors including; a low level of awareness and pre-engagement with stakeholders, a resistance to the new service by interpreters and difficulties in an immediate scaling up of service delivery at ALS.

Immediately when the service delivery issues at ALS were identified, Capita took firm and responsive action to correct these as soon as possible. All responses and initiatives were made without commercial consideration as both the Ministry and Capita recognised both the importance of addressing the difficulties being experienced by users of the service and shared the view that, despite initial setbacks, the new arrangements could be made to work and thereby deliver the intended quality and commercial benefits when compared with previous court based arrangements.

As soon as problems first surfaced, Capita enabled and encouraged ALS to draw upon Capita’s wider resources, skills and track record to enhance and strengthen its service delivery. We do not believe ALS would have achieved the service delivery improvement without Capita’s operational expertise and financial backing. In particular, Capita has:

- Mobilised and deployed an experienced management team.
- Significantly increased back-office resources (75 FTE).
- Mobilised a team of experts to support the operation on process implementation, project management and management information.
- Absorbed costs in relation to increased interpreter payments, bonuses and incentives.
- Absorbed increased travel costs incurred by interpreters.
- Invested in the IT system.
- Rectified inadequate processes and procedures.
- Received positive feedback regarding improved performance from the Police Authorities and a number of Courts and Tribunals nationwide.

Capita has to date invested in excess of £3.5 million to rectify service delivery issues and none of these costs were foreseen at the time of acquisition.

Capita has also now replaced all of the ALS senior management team that were involved with the contract as, in my and my board colleagues’ opinion, there was insufficient experience and capability to handle and address the issues being faced by service users and the Ministry in its capacity as the commissioning public
authority. We were not satisfied with ALS management’s attitude to business process adherence, implementation planning, audit management and service delivery. I believe such management change was necessary to deliver the contract as originally envisaged and realise the service improvements and cost savings.

Statistics released by the Ministry concerning the contract show an improvement month on month in fulfilling requests for interpretation services (nearly 3,000 bookings a week) rising from 65% in the first month of the contract to more than 90% in April. This performance is continuing to improve, which will be demonstrated in the next set of official statistics likely to be released during September. These will demonstrate overall performance is at around 95%. Capita is determined to get the service running at full efficiency, providing transparency of opportunity for linguists and fully supporting the Ministry, police and court service. The overall objective remains to work in close collaboration with the Ministry to ensure that a more efficient and effective service is in place than previous arrangements.

Should the Ministry’s users of the service not be satisfied with the service delivered by ALS, an issue can be logged on the “portal” (the on-line interpreter booking tool) which will be dealt with by a dedicated team of Relationship Co-ordinators. This team of Relationship Co-ordinators is also directly available by telephone or email should the Ministry have a particular question or complaint. The team of Relationship Co-ordinators has been set-up specifically to support the Ministry, not only with issues but also with day to day service requests which cannot be dealt with through our on-line portal. All issues are currently dealt with in a timely manner, whereas this was not always the case. The support service is now fully functioning providing the Ministry with the opportunity to feedback on the service received, something that was previously not possible.

All issues received are investigated as appropriate and the Ministry is able to review an update on their issue via the on-line portal. We welcome feedback from the Ministry as this is a good way for us to achieve continuous and sustained improvement to the service.

In addition to the Relationship Co-ordinators, who are office based, ALS has a team of Relationship Managers who are field based and visit all of the Ministry’s premises periodically.

The Ministry and ALS hold regular Project Board meetings to monitor the execution of the framework agreement and the Ministry and ALS now work closely together to further optimise service delivery. The Ministry is in receipt of daily and weekly Management Information which enables it to clearly monitor the performance of ALS.

Capita has ensured that the Ministry’s business model can work and that expected savings will ensue. Whilst the journey has been challenging for all parties, Capita is in a position operationally deliver the contract successfully using a robust and sustainable service delivery platform.

Capita has fully engaged with the National Audit Office (NAO) team that has been reviewing the Ministry’s contract with ALS. We expect the NAO’s memorandum to be published shortly and, having had sight of the draft report, we anticipate that much helpful and relevant background, data and analysis regarding the contract and ALS and Capita’s specific conduct since acquiring ALS will be made publically available.

August 2012

**Supplementary written evidence from the Ministry of Justice**

Response to questions (item) from the Committee

<table>
<thead>
<tr>
<th>Item no.</th>
<th>Item</th>
<th>Attachment (where relevant) or answer</th>
<th>Comments</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Copy of National Agreement 2007</td>
<td>Attached. (not printed)</td>
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<tr>
<td>2</td>
<td>Details of the short-notice booking pilot</td>
<td>The pilot consists of 20 criminal courts, consisting of 19 Magistrates Courts and 1 Crown. This has progressed well and both the Midlands and Northwest HMCTS regions will begin to return their short notice bookings to the contract, commencing with the Midlands from 22 October. ALS provides booking services for interpreters in other areas and sectors; it is not possible to relate this to fulfilment or complaint statistics since some interpreters will choose only to work under one sector or contract, others may cover more than one.</td>
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<tr>
<td>3</td>
<td>Copy of the MoJ contract</td>
<td>The MoJ contract comprises the Framework Agreement with administration instructions and the relevant signature page, all attached (not printed).</td>
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<tr>
<td>Item no.</td>
<td>Item</td>
<td>Attachment (where relevant) or answer</td>
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<td>4</td>
<td>Copy of the Better Trials Unit report from 30 March 2011 ‘Reforming the provision of interpretation and translation services’</td>
<td>The communication issued by the Better Trials Unit on 30 March 2011 comprised a letter to stakeholders with five additional documents on the proposals, all of which are attached.</td>
<td>This was a consultation exercise rather than a report.</td>
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<tr>
<td>5</td>
<td>Copy of the MoJ Internal Audit Report 2010</td>
<td>Attached. (not printed)</td>
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<tr>
<td>6</td>
<td>Copy of the conclusions of the procurement consultation exercise</td>
<td>This was not a consultation exercise run by procurement, but by the project team. The responses were summarised in the attached document.</td>
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<td>7</td>
<td>Proportion of interpreters with ALS are new to justice sector</td>
<td>It is not possible to specify the precise proportion of interpreters who are new to the justice sector, as it would require a manual search of the records of each interpreter registered with ALS. We are aware that some are new to the sector from anecdotal evidence.</td>
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<td>8</td>
<td>Request on ALS improvement in interpreters in less common languages. Are there any languages where the number of available interpreters has reduced in comparison to the previous arrangements? If so, how many languages and by what proportion?</td>
<td>- At the beginning of August 2012, data from the NRPSI and ALS registers was compared and identified where there were fewer than 10 interpreters on either register for a language or dialect. - Those languages where there are fewer than 10 interpreters on NRPSI but register are those where ALS has improved language provision through the new arrangements: Albanian (Kosovo); Amharic; Croatian; Hindko; Kurdish (Bahdini and Kurmanji); Lingala; Potwari; Tigrinya; and Ukrainian. - Only one language has more than 10 interpreters on NRPSI but fewer than 10 on the ALS register: Dutch. Some languages had fewer than 10 interpreters on both registers (68 languages or dialects in total), and targeted recruitment by ALS is being carried out where possible. ALS has separate data on some of these rare languages used by the MoJ. The most commonly used of these (top 10 numbers of bookings) were, in descending order: Nepalese; Sinhala; Twi; Yoruba; Tagalog; Shona; Malayalam; Luganda; Mandinka; and Burmese.</td>
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<tr>
<td>9</td>
<td>Timetable of the business process work</td>
<td>The first tranche of issues were resolved through both the portal upgrade on 28 September 2012 and by circulating updated guidance to staff. The Project Board considered the remaining issues identified by this work area at its meeting on 4 October and agreed to the setting up of a working group to consider front line staff and judicial views on the relevant issues. A further tranche of issues will be put to the Project Board in November. HMCTS business process maps, which document the end-to-end processes for the interpreter process in each of the jurisdictions, have been provided to the Project Board members for validation by their respective business areas.</td>
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<td>10</td>
<td>Breakdown of complaint type</td>
<td>Statistics were published by the MoJ in May on the first 3 months of operation of the contract. These broke down the complaints by type in Tables 16–21, covering the overall picture and the picture by jurisdiction: <a href="http://www.justice.gov.uk/downloads/statistics/mojstats/language-stats/language-service-stats-jan12-april-12.pdf">http://www.justice.gov.uk/downloads/statistics/mojstats/language-stats/language-service-stats-jan12-april-12.pdf</a> Complaint types: - Interpreter did not attend - Interpreter quality - Interpreter was late - No interpreter available - Operational issue - Other Interpreter issue - Time sheet error - Unknown Further statistics will be published later in October.</td>
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<tr>
<td>11</td>
<td>Breakdown of £15m savings and relation to costs</td>
<td>In brief: - Estimated spend under previous system was £30 million per year. - New contract spend February £6m, projected to £10 million over the first year. Off-contract spend (due to short notice bookings in</td>
<td></td>
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</tbody>
</table>
the main) estimated at £4 million over the first year. Cost of ineffective trial increase in Magistrates’ Court estimated at £60,000; cost to other jurisdictions unavailable. Costs rounded up to £15 million, which totals £15 million savings.

September 2012

Supplementary evidence from Capita

ISSUES

The spreadsheet (see annex) shows the number of issues received, the percentage of the total volume and the closure time in hours. You will note the turnaround times are particularly long historically, however, part of this is caused by resolved complaints not being closed down on the system. In addition, when Capita acquired Applied Language Solutions there were a lot of processes which needed to be fixed immediately and we have taken time to work through the issues process to ensure it is robust. In the last seven weeks, we have made great progress and our issues process is now robust and operating in line with contractual terms.

PERFORMANCE DATA

The monthly performance data is detailed below, this is the overall performance for all customers under the MoJ Framework Agreement (HMCTS, HMP, CPS and the Police).

<table>
<thead>
<tr>
<th></th>
<th>February</th>
<th>March</th>
<th>April</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>August</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>72%</td>
<td>84%</td>
<td>91%</td>
<td>94%</td>
<td>95%</td>
<td>95%</td>
<td>96%</td>
</tr>
</tbody>
</table>

September 2012
Supplementary evidence from Capita

Number of interpreters by tier and percentage of interpreters attending work requests in a 25 mile radius.

<table>
<thead>
<tr>
<th>Type</th>
<th>Feb-12</th>
<th>Mar-12</th>
<th>Apr-12</th>
<th>May-12</th>
<th>Jun-12</th>
<th>Jul-12</th>
<th>Aug-12</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tier 1</td>
<td>402</td>
<td>517</td>
<td>534</td>
<td>578</td>
<td>578</td>
<td>590</td>
<td>577</td>
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<tr>
<td>Tier 2</td>
<td>198</td>
<td>312</td>
<td>338</td>
<td>359</td>
<td>332</td>
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<tr>
<td>Tier 3</td>
<td>170</td>
<td>234</td>
<td>196</td>
<td>140</td>
<td>75</td>
<td>79</td>
<td>60</td>
</tr>
<tr>
<td>Total</td>
<td>770</td>
<td>1063</td>
<td>1068</td>
<td>1077</td>
<td>985</td>
<td>994</td>
<td>932</td>
</tr>
</tbody>
</table>

There are currently 1,135 interpreters live on our supplier base.

<table>
<thead>
<tr>
<th>May-12</th>
<th>Jun-12</th>
<th>Jul-12</th>
<th>Aug-12</th>
</tr>
</thead>
<tbody>
<tr>
<td>25.90%</td>
<td>30.00%</td>
<td>37.80%</td>
<td>34.0%</td>
</tr>
</tbody>
</table>

NB this information is based upon invoiced jobs only and excludes jobs where other transport has been used.

Supplementary evidence from NRPSI Ltd

JSC—Interpreting and Translation Services and the ALS Contract

One of the main failures of the current ALS/Capita contract is that it is all inclusive and there is a lack of independence in the monitoring of quality, competence, qualifications and dealing with complaints. The opportunity exists therefore for the contractor to cloud, fudge, miss or ignore some or all of these issues and as a consequence make it more difficult for the MoJ to be aware of and monitor the effectiveness of the delivery of the contracted service.

Evidence that we and others have provided points to many examples of such failures, deliberate or not, and we believe that whilst the present model continues efficiency and public safety will continue to be impaired because of the inherent lack of actionable accountability within the current contract approach.

We have stated that the solution needs to be based around a return to the basic elements of the National Agreement and have offered our support to the MoJ in working towards such a revision.

This means that whilst there are of course the issues of adequate remuneration and of rebuilding the massive loss of trust between the MoJ and its stakeholders to be dealt with, there also needs to be a separation of some of the functions currently undertaken by the contractor within the FWA. In our view this requires an independent registrar to vet and approve the qualifications of interpreters employed under the FWA, and to deal effectively and impartially with complaints.

Whilst of course we would point to the fact that such a regulator already exists with the NRPSI which is now completely independent, has revised and improved its Code of Conduct and Disciplinary Procedures and has the trust and confidence of the interpreting profession, the main objective should be to separate these regulatory functions from the contractor.

October 2012

Correspondence between the Justice Committee and the Ministry of Justice

Interpreting and Translation Services and the Applied Language Solutions Contract

Letter from Rt Hon Sir Alan Beith MP, Chair, Justice Committee to Rt Hon Chris Grayling MP, Secretary of State for Justice and Lord Chancellor

As you will be aware, my Committee has been undertaking an inquiry into interpreting and translation services and the Applied Language Solutions contract. An important part of our inquiry has been to seek information which would allow us to make an assessment of the scale and nature of the acknowledged practical difficulties which have arisen in courts since the new Framework Agreement was rolled out nationally.

Early in our inquiry we heard that court staff might be unwilling to provide evidence of their experiences. Partly for that reason we recently set up an online forum in which people, whether court staff, lawyers, parties, interpreters or the public, were invited to submit their direct and personal experiences of interpretation services in court, and were able to do so anonymously if they wished. This method of obtaining information has been used by a number of select committees on sensitive subjects.
Before establishing the forum we asked your Ministry at official level if you would be willing to draw the existence of the forum to the attention of court staff, but we were told that the Ministry’s view was that this would be inappropriate. Nor were officials willing to provide us with contact details of courts. Subsequently we have also heard that court staff may have been actively discouraged by management in the Ministry and/or in HMCTS from making submissions to the forum.

Submissions to an online forum are not considered to be formal evidence to a committee, and so it is unlikely that any efforts to dissuade Ministry or courts and tribunal staff from making such submissions, if indeed such dissuasion did occur, could constitute a contempt of the House, as might be the case in respect of formal evidence. However if it is the case that pressure has been placed on court staff to dissuade them from making submissions to our online forum we would certainly wish to be aware of the fact, as it may have had a material effect on our ability to obtain a full picture of the current position in respect of the effectiveness of interpretation services in courts.

I would therefore be grateful if you would let us know whether any advice, guidance or other instructions have been issued to staff of the Ministry and/or HMCTS, verbally or in writing, on the subject of (a) providing formal evidence to us and (b) making submissions to our online forum in relation to our inquiry. Please could you let us know by 17 November as we would like to consider the contents of our draft report with full knowledge of the circumstances in which evidence and other information was submitted to us in our inquiry.

Letter from Helen Grant MP, Parliamentary Under-Secretary of State for Justice, to Rt Hon Sir Alan Beith MP, Chair, Justice Committee, 13 November 2012

Thank you for your letter to the Justice Secretary dated 7 November, raising the issue of Ministry of Justice (MoJ) staff providing evidence to the Justice Committee as part of its inquiry into the interpreting and translation services contract. I fully appreciate the seriousness of your query, and I have asked my officials for an account of the messages sent to staff in HM Courts and Tribunals Service (HMCTS).

As you know, the MoJ provided its written evidence to the Committee in the form of a memorandum on 7 September. Additional evidence was provided at the request of the Committee on 11 October. This was supplemented by the MoJ publication of statistics on interpretation services on 18 October (covering the period 30 January to 31 August 2012) and an oral evidence session on 30 October. The evidence submitted was based on facts and figures that the Department has gathered over time, including performance figures, savings estimates, and explanations for decisions made.

As you have stated in your letter, we took the view that it would be inappropriate to invite court staff to submit further evidence to the online forum set up by the Committee. We took this decision as the Department was already giving its evidence to the Committee in written and oral form, as described above. The Civil Service Management Code and the Osmotherly Rules say that officials “should not take part in research projects or surveys designed to establish their personal views on Government policies”.

In the second half of October, we became aware of some interpreters contacting courts directly with the details of the forum, accompanied by a press release from an interpreters’ organisation which disagreed with the MoJ’s evidence at the Public Accounts Committee. In light of these emails, we decided to email HMCTS Cluster Managers to give them some guidance on how to respond to these specific emails. A copy of the email we sent on 24 October and a sample email that had been received at a court are annexed to this letter. This was the only email issued to staff and there was no verbal instruction given. No email guidance was issued to the judiciary or other justice partners. In my view, this email was an entirely appropriate response to the contact from interpreter groups that staff received and did not interfere with the collection of evidence by the Committee.

I thought it would also be useful to answer another allegation that was made to you in written evidence on a similar issue. I am aware that one respondent claimed that HMCTS specifically forbade him from providing a copy of a local spreadsheet of issues with Capita-ALS. I understand that it is not possible for local spreadsheets to be checked against the data which we receive from ALS, and we would therefore suggest to respondents that they should not be submitted as evidence. In any case, I would expect any issues with the contract to have been raised through the established complaints procedure.

I hope that this letter reassures you as to the Department’s conduct during the inquiry into interpretation services.
Annex

Copy of email sent to HMCTS

From: Project manager
Sent: 24 October 2012 13:31
To: HMCTS delivery directors; HMCTS Cluster Managers
Cc: SRO; Internal Communications; Project team
Subject: [None specified]

Dear Cluster Managers,

You will be aware that the Justice Select Committee are currently conducting hearings into the interpreter services contract we have with Applied Language Solutions/Capita and that Peter Handock is appearing in front of the committee on Tuesday 30th October.

From communication with the Select Committee we are aware that they have created a forum and encouraged interested parties to provide anecdotal evidence to inform the Committee. We have already asked the Committee not to contact our staff directly in this regard but we are now aware that individual interpreters are emailing our staff encouraging them to participate.

We are very clear that this is not appropriate, and would be grateful if you could cascade advice to your staff that they should not engage with these approaches, as the Ministry has already provided its evidence to the Committee. The paragraph below may assist:

You may be aware that the Justice Select Committee is currently investigating the interpreter services contract that we have with Applied Language Solutions/Capita. You may be contacted by interpreters inviting/encouraging you to join a forum where anecdotal information about this service is being gathered. As the Department has already provided consolidated evidence to the Committee you are requested to refrain from participating, or engaging with the interpreters who approach you in this way.

I have attached an example of the typical email your staff may be receiving from interpreters in this regard.

Thanks for your assistance with this

Interpretation Project

Email attached to above

From: Uxbridge Magistrates’ Court
Sent: 23 October 2012 13:59
To: Cluster Manager
Subject: FW: Court Language Services Forum - Justice Committee calls for evidence (ANONYMOUS)

This was sent to the Uxbridge general enquiries inbox. I spoke with [REDACTED] who advised me to forward it to you. We have taken no action on this and it has been deleted.

Regards.

From: Interpreter
Sent: 23 October 2012 13:28
Subject: Court Language Services Forum – Justice Committee calls for evidence
(ANONYMOUS)

Court Language Services Forum –
Justice Committee calls for evidence

- What are your experiences of ALS service provision?
- What are your experiences of the complaints resolution process?
- What are your views on the efficacy of steps to rectify under-performance?

The Justice Committee has launched an inquiry into the provision of interpretation and translation services since Applied Language Solutions (ALS) began operating as the Ministry of Justice’s sole contractor for language services in February 2012.

The Committee had an excellent response to its call for written evidence. We have been given many examples which highlight apparent under-performance but most of these have been provided by third parties and relate to the first few months of operation.

The Justice Committee has heard that some stakeholders may be reticent to provide formal written evidence.

These may include: court and tribunal service staff; members of the judiciary and magistracy; legal practitioners and other practitioners; defendants in criminal cases and parties in civil and family cases and interpreters providing services on behalf of ALS.

We would encourage these individuals to submit their experiences through this web forum using an anonymous user name.

Web-link to the forum: http://tinyurl.com/ALSion

This forum will close on 2 November 2012.

PRESS RELEASE
‘Car crash’ contract puts Ministry of Justice in the firing line

19 October 2012: Senior officials from the Ministry of Justice faced ridicule and derision by MPs at the House of Commons Public Accounts Committee (15 October) when they examined the interpreting contract awarded by MoJ to Applied Language Solutions (ALS), now owned by Capita.

When quizzed about the “botched up procurement process”, Ann Beasley, in charge of procurement, Martin Jones, senior responsible officer and Peter Handcock CBE, accounting officer, eventually admit they had not read the Equifax credit report they commissioned, which had advised them not to do business worth more than £1m with ALS.

Nick Smith MP: At the time, did either of you look at the report?

Martin Jones: I have certainly read the report.

Nick Smith MP: At that time?
Martin Jones: I didn’t read the report at that time.
Nick Smith MP: Ann Beasley, did you read that report at that time?
Ann Beasley: No, but staff working for me did.
Margaret Hodge MP (Chair): Mr Handcroc, did you?
Peter Handcroc: No, I didn’t.

Faced with these shocking admissions, Margaret Hodge MP, Chair, Public Accounts Committee, asked: “But you have got advice saying ‘Don’t give this little company more than a million quid contract’ and you give it a £42 million contract. What were you thinking about?” whilst Conservative MP Stewart Jackson offered some “friendly advice” that “in future you do read these reports”.

Martin Jones also admitted he didn’t read the full report from an academic at Middlesex University which expressed “profound reservations” about the validity of how interpreters would be assessed and graded into tiers.

Despite the fact that the number of individuals registered on ALS’s online portal was 2,000 at the time the contract went live, it emerged that only 260 had actually been assessed, vetted and CRB checked for interpreting in the Justice sector prior to roll out – a clear indication of the inadequacy of the contract.

In relation to this, Margaret Hodge highlighted the fact that one of those ‘registered numbers’ was in fact the owner of a cat who registered his pet as a feline language specialist as a joke, and was then asked by ALS to bring the pet in for a language test. Another registered individual was ‘Joj’ the Rabbit, who was also offered work by ALS. Responding to this, Martin Jones tartly replied: “I am assuming that they would perhaps have not done well when they turned up.”

Attending the hearing on behalf of professional interpreters were Geoffrey Buckingham and Alan Thompson of the Association of Police and Court Interpreters (APCI). Thanking the committee for inviting them to give evidence, Mr Buckingham welcomed the fact that this matter was being taken seriously, saying: “It is our view that the matter of interpreting in the criminal justice system lays such a responsibility on its practitioners that only qualified, experienced, vetted and registered public service interpreters should be employed. Failure to do so is an abrogation of responsibility and will be very costly, not just in financial terms but in human terms and in terms of the reputation of British justice across the world”.

Capita, who recently rebranded ALS to Capita Translation and Interpreting, were not present at the hearing on 15 October. Margaret Hodge has summoned the company to give evidence on 29 October. It is expected that Capita representatives will face the same tone of questioning by members of the committee who collectively branded the contract “shambolic”, “a disaster”, “car crash” and akin to “Fred Kamo’s circus”.

A transcript of Monday’s hearing reveals the extent of the gruelling questioning faced by the MoJ and the ‘shocking findings’ which were uncovered. It is available for download here.

Figures released by the MoJ this week (18th October) show that the company has again failed to reach its performance target, six months after the new contract came into place. There were 3,637 official complaints recorded within this time period. The majority of the complaints came from tribunals (37.3%), with the most common reason for complaint being that the interpreter was late. At criminal courts and prisons, the most common reason for complaint was that there was no interpreter available (34.6%).

The MoJ officials admitted they did not impose penalties in the first four months of the contract and to date had only fined Capita (which supplies the data published) £11,000. Only spot checks are carried out and no proper system for monitoring or independent evaluation of the contract is in place.
Additional Extracts from the hearing: Austin Mitchell MP (speaking to Peter Haincock): “It is most entertaining watching you, because most of what you say has been greeted with multilingual nods of denial from behind you.”

Austin Mitchell MP (speaking to Ann Beasley): “Did you take independent expert advice?”
Ann Beasley: “We did not take specific independent advice on the tendering.”
Austin Mitchell MP: “Why not?”
Ann Beasley: “Because tendering was a solution offered by every single one of the 26 bidders and is already in operation in an OGC language framework. Although it was new to the Ministry, it was not new in the world of delivering interpreting services.”
Austin Mitchell MP: “Again, you have disbeliefing nods behind you.”

Austin Mitchell MP: Do we know how much the directors of ALS made out of selling their crock to Capita?
Ann Beasley: No.
Martin Jones: No.
Austin Mitchell MP: “Shouldn’t we know?”
Ann Beasley: No.
Martin Jones: No. It is not our business.
Austin Mitchell MP: If you have been involved in a huge contract worth £40 million, and you cannot fulfill it, and then you flog off your company to a bigger company, it is a good way of making money, isn’t it?

Notes to Editors

Interpreters’ organisations will give live evidence to the Justice Select Committee on Tuesday 23 October by way of a panel of three. Those will be the National Register in the form of the Chairman, Ted Sangster; Madeleine Lee, Director of the Professional Interpreters’ Alliance (PIA) and Nick Rosethath, Chairman of the Institute of Translation and Interpreting (ITI)

Interpreters for Justice

Interpreters for Justice is united against the Ministry of Justice’s Framework Agreement for the provision of public service interpreting and was formed by the Association of Police and Court Interpreters (APCI) and the Society for Public Service Interpreting (SPSI) in order to represent the views of their members, all of whom are committed to upholding the quality and professionalism of public service interpreting in the UK.

Follow Interpreters for Justice on Twitter for updates on ALS / Capita and court cases affected: @Interpreters4Justice

Also see www.interjusticeloupe.org for commentary and updates.

STOP PRESS!

The Justice Committee has announced today (19 October) it would like to hear from individuals with direct experience of the operation of interpreting and translation services by Applied Language Solutions (ALS). The Justice Committee would particularly like to hear about direct examples of recent performance issues (during September and October 2012) surrounding the operation of the Framework Agreement between the Ministry of Justice and ALS.

The Justice Committee has heard that some stakeholders may be reticent to provide oral written evidence. These may include: court and tribunal service staff; members of the judiciary;
and magistrates, legal practitioners and other practitioners: defendants in criminal cases and parties in civil and family cases and interpreters providing services on behalf of ALS.

Justice Committee ‘We would encourage these individuals to submit their experiences through this web forum using an anonymous user name.’

Chairman of APCI, Geoffrey Buckingham, said: “We welcome opportunity for the judiciary, legal practitioners, defendants and even the interpreters themselves who are providing services on behalf of ALS to make anonymous submissions.”

See http://forums.parliament.uk/court-language-services/index.php?index.1

For more information please contact:
Penny Arbuthnot, Involvis Ltd
penny.arbuthnot@involvis.co.uk
01473 256341 / 07865 296374
Or:
Aisleen Marley, Involvis Ltd
aisleen.marley@involvis.co.uk
07787 228999
Letter from Rt Hon Alan Beith MP, Chair, Justice Committee, to Helen Grant MP, Parliamentary Under-Secretary of State, Ministry of Justice, 22 November 2012

Thank you for your letter of 13 November concerning the approach of the Ministry of Justice and HMCTS to the submission of information by courts and tribunal staff to our online forum on court interpreting services.

My Committee has noted the points you have made, but has asked me to convey to you its continuing serious concern over this matter. You cite the Osmotherly Rules, which as you know are not endorsed by Parliament, as providing a basis for your actions. We would not equate a select committee inquiry with research projects or surveys; nor was our forum seeking views on Government policy. We were seeking examples of direct experience of the effectiveness of interpreting services within courts in recent months. This is a well-established mechanism for select committees, a number of which have used online forums in this way. We ourselves have done so in support of previous inquiries into the role of the probation service—which you will personally recall—and on the role of the prison officer. We can see no difference between these cases and this one.

We think in principle you were most ill-advised to use contacts received from interpreters to discourage court staff from participating in our forum. We would also take issue with the statement in the attached email saying that the Committee has been asked not to contact court staff. In fact, you refused to provide my Committee staff with contact details for courts. That is a different, though still regrettable, matter.

When we come to agree our draft Report we will consider the effects of this affair on our ability to assess the performance of Capita/ALS under the contract. You should be aware that we intend to publish this correspondence and to comment on the matter. If we come to the view that your actions have constituted a significant obstruction of our own work we may take further steps to seek to ensure that it does not happen again.

Supplementary evidence from Capita following the evidence session on 30 October 2012

APPENDIX A

INTERPRETER NUMBERS UPDATE

Tier 1: 655 interpreters covering 1,242 languages.
Tier 2: 321 interpreters covering 582 languages.
Tier 3: 191 interpreters covering 370 languages.

All interpreters are vetted to ECRB level, NPPV Level 2 or above save for a small number of NRPSI interpreters for which evidence of this security clearance has not yet been obtained. In agreement with the Ministry, these interpreters will be removed from the supplier base should this evidence not be provided by 30 November 2012.

All interpreters have provided us with qualification details which have been verified and recorded save for a small number of NRPSI interpreters for which evidence of these qualifications has not yet been obtained. In agreement with the Ministry, these interpreters will be removed from the supplier base should this evidence not be provided by 30 November 2012.

Of the interpreters on the supplier base currently, 635 interpreters have been assessed and of those 210 have been marked.

Of the interpreters on the supplier base, c. 420 interpreters are or have been registered with NRPSI.

Of Tier 1 interpreters, 48% are qualified to interpret in more than 1 language.
Of Tier 2 interpreters, 47% are qualified to interpret in more than 1 language.
Of Tier 3 interpreters, 54% are qualified to interpret in more than 1 language.

Please explain how the quality of interpretation is independently verified after a complaint is made?

When ALS receives an issue about quality, the interpreter is contacted to discuss the particular issue with them. The action will depend on the type of issue received for example:

— Issues of gross misconduct, defined in the terms and conditions, mean the interpreter will permanently suspended such as in the Winchester case where an interpreter sent her husband. Coincidently this was a NRPSI interpreter who is still on the register and can be contacted by any Criminal Justice organisation not on the framework.
— If the interpreter is late or did not show this will be discussed with the interpreter to establish the reason for the lateness or “no show”. These types of quality issues are recorded on a rolling basis. Repeat issues will be addressed by suspending the interpreter temporarily or permanently. The reason for lateness/no show” will be taken into account.
— If an issue is raised about the quality of the actual interpreting, again this is discussed with the interpreter and a review is conducted on the number of jobs completed and the number of complaints received. The type of quality issue will also form part of the assessment. Where an interpreter assignment has been recorded, an independent verification of the skills of the interpreter can be carried out.

— Where possible, we would look at further training for the interpreter.

What are the remaining issues with frontline court and tribunal staff and the judiciary that you are continuing to work with MoJ to resolve?

We are not aware of any remaining issues with front line staff in the Courts or Tribunals other than those which are part of the day to day running of an operation such as a specific issue regarding an assignment. One of the issues at the beginning of the agreement was the lack of communication. This has been addressed by the introduction of a team of Relationship Coordinators who are in continuous dialogue with frontline staff—we have received some very positive feedback from frontline staff.

The Ministry has built a robust communication mechanism allowing it to communicate any important information from ALS to its frontline staff.

What investment has been made in assessment processes and with what effect?

The assessment centre process was proposed by previous ALS management as part of the framework as a language based assessment over and above the professional qualification already obtained by the interpreter. It was ALS’ intention to undertake an assessment for every interpreter regardless of the language spoken.

Whilst the theory of this assessment sounds plausible, in practice it was possible to assess the interpreters, but it was not possible to mark the assessments in every language. This became apparent during Capita ownership. The assessment centre process was discussed with the Ministry and proposals have now been put to the Ministry for its consideration, which move away from a language based assessment and focus more on familiarisation of processes and procedures for the Criminal Justice Sector as well as for ALS.

The professional qualifications gained by interpreters through independent organisations such as the Institute of Linguists, test the interpreters’ language capability and it is not appropriate for ALS to test interpreters over and above the professional qualification they have already obtained. The real benefit of an induction programme is to ensure interpreters are fully familiar with what is expected of them in their role. A crucial part of this is the “buddy” system which has been proposed, where a new interpreter spends a day with an experienced interpreter in a Court or Tribunal.

Please provide us with details of the assessment processes that you have developed/are developing, including those for rarer languages

The induction programme proposed to the Ministry is applicable to all interpreters regardless of the language they speak. A brief outline of the process is documented in Appendix B. Please note this proposal and process is in draft form and needs to be discussed further with the Ministry.

How do you verify qualifications or experience gained overseas?

We do not receive many overseas qualifications, where these qualifications are received; these can be translated by our translation department. Experience obtained by interpreters is predominantly UK based experience rather than overseas. Should experience been gained overseas, we would seek a reference to verify the experience gained.

What is the nature of the familiarisation training?

The familiarisation training referred to are the Criminal Justice workshops which have been set up by ALS for those interpreters who are already familiar with the Criminal Justice system and whom have undertaken interpreting work within this sector previously. The Criminal Justice workshops support interpreters in the role they undertake on behalf of ALS. The workshops include:

— Updates on processes and procedures.

— Familiarisation with Criminal Justice organisations’ specific processes to enable interpreters to work across courts, tribunals, police and probation services.

— Support with ALS systems (on-line booking acceptance, timesheets).

— Refresher training on the importance of conduct on the job.

— Opportunity for interpreters to network, ask questions and provide feedback to ALS.

Capita is working closely with the Ministry to ensure that parts of this programme are an integral part of the overall induction process on which ALS is in discussion with the Ministry.
What is the extent of other training required for interpreters currently on your supplier base to become competent in delivering services in the criminal justice sector?

ALS interpreters are competent in delivering services to the Criminal Justice sector. Interpreters at Tier 1 and 2 are qualified to interpret and have undertaken work in the Criminal Justice sector.

What opportunities are you providing for interpreters on your supplier base with regards to continuous professional development?

We have engaged an external industry expert who is supporting ALS in identifying and preparing training for interpreters. The Criminal Justice Workshops have been an excellent forum to identify further training requirements for interpreters. It is through these workshops we identified the need for interpreters to become more familiar with the specifics of a variety of Criminal Justice organisations. There are examples where interpreters have worked in Court for many years but have never undertaken an assignment at a Police station.

We will continue to identify opportunities for continuous professional development, however, at this moment, we only run the Criminal Justice Workshops.

What is your estimate of how much additional money had been spent on the contract by the end of October?

Capita has invested in excess £5.4 million to rectify the service delivery. This has made a significant difference and as a result performance as well as customer service has improved over a period of months. Some of the specific investments made include:

— Mobilised and deployed an experienced management team.
— Significantly increased back-office resources (75 FTE).
— Mobilised a team of experts to support the operation on process implementation, project management and management information.
— Absorbed costs in relation to increased interpreter payments, bonuses and incentives.
— Absorbed increased travel costs incurred by interpreters.
— Invested in the IT system.
— Rectified inadequate processes and procedures.

Performance has improved to 95% in August and whilst this is not yet in line with the contractual agreement of 98% it is a considerable improvement in comparison to when the service first went live. Complaints have dropped significantly. Complaints from criminal courts have dropped from 9.9% in February to 1.4% in August, for Civil and Family Courts the complaints have dropped from 5.8% to 0.6%. Tribunal complaints have also dropped from 17.1% to 5.2%.

Please could you provide the Committee with fuller information on your targets for specific languages and regions where there is a shortfall in interpreters for the existing contract with HMCTS

The table below shows the delivery percentage by region. An increase in interpreter numbers in this region will improve service delivery. We have detailed information on the languages which specifically affect the service delivery in a particular region.

<table>
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<td>Grand Total</td>
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By way of example, 20 languages account for 80% of the volumes. Of those 20 languages, five languages are currently performing between 91% and 95%. It is those languages where we specifically target our recruitment.

Vietnamese—95%
Turkish—95%
Czech—92%
Lithuanian—92%
Tamil—91%
Slovak—91%

Our recruitment strategy is working well, by way of example, in the w/c 5th of November 2012 20 new interpreters were recruited.
Reasons behind the agreement between Mr Wheeldon and other members of ALS’ senior management team and Capita to part company

Mr Wheeldon continued as CEO of Applied Language Solutions post the acquisition by Capita. Over time it became clear that Mr Wheeldon’s view on how to take the business forward differed from the view held by the Capita Board. As a result it was mutually decided that Mr Wheeldon would pursue his career elsewhere.

As part of an acquisition there are sometimes changes at senior management level. Capita review the capability of the senior management team and make adjustments where necessary to enable the business to be supported appropriately. In addition, post acquisition, senior managers may not have an interest in working as part of a larger company.

Please provide evidence to confirm the exact dates when a) Middlesex University terminated the agreement regarding assessments and b) the MoJ were informed that this agreement had been terminated?

ALS had discussions with Middlesex University in December 2011 to discuss the speed at which the marking was taking place. These discussions continued into the New Year of 2012. On 3 January 2012 Middlesex University informed ALS that it no longer wished to continue the agreement but that it was happy to continue to provide the software under a separate agreement. Discussions continued to formalise the termination of the agreement which we believe was signed on or around 17 February 2012. A separate agreement was put in place for continued use of the assessment centre software.

The Ministry was aware of the problems with Middlesex University as through the results on number of assessments marked, progress, or lack of it, was tracked. We first informed the Ministry by telephone, and therefore cannot recall the exact date of when ALS informed the Ministry of the termination of the agreement with Middlesex. However, subsequent risk logs of 13 and 19 January 2012 which were shared and discussed with the Ministry indicate the actions which ALS had taken as a result of the termination of the agreement.

Please provide us with any evidence you have to support claims that interpreters on your supplier database have been subject to intimidation by other interpreters

We did not anticipate the intimidation, verbal and in some cases physical abuse, interpreters who worked for ALS had to experience. The instances reported to ALS were shocking and ALS advised interpreters to contact the Police in these instances. The Ministry and ALS also worked closely together to ensure ALS interpreters were not intimidated and did not suffer any abuse verbal or otherwise. The Ministry made available to interpreters the option to speak with Court security staff when such instances occurred. Thankfully this level of intimidation has reduced, however, we still receive occasional instances from interpreters who experience intimidation.

It would be inappropriate to provide you with full detail of the individuals involved in this memorandum, therefore I am sharing with you a few anonymous instances. I have full detail of the individuals involved.

“[ALS interpreter] turned up for an assignment and was faced by [name of NPRSI interpreter] who used threatening language and followed [ALS interpreter] all day from room to room humiliating the interpreter. [The ALS interpreter] informed the Judge and the Judge asked for the [NRPSI interpreter] to be removed.”

“I’m Registered NRPSI interpreter and I have registered with ALS. I am concerned as I have just received a text message from one of NRPSI interpreters [name of interpreter] telling me that I sold myself cheaply to work for ALS. I believe she found my telephone number on the National Register list of interpreters. Yesterday evening someone left a large broken mirror in front of my house at the entrance door covered with red paint and words ‘bloody Mary’. I thought I would let you know as I am now aware of threatening campaign against interpreters working for ALS.”

“Photograph of an alleged assault on an interpreter”.

Text message: “U still help als! U shld look up the def of monopoly...pay reduced as soon as competition is eliminated...”. U’re only helping als destroy us. We hv mortgages 2, sm small kids. Thak about it, we sacrifice ourslys, n 4 nothing. Thanks t yr kind. At least for a couple of weeks tk a break, dnt stab yr own in the back, 2 ugly t betray us, pt 30 de arginti... Shame!”.

Text message: “4 as long as u help als destroy us, i cnt talk t u, makes me sick. May yr kind b cursed.”

Photograph of alleged assault. (Not printed)
APPENDIX B

NEW LINGUIST SIGN UP PROCESS (PROPOSAL ONLY, TO BE AGREED)

**STEP 1**
Interpreter registers on linguist lounge and completes a full or partial application. Interpreter uploads documentation onto Linguist Lounge (interim solution is post or email). Key information captured:
- Qualifications.
- Security clearance.
- Experience.
- References (where applicable).

**STEP 2**
Linguist Relations Team review the registration and review if all appropriate documentation is attached to the application. If all the information has been provided and is verified, we may, on rare occasions, assign the interpreter a tier so that they can commence work ahead of the induction programme. However we would only do this in cases where there is a shortage in the language and only in agreement with the Ministry of Justice.

**STEP 2A**
If any documentation is missing, the Linguist Relations Team will contact the interpreter and request the missing information.
- Should the interpreter not hold the appropriate qualifications they will be notified that the registration will not proceed.
- Should the interpreter not hold the appropriate security clearance, their details will be passed to “The Security Watchdog” where the security clearance process will take place (for the avoidance of doubt, the security clearance itself will be done by CRB but the process and admin will be managed by TSW who are part of Capita). TSW will, at the same time process the NPPV check required by the Police Authorities. If the interpreter holds NPPV level 2 or above then the interpreter will not require ECRB clearance also. Once the clearance is obtained the process continues.

**STEP 3**
The Linguist Relations Team will record on the database the following information obtained from the documentation:
- Qualifications held.
- Security clearance held including (issuing agency, date of issue, convictions yes/no, document number).
- Experience.

**STEP 4**
The interpreter will be contacted by telephone and will undergo a brief interview which enables the interpreter to share with ALS his/her experience within the Criminal Justice Sector. A copy of the interview notes will be stored on the interpreter file.

**STEP 5**
The interpreter is invited to the induction programme.

**STEP 6**
The interpreter, where required, is scheduled to attend a work shadow assignment.

INDUCTION PROGRAMME PROCESS (PROPOSAL ONLY, TO BE AGREED)

**STEP 7**
The interpreter will attend an Induction Programme.

**STEP 8**
The interpreter identity will be checked together with proof of residence.

**STEP 9**
Proof of Qualifications and Security check, security forms are completed where appropriate (upgrade to NPPV).
STEP 10
ID card produced and handed to the interpreter.

STEP 11
Overview of who Applied Language Solutions are and the services that are offered and how the service works eg Linguist Lounge, Mobile App, Self Serve, Call Centre.

STEP 12
Overview of working in the Criminal Justice System (video/slides) and to test the understanding of what is required.

STEP 13
A copy of the Interpreter Handbook given to the interpreter and sign up to the code of conduct and T&Cs completed.

STEP 14
Attendance data is confirmed to the Linguist Relations team and the interpreter receives their Tier.

Supplementary evidence from the Ministry of Justice following the evidence session on 30 October 2012

ADDITIONAL QUESTIONS

What modifications, specifically, were made to the Framework Agreement in response to the April 2011 consultation?

Modifications to the approach under the Framework included additions to the list of interpreter membership organisation recognised, and modifications to the applicable standards for deaf interpreters, following input from Signature (a charity promoting excellence in communication with deaf people). Other changes were made through the competitive dialogue process, which included input from justice sector partners.

What data were available to inform the procurement process, and where, specifically, did you seek and get data from?

Overall spend data was provided to Procurement through the Project Board acquired from each organisation individually. Procurement also collected some sample data from individual courts over a week period. Representatives from all justice sector agencies party to the Framework Agreement participated in the competitive dialogue process and had the opportunity to discuss their specific requirements.

How was ALS tested to ensure that rates of pay would be sufficient to ensure that they would attract and retain suitably qualified linguists?

We questioned all the bidders about market rates during the competitive dialogue. We were aware that courts in Scotland paid less than the ALS bid. We also looked at the website below: http://www.payscale.com/research/UK/Job=Interpreter_or_Translator/Salary

What is your estimate of the administrative costs to courts and tribunals to date of resorting to the old arrangements?

Off contract spend between February and September is c.£1,550,000. However, we note that monthly spend has reduced from over £500k in February 2012 to just over £70k in September 2012. Spend for October 2012 off contract is not yet available. The above figure is the total of off contract spend not the difference between the old arrangements and those under the Framework.

What are the remaining issues with frontline staff and the judiciary that you are continuing to work with Capita TI to resolve (as indicated in your memorandum)?

There are two aspects to business improvement which are being taken forward. With Capita, we are reviewing quality standards (as part of our work on the second recommendation by the National Audit Office), as well as looking at attracting additional, qualified interpreters to the work. Internally, we are looking at HMCTS internal processes to ensure they are as efficient as possible. This includes financial assurance standard processes, and complaints and compensation guidance. We are also working on more detailed guidance on appropriate use of interpreters, such as interpreters assisting with post-hearing work to support bail applications or probation interview. There is inevitably overlap between the two strands of work (with Capita and with HMCTS), and we are involving people in each strand where relevant, as well as judiciary and other partners.
When was the most recent routine inspection of the register of interpreters and the work that Capita TI has done to check interpreters? What did this inspection show in terms of the absolute number of interpreters that are on the supplier base for each tier and the proportion of those are a) fully CRB vetted, b) fully assessed to the appropriate tier and c) had their qualifications properly verified? What proportion is registered with NRPSI? What proportion of interpreters in each tier hold appropriate qualifications to enable them to interpret in more than one language?

(a) The latest information from ALS tells us that 50 NRPSI interpreters have yet to supply their security information. All others on the register have either Enhanced CRBB or NPPV 2.

(b) There are currently 1,162 individual interpreters on the register, 48% of whom can interpret in more than one language.

(a), (b) and (c) An audit took place on 24 October 2012 to check the details of a sample from the register. For that audit, all but one interpreter in the random sample of 30 checked had the appropriate security checks. The interpreter without the appropriate checks has been removed pending verification. Interpreters checked had been assigned to tiers, however, as the Committee is aware assessments are not taking place whilst the process is improved. The NRPSI status was not checked, as this is only one form of qualifying for tiering. A third of the sample required further documentation to prove their qualifications and Capita undertook to obtain this.

What guidance has been given to courts and tribunals to enable them to ascertain the appropriate tier of interpreter that should be booked?

A tier 1 or 2 interpreter should be used for all bookings, unless otherwise specifically agreed with the court or tribunal. This is set out in guidance issued to staff; the most recent version of the guidance was circulated to accompany the new version of the booking portal in September.

Why has the MoJ not yet exercised its right to inspect Capita TI? Do you have any current intentions to do so, and if so, when?

Spot checks and audits are carried out on Capita as part of ongoing management. Three sample audits have been completed to date. We intend to continue this audit regularly, as a minimum monthly. We will be scheduling one in for week commencing 26 November. Thereafter they will be monthly for the foreseeable future.

How do you respond to suggestions that there is a need for an independent regulator and arbitrator overseeing interpreting and translation services?

It is worth stating that the Framework requires all interpreters to be qualified, dependent upon the tier. These qualifications are obtained independent of Capita/ALS from recognised educational institutes, examining boards or regulatory bodies. The customer and its stakeholders are a key element of overseeing the services. If the customer (MoJ, ACPO etc) is not content with the quality and skills of an interpreter then they can remove them from the register. However, interpreting and translation services cover many sectors and there would be many issues in regulating interpreters and translators. Whilst we have not given full consideration to the possibility of an independent regulator and arbitrator, the NAO recommendations were for the contract to be implemented fully, with independent advice on the quality assessment to be obtained. We are working to implement these recommendations with Capita and the interpreting community, as well as other justice sector partners.

From the Justice Committee, 30 October 2012

Q194–195 Please would you provide evidence to confirm the dates when you were informed by ALS that there was a) a problem with the assessment process, and b) that Middlesex University had terminated its agreement to undertake assessments?

We became aware that there was a delay in marking from Middlesex in mid-January and that ALS was in the process of discussion with other institutions to pick up the work. It was highlighted in the project’s risk register from this point. We did not know the date of termination until the NAO investigation.

Q220–221 Communications with legal professionals about the complaints system

We will include the legal profession in our revised communications strategy, and ensure they are aware of the best way to raise concerns with HMCTS.

Q227–230 Please would you provide us with: a) details of the number of cases in which a judge has i) accepted and ii) rejected an interpreter of a tier lower than that initially requested, and b) the general level of complaints from the judiciary regarding the quality of interpreters

(a) We do not have the specific data that you have requested, because if the judge accepts the tier 3 interpreter from the outset, it is counted as a successful booking. However, a complaint can be raised on the tiering of the interpreter. Over the period August to October, no Prisons complained about this. Sixteen complaints were
received from courts or tribunals; 10 were reassigned to tier 1 or 2 interpreters in advance of the hearing, and six continued to use a tier 3 interpreter when the judge had accepted the explanation.

(b) The complaints data we receive does not record who complained, currently. We are hoping to change this in future version of portal.

Please provide the fulfilment and complaints rates for NOMS and for translation services over the period in which the contract has been operating? Please would you also provide a list of indicators used to monitor Capita TI’s compliance with the FWA

Complaints in NOMS were very low, only three complaints made in the period 30 January to 31 August 2012. Delivery for Prisons compared to other justice sector partners in the Framework Agreement are below (to note that these are figures as at August 2012 and may be subsequently revised).

<table>
<thead>
<tr>
<th>TOTAL DELIVERY VOLUME</th>
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<td>Courts</td>
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<td>CPS</td>
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<td>Police</td>
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<td>Tribunals</td>
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November 2012

Supplementary evidence from the Professional Interpreters for Justice

On 23 October 2012 I gave oral evidence to the Justice Select Committee inquiry into Interpreting and Translation services and the Applied Language Solutions contract, on behalf of the Professional Interpreters for Justice campaign. The other witnesses and I were invited by Sir Alan Beith to provide further information to the Committee in writing.

In addition to the Justice Select Committee inquiry, the Public Accounts Committee is holding a parallel inquiry into Ministry of Justice Language Services, to which inquiry officers of the Association of Police and Court Interpreters gave oral evidence on behalf of Professional Interpreters for Justice on 15 October 2012.

Given the overlap between the two inquiries, I feel that pragmatism dictates I should provide information to both committees and with reference to the evidence under consideration by both committees.

1. Professional Interpreters for Justice

Eight membership organisations are united in the Professional Interpreters for Justice Campaign, along with non-membership organisations. Figure 1 in appendix 1 shows there is overlap between our respective membership, and between us we represent upwards of 2320 registered and qualified interpreters.

2. National Agreement

Figure 2 in appendix 2 shows that the professional linguists we represent are those who were approved for use in the Criminal Justice System under the terms of the National Agreement on the Arrangements for the use of Interpreters and Translators in the Criminal Justice System in England and Wales (1997; revised 2002; 2007; 2011).

3. References to Shortcomings of the “Old System”

As stated during evidence on 23 October, interpreters and their professional organisations wanted the Ministry of Justice to work with the profession to build on what had already been achieved by the establishment of a National Register and the associated professional qualifications, and the decades of policy development that had led to the National Agreement.

3.1 Lack of enforcement of the National Agreement

The “old system” consisted of the guidance set out in the National Agreement, which was insufficiently implemented by CJS agencies and not at all enforced by the Ministry of Justice. Interpreters wanted the National Agreement to be properly enforced.

3.2 Diversity of arrangements in practice under the “old system”

Alongside adherence to the National Agreement and its high standards of professional qualifications and registrations, CJS agencies used diverse local arrangements ranging from local lists and smaller commercial
agencies offering no safeguards. This perceived shortcoming was also the result of the MoJ failing to enforce the National Agreement. This has not changed under the Framework Agreement.

3.3 Complaints procedure under the "old system"

Where an interpreter was drawn from the sources recommended by the National Agreement they were subject to a code of conduct and to disciplinary procedures. NRPSI, CIOL, APCI and ITI all have codes of professional conduct and transparent, published procedures including an appeals procedure. Conversely, where an interpreter was not drawn from National Agreement sources, there was indeed no recourse to any disciplinary procedure.

It has been stated that the NRPSI complaints procedure was too slow and did not allow for the suspension of an interpreter pending investigation. The fact is that interpreters complained about could not be suspended before they had had a proper hearing. The outcome of complaints received is now published online by the NRPSI.

Co-operation overseen by the MoJ could have resulted in more stringent implementation of the National Agreement, greater incentive to become professionally registered, and the ability for organisations to share information about disciplinary hearings.

4. Lack of Past Management Information

It has been repeatedly stated that there was no audit trail for the use of, and cost of interpreters and translators by HMCTS. Reports by the Runciman Commission (1993) and Lord Justice Auld (2001) had recommended an audit trail be kept, but neither HMCTS nor the MoJ acted on this recommendation.

However, good records on the use of interpreters were kept by many police forces and these had been collated by interpreter organisations over the years. It is not true that the proportion of short-term bookings was an unknown quantity.

5. Reduction and Restricturing of Fees

Under the Framework Agreement, fees due to interpreters were reduced and restructured to such an extent that ALS workers are taking home less than the minimum wage.

For reasons that were set out in a thorough response to my Freedom of Information request (not included), the National Audit Office concedes that its report relied on financial information that was not the relevant information, and consequently made certain errors in its modelling of the losses suffered by professional interpreters.

Professional Interpreters for Justice has made a comparison between the previous National Agreement rates and the current ALS/Capita rates, showing that ALS/Capita workers are taking home less than the minimum wage in many cases. Please see the comparison tables with commentary in Appendix 3 for the true scale of the losses suffered by interpreters.

6. Access to the NRPSI and who Funds it

It was incorrectly stated in the NAO report, and repeated in oral evidence, that the registration fee for interpreters registered with NRPSI had been abolished in April 2011 when the NRPSI was reconstituted (NAO p.9, 1.5).

Prior to 2011, NRPSI was funded by subscription fees from end users (police forces, HMCTS, local government organisations, NHS Trusts) as well as by interpreters’ registration fees (around £90). When the NRPSI became independent of the CIOL in April 2011, access to the register was made free of charge for users, whereas interpreters now have to pay a £130 registration fee to fund the NRPSI’s running costs. Interpreters do this because they care about professional standards and an independent regulator. The NRPSI register is now freely accessible online to all.

7. Level of Qualifications Required under the FWA

7.1 Tier 1

The new top tier, Tier 1, effectively mimics the previous minimum standards under the National Agreement. The qualifications are at Level 6. Tier 1 interpreters must also sit the “compulsory” (yet non-existent) ALS assessment.

We doubt that these criteria have been met and verified for all 677 Tier 1 workers Capita currently uses.

Now, the default setting for HMCTS bookings is for Tier 2 interpreters (compared with T1 as the minimum standard across the board under the National Agreement). A Tier 1 interpreter may accept a Tier 2 assignment but will only be paid at Tier 2 rates.
7.2 Tier 2

Previously, those placed in Tier 2 would not have qualified to work in CJS interpreting. Tier 2 workers must have:

(a) “Partial DPSI” (English Law option) ie the interpreter must have passed all modules with the exception of component 3b (written translation from English);

Comment: Interpreters are often required to provide (sight) translation of documents in both languages in the course of their CJS work. The DPSI is only awarded to those who successfully complete all components of the examination; the notions of a “partial DPSI” or a CJS interpreter without proven written skills are risible.

(b) A degree in linguistics, English philology, Modern Languages or MA in Teaching of English, or other language related diplomas where English figures as part of the course completed.

Comment: None of the above degree subjects, (with the exception of a degree level qualification with at least two interpreting components and two translation components, including consecutive and simultaneous interpreting and sight translation17) are recognised interpreting qualifications. Neither philology (the study of language in written historical sources; a combination of literary studies, history and linguistics), nor linguistics (the scientific study of language), nor English language teaching, have any relevance to legal interpreting.

In addition, Tier 2 workers must have (in all cases):
— Previous or current employment in criminal justice services in their countries 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
— A pass at the assessment centre to the tier two standard.

Comment: In other words, according to the Framework Agreement a “partial DPSI” by itself is not enough and must be supplemented by a degree, experience in criminal justice and public service interpreting, references, and the “compulsory” (yet non-existent) ALS assessment.

We doubt that these criteria have been met and verified for all 303 Tier 2 workers Capita currently uses.

7.3 Tier 3

The interpreter must have one or more of the following:
— Demonstrable experience in the public sector with appropriate linguistic background; plus
— Formalised basic interpreter training including one of the following:

(a) the Workers Educational Association (WEA) programmes.

Comment: This is a Level 3 Award (Foundation/A-Level standard).

(b) Bi-Lingual Skills Certificates,

Comment: The Institute of Linguists Educational Trust Certificate in Bilingual Skills (CBS) is NQF accredited to Level 3 (Foundation/A-Level standard). It is not an interpreting qualification.

(c) Community Level Interpreting Degrees under the NVQ certification system.

Comment: There is no community interpreting qualification at degree level. NVQs in interpreting only exist for sign language interpreting.

The Certificate in Community interpreting and Level 3 Award in Introduction to Community Interpreting Skills are QCF accredited to Level 3 (Foundation/A-Level standard) whereas the Award in Understanding Community Interpreting (QCF) is just Level 1.

Together with:
— References; and
— A pass at the assessment centre to the tier three standard.

It is also desirable for tier three interpreters to have at least 100 hours public sector interpreting experience.

We doubt that these criteria have been met and verified for all 132 Tier 3 workers Capita currently uses.

17 According to the NRPSI entry requirements, published at http://www.nrpsi.co.uk/pdf/CriteriaforEntry.pdf
8. Number of Registered & Checked Interpreters

8.1 National Register of Public Service Interpreters

The National Register of Public Service Interpreters offers free and open access to over 2,200 interpreters listed in 101 languages. Interpreters registered with National Register are qualified, have agreed to abide by a Code of Professional Conduct and can be held accountable if they break that code. In addition, they have proven experience and have an enhanced CRB check as a minimum—many have higher levels of clearance such as a Counter-Terrorist check or Home Office Security Check. Re-registration is annual and subject to certain criteria and payment by the interpreter of a registration fee.

8.2 Number of NRPSI interpreters registered with Capita/ALS

It was established by the NAO report in September 2012 that ALS only had 301 NRPSI registered interpreters. In oral evidence, Capita employees stated there were now 400 NRPSI interpreters signed up to ALS. The best qualified refuse to service this contract, both out of principle and because they cannot afford to work for the low rates.

It was established by the media and by an investigation by the Information Commissioner’s Office that ALS had unlawfully harvested the personal details of NRPSI interpreters and created profiles in their names and without their consent, in breach of the Data Protection Act.

8.3 Number of workers signed up to Capita/ALS

The charts and tables in appendix 4 show the numbers of workers Capita/ALS now says it has in each Tier and, by comparison, the number of those who were demonstrably vetted and checked at different points in time.

Total numbers of workers registered with Capita are compared with the wildly exaggerated numbers claimed at various times to have signed up. The same misrepresentations were included in the tender documents, where ALS claimed to have 3,500 linguists registered with it.

8.4 Checks currently being carried out by Capita/ALS

The company was not able to give firm numbers or assurances about the number of workers whose qualifications and references had actually been checked. Nor was it able to assure the Public Accounts Committee that all of its Tier 2 workers hold a degree.

Since the oral evidence hearing took place, on 1 November, Capita-TI sent emails to some workers registered with it, asking them to provide proof. It is clear that the contractual terms regarding the appropriate qualifications and CRB checks for those servicing the contract have been flagrantly disregarded until now. Among those receiving the email, despite ALS/Capita stating that such profiles had been removed or can’t be found, was the infamous Masha the cat. Jajo the rabbit is still able to change his password but his account has been disabled and he no longer receives emails from ALS/Capita.

Where proof of qualifications or experience is received from abroad, it is not clear what procedure Capita has in place to verify the equivalency of qualifications or veracity of references.

8.5 Ratio of interpreters to language listings

According to Capita’s own figures, the number of languages spoken by ALS workers in different tiers is as follows:

<table>
<thead>
<tr>
<th>Tier</th>
<th>Workers</th>
<th>Language listings in October 2012</th>
<th>ALS Worker to Language Ratio in May 2012 (NAO report)</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>677</td>
<td>1,332</td>
<td>1.97</td>
</tr>
<tr>
<td>2</td>
<td>303</td>
<td>604</td>
<td>1.99</td>
</tr>
<tr>
<td>3</td>
<td>132</td>
<td>281</td>
<td>2.13</td>
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<tr>
<td>Total</td>
<td>1,112</td>
<td>2,217</td>
<td>1.99</td>
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<td>2,217</td>
<td>1.99</td>
</tr>
</tbody>
</table>
A very large proportion of Capita/ALS workers work in two or more foreign languages, and this tendency has increased since May. Compare the above ratios to the ratio of professionally qualified NRPSI interpreters working in more than one foreign language:

| Interpreter to Language Ratio in May 2012 (NAO report) |
|-----------------|-----------------|-----------------|
| NRPSI           | 2.241           | 2.609           | 1.16           |

There are strong grounds to suspect that ALS workers are working in languages in which they possess no qualifications. An independent audit of the ALS database is urged.

9. **Quality of Interpreting provided under the Framework Agreement**

Despite the contractual obligation for ALS to provide data on the different Tiers of workers used for HMCTS assignments, the MoJ claims that it does not hold this data. Given that Tiers 1, 2 and 3 are paid at different rates, how can the MoJ audit whether it was correctly invoiced by the contractor if it is not in possession of this information?

With Tier 1 being the equivalent of the National Agreement’s minimum standards, it should be clear that quality has been affected by the introduction of tiering.

Failure to provide this information as specified in J2 of the Framework Agreement places Capita in breach of contract.

10. **The Tiering System**

It was established by the NAO report and the oral evidence hearings that the Tiering system was in fact approved by nobody and was unanimously rejected by professional experts. The NAO report made the recommendation (in 3.16), for the Ministry and Capita/ALS to seek, and publish, independent advice about the adequacy of the new tiering and assessment regime as a high priority.

We contend that overwhelming advice has already been received by the various inquiries and by the Ministry of Justice, from independent associations and professional institutes of considerable standing, which has unanimously rejected the tiering and assessment as wholly inappropriate and inadequate.

Since the tiering and assessment are such integral aspects of the delivery of the Framework Agreement, the contract rests on false premises.

Here, a procurement decision was taken by people who lacked the appropriate expertise, resulting in undesirable changes to Justice policy and sideling of the existing professional structures.

11. **The “Compulsory” Assessments**

It was a key feature of the Framework Agreement that ALS would assess all interpreters, without exception. Initially, a fee was payable for the “compulsory” assessment. According to a Freedom of Information response by Middlesex University, no contract was yet in place by 16 September 2012. Yet, according to other evidence, Middlesex University gave notice that it wished to suspend its contract with ALS as early as 10 October 2011 and the contract was subsequently suspended on 17 February 2012. Clearly, the contract cannot have been in existence for long before it was found to be unworkable.

No ALS workers have been assessed since February, even though assessment is an essential criterion for working on the contract. This places ALS/Capita in material breach of the Framework Agreement.

The tender documents and the Framework Agreement not only specified that assessments would be carried out, but that they would be carried out by Middlesex University.

The collapse of the contract between Middlesex University and ALS/Capita places ALS/Capita in material breach of the Framework Agreement.

12. **Ancillary Costs**

The contract’s penalty provisions, of which the MoJ has only recently availed itself, fall far short of giving financial recompense for the chaos caused to human lives and the resulting additional cost to the tax-payer.

12.1 “Off-contract spend”

The MoJ have provided estimates of the ancillary costs borne by tax-payers as a consequence of ALS/Capita’s failings. The “off-contract spend”, ie the cost of HMCTS continuing to engage interpreters directly at the old National Agreement rates and thereby bypassing ALS/Capita, is estimated by the MoJ at £4 million. Compared with the projected “New contract spend” of £10 million, this shows the volume of bookings anticipated to be dealt with directly is around 30% of the total.
The only evidence provided with regard to the volume of HMCTS interpreter bookings bypassing ALS was a figure of 20% provided by Peter Handcock. As has been noted repeatedly, the ALS performance figures do not reflect the company’s fulfilment against 100% of the entire HMCTS requirement, but against somewhere between 70% and 80% of the total requirement.

If the contract were to be rolled out in full, including its use by CPS trusts, it will collapse within a matter of days because ALS/Capita cannot cope with the demand and cannot cope with short notice bookings.

12.2 “Cost of ineffective trial increase”

The cost of ineffective trial increase in Magistrates’ Courts is estimated at £60k; the cost to other jurisdictions is unavailable.

It should be clear that the estimated cost of £60k is unrealistically low. The definition of an “ineffective trial” in official statistics does not account for (repeated) case adjournments or remands due to an inability to grant bail and the broader associated costs of detention, transport, relisting, attendance of all parties. Evidence has been submitted of hundreds of cases before the courts that were (repeatedly) adjourned due to ALS/Capita’s inability to provide an interpreter, with defendants unable to apply for bail remanded in custody in the interim.

Ancillary costs caused by inadequate interpreting services also stretch to post-trial proceedings such as the recovery of Proceeds of Crime. Potential losses in terms of irrecoverable proceeds of crime where a prosecution collapses due to interpreter error are considerable. Damages claims and appeals by those denied a qualified interpreter are sure to follow.

The cost of one collapsed Crown Court trial will easily overshadow the £60k. projection made by the MoJ. It remains to be tested whether the professional indemnity insurance arrangements -if there are any- that cover Capita/ALS workers will be adequate to meet the damages in the event of a trial collapsing due to interpreter error.

13. Alleged “Interpreter Intimidation Campaign”

In his evidence before the Justice Select Committee, Gavin Wheeldon alleged that professional interpreters who opposed the Framework Agreement had orchestrated a campaign of intimidation, but he was unable to offer concrete proof of the incidents he cited. Similar allegations were already published by Wheeldon on 15 February 2012, both online and sent to ALS workers by email.

Both committees have heard that some professional interpreters who are not working under the Framework Agreement have been attending courts to observe cases involving an interpreter. Observing other interpreters at work is a recommended practice for Continuous Professional Development. We accept that it may well be intimidating to an unqualified, inexperienced novice who is fully out of their depth interpreting in court, to be observed and monitored by a qualified, experienced, registered professional interpreter. It goes without saying that professional interpreters monitoring cases in court did so discreetly, unobtrusively and courteously.

The Professional Interpreters for Justice campaign by united interpreter organisations has, from the start, acknowledged colleagues’ right, as independent freelancers, to choose to whom they will or will not provide their services. The role of professional organisations has been to provide information to our members and put them in contact with one another; the widespread boycott of ALS and substantial boycott of direct HMCTS bookings are the actions of members at grass-roots level. We fully refute Mr Wheeldon’s allegations of organised intimidation.

14. Provision of Translation Services under the Framework Agreement

The matter of translation services provided to the courts and other CJS agencies by Applied Language Solutions has not been considered by either committee, and in actual fact could warrant an inquiry of its own. Under the same Framework Agreement, ALS/Capita now provides translation (ie written) services to the Criminal Justice System and presumably deals with evidential documents, transcripts of interviews under caution, and incoming and outgoing Letters of Request for International Legal Assistance.

Not much is known by our organisations about the functioning of this side of the contract, except that is heavily reliant on computer-assisted translation using ALS/Capita’s bespoke software. A recent recruitment email sent by Capita-TI to translators offered the same rate of £60 per 1000 words for all languages, which rate is well below accepted market rates, even in the CJS sector.

All the concerns that have been raised in respect of ALS/Capita’s suitability to provide appropriately qualified and experienced interpreters to the Criminal Justice System are equally valid regarding the company’s ability to provide high quality professional translators to the Criminal Justice System. The more CPS work is entrusted to ALS/Capita, the more acute these problems will become.

Conclusions

— The contractor has been in material breach all along.
— The adoption of the Tiering system was based on lies and misrepresentation.
— The contractor has not been carrying out checks on workers; a breach of contract.
— The contractor currently has no assessment system in place; a breach of contract.
— The contractor is unable to reconcile its conflicting functions.
— The MoJ has not yet undertaken the necessary steps to independently audit its contractor’s worker database, self-reported performance figures and invoicing.
— The MoJ and the contractor sought to bully professional interpreters into conforming.
— The MoJ and the contractor knowingly allowed unchecked amateurs to interpret in the courts; a breach of contract.
— The consequences of the MoJ’s refusal to engage with the profession have been disastrous.
— The Framework Agreement is unsalvageable.

APPENDICES
(1) Figure 1: Professional Interpreters for Justice Campaign: organisations and membership.
(2) Figure 2: Sources of CJS interpreters approved by the National Agreement.
(3) Comparison of National Agreement and ALS/Capita rates of pay.
(4) Number of workers registered with ALS/Capita per tier.

November 2012
APPENDIX 1

UK PROFESSIONAL MEMBERSHIP ORGANISATIONS FOR INTERPRETERS AND TRANSLATORS
AND INTERPRETERS REPRESENTED BY THE PROFESSIONAL INTERPRETERS FOR JUSTICE CAMPAIGN

QUALIFIED INTERPRETERS
(HOLDING DPSI / MET TEST)

NATIONAL REGISTER OF PUBLIC SERVICE INTERPRETERS
2,320 NRPSI REGISTERED INTERPRETERS

PROFESSIONAL INTERPRETERS FOR JUSTICE
PARTNER ORGANISATIONS:

APCI  Association of Police and Court Interpreters
CIOL  Chartered Institute of Linguists
ITI   Institute of Translation and Interpreting
NRPSI National Register of Public Service Interpreters
NUBIT National Union of Professional Interpreters and Translators, part of Unite the union
PIA   Professional Interpreters Alliance
SOMI  Society of Official Metropolitan Interpreters UK
SPSI  Society for Professional Public Service Interpreting

LINGUISTS PROFESSIONALLY QUALIFIED IN AREAS
OTHER THAN PUBLIC SERVICE INTERPRETING

ITI      CIOL
PIA SOMI
NUBIT SPSI
APCI
APPROVED SOURCES OF INTERPRETERS UNDER THE ‘NATIONAL AGREEMENT’ (PRE-2012)

QUALIFIED INTERPRETERS (HOLDING DPSI/MET TEST)

NATIONAL REGISTER OF PUBLIC SERVICE INTERPRETERS
2,320 NRPSI REGISTERED INTERPRETERS

QUALIFIED INTERPRETERS

NRPSI

APCI

RECOMMENDED SOURCES

NRPSI, APCI & ITI INTERPRETERS

Altemative sources listed in Annex B part B

NATIONAL AGREEMENT 2007-2012: 3.3.1 The standard requirement is that every interpreter/LSP working in courts and police stations should be registered with one of the recommended registers.

3.4.1 A determined effort should be made to obtain a registered interpreter.

3.4.2 If no interpreter can be found from the appropriate recommended register, and delay or rescheduling is not possible, possible alternatives are listed in Annex B.
APPENDIX 3

COMPARISON OF RATES OF PAY TO COURT INTERPRETERS
APPLIED LANGUAGE SOLUTIONS (ALS) AND NATIONAL AGREEMENT (NA)

There are very few of us who can afford to work full-time as a public service interpreter with the possibility of only earning £13.32 in a day (before tax).

The calculations below show that ALS does not even guarantee a rate equal to the minimum wage and at best the gross hourly rate for half a day at court has been reduced by 57.85%.

SAMPLE COMPARISON

Interpreter travelling from NW London to Westminster Magistrates’ Court

(Half a day at Court, Monday—Friday rates)

<table>
<thead>
<tr>
<th>Distance: 29 miles return</th>
<th>ALS</th>
<th>ALS</th>
<th>ALS</th>
<th>NA rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Travel time: 2 hrs</td>
<td>3</td>
<td>4</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Total hours (attendance + travel time)</td>
<td>10am</td>
<td>11am</td>
<td>10am</td>
<td>11am</td>
</tr>
<tr>
<td>Attendance fee:</td>
<td>£20.00</td>
<td>£40.00</td>
<td>£60.00</td>
<td>£85.00</td>
</tr>
<tr>
<td>Travel time: 2 hrs</td>
<td>£0.00</td>
<td>£0.00</td>
<td>£0.00</td>
<td>£30.00</td>
</tr>
<tr>
<td>Mileage:</td>
<td>£3.60</td>
<td>£3.60</td>
<td>£3.60</td>
<td>£7.25</td>
</tr>
<tr>
<td>ALS 40ppm after first 20m = 9 miles</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>NA 25ppm = 29 miles</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parking expenses</td>
<td>£9.00</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public transport</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total payment</td>
<td>£23.60</td>
<td>£43.60</td>
<td>£63.60</td>
<td>£131.25</td>
</tr>
<tr>
<td>Parking (2 hrs minimum) [1]</td>
<td>−£5.00</td>
<td>−£5.00</td>
<td>−£9.00</td>
<td>−£9.00</td>
</tr>
<tr>
<td>Fuel cost [2]</td>
<td>−£5.28</td>
<td>−£5.28</td>
<td>−£5.28</td>
<td>−£5.28</td>
</tr>
<tr>
<td>Total travel expenses</td>
<td>−£10.28</td>
<td>−£10.28</td>
<td>−£14.28</td>
<td>−£14.28</td>
</tr>
<tr>
<td>Income net of travel expenses</td>
<td>£13.32</td>
<td>£33.32</td>
<td>£49.32</td>
<td>£116.97</td>
</tr>
<tr>
<td>Gross income/hour*</td>
<td>£4.44</td>
<td>£8.33</td>
<td>£9.86</td>
<td>£23.39</td>
</tr>
</tbody>
</table>

*Gross hourly rates for self-employed interpreters liable to pay Income Tax and National Insurance, who have no pension, holiday or sick pay and no job security.


- According to the AA, the cost of running a petrol car costing up to £14,000 is 45.91p per mile; for petrol cars costing between £14,000 and £17,000 this rises to 59.83p (assumed annual mileage of 10,000) (2012 figures).

1. An ALS interpreter classified under tier 2, on an assignment for the minimum period of an hour, travel time within the 2 hour limit and travelling 29 miles return would be paid £23.60, and after deduction of £10.28 expenses is left with £13.32. Therefore, for the 3 hours spent on the assignment, the hourly rate of pay works out at £4.44 per hour (before tax). In the event of accepting the booking on-line, a £5 supplement becomes payable in which case the hourly rate would be £6.11 (before tax).

2. The National Minimum Wage (NMW) is £6.08. The NMW is for those on “low pay”.

3. This indicates that public service interpreting is no longer considered a skilled profession by the MoJ, but has been reduced to become part of the low-paying industries.

PAYMENTS TO INTERPRETERS UNDER THE NATIONAL AGREEMENT

Prior to the introduction of the Ministry of Justice’s Framework Agreement and the outsourcing to ALS court interpreters were paid in accordance with the standardised fees and terms and conditions set by the National Agreement on Arrangements for the use of interpreters within the CJS (as revised in 2007):

Minimum attendance fee: £85 for 3 hours attendance (excluding travelling time).
Additional attendance: £7.50 per quarter hour or part thereof after the first 3 hours.
Travel time: £3.75 per quarter hour or part thereof.
Mileage: 25 pence per mile.
Parking expenses: reimbursed.
Public transport expenses: reimbursed.
A cancellation fee equal to the minimum attendance fee was payable if the booking was cancelled after 10.00 am on the working day before it was due and no replacement was offered.

**Payments to Interpreters under the Framework Agreement**

Applied Language Solutions assigns foreign language interpreters in three tiers and pays associated (supposedly) non-negotiable payment rates of £16, £20 and £22.

Court interpreting is classified as **Tier 2**:
- Minimum attendance fee: £20 for 1 hour attendance.
- Additional attendance: not specified (£20 per hour pro-rata per minute?).
- Travel time: Interpreters are not paid for travel time if total return journey time is less than two hours. £10 per hour is paid if total journey time exceeds one hour each way.
- Mileage: 40 pence per mile for mileage in excess of 10 miles travelled each way.
- Parking expenses: ALS does not cover the cost of car parking charges.
- Public transport: ALS does not reimburse the cost of train or bus tickets or any other mode of transport, calculating the journey as if the trip had been made by car.
- £5 supplement for every booking accepted through any of the automation methods.

No cancellation fee.

**APPENDIX 4**

**CAPITA’S DATA ON NUMBERS OF INTERPRETERS USED, PER TIER**

Feb to Aug provided in Supplementary Written Evidence to the Justice Committee, CI 80; Sept not known; Oct provided in Oral evidence—evidence not yet published online.

<table>
<thead>
<tr>
<th>Tier</th>
<th>Feb</th>
<th>Mar</th>
<th>April</th>
<th>May</th>
<th>June</th>
<th>July</th>
<th>August</th>
<th>Sept</th>
<th>October</th>
</tr>
</thead>
<tbody>
<tr>
<td>T1</td>
<td>402</td>
<td>517</td>
<td>534</td>
<td>578</td>
<td>578</td>
<td>590</td>
<td>577</td>
<td>677</td>
<td>402</td>
</tr>
<tr>
<td>T2</td>
<td>198</td>
<td>312</td>
<td>338</td>
<td>359</td>
<td>332</td>
<td>325</td>
<td>295</td>
<td>303</td>
<td>198</td>
</tr>
<tr>
<td>T3</td>
<td>170</td>
<td>234</td>
<td>196</td>
<td>140</td>
<td>75</td>
<td>79</td>
<td>60</td>
<td>132</td>
<td>170</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>770</strong></td>
<td><strong>1,063</strong></td>
<td><strong>1,068</strong></td>
<td><strong>1,077</strong></td>
<td><strong>985</strong></td>
<td><strong>994</strong></td>
<td><strong>932</strong></td>
<td><strong>1,112</strong></td>
<td><strong>1,340</strong></td>
</tr>
</tbody>
</table>

vetting applications 720 1,091
vetted 574 1,035
NRPSI 305

30 Oct 2012: “There are currently 1135 interpreters live on our supplier base”.

### Actual numbers of ALS workers vs. claims made

- **http://www.theyworkforyou.com/lords/?id=2012-07-09a.907.5**
  - Lord McNally: “At the moment, there are about 1,500 interpreters under contract and they are equivalent to about 3,000 interpreter persons, which means that many of them speak two or more languages.”

  - 24 May 2012
  - “Disruption to court business and complaints have reduced substantially and close to 3,000 interpreters are now working under this contract. We continue to monitor the improvement on a daily basis.”

  - 23 March 2012
  - “The contract began less than two months ago, we are fulfilling the vast majority of bookings (nearly 3,000 a week) and have 2,000 experienced and qualified linguists actively working within the system. More interpreters are signing up daily.”

- **http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm111010/debtext/111010-0004.htm#1110115000002**
  - 10 Oct 2011
  - “Applied Language Solutions claims that 1,000 linguists have signed up to its Linguist Lounge recruitment website. That means a cut of around 1,300 qualified interpreters available to the courts system, assuming that all 1,000 are NRPSI-qualified. If they are not, the cut in qualified interpreters will be even greater.”
Written evidence from Dr Francis Beresford

This submission refers to three documents that give supporting information:

Doc 1. Review of FWA and alternatives. 3.comb.doc
Doc 2. To Sir Alan Beith in response to Peter Handcock. 2.8.12.doc
Doc 3. Reply to Iain Bell. Chief Statistician. 18.7.12.doc

SUMMARY

1. Since the Runciman Commission made its recommendations in 1993, trained and qualified interpreters who are on the National Register of Public Service Interpreters (NRPSI) have provided a high quality interpreting service to courts and police in England and Wales in a system which has gained renown throughout Europe.

2. Though interpreting costs escalated from 2004 when the A8 countries joined the EU they have been roughly stable since 2008.

3. In 2010 the Ministry of Justice (MoJ) Interpreting Project identified three concerns with the current arrangements: time consuming and costly booking arrangements; limited availability in some languages; and some areas and complaints not being investigated thoroughly.

4. The MoJ decided to outsource interpreting to a single interpreting agency under a Framework Agreement (FWA) rather than employ interpreters direct to try and reduce costs and improve booking efficiency and complaints.

5. To try and increase the pool of interpreters and reduce costs the MoJ allowed Applied Language Solutions (ALS) to introduce a tiered system where interpreters with language qualifications but no training in legal terminology could interpret for courts and police as Tier 2 interpreters. A superficial assessment was introduced to help this grading.

6. No independent assessment was commissioned to check whether those fulfilling the new criteria could perform adequately in situ even though this seemed unlikely given that they might have no training in interpreting legal terminology.

7. The FWA and introduction of Tier 2 interpreters has in fact produced a dramatic decrease in the available pool of interpreters from the 2,350 interpreters previously on the NRPSI list to the 1,500 currently working for ALS after a year of recruiting.

8. The reduction in training and skills of the interpreters working in courts has been even more dramatic with only 13% of those previously on the NRPSI list now signed up with ALS.

9. The MoJ’s assertion that since many of ALS’s interpreters speak more than one language this increases the effective number of interpreters to 3,000 (i.e. a 100% increase) only lays bare the marked drop in standards, as the equivalent increase in the NRPSI list when adding multiple languages is only 18% due to the high level of interpreting skill required.

10. The much quoted assertion by Mr Crispin Blunt that interpreters were previously overpaid and could earn £100,000 under the National Agreement is based on a single unsubstantiated quote in the Birmingham Mail repeated in the Sunday Times and has no basis in fact.

11. Average interpreter pay in England, prior to the FWA, was £15,000 with a small percentage of interpreters working in a few specific languages, earning over £30,000.

12. ALS has reduced the average hourly rate for a freelance interpreter, including travel time, from £23/hr under the previous National Agreement to an average £11/hr under the FWA.

13. The evidence that outsourcing might reduce costs came from the Collaborative Police contract in the North-West but this initially offered higher rates of £30–35/hr to trained interpreters, was on ALS’s home territory where it had the necessary contacts and was only for police work which is not observed so poor standards could go unrecognised.

14. Even though it was inviting bids for a £60 million pound a year contract the MoJ had no national data on the number of interpreting assignments it required or in which languages or what locations.

15. As the MoJ nonetheless asked for bids for an hourly rate to include travel time and expenses it was always likely that bids would be based mainly on guesswork and would end up too high or too low.

16. ALS’s tender submission stated that “approximately 2,500 of our 4,500 registered freelance are suitably experienced and qualified for Authority assignments” when in fact most of those 2,500 were on an NRPSI database which ALS had bought. Only a tiny percentage of these interpreters had actually agreed to work for them.
17. ALS and the MoJ could only claim they were paying interpreters “market rates” which is usually defined as “the usual rate in the market” as ALS’s Interpreter Working Group were deciding themselves what the figure should be.

18. The MoJ appears to have simply taken without question the things ALS was promising in the contract and not obtained suitable independent expert advice. For instance the first Key Performance Indicator (KPI) is “availability of all languages within a 25 mile radius—95%”. This is an impossible target as many languages have less than ten NRPSI interpreters for the whole country.

19. ALS was awarded a £60 million/year contract by the MoJ even though in May 2010 it had a turnover of £7.5 million and losses of £20,000, and in May 2011 a turnover of 10.6 million and losses of £331,000.

20. The first month of roll out in Feb 2012 saw interpreting chaos in the courts and those police forces who had signed up with over one third of interpreting assignments not being fulfilled.

21. Though overall rates fulfilment rates have increased this has almost certainly only been possible only as ALS has been ignoring the quality requirements for Tier 2 interpreters.

22. The MoJ has not published data on fulfilment for the less common languages, which are where ALS is likely to have major long term problems in fulfilment, despite requests, presumably as this would show how severe the shortage of interpreters still is.

23. It is likely that most of ALS’s Tier 2 interpreters, other than those with partial DPSI, do not fulfil all the requirements stated in the contract ie did not have 100 hours interpreting experience before starting work, plus a language related degree, plus previous experience of working in a justice system and should not therefore be working.

24. It is also highly likely that a substantial number of Tier 2 interpreters do not have the required enhanced CRB check within three years or the equivalent and some may have no CRB check at all which would also invalidate them from working.

25. Of the 720 applications ALS made between Jan and July 2012 for Non Police Personnel Vetting (NPPV3) a remarkable 20% were turned down which speaks volumes about the calibre of ALS’s workforce.

26. The contract states that interpreters/translators will be covered by professional indemnity but in mid-April 2012 the ALS website argued that this was not necessary, though this was subsequently removed. It is not yet clear if ALS has complied with this part of the contract.

27. Reports of interpreters not being informed of the result of their assessments suggest that ALS may not even have been arranging for all of these to be marked by Middlesex University.

28. The MoJ has up until now steadfastly refused to admit there are any problems of interpreter quality relating to the FWA. However in early August Mr Alan Handcock, Chief Exec of the Courts and Tribunals service was informed personally and in detail both of the problems and the questions that need to be put to ALS to confirm if it is complying with the quality aspects of the contract as above. Hopefully these will now be addressed.

29. The huge reduction in the standard of interpreting detailed above goes a long way to explain why so many of those working in the CJS and from all sections of the press are critical of the FWA. It is of note that all the senior management in ALS who were involved in negotiating the FWA and introducing the Tiering system which has proved so disastrous for interpreting standards in this country have now left ALS/Capita and cannot get further jobs in the language industry in this country. Why is the MoJ still clinging to this failed experiment, particularly when other options which save money are available? (Doc 1, p 10&11).

1. The Rationale for Changing Arrangements for the Provision of Interpreter Services

1.1 In 1993 the Runciman Commission recommended that only trained and qualified interpreters be used in court and subsequently the National Register of Public Service Interpreters (NRPSI) was established (1994) along with the Diploma in Public Service Interpreting (DPSI) with legal, community and medical options. In 1998 the Trials Issues Group recommended only NRPSI interpreters be used for criminal investigations and court proceedings, and in 2001 the Auld Report recommended a review of levels of pay “to encourage more and the best qualified to undertake this work”. The high standards of interpreting in England and Wales, and in particular the NRPSI and DPSI, have previously been held up as beacon of good practice to other countries in the European Union by EULITA, the European Union Legal Interpreters and Translators Association.

1.2 Interpreting costs escalated in 2004 when the A8 countries joined the EU but the Ministry of Justice’s published interpreter costs for Crown Courts showed only a marginal increase between 2008–2010 from £4.5 million to £4.6 million. In 2010 the MoJ established the Interpreting Project to improve the existing system and reduce costs while maintaining appropriate quality standards. The review (381–11 03 30 Document 5—Draft Quality Impact Assessment -30 March 2011 p3) identified three major concerns: (a) the time consuming and costly mechanism for booking interpreters (b) the limited availability of registered interpreters in some languages and in some parts of the country (c) that complaints made against interpreters were not being investigated thoroughly.
1.3 (a) The booking system could be time consuming and inefficient as there was no local or national coordination to enable bookers to know which interpreters were available (other than partly for Tribunals) and fees for travel time, travel expenses were negotiated individually for each job (other than for Tribunals). (b) The perception of limited availability of interpreters in some languages and some areas was based on hearsay, as no audit was undertaken, and was at least partly explained by the extremely poor search system on the NRPSI website which meant interpreters in neighbouring counties, even if close by, did not appear on the searches. The NRPSI board was also charging a substantial fee for access to the register which meant not all parts of the CJS had access to it. (c) The NRPSI board which was responsible for investigating complaints had neglected this role for some time and had a considerable back log as it was consumed by legal battles with interpreters. In 2011 the Institute of Linguists (IoL) reformed the management of the NRPSI which is now independent of the IoL. The register is now freely available to anyone and has reasonable search facilities.

1.4 The Interpreting Project hoped to reduce travel expenses for interpreters by widening the pool of interpreters beyond those on the NRPSI, and thus hopefully increasing the distribution of interpreters. It was also persuaded by ALS that less highly trained interpreters ie without the DPSI could perform adequately in some court and police cases, although there was no actual evidence for this, and would also accept lower rates of pay. Thus was born the concept of Tiers of interpreters where Tier 1 interpreters had the DPSI or Met test and Tier 2 interpreters had either the DPSI exam apart from the written test, or had a language related degree with an English component or relevant diploma plus previous experience of criminal justice work plus at least 100 hours of public service interpreting experience. Tier 3 interpreters were meant to be only used for community work. A new assessment was introduced to support this Tiering which mimicked the DPSI in a very superficial way but was machine based and included no in-depth assessment of legal terminology or interpreting skills (Doc 2, p.6 ).

1.5 Having decided to re-write the requirements for court and police interpreters contrary to all the previous recommendations the MoJ did not then undertake a trial to see if interpreters meeting these new standards could perform adequately in courts or police stations. It also did not set any limits on the situations in which Tier 2 interpreters were used but left this up to individual justice organisations to decide. As it happened, as very few Tier 1 interpreters signed up with ALS, apart from very high profile cases the courts and police will have been forced to usually mostly Tier 2 interpreters.

1.6 Instead of increasing the pool of trained interpreters as envisaged the FWA has in fact managed to dramatically reduce both the pool of interpreters available and their skill base. The pool of 2,350 NRPSI interpreters available prior to the FWA, has shrunk to 1,500 interpreters of whom only 301 have the DPSI (in July 2012). The MoJ has tried to put a positive spin on this by saying that as some interpreters speak more than one language this equates to 3,000 interpreters by language (ie an increase of 100%). However this simply shows how dramatically standards have fallen as very few people manage to master a second language sufficiently to pass the DPSI, the commonest combinations being Urdu/Punjabi and Mandarin/Cantonese. When including multiple languages the number of DPSI interpreters only increases by 17%. Interestingly, and also contrary to the original aims, as the rates of pay are now so low and there is no three hour minimum many ALS interpreters will not take court jobs near to where they live as jobs with more travel time give a more a guaranteed income.

1.7 Mr Crispin Blunt has promulgated a myth, both in the House and on the radio, that interpreter pay was excessive under the National Agreement and that interpreters earned more than £100,000. In fact under the National Agreement, with a three hour minimum, the average total hourly rate, including travel time was £23/hr and for the Tribunals Service was around £20/hr (Doc 1, p 5). According to a survey by the Institute of Translation and Interpreting (ITI) in 2011, average annual income for interpreters in this country was £15,000. Interpreters working in languages such as Slovak & Romanian, where the demand is usually more than the supply, can earn around £30,000—£35,000 from the National Agreement. A very small number of interpreters earn more than this by working very long hours. The assertion that interpreters earned more than £100,000 appears to be based on an article quoting a single anonymous interpreter in a pro ALS article in the Birmingham Mail (23 September 2011) which was repeated in the Sunday Times (23 October 2011). From the hourly rates above, even given overtime, it is clear this is virtually impossible, and no authentic case has yet been found. The ITI survey does identify a small number of interpreters/translator earning over £100,000 but these either run their own interpreting companies or were doing work outside the National Agreement which pays much higher rates.

2. THE NATURE AND APPROPRIATENESS OF THE PROCUREMENT PROCESS

2.1 The original aim of the review of interpreting and translation services was to make savings of 10% on an approximate £60 million spend. (e-mail by Richard Mason to Interpreters 30 March 2011). This was a reasonable target but was subsequently forgotten following Applied Language Solutions’ (ALS) promises of savings of £18 million.

2.2 One can see that at the time a Framework Agreement with a single provider seemed like a good solution for the MOJ. Though negotiation with interpreters organisations might have produced the 10% reduction in costs that was being aimed for it would not have dealt with the problems associated with booking interpreters. Expanding the Tribunals Service Booking Service, which was well run and highly cost-effective, to cover the whole of the CJS was probably too “hands on” a solution to be politically acceptable. A solution that uses a
nationwide web based booking system (Doc 1, p 10) has recently been proposed which would solve the problem but this idea had not been put forward in 2011. A Framework Agreement delegated the responsibility for the organisation of interpreters, negotiating reduced terms and ensuring adequate standards to a private company and out of the hands of the MOJ. It also appeared to offer a solution to the difficulties with bookings and complaints and ALS also promised continuous professional development and appraisals. A single contractor gave the selling point of a single contact phone number, though for a service not used by the public this would seem to have little advantage. Ironically in its tender ALS charges extra for phone bookings to discourage them.

2.3 There were however potential problems and downsides to this decision as interpreters pointed out in their responses:

- All the large agencies in England had in reality up till then done most of their interpreting work in one or two regions in the country. This meant national roll out for a single contractor was always going to be difficult as local contacts are vital for interpreting agencies.

- The MOJ, as a virtual monopoly employer of interpreters used in a legal setting (over 90% at a rough estimate), has a strong motivation to develop a sustainable, high quality service interpreting service. In contrast an agency on a fixed term contract is naturally going to look at maximising its short term profits and to be less concerned with issues of long term standards or provision. This is particularly true for a single provider where there is no competition to drive up standards.

- Though a single provider would administratively be much more cost efficient at booking and paying interpreters the MOJ was paying by assignment not in bulk. In order to maintain accounting controls the courts and police would therefore still have considerable administrative costs recording jobs done and checking the agency’s invoices against these.

- The Government had recently stopped employing freelance consultants via agencies as it added a considerable extra layer of expense. It was equally probable that this extra layer of expense would apply if an agency employed freelance interpreters and lead to reduced income for interpreters.

2.4 The main evidence that a Framework Agreement might succeed came from the North West Collaborative contract for interpreting which significantly reduced headline interpreter costs for Greater Manchester Police and other North–West forces. This was however achieved by ALS paying some NRPSI interpreters £30–35/hour for interpreting time without travel time or travel costs (though its initial proposed rate was lower) and non NRPSI interpreters lower rates. Though the contract had a difficult first two months it succeeded in attracting just enough NRPSI interpreters, supplemented by non-NRPSI interpreters already known to ALS, to fulfill the contract. There were however some particular features of this contract which meant that a similar contract, particularly one offering considerably lower rates, was likely to be much more difficult to roll out either to courts or nationwide.

1. It was on ALS’s “home territory” where ALS already had many non-NRPSI interpreter contacts.

2. It was only for police jobs which, in 90% of cases do not last more than 2 hours, and can wait a while for an interpreter, unlike courts. This meant ALS could sequence jobs relatively easily and so get away with a relatively small pool of interpreters.

3. If no travel time is paid and minimum time is one hour, two hour police jobs give a significantly higher hourly rate of pay to interpreters than a one hour magistrate jobs.

4. Police interviews usually have no witnesses and the North-West police were either not encouraged or actively discouraged from making complaints about any reductions in the standard of interpreting. Therefore though many examples of non-fulfilment and poor interpreting from use of non-NRPSI interpreters were collected by NRPSI interpreters these did not reach the press. The openness of courts to the public and the presence of judges meant courts were unlikely to be so tolerant of reduced standards.

2.5 Though the MoJ made the decision to appoint a single national provider it unfortunately had minimal information for potential bidders on either the total number of assignments required, or their geographical and language distribution. The companies however seem to have been asked to quote for an hourly rate for each Tier of interpreter inclusive of travel time and travel expenses. Though this payment method was obviously convenient for the MOJ in calculating fees per case, interpreters had traditionally been paid travel time and travel expenses and these were vital to make jobs involving minority languages, where travel is more likely, and geographically isolated sites, viable. Travel time and expenses were also needed to allow approximate equalisation of hourly rates of pay for assignments of different duration and location. As the agencies had no information on these costs their bids were always going to involve a large amount of guesswork. It is reported that ALS, a relative newcomer to the interpreting industry (2003), bid substantially lower than the other two more experienced agencies.

2.6 By March 30th 2011 when interpreters were consulted on the new Framework Agreement it was clear that the MOJ was having considerable problems realising which of the improvements it was asking for were practically achievable and which were not and it was also clear that ALS was not choosing to enlighten them. For instant the first key performance indicator in the proposed contract had as its objective the absolutely
impossible target of "availability of all languages within a 25 mile radius—95%" (over 140 languages are needed and many have less than 10 NRPSI interpreters to cover the country!). The MoJ also appears to have been taking little account of interpreters' responses to the proposed FWA as despite the impossibility of this target being pointed out in interpreters' responses it still made its way into the final contract.

2.7 The tender submission by ALS included highly misleading statements and also promises it has subsequently made no attempt to honour or has ignored from the start of the contract. For example in its Tender Response ALS states that "approximately 2,500 of our 4,500 registered freelance interpreters are suitably experienced and qualified for Authority assignments" (page 114). What ALS fails to mention is that this number is almost entirely made up of the database of NRPSI interpreters which it had purchased. ALS would have known that most of those interpreters had neither any idea they were on their database nor had agreed to work for them. The MoJ subsequently became painfully aware of this lack of available interpreters in February 2012. ALS's ignoring of standards for Tier 2 interpreters, CRB checks and indemnity insurance for interpreters will be dealt with later.

2.8 Both ALS and the MoJ have repeatedly asserted that under the Framework Agreement they are paying interpreters "market rates". In its tender response ALS states that "one of its unique selling points" is "before and throughout the economic crisis we have continued to pay our linguists above the market rate for their services." The official definition of "market rate" is "the usual rate in the market". However when using the term in the Tender Response (Framework Agreement page 126) the phrase does not have its usual meaning but is defined as the rate that ALS’s Interpreter Working Group, a group of interpreters employed by ALS, decide it should be. For instance a private request in April 2011 for one hour of a Polish NRPSI interpreter’s time, gave quotes from Prestige Network and the Big Word, two of the largest agencies in the North-West, of £150 and £120+mileage respectively, whilst ALS quoted £45 + £20/hr travel time + 40p/mile (all excl. VAT). When ALS published its proposed rates for interpreters under the FWA in Sept 2011 these gave an average rate of pay of £11/hr including travel time (Doc 1, p 5/6) which is less than half the rate under the National Agreement. This clearly shows the extraordinarily large drop in pay ALS was demanding of trained interpreters and its disregard for previous market rates and easily explains why 87% of NRPSI interpreters have not signed up with them.

2.9 It also remains a puzzle how a contract worth around £60 million a year to a company which in May 2010 had a turnover of £7.5 million and overall losses of £20,000 and in May 2011 a turnover of £10.6 million with overall losses of £331,000 passed the MoJ's pre-contract financial scrutiny checks.

3. The Experience of Courts and Prisons in Receiving Interpretation Services That Meet Their Needs

3.1 By the start of 2012 over 1,000 NRPSI interpreters had signed a petition refusing to work for ALS and the start date of the contract, originally meant to be in September had been repeatedly delayed. Though this should have alerted the MoJ to the problems that ALS were having recruiting enough interpreters they pressed on regardless and as expected the national roll-out in February 2012 caused chaos in the courts with very large numbers of cases unfulfilled.

3.2 Though the overall fulfilment rate has improved since then from 65% in Feb to 90% in April there is a significant possibility ALS has manipulated these figures by misallocating some “unfulfilled cases” to “cancelled by customer” (Doc 3, p 5). This can easily be proved or disproved by comparing previous Tribunal statistics with the “cancelled by customer” figures in the FWA but the MoJ's statistics office have so far not responded to this request (Doc 3, p 7). The MoJ has also only published the success rates for the top 20 languages despite the fact that the majority of the remaining 122 languages are likely to have fulfilment rates well below 90% and in many cases zero, as finding interpreters for minority languages is much less easy. The chief statistician has used a statistical technicality to support non-publication of this data though this technicality is not applied by himself elsewhere in his report or applied by the EU statistics agency or the Northern Ireland Courts and Tribunals service to their data. Publication of this data is clearly in the public interest (Doc 3, p 3).

3.3 The emphasis the MoJ has placed on the improving fulfilment rates under the FWA tends to distract observers from the FWA's major failing which is that the standard of interpreting is in many cases completely unacceptable for court and police work. As only 301 NRPSI interpreters have signed up with ALS, 1,200 of ALS’s 1,500 interpreters must be Tier 2 or below. The FWA requires Tier 2 interpreters to have either "Partial DPSI in law" (having failed only the written component) or a language related degree or diploma involving English, plus previous work in a criminal justice system whether paid or voluntary, plus a university degree, plus 100 hours of public service interpreting. Though there will be a small number of interpreters with "partial DPSI in law" employed by ALS who fulfill these requirements it has been obvious since ALS started recruiting in Sept 2011 that £11/hr for freelance work is simply not enough to attract such educated candidates. Since roll out in Feb 2012 ALS has therefore usually been simply been ignoring these requirements and taking on anyone it can find who has basic language skills and is willing to brazen it out in court when they have little or no knowledge of the legal terminology being used . ALS may have been largely relying, if on any requirement at all, solely on a pass at Tier 2 level in the assessment something the designer of the assessment has specifically stated is quite inadequate. http://www.lawgazette.co.uk/blogs/blogs/news-blogs/interpreting-interpreters-strike#comment-14643Some carefully phrased questions to ALS will quickly establish the facts in this matter (Doc 2, p 4/5) and it is likely that very few of the Tier 2 interpreters without partial DPSI in law
will fulfil the stated requirements. This would make a sizeable percentage of ALS’s workforce ineligible to interpret in court or the police. There is also considerable doubt, even if all the Tier 2 requirements were fulfilled, whether many Tier 2 interpreters would perform adequately in court as the requirements do not ensure detailed knowledge of legal terminology.

3.4 The other major area in which ALS has been failing to meet the requirements of courts and police is in making sure that all its interpreters have the necessary CRB clearance. The contract states that all interpreters should have an enhanced CRB check as a minimum requirement prior to working. In its Tender Submission (page 150 of the Language Services Framework Contract) ALS states that if an enhanced CRB check is not in place or is more than three years old they will carry out the check. However Interpreters going to the assessment centres in the first month or so described taking their documents and no one at the Centres being interested in them. There has also been at least one email from ALS to its interpreters asking them to upload details of their CRB checks if they have not done so and individual ALS interpreters attending court have also admitted to other interpreters that they have had no CRB check. It therefore seems likely that in its rush to find interpreters to fulfill the contract that ALS as not been complying fully with the requirements for CRB checks. This would again make a proportion of its workforce ineligible to work in court until the necessary checks were made.

3.5 In July 2012 a Freedom of Information Act reply from Warwickshire Police Force, who do CRB checks for the ALS contract, showed that since January 2012 ALS made 720 applications for its interpreters for Non Police Personnel Vetting (NPPV 3) status of whom only 574 (ie 80%) were accepted. This shows a surprisingly high rate of refusal which must reflect on the quality of ALS’s interpreters. Assuming that only the 300 or so NRPSI interpreters and perhaps an extra 200 Tier 2 interpreters are likely to have existing CRB checks this could potentially leave a considerable number of interpreters with either no CRB check or one that is out of date. A few carefully phrased questions to ALS would again elucidate the facts in this matter (Doc 2 p 5).

4. THE NATURE AND EFFECTIVENESS OF THE COMPLAINTS PROCEDURE

4.1 Though many people are involved in court cases the complaints procedure allowed only the courts themselves to complain to ALS which meant that solicitors, barristers, probation officers and others using ALS interpreters were not able to complain. Complaints could also only be addressed to ALS themselves and no higher level independent authority was available to deal with complaints that were not answered satisfactorily. Complaints by interpreters to ALS over the last nine months, for instance in relation to ALS’s frequent breaches of the Data Confidentiality act with regard to interpreters’ data have invariably gone unanswered.

4.2 It is also seems possible that ALS has manipulated the statistics concerning complaints about quality in the report “Statistics in the use of language services in Courts and Tribunals Feb—April 2012”: Complaints about “quality of interpreter” for this period were 62 while the complaints about “operational issues” were 422. Operational issues are defined as including amongst other things “incorrect tier assigned (the customer has requested a specific tier of assignment and an incorrectly tiered interpreter was assigned)” ie a complaint about the quality of the interpreting. In practice Tier 3 interpreters should not be sent to court or police stations and the MoJ has not specified that there is any sort of court where a Tier 2 interpreter cannot be used so the situation of an incorrect tier of interpreter being sent should not theoretically exist.

5. THE STEPS THAT HAVE BEEN TAKEN TO RECTIFY UNDER-PERFORMANCE AND THE EXTENT TO WHICH THEY HAVE BEEN EFFECTIVE.

5.1 The MoJ’s response to the underperformance in the contract has involved allowing courts to book interpreters direct if it was clear ALS could not supply someone, though unsurprisingly only a small minority of NRPSI interpreters have taken up this offer. Other than that the MoJ has sat tight and tried to believe its own mantra that “things were just settling down”. Fulfilment rates have increased, as they were gradually bound to if ALS were allowed to largely ignore the quality requirements for Tier 2 interpreters. The rates for less common languages, which the MoJ has so far refused to publish, are however likely to still be dire.

5.2 The MoJ from Kenneth Clarke down has resolutely refused to consider that there are any issues of poor quality in relation to the FWA and have seemed determined to see the problem in Ken Clarke’s words as “an old-fashioned industrial relations dispute”. So despite being notified of problems by the press, by interpreters, by judges, by barristers, by solicitors and others in the Justice System the MoJ has never asked ALS the precise questions which would uncover the truth about whether the quality standards in the contract are being fulfilled (Doc 2). In early August Peter Handcock, Chief Exec of HM Courts & Tribunals, was notified by email, in detail, of these problems and the questions which when put to ALS would uncover these deficits. Given the forthcoming enquiry he will hopefully now look into the matter.

5.3 The MoJ has also failed to understand that professional interpreters by the nature of their language skills tend to be enterprising and multitalented and that unless the current contract is replaced soon by something more reasonable they will lose most of their current NRPSI interpreters for good. Just as most MPs, if their pay were halved overnight, would leave the job and find other work even if they were very dedicated to politics, unless they saw a chance things would change very soon, so also with interpreters. Should this happen it would condemn the British courts to low standards of interpreting, particularly in minority languages, for years to come. It would also from October 2013, when the Implementation of the European Directive on Rights to Interpreting in Criminal Proceedings is to be implemented, bring down the wrath of the EU, along with
sizeable financial penalties, for destroying an exemplary high quality interpreting system and replacing it with one more compatible with the most undeveloped parts of the EU.


6.1 When ALS published its proposed rates for interpreters in September 2011 why did the MoJ not realise that halving the rate of pay for trained interpreters would inevitably be unacceptable to most of them? When over half the work force signed a statement saying they would not work for ALS in Dec 2011, why did the MoJ not quickly produce estimates of cost of an interpreter not turning up so it could estimate when the contract was becoming economically non-viable, if roll out led to significant non-fulfilment?

6.2 Once it became clear in the first few weeks that even for assignments where ALS did provide an interpreter who arrived on time, there were problems with interpreters having to leave for another job before the end of the case, why did the MoJ not take steps to monitor this event via the ALS computer system or by individual reports from courts given that it would not otherwise show up on the system?

6.3 When reports have made it quite clear that in trying to fulfil the contract ALS was often ignoring the quality requirements for Tier 2 interpreters eg a language related degree plus 100 hours of public service interpreting experience plus experience of a justice system why did the MoJ not investigate these complaints itself instead of making out that there was no problem?

6.4 The contract states that all interpreters/translators will be “covered by a current and valid policy of professional indemnity” (item 1.11 on page 11) and item 34.2 in the contract implies this will be to £1,000,000. However in mid April 2012 the ALS website stated that “professional liability insurance …doesn’t seem useful at this point …and could make you a more attractive target for a lawsuit” (see www.linguistlounge.org and search on “indemnity insurance”). What proof does the MoJ have that ALS has now taken out insurance for all its translators and interpreters?

6.5 There are many reports of interpreters not receiving the result of their interpreting assessment. What proof does the MoJ have from ALS have that all these assessments have been marked by Middlesex University and that all those interpreting in multiple languages have past the assessment in each language to the required degree? (see Doc 2, p 3&5)

6.6 When every newspaper reported problems the FWA along with judges, barristers, solicitors and almost everyone else in the court system why did the MoJ not stop and ask itself whether all those might be right and ALS’s blarney might be wrong?

6.7 Perhaps the most extraordinary revelation to an outsider, of this whole contract has been the degree to which those who have initiated a new and controversial government contract are also allowed to monitor it without any external body empowered to step in if things are not going right. We all make mistakes. Picking these up quickly and rectifying them is embarrassing but not over costly whilst ignoring all the evidence and doggedly continuing with a wrong decision may end up very costly indeed for the tax payer.

August 2012

Annex A

REVIEW OF THE FRAMEWORK AGREEMENT FOR INTERPRETING & ALTERNATIVE PROPOSALS

SUMMARY

The National Register of Public Service Interpreters (NRPSI) was set up in 1994 along with the Diploma of Public Service Interpreting (DPSI) in Law to improve interpreting standards in the Criminal Justice System (CJS). They have both been praised in as beacons of good practice.

In 2010 the Ministry of Justice (MOJ) established the Interpreting Project to look at reforming the provision of Interpreting Services and to reduce costs. There were concerns about inefficient booking systems, complaints not being adequately dealt with and insufficient numbers of interpreters in some areas. Following the apparent success of the North-West Collaborative Police Contract which reduced police costs in the North-West the MOJ decided to negotiate a Framework Agreement with a single supplier. This included the formation of Tiers of Interpreters so that interpreters without the DPSI exam could be included. A new assessment was introduced to help allocate non DPSI interpreters to Tiers, though its validity was not tested.

The contract was priced by hourly rate per tier and was won by Applied Language Solutions (ALS) who by report bid considerably lower than the other two more experienced agencies. The average overall rate per hour offered to freelance NRPSI interpreters by ALS is less than half the rate they were paid previously (£11 vs. £23). Many NRPSI interpreters have refused to sign up with ALS and there have been considerable problems with non-fulfilment of jobs in courts and police stations. Lower standards of interpreting have also been reported which is unsurprising since most of the newly signed interpreters have had no training in legal interpreting.
In the long term £11/hr is too low a rate to sustain freelance work by postgraduates with higher training. It is likely most of the NRPSI interpreters signed up with ALS will in time find other better paid work. Standards will fall further as there will be no incentive to train for the DPSI as most jobs are Tier 2 and do not require it. Less skilled interpreting is likely to increase costs due to slower speed, fewer early guilty pleas due to poorer communication, and increased retrials and miscarriages of justice. Shortages of interpreters will increase costs due to cancelled cases.

There are doubts about ALS’s probity including dubious representation of interpreter figures, breaches of the Data Protection Act, and doubts about compliance with the conditions for Tier 2 interpreters. The long term financial viability of the contract for ALS/Capita is also unclear.

Other organisations in the CJS have reduced costs considerably without using agencies. If the MOJ were to again employ NRPSI interpreters directly at their previous rates but with a two hour minimum for police work the MOJ would save around 21% compared to previous costs, roughly the same as with the Framework Agreement. Similar savings on minimum time could be made for court cases where the finish time could be reliably estimated. If as a result of these more competitive terms the MOJ directed that all court and police work was done by NRPSI interpreters (as per the Auld Report) there is a good chance interpreters would find these terms acceptable.

Interpreter booking could usually be reduced to a single phone call by having a national booking website on which interpreters indicated their daily availability. By automatically calculating realistic travel time and other fees and automating all paperwork and payments the website would reduce administration costs to less than any agency could achieve. Complaints and postgraduate training could be dealt with via an interpreter manager and the existing professional bodies.

REVIEW OF THE FRAMEWORK AGREEMENT FOR INTERPRETING AND ALTERNATIVE PROPOSALS
15 APRIL 2012

Since its national rollout in February 2012 the Framework Agreement for Interpreting services has been producing difficult headlines for the Ministry of Justice with stories of poor quality interpreting and interpreters failing to appear at courts and police stations. When all factions of the press are united in their criticism of a new system it is likely to indicate there are significant problems. After more than two months of difficulties an in-depth review is required to look at why and how the Framework Agreement was first contracted, why problems have arisen, the outlook for the Agreement and whether there are any alternatives which would still allow the MOJ to make savings.

BACKGROUND TO THE PREVIOUS NATIONAL AGREEMENT

The Runciman Royal Commission on Criminal Justice recommended in 1993 that only trained and qualified interpreters be used in court. In response the National Register of Public Service Interpreters (NRPSI) was established in 1994. The NRPSI was administered from 1996 by the Institute of Linguists (IOL), in 2000 it became a limited company limited and a subsidiary of the IOL group, and it finally became independent of the IOL in April 2011. An examination for interpreters, the Diploma in Public Service Interpreting (DPSI), was set up in 1994 with legal, medical and community options administered by the IOL.

In 1998 the Trials Issues Group recommended the exclusive use of National Register Interpreters when selecting interpreters for criminal investigations and court proceedings. This was confirmed by the Auld Report in 2001 which also recommended a review of levels of payment “to encourage more and the best qualified to undertake this work”.

The DPSI in Law has become the gold standard in this country as a qualification for interpreting in legal settings. The Metropolitan Police Test for Interpreters, also administered by the IOL, which focuses mostly on police work and is not an accredited qualification, also allows entry to the National Register.

The European Legal Interpreters and Translators Association (EULITA) has held up the National Register and its use in the Criminal Justice System (CJS) as a beacon of good practice to other countries in the European Union.

PROBLEMS WITH THE NATIONAL AGREEMENT

In February 2010 the MOJ established the Interpreting Project to look at reforming the provision of Interpreting and Translation services. Its purpose was to improve the existing system and find ways to reduce costs while maintaining appropriate quality standards. The review identified “three major concerns about existing arrangements” (Equity Impact Assessment Initial 30.3.11.pdf—Page 3)

1. The time consuming and costly mechanism for booking interpreters.
2. The limited availability of registered interpreters in some languages and in some parts of the country.
3. That complaints made against interpreters are not being investigated … thoroughly....
Some of the factors causing these concerns were:

- Access to the NRPSI list of interpreters was limited by the NRPSI board to organisations in the Justice Sector that were prepared to pay a substantial fee for access. Besides the cost this meant some parts of the CJS did not have access to the register.
- The search facilities on the NRPSI list were extremely poor so police forces and courts sometimes thought a suitable interpreter was not available when they in fact were.
- Police forces and courts sometimes had to make multiple phone calls to find an available interpreter as there was no nationally co-ordinated booking system.
- The fees for travel time and parking for each job were calculated individually which was administratively time consuming.
- Payments for interpreting jobs were made individually and sometimes still by cheque which was administratively expensive.
- NRPSI interpreters were at loggerheads with the NRPSI board which they felt was not running the NRPSI in the best interest of interpreters or of the Justice system. The NRPSI board was responsible for investigating complaints about interpreters. (The structure of the NRPSI has subsequently been reformed and the NRPSI list of interpreters is publically available with improved search facilities).

Besides identifying these concerns the Interpreting Project effectively raised a number of questions:

(1) Was the current pool of NRPSI interpreters sufficient to meet demand or did the pool need to be widened?
(2) Could a wider geographic pool of interpreters decrease costs by reducing travel expenses?
(3) Could people with language skills but without the DPSI, and the training in interpreting skills and legal vocabulary that required, interpret to a sufficient standard in some CJS settings?
(4) Could using such less well trained interpreters working at a reduced rate help to lower costs?
(5) Could a new test sponsored by the chosen agency adequately identify these interpreters?

During its “competitive dialogue” to find a single provider the Interpreting Project was persuaded by the bidding companies or others that the answers to questions 2, 3, 4, 5 above were “yes”. From this was born the concept of Tiers of interpreters where Tier 1 has the DPSI or Met test, Tier 2a has a pass in the legal DPSI and Tier 3 has a pass in the English related degree or equivalent diploma plus some experience in criminal justice work (though not necessarily in this country), and Tier 3 had previous public sector work experience. Tiers 1 & 2 also have to have at least 100hrs of public service interpreting experience. All tiers are have to have a pass at the relevant level in the new test.

However no trial of the level of the interpreting skills needed for different CJS jobs was undertaken, nor was a trial undertaken of how well results in the new test, combined with the Tiering requirements, correlated in practice with the interpreting skills needed for courts and police stations. (The new test has subsequently turned out to be mostly a test of an interpreter’s facility with non-legal English with only a few legal terms included and has no in-depth assessment of legal terminology or interpreting skills as the DPSI does)

**The Rational for a Framework Agreement for a Single National Contractor for Interpreting and Translation Services**

The original aim of the review of interpreting and translation services was to make savings of 10% on an approximate £60 million spend. (e-mail by Richard Mason to Interpreters 30 March 2011). This was a reasonable target but has been side-lined following Applied Language Solutions’ (ALS) promises of savings of £18 million. It is not clear exactly what the much quoted £18 million savings figure applies to, whether the five year contract with a stated total worth of £125 million or to some other figure.

One can see that at the time a Framework Agreement with a single provider seemed like a good solution for the MOJ. Though negotiation with interpreters organisations might have produced the 10% reduction in costs that was being aimed for it would not have dealt with the problems associated with booking interpreters or with complaints. A Framework Agreement delegated the responsibility for the organisation of interpreters, negotiating reduced terms and ensuring adequate standards to a private company and out of the hands of the MOJ. It appeared to also offer a solution to the difficulties with bookings and complaints while adding provision for continuous professional development and appraisal and also promised to save large amounts of money. A single contractor gave the selling point of a single contact phone number, though for a service not used by the public this would seem to have little advantage. Ironically in its tender ALS charges extra for phone bookings to discourage them.

There were however potential problems and downsides to this decision as interpreters pointed out in their responses:

- All the large agencies in England had in reality up till then done most of their interpreting work in one or two regions in the country. This meant national roll out for a single contractor was always going to be difficult as local contacts are vital for interpreting agencies.
— The MOJ, as a virtual monopoly employer of interpreters used in a legal setting (over 90% at a rough estimate), has a strong motivation to develop a sustainable, high quality service interpreting service. In contrast an agency on a fixed term contract is naturally going to look at maximising its short term profits and to be less concerned with issues of long term standards or provision. This is particularly true for a single provider where there is no competition to drive up standards.

— Though a single provider would administratively be much more cost efficient at booking and paying interpreters the MOJ was paying by assignment not in bulk. In order to maintain accounting controls the courts and police would therefore still have considerable administrative costs keeping detailed records of all interpreting assignments and checking the agency’s invoices against their own records.

— The Government had recently stopped employing freelance consultants via agencies as it was so much more expensive than employing them direct. There were concerns this considerable extra tier of expense would equally well apply to freelance interpreters, leading to reduced income for interpreters if an agency was involved.

The main evidence that a Framework Agreement might succeed came from the North West Collaborative contract for interpreting which significantly reduced headline interpreter costs for Greater Manchester Police and other North-West forces. This was achieved by ALS paying some NRPSI interpreters £30–35/hour for interpreting time without travel time or travel costs (though its initial rate was lower) and non NRPSI interpreters lower rates. Though the contract had a difficult first two months it succeeded in attracting just enough NRPSI interpreters, supplemented by non-NRPSI interpreters already known to ALS, to fulfil the contract. There were however some particular features which meant that a contract of this sort (ie without or with severely reduced travel time and travel costs) was likely to be difficult to roll out either to courts or nationwide, though at the time some of these reasons were not obvious:

1. It was on ALS’s “home territory” where ALS already had many non-NRPSI interpreter contacts
2. The North-West is relatively contained with good motorway connections so travel time was often under two hours.
3. As an area it contained Manchester, one of the largest cities in the country, so interpreters for most minority languages were near at hand.
4. It was only for police jobs which, in 90% of cases do not last more than 2hrs, so ALS could sequence jobs relatively easily (courts are much less predictable).
5. The police are usually willing to wait a few hours for an interpreter while courts often cannot do this. This factor combined with (4) meant that ALS could fulfil the contract with relatively few interpreters
6. If no travel time is paid the two hour police jobs give a significantly higher hourly rate of pay to interpreters than one hour jobs
7. Police interviews usually have no witnesses and the North-West police were either not encouraged or actively discouraged from making complaints about any reductions in the standard of interpreting. Therefore though many examples of non-fulfilment and poor interpreting from use of non-NRPSI interpreters were collected by NRPSI interpreters these did not reach the press. The openness of courts to the public and the presence of judges meant courts were unlikely to be so tolerant of reduced standards.
8. It is not clear if the relatively high rate ALS was paying interpreters, compared to the fee ALS was receiving, was financially sustainable for ALS, as its year end accounts for the year following the contract showed a loss of £331,000.

**Difficulties in Drawing up the Contract for the Framework Agreement**

The MOJ had minimal information for potential bidders on either the total number of assignments required, or their geographical and language distribution. Companies appear however to have been asked to quote for an hourly rate for each Tier inclusive of travel time and expenses. This method was obviously convenient for the MOJ in calculating fees per case but interpreters had traditionally been paid travel time and travel expenses and these were vital for jobs involving minority languages and geographically isolated sites. As the agencies had no information on these costs their bids were always going to involve a large amount of guesswork. It is reported that ALS, a relative newcomer to the interpreting industry (2003), bid substantially lower than the other two more experienced agencies.

By 30 March 2011 when interpreters were consulted on the new Framework Agreement it was clear that the MOJ was having considerable problems picking out which of the improvements ALS had agreed to were practically achievable and which were not. For instance the key performance indicators in the contract have as their first objective the absolutely impossible target of “availability of all languages within a 25 mile radius—95%” (some languages have less than 10 NRPSI interpreters to cover the country). The MOJ also appears to have had difficulty picking out which of interpreters’ responses to the Agreement contained reasonable points and which did not as this impossible target made its way into the final contract.
The overall impression is that the MOJ placed too much weight on ALS’s sales pitch and either did not seek, or was not able to find, good independent advisors in Public Service Interpreting to guide them in drawing up the Agreement. Knowledgeable and completely independent advisors in this area may in fact not exist but there were knowledgeable people working for the government such as the leads for the Metropolitan Police Interpreting Unit, the Tribunals Interpreting Unit and the Interpreting lead for Cambridgeshire Police. Though none of these three could be considered to be properly independent as they had vested interests in employing interpreters direct rather than through an agency they were still knowledgeable in the field and could have given the MOJ guidance.

**INTERPRETER PAY UNDER THE FRAMEWORK AGREEMENT AND THE NATIONAL AGREEMENT**

ALS is offering interpreters £20/hr (assuming most jobs are Tier 2). There is a £5 addition per job which will be more than absorbed by travel expenses for the first 20 miles and so is not included in the calculations below. Additional time is paid per minute. ALS offers travel expenses of 40p/mile after the first 20 miles and travel time after the first 2 hours but no parking fees and these are not included in the calculations of pay below.

Assuming no parking fees, for a one hour job this gives rates of £10/hr, £6.7/hr and £8/hr respectively for 1hr, 2hrs and 4hrs travel time. For a three hour job it is £15/hr, £12/hr and £11.4/hr for 1hr, 2hrs and 4hrs travel time respectively. The average rate of pay working for ALS is therefore around £11/hr.

Under the National Agreement interpreters were paid £30/hr with a minimum interpreting fee of £84 for three hours work. Travel time was paid at £15/hr, mileage at 25 or 40 pence per mile, and parking fees were reimbursed. Assuming no parking fees, and excluding mileage expenses, for a three hour job with one hour travel this gave rates of £25/hr, £23/hr and £20.5/hr for 1hr, 2hrs and 4hrs travel time respectively. This gave an average of around £23/hr.

The Tribunals Service were paying £26/hour and £16/hr travel time with a minimum overall fee of £48 and mileage of 25 pence per mile but not parking. Assuming no parking fees, for a 1hr job this gave rates of £24/hr, £19.3/hr and £18/hr for one hour, two hours and 4 hours travel time respectively. For a three hour job (usually only employment tribunals) this gave £23.5/hr, £22/hr and £20.2/hr for 1 hour, 2 hours and 4 hours travel time respectively. As most jobs are for 1 hour this would give an average of around £20/hr.

It can be seen from the above that the Framework Agreement pays interpreters less than half the hourly rate of the National Agreement and just over half the rate of the Tribunals Service. It is unclear if the MOJ realised that the rate cut for interpreters would be as dramatic as it is has been as ALS states in its Tender Response (Framework Agreement page 126) that it has always paid market rates and this has been repeated by the MOJ. However careful reading of the Tender Response shows that the way ALS using the term “market rate” is not the usual definition. (see ALS and Probity on page 6).

According to a survey by the Institute of Translation and Interpreting (ITI) in 2011, average annual income for interpreters in this country was £15,000. Interpreters working for the most in demand languages such as Slovak & Romanian can earn around £30,000—£35,000 from the National Agreement and a very small number earn more than this by working very long hours. (The single unnamed interpreter who reported to the press that he earned £100,000 from the National Agreement appears to be mythical). ALS is not likely to require significantly less interpreters than before and an average annual income of £7,500 is simply not sustainable for professionals with postgraduate qualifications.

**PROBLEMS WITH FULFILMENT OF THE FRAMEWORK AGREEMENT**

The Framework Agreement has run into significant problems with finding sufficient interpreters to fulfil the jobs required and this has been widely reported in the press. This has been particularly marked in some areas and some languages. http://www.bbc.co.uk/news/uk-17009115, http://www.peterboroughtoday.co.uk/news/local/court_interpreter_service_criticised_1_3577650

http://www.thetelegraphandargus.co.uk/news/local/localbrad/9618688.Bradford_Judge_demands_firm_explain_after_it_failed_to_provide_interpreter_in_case

Both ALS and the MOJ appear to have been taken off guard by the level of resistance to the Framework Agreement by existing NRPSI interpreters. However given that their rate of pay had been halved and that in Dec 2011, once the new rates were known, over 60% of NRPSI interpreters declared that they would not work for ALS these difficulties are not so surprising. Though the trial roll out to the courts in the North-West went smoothly this was in ALS’s “home territory” where they had a large number of existing interpreter contacts. ALS was also able to supplement any shortfall in interpreters by bringing them in from elsewhere in the country.

The level of non-fulfilment since national roll-out has not been made public but from press reports it would appear to be substantial. It is also not clear if the MOJ is collecting its own data on cases where an interpreter fails to show or is relying on data from ALS. Given the questions about ALS’s use of numbers (see page 6) it would seem highly advisable for the MOJ to collect its own data as well if it wishes to get a true picture of the problem.
The only data released so far to give a view of the situation nationwide is a CrimeLine survey of solicitors in the week March 12–16, 10 weeks into the contract, which showed from 403 responses that in 56% of cases the interpreter did not turn up at all; in 18% the interpreter turned up late and in 26% the interpreter turned up on time.

dl.dropbox.com/u/50165963/int...

The cost to the MOJ over the last 2.5 months arising from interpreters not turning up has not been made public. However the MOJ must have estimates of the average cost of a no-show by a defendant in Magistrate’s courts, Crown courts and Tribunals and will therefore have been able to monitor the considerable accumulating costs incurred by the non-fulfilment of the Framework Agreement. There is an automatic nominal penalty fee in the contract for failure to fulfil each job below 98% fulfilment but the cost to the MOJ of a no-show must far outweigh this fee.

The recent shortage of interpreters for court cases has made it clear that though interpreting fees are a minor part of total court costs, in cases where they are needed, interpreters are the oil which enables the machinery of justice to turn and without them it grinds to a halt.

THE COST IMPLICATIONS OF USING LESS HIGHLY TRAINED INTERPRETERS

There have been numerous reports in the press and on the interpreters’ website www.linguistlounge.org of sub-standard interpreting under the new Framework Agreement. Unless significant numbers of extra NRPSI interpreters sign up in the next few weeks this problem is likely to continue long term even if fulfilment rates gradually edge up.

Assuming most court work has so far been designated as Tier 2 it is likely that already a high percentage of all court and police interpreting jobs are now being done by Tier 2 interpreters i.e. without the legal DPSI exam. If interpreters have a Tier 2 pass at the new assessment centres, they should have passable skills in interpreting non legal English but from report the test includes minimal legal terminology. They will not therefore have the depth of knowledge of legal terminology or the interpreting skill that candidates for the DPSI have studied hard to achieve. Being able to interpret a series of technical legal terms accurately and at speed is a vital part of being a competent court or police interpreter. Tier 2a interpreters who have failed only the written paper in the DPSI law exam are likely to have a reasonable knowledge of legal terminology but will only make up a small number of total Tier 2 interpreters.

One of the strongest arguments against paying less for lower quality interpreting is that in the end it will lead to much greater expense for the MOJ. The cost-effective running of the justice system is highly dependent on the quality of communication between the parties involved. The Attorney General highlighted last year the huge savings to be made when defendants who are going to plead guilty do so at the earliest opportunity. Doing this depends on high quality and accurate communication between the defendant, the police and the defendant’s solicitor. Sending an untrained interpreter with inadequate knowledge of legal terminology, and without the calm professionalism that comes with higher training, in order to save £11/hr will not prove cost effective given the very high costs of a late guilty plea.

Lower quality interpreting will also increase costs from misinterpretation leading to appeals and miscarriages of justice requiring retrials. As well as being more accurate and providing more effective communication trained interpreters are almost always faster than untrained ones. When conversations are being interpreted consecutively this can make a considerable difference to the time a case takes. Again adding an extra five–10 minutes per hour to each court case by using a lower quality interpreter in order to save £11/hr will not prove cost effective given the very high costs of a late guilty plea.

Priority and ALS

NRPSI interpreters have for some time been reluctant to work for ALS due to their perceived poor levels of probity. This has been manifest in the past by: their failure on occasions to pay interpreters the agreed rate for jobs; excessively late payments; reneging on orally or previously agreed terms; and misrepresenting probable arrival time with police stations.

The last 2.5 months of the Framework Agreement have shown further examples of dubious probity:

Inflating interpreter numbers by including interpreters for whom they had details but who had not agreed to work for them. In its Tender Response ALS states that “approximately 2,500 of our 4,500 registered freelance interpreters are suitably experienced and qualified for Authority assignments” (page 114). What ALS fails to mention is that this number is almost entirely made up of the database of NRPSI interpreters which it had purchased. ALS would have been quite aware that most of those interpreters neither had any idea they were on their database nor had agreed to work for them. In early March ALS’s number of interpreters dipped suddenly after someone showed that their pet rabbit was registered on ALS’s website suggesting they were on their database.

CRB checks—on page 149 of the Language Services Framework Contract ALS states: “for all CJS work interpreters are enhanced CRB checked and then vetted...” and that “following recruitment interpreters are subject to the application of the agreed security standards before being made available...for assignments”.

Probity and ALS
However they have relied on new interpreters uploading their own previous CRB check onto their website and from a recent email from Gavin Wheeldon to all ALS’s interpreters encouraging them to do this it appears that quite a number have so far failed to do this.

www.linguistlounge.org search on “CRB”. See reports 4,9,10,11,12 (may shift with more reports)

**Tier 2 infringements**—Tier 2b interpreters (ie interpreters without the DPSI in law or a fail in only the written exam) are required to have an English related language degree or diploma + proved 100 hours of public sector interpreting experience + previous experience of the justice sector. It is appears from reports of the inexperience of many of the new interpreters that some have been interpreting without one or even any of these requirements and ALS has sometimes relied simply on their Tier test.

www.linguistlounge.org—search on “assessment”. See reports 27 + 5,9,24,25,26,29,30 (may shift)

If this variation on the contract conditions has not been negotiated with the MOJ it would represent a clear breach of the contract conditions. Either way it would go against the MOJ’s assertion that the Framework Agreement is not compromising the quality of interpreting. Since under the Framework Agreement the identity of all interpreters along with their qualifications has to be e-mailed to courts and police stations prior to the interpreter arriving this should be possible to check by checking with courts on the details given for new interpreters who do not have either the DPSI or a fail in the written exam.

**Data protection infringements**—interpreters who asked for all their data to be removed from the ALS website have recently found this has not been done and even bank details have been kept. A number of complaints with documented evidence of this have been submitted to the Information Commissioner’s Office.

http://www.bbc.co.uk/news/uk-england-london-17463036

**Market rates**—both ALS and the MOJ have repeatedly asserted that under the Framework Agreement they are paying interpreters “market rates”. In its tender response ALS gives as one of its unique selling points that “before and throughout the economic crisis we have continued to pay our linguists above the market rate for their services.” The official definition of “market rate” is “the usual rate in the market”. However when using the term neither ALS or the MOJ have explained that in the Tender Response (Framework Agreement page 126) the phrase does not have its usual meaning but means the rate that ALS’s Interpreter Working Group, a group of interpreters working for them, decide it should be. A request last year, by a private individual for one hour of a Polish NRPSI interpreter’s time, gave quotes from Prestige Network and the Big Word, two of the largest agencies in the North-West, of £150 and £120+mileage respectively, whilst ALS quoted £45 (all excl. VAT).

The Future for the Framework Agreement

From the above it is clear that the average £11/hour paid by ALS to interpreters under the Framework Agreement is an inadequate rate of pay for freelance professionals with postgraduate training. This rate of pay is simply not capable of sustaining the high quality interpreting service that the MOJ requires.

At this stage although a few more NRPSI interpreters may sign up with ALS, the majority of those who have not done so are unlikely to as the pay rates are so poor. ALS’s options for finding more interpreters in this country who meet the tier 2 requirements are by now limited and it is also likely that a proportion of those who have so far signed up will either prove to be inadequately trained for the job or find the work too stressful.

High profile cases criticising untrained interprets are also going to cause some Tier 2 interpreters to stop working for ALS. http://www.bbc.co.uk/news/uk-england-london-17709440

Though ALS is now advertising in Eastern European countries this is unlikely to provide the quality or number of interpreters required.

In some languages there is already a severe shortage of interpreters due to reduced numbers of NRPSI interpreters. Given the low pay rates it is very difficult to see how this could be remedied even in the longer term, particularly for less common languages. The MOJ will therefore inevitably end up with a long term supply problem for some languages fairly soon.

Even at this early stage in the Framework Agreement it is likely that a majority of court and police work in this country is now being done by non NRPSI interpreters and it is inevitable over time that standards will fall even further. NRPSI interpreters currently signed up will find in time they can earn better money elsewhere and will gradually leave. As Tier 2 interpreters will be eligible for almost all the work available it will remove any motivation for new interpreters to improve their legal interpreting skills up to DPSI exam level. The exam also costs almost £500 to sit. Though ALS says in its tender response said that it would sponsor linguists to sit the DPSI for rare languages it will not have the money, or the linguists the motivation, to make this happen on a larger scale. Similarly though ALS says it will arrange post-graduate training, with the grade of linguist the pay rates are likely to attract, this is not likely to have much effect. Within a few years it is likely there will be very few NRPSI grade interpreters left working for the CJS.

It is also not clear to what extent the Framework Agreement is still a financially viable proposition for ALS and its owner Capita. It is likely that in order to win the contract and the monopoly this gives that ALS bid on tight margins—reports are that the other more experienced companies bid at a considerably higher hourly rate.
ALS has so far officially increased its rates by £5 per job and increased travel costs. However unofficially there are reports that it has been paying many individual interpreters far more than the official rate, either as their language is in short supply, or to encourage interpreters to take jobs with more travel time which are otherwise financially unattractive. http://www.naad.co.uk/news/ipswich_it_s_a_farce_fed_up_defence_solicitors_blast_court_interpreter_system_afterTranslator_has_to_travel_from_newcastle_to_ipswich_for_hearing_1_1331803

The automatic penalty for non-fulfilment will also eat into their margins as will solicitors taking out wasted costs orders. These factors combined with the fact ALS as a company made losses of 20,000 in 2010 and 331,000 in 2011 raise questions as to the National Agreement’s financial viability for ALS/Capita in the long term.

**Other Models for Saving Money on Interpreter Costs**

When the Framework Agreement was negotiated with ALS there was some evidence from the North-West Collaborative contract used by local police forces that by using an agency such contracts could significantly reduce costs while maintaining standards. However information collected at the time by interpreters suggested that standards were variable depending on the training of the interpreter. These problems with standards did not come to light because police interviews have no independent witnesses, and complaints from officers were not encouraged. NHS Manchester which used the same North-West Collaborative Commercial Agency Agreement for non-NRPSI interpreters found that complaints about poor interpreting standards escalated rapidly once it joined the Agreement as the interpreters sent by the agencies (including ALS) were of a lower quality than what they had previously been used to. Since then NHS Manchester has started, wherever possible, using its own vetted team of interpreters and has found this gives better standards and is cheaper than using the North-West Collaborative agreement.

Other large employers such as Leeds Hospitals have also found they could reduce costs by not using an agency. http://www.bbc.co.uk/news/uk-england-16868007

Katrina Mayfield the interpreter manager for Cambridgeshire police force reduced costs by 40% last year by actively managing the service. The Metropolitan Police Interpreting Unit and the previous Tribunals Agency Interpreting Unit also run or ran efficient operations at lower cost than other courts or police forces by actively managing their interpreters.

**Employing NRPSI Interpreters Direct and Also Achieving Savings**

By learning lessons from the Framework Agreement it would be possible for the MOJ to employ NRPSI interpreters direct, at their previous hourly rate, but at a substantially reduced cost to the MOJ. This would give the MOJ savings approaching those of the Framework Agreement but also ensure continued quality.

The three hour minimum fee is appropriate for cases where a court or police station needs to guarantee the presence of an interpreter for three hours or more. However ALS has found that 80% of police jobs take 1.5—2hrs with only 10% taking longer. A routine two hour minimum might therefore be agreed with interpreters for police jobs, with the understanding that interpreters could leave if necessary after two hours, and that at booking the police could request a 3 hour minimum for the occasional case where this seemed necessary. This measure alone would give an approximate 21% reduction in cost for all police work compared to the previous National Agreement. The cost to the MOJ of this Alternative Agreement (AA) would be roughly the same as under the Framework Agreement (excluding admin) on an assumption that the MOJ is paying ALS £45/hr for Tier 2 work.

eg if one assumes the MOJ is paying ALS £45/hr under the Framework Agreement (FWA), a two hour police job would cost £90 (+ the vetting fee). Assuming two hours travel each way the cost under the Alternative Arrangement (AA) given above would be £60 interpreting time + £30 travel time = £90 (+ travel expenses) and under the old National Agreement (NA) £114. Travel time of one hour would make the job cheaper using the Alternative Arrangement than the Framework Agreement—£75(AA) vs £90(FWA) vs £99(NA) and travel time of three hours slightly more expensive £105(AA) vs £90(FWA) vs £129(NA).

Similarly if there are certain court or tribunal cases where the finish time could be guaranteed to be 1 hour or 2 hours after commencement a system to pay a similarly reduced minimum time might be negotiated. For a court jobs lasting 3 hours the cost to the MOJ with two hours travel time + parking + travel expenses would be roughly the same (£90 + £30 + £15 = £135) under the Alternative Agreement as that paid under the Framework Agreement (£135) and for one hours travelling it would be less (£90 + £15 + £10 = £115). For a one hour job the comparison would be £55(AA), vs £45(FWA) vs £109(NA) for one hour of travel and £60(AA) vs £45(FWA) vs £124(NA) for two hours travel. One hour jobs therefore cost a bit more under the Alternative Agreement than the Framework Agreement but these were particularly badly remunerated using the FWA. Using the AA they still cost half the price of the National Agreement.

Similar payment models to those suggested here already exist in some police forces and in the previous tribunal service booking arrangements. They do reduce the overall hourly rate for interpreters for jobs lasting less than three hours as the balance between travel time and interpreting time is altered. One hour jobs requiring three or more hours travel are worst effected and to compensate for this would need an increase in travel time.
rate to £16/hr if travel time was three or more hours, and £17/hr if travel time was five or more hours. A similar sort of approach to this used by the previous Tribunals Agency Interpreting Unit with its higher rate than courts for travel to compensate for lower interpreting rates.

The main way these fees reduce costs is by reducing the number of hours interpreters are paid for. Given that these new rates are so much more competitive the MOJ could balance this by instructing that all court and police work should be preferentially booked direct with NRPSI interpreters rather than using agencies. This would compensate NRPSI interpreters with an increased flow of work and save money by raising standards (see above). This combined package might well be acceptable to NRPSI interpreters and would also meet the standard of interpreting recommended by the Runciman and Auld reports. This model for payments would therefore produce considerable savings, not far off those achieved via the Framework Agreement, whilst maintaining the existing skilled workforce.

**Making Interpreter Booking and Administration Cheaper and More Efficient**

If the MOJ developed a national interpreter booking website on which each court and police station entered details of the cases where an interpreter was required, and each interpreter had a diary page on which they indicated their daily availability, an available interpreter would often be found by a mouse click and a single phone call. Realistic travel time along with parking fees could be calculated automatically, booking emails and invoices generated automatically, and payments automated. A simple grading system for rating the quality of each interpreting job once done could allow courts and police to choose a more highly rated, and usually more experienced, interpreter if wished and also identify any underperforming NRPSI interpreters.

This sort of computerised system would reduce interpreter booking and administration costs to below those that any agency could manage. In particular the MOJ would not have to check and challenge detailed monthly invoices from an agency.

The details of such a system would need to be carefully thought through and set up in negotiation with interpreters and experts in police and court administration. (An addendum to this document gives further detailed suggestions). Initial enquiries to two large and reputable website companies taken out in another context indicate that it should be possible to set up such a website for less than £30,000.

The website would also easily give the MOJ, as well as courts and police, detailed on-going information about their interpreter costs and useful information about the spread of different language groups around the country and how this compared to the spread of interpreters. One of the useful calculations for the website to make would be average travel time for each language and each site along with the number of assignments. If this sort of information were put in the public domain it would allow existing or new interpreters to relocate to under resourced areas if they wished.

**Other Suggested Changes to the Organisation of NRPSI Interpreters**

Should the above measures be adopted it would still leave some of the organisational matters provided for under the Framework Agreement unaccounted for.

**Interpreter management**

If the systems of booking and payment above are to work effectively it will require good communication between interpreter bodies and the MOJ and on-going active management by the MOJ. It would therefore be important for the MOJ to appoint an interpreter manager(s) with some knowledge of the field to oversee the system, deal with any on-going issues and liaise with interpreter bodies. Encouraging NRPSI interpreters to form a single representative body would make negotiations between the MOJ and interpreters much simpler. This would also help interpreters as a profession to develop more quickly and consolidate professional standards.

**Complaints**

Less serious problems could be dealt with initially by the Interpreter Manager. More significant complaints should be adequately dealt with by the Disciplinary Committee of the NRPSI now it has been reformed and is independent of other interpreter bodies.

**Continuing professional development for interpreters**

The professional interpreter bodies such as APCI, ITI, PIA, SOMI etc. could perhaps set up a working group to look at this area and come up with some suggestions of what should be reasonably expected. Starting a system of appraisals for NRPSI interpreters would be best delayed for two–three years until the system is more settled. It is of note that yearly appraisals are not yet mandatory for solicitors though they do have to do CPD.
OTHER CONSIDERATIONS

Interpreters previously used by the Tribunals Interpreting Unit

There is a cohort of interpreters without the legal DPSI who have for many years given good service to the Tribunals Service. It is suggested a way is found to include them in any new arrangements so they are able to continue doing this sort of work.

Telephone Interpreting

This would need to be put out to tender from an agency to give 24 hour cover. It would be cost-effective to use high quality legally trained telephone interpreters wherever possible and from a reputable agency.

The ALS list of interpreters

It is becoming increasingly clear from reports of poor standards of interpreting that the Tiering system in the Framework Agreement does not guarantee sufficient standards and should not be continued. The Met test already gives an opportunity for a legal interpreting qualification for those who feel the DPSI would be too challenging. However the ALS list of Tier 2a interpreters, ie who have passed the DPSI exam except the written component, could be useful to the MOJ, if once the system is up and running there are in practice true shortages of NRPSI interpreters in certain languages.

Addendum A

ADDITIONAL POINTS TO BE CONSIDERED IN CREATING A NATIONAL INTERPRETER BOOKING WEBSITE

— Courts and police stations would have a home page with their details of address, contacts, parking rates, entry instructions etc. as well as a bookings spreadsheet.
— Interpreters would also each have a secure home page where they could update their own contact details and possibly bank details besides a diary page and a bookings spreadsheet. The diary page would log regular times of unavailability as well as one off occasions.
— Court booking pages should allow courts to add any interpreting jobs not booked via the website so that both they and the MOJ have a complete picture of interpreting jobs and costs.
— Interpreters’ booking spread sheets should be downloadable to aid completion of tax returns.
— The search facility should create a list starting with the nearest interpreter but should also clearly show interpreters ratings so staff could book a more highly rated interpreter if preferred eg for more demanding cases.
— The last time and date that an interpreter updated their diary should be clearly shown on the search results list so that booking staff could pick out interpreters who were not actively looking for work.
— For jobs likely to last more than three hours courts will need to estimate how long an interpreter will be needed in order for the computerised booking system to know when an interpreter will be available for further work.
— All admin such as booking confirmation, agreed terms and costs, and confirmation of completion and payment would all be sent automatically by email. Payments could be aggregated and automated and paid two–four weekly.
— Basic travel time could be calculated via a travel website but would need an uplift to fit in with reality and an addition for car park to court time if there was not onsite parking. Travel expenses would have to be mileage costs and assume all journeys were by car. How this level of remuneration worked out for Central London where most interpreters will not go by car would need to be discussed. If courts put the rates for their local car park(s) on their homepage this fee could also be automatically calculated. Finding ways to automate these calculations, even if they are sometimes a little less or more than in reality, is vital for reducing administration costs.
— Ratings made by CJS organisations of each interpreting assignment might be on a five point scale such as Very Good, Good, Adequate, Barely Adequate and Inadequate. Allowing the rater to add a comment if wished would be helpful. The rating and comments could automatically appear on each interpreter’s job spread sheet as feedback. A single Inadequate rating or repeated Barely Adequate ratings could create an automatic notification to the Interpreter Manager so he or she could look into the problem. A mechanism for helping those with language deficiencies would need to be devised. More severe or persistent problems could be notified to the NRPSI board.
Dear Sir Alan,

I have just read a copy of Peter Handcock’s replies to your questions about the Framework Agreement for Language Services (FWA) sent on 31 May 2012. http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/courtinterpreters.pdf

His answers unfortunately illustrate how out of touch those at the highest level in the Civil Service are with the reality of the performance of this contract. I will comment on his individual answers in turn to illustrate this and will send a copy to Peter Handcock as I am sure he would want to be aware of the issues, particularly in light of the Justice Select Committee’s planned investigation.

**Introductory Paragraphs**

Though the success rate of the FWA is undoubtedly improving and may even in time approach the required 98% the main issue is actually the quality of the service that the MoJ has purchased. When ALS halved the rates of pay of the skilled interpreting workforce, which the MoJ had built up over the past 18 years following the advice of the Runciman Commission and the Auld Report, it was not surprising that the vast majority of those interpreters stopped working for the MoJ.

So far only 301 NRPSI interpreters out of 2,350 previously on the register have signed up with ALS. There are likely to be perhaps another couple of hundred ALS interpreters who have some language training but most linguists will not consider doing demanding part-time freelance interpreting for an average of £11/hr when they can earn more translating or working for other employers.

Fortunately for ALS there are many immigrants in this country who are unemployed or in low paid jobs and speak reasonable conversational English. Though most of these do not comply with the educational and language training standards required for a Tier 2 interpreter, ALS has largely ignored these quality requirements and the MoJ has, so far, not asked the relevant questions. ALS’s “interpreting assessment” has only a handful of legal terms and so provides a convenient and seemingly authoritative “Tier 2” label even though it was never intended to be used in this way (see later). There is also considerable doubt, even if all the Tier 2 requirements were fulfilled, whether many Tier 2 interpreters would perform adequately in court as this Tier does not ensure detailed knowledge of legal terminology.

It was inevitable that if allowed to operate in this fashion ALS would eventually find enough “interpreters” , at least in the commoner languages, willing to interpret in courts and tribunals even though in many cases they had no proper understanding of the legal terminology being used.

Britain has a proud history of high standards of justice over many years. Is this the sort of third rate service the MoJ really wishes to provide for those with English as a second language?

Though there is obviously a need to save money on the interpreting budget there are other ways the MoJ can save considerable amounts of money while retaining its trained interpreters. (see the attached Review of the FWA and alternatives, also sent to you previously).

**What is the current fulfilment rate? How is this measurement made and verified?**

Though the fulfilment rate has increased the complete picture would need to include data on all languages. Even if the contract achieves a success rate of 98% or more in the common languages, if it has a markedly reduced success rate in the less common languages then this will cause a significant long term problem for the MoJ. Though this data is available to the MoJ it was not published in the Statistical Bulletin on 24 May 2012 and parts of the base data, which were published, have been blocked so that no-one else can calculate the figures. This, along with other significant anomalies in the Bulletin, have been discussed in my correspondence with Iain Bell, Chief Statistician at the MoJ, which I have forwarded to you separately. It is not clear whether this data on the “success” figures for all languages has been tabulated and circulated amongst more senior personnel responsible for the contract. This data is important as it is likely to show significant problems with ALS’s success rate with minority languages which it will be difficult to correct even over time.

**How many interpreters are now providing services via ALS? How many were providing services under the old arrangements?**

The reply says that there are around 1,500 interpreters employed by ALS but that because some speak more than one language this equates to more than 3,000 interpreters by language, ie an increase of 100%. The National Register of Public Service Interpreters (NRPSI) has around 2,350 interpreters but this number only increases by about 20% when extra languages spoken by a single interpreter are included. Relatively few NRPSI interpreters interpret in more than one language because although it is possible to be fluent in ordinary conversational terms in several languages interpreting in court is considerably more demanding than this.

So far only 301 NRPSI interpreters out of 2,350 previously on the register have signed up with ALS. There are likely to be perhaps another couple of hundred ALS interpreters who have some language training but most linguists will not consider doing demanding part-time freelance interpreting for an average of £11/hr when they can earn more translating or working for other employers.

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command of ordinary conversational terms in several languages interpreting in court is considerably more demanding than this. Not only does the interpreter have to learn the equivalent translations for specialised English legal terms, many of which are not in dictionaries, but he or she also needs to be able to simultaneously translate these complex terms at high speed. This means that relatively few people are able to pass the Diploma of Public Service Interpreting (DPSI) in more than one language.

Peter Handcock’s disclosure of the high numbers of ALS interpreters who speak multiple languages is a concrete illustration of the way ALS has focused on finding interpreters for a particular language at the expense of standards. It also illustrates the markedly lower standard of their new assessment test compared to the DPSI, assuming ALS interpreters have taken the assessment in each language.

The reply has also misinterpreted the MoJ’s own Statistical Report as it says that ALS interpreters “cover 142 languages”. The report actually says that “142 languages were requested” but only gives the success rate for the 20 commonest. It is likely that for large number of these 142 languages and probably even the majority, ALS was unable to provide an interpreter. Hopefully the MoJ will now publish data on the success rate for all 142 languages so it is clear to everyone.

ALS should be asked: Of their interpreters who interpret in more than one language what percentage have a separate Tier 2 pass for every extra language marked by Middlesex University?

What qualifications are required of interpreters?

I am interested that Peter Handcock’s reply says that ALS developed the tiered system since I had understood that the tiering system had been developed in conjunction with the MoJ. He also says that each hearing is assigned a tier based on the skills required of the interpreter. In fact despite producing this new system the MoJ & ALS never arranged for an independent assessment to see how Tier 2 interpreters actually performed in different types of court setting so the Tier of interpreter that is required for different types of court work is not known. Furthermore because only 301 of ALS’s 1,500 interpreters have the Diploma of Public Service Interpreting (DPSI) and are therefore Tier 1 it is clear that the default for most court cases has to be for a Tier 2 interpreter even if the court would prefer a Tier 1 grade.

There are numerous anecdotal reports of interpreters with only basic interpreting skills ie Tier 3 on ALS assessment, being offered court work. The following questions need to be asked of ALS to discover if this is correct as Tier 3 interpreters are only intended to be used for community jobs. It is likely that for large number of these 142 languages and probably even the majority, ALS was unable to provide an interpreter. Hopefully the MoJ will now publish data on the success rate for all 142 languages so it is clear to everyone.

ALS should be asked: Of their interpreters who interpret in more than one language what percentage have a separate Tier 2 pass for every extra language marked by Middlesex University?

What checks are made that those qualifications are held?

Peter Handcock quite correctly states that the purpose of the assessment is to check that interpreters have the appropriate skills that match their qualifications. This has been confirmed by Brooke Townsley of Middlesex University who designed the test:

I would emphasise that what was designed at Middlesex University was explicitly NOT intended to mimic or replace the DPSI examination, nor indeed was it designed to serve the same purposes. It was delivered solely as an in-service performance check, providing a diagnostic check (not a pass or fail result) on ability to deliver a simultaneous interpretation of legal discourse delivered in English at 120 wpm into a target language; and the quality of renditions from a the non-English language of the language pair into English, delivered consecutively. It was also designed on the understanding that it would be used to confirm that the skills indicated on paper by existing qualifications were actually evident in performance. http://www.lawgazette.co.uk/blogs/blogs/news-blogs/interpreting-interpreters-strike#comment-14643

This makes it apparent that the assessment is not really testing legal vocabulary in depth and is more to do with a quick assessment of consecutive and simultaneous interpreting ability. It also clear that the qualifications of interpreters, as laid out in the FWA, are vital if the MoJ is to have a chance of providing service which complies with the FWA requirements. Tier 1 interpreters have the DPSI and so can easily be checked on the NRPSI website. Tier 3 interpreters are only intended to be used for community jobs. It is therefore Tier 2 interpreters whose qualifications need the greatest scrutiny. The requirements for these are set out below:

Tier Two

The interpreter must have one or more of the following:

— “Partial DPSI” (English Law option) ie the interpreter must have passed all modules with the exception of component 3b (written translation from English);
— A degree in linguistics, English philology, Modern Languages or MA in Teaching of English, or other language related diplomas where English figures as part of the course completed.
Together with (in all cases):

- Previous or current employment in criminal justice services in their countries 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
- A pass at the assessment centre to the tier two standard.

From numerous reports ALS has often relied on the assessment centre test alone to allocate interpreters to Tier 2 and ignored all the other quality requirements. The questions that need to be put to ALS to check on this are:

1. How many Tier 2 interpreters does ALS have?
2. How many of its Tier 2 interpreters have a photocopy or uploaded scan (here after called “documentary evidence”) as proof of “Partial DPSI” (English Law option) ie the interpreter must have passed all modules with the exception of component 3b (written translation from English)?
3. How many of its Tier 2 interpreters without “Partial DPSI” (English Law Option) have documentary evidence of “a degree in linguistics, English philology, Modern Languages or MA in Teaching of English, or other language related diplomas where English figures as part of the course completed.”
4. For how many of its Tier 2 interpreters does ALS have documentary evidence of a University degree?
5. For how many of its Tier 2 interpreters does ALS have documentary evidence of at least 100 hours public service experience prior to starting work on the FWA contract?
6. For how many of their Tier 2 interpreters does ALS have documentary evidence of “previous or current employment in criminal justice services in their countries 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)”;
7. For how many of its Tier 2 interpreters does ALS have a documented pass to Tier 2 standard done at the assessment centre and marked by Middlesex University?

The last point may seem obvious but reports of interpreters not receiving their results suggest it is possible that ALS has not paid for some of the interpreting assessments it has had done to be marked.

Once this data has been collected it is highly likely that the MoJ will find that remarkably few of ALS’s tier 2 interpreters fulfil the stated requirements for Tier 2 interpreters and should not therefore be doing this work. If correct this would clearly explain the number of complaints about the standard of interpreting.

CRB Checks

Peter Handcock states that the “ALS Assessment Centres provide the setting to complete all identification and academic document checking as well as initialising the appropriate CRB and vetting processes”. Interpreters going to the centres in the first month or so described taking their documents and no one at the Centres being interested in them. There has also been at least one email from ALS to its interpreters asking them to upload details of their CRB checks if they have not done so. Individual ALS interpreters attending court have also admitted to other interpreters that they have no CRB check. The contract states that all interpreters will have an enhanced CRB check as a minimum requirement. In its Tender Submission (page 150 of the Language Services Framework Contract) ALS states that if an enhanced CRB check is not in place or is more than three years old they will carry out the check. The questions that need to be put to ALS by the MoJ are therefore:

- How many interpreters does ALS have available for the MoJ contract?
- For how many of these does ALS have a photocopy or uploaded scan of an enhanced CRB check done within the last three years?
- How many of these checks were requested after 27 August 2012?
- For how many of those with no enhanced CRB check in the last three years do they have a photocopy or uploaded scan of any enhanced CRB check?

In July 2012 a Freedom of Information Act reply from Warwickshire Police Force, who do CRB checks for the ALS contract, showed that since January 2012 ALS made 720 applications for its interpreters for Non Police Personnel Vetting (NPPV 3) status of whom only 80% (574) were accepted. Assuming that only the 300 or so NRPSI interpreters and perhaps an extra 200 extra semi-trained Tier 2 interpreters are likely to have
existing CRB checks this could potentially leave a considerable percentage of their interpreters with no enhanced CRB check in the last three years.

**Have the qualifications for court interpreters changed since the start of the ALS contract?**

Peter Handcock states that “the qualification criteria . . . have not been changed in any way as to diminish the importance of the quality and skills required”.

Prior to the ALS contract the accepted qualification for court interpreters was passing the DPSI exam. This consists of an in-depth test of legal terminology using: consecutive and simultaneous interpreting in both language directions; sight translations in both directions and written translations (under exam conditions) in both directions. The ALS Assessment in contrast is booth based and digitally recorded and consists of a single simultaneous interpretation from English into the target language, a single consecutive interpretation from the target language into English, and a written translation which the candidates are allowed to take home. The ALS pieces for interpreting and translation by report contain only a handful of legal terms. The DPSI examination and ALS assessment are therefore obviously not comparable.

Peter Handcock also states that “the requirement has been enhanced . . . by the requirement for continuous professional development (CPD).” CPD implies someone already has a professional qualification and is having on-going training and cannot be used to describe initial training workshops for inexperienced new recruits. In the first six months of the contract how many of ALS’s Tier 1 interpreters have attended a training course suitable for CPD, excluding ALS’s initial training workshops?

**What monitoring of performance of interpreters is carried out by ALS and HMCTS**

Under the details of the contract ALS are meant on a monthly basis to provide the MoJ with the following:

1. Breakdown of available interpreter numbers by region, language, tier and vetting status.
2. Details of complaints received, upheld, timescale for resolution and outcome (per collaborative partner).
3. Number of new interpreters added per tier per region.
4. Gaps in availability of languages per region

Has this been happening? Does the MoJ know how many Tier 1, 2 and 3 interpreters in each language and in each region ALS has?

**How is feedback from sentencers and other court users obtained and acted upon**

The fact that logging a complaint against ALS has been restricted to the courts themselves has restricted the ability of other court users to make a complaint. Interpreter organisations have been contacted by solicitors asking how to make a complaint about an ALS interpreter and there is no obvious mechanism for this. The lack of any independent check on complaints has also allowed ALS to manipulate its complaint figures by including complaints about “wrong tier of interpreter” ie poor quality as complaints about “operational issues”. ALS states in its Tender Information (FWA contract page 120) that “no Customer Service Report (re a complaint) will be closed until confirmation is received from the customer that they are happy with the outcome”. Given the very large number of complaints has this been adhered to?

**How many interpreters have been dismissed for underperformance since the start of the contract? How does this compare with numbers dismissed under the previous arrangements? What actions are taken in cases of inadequate performance?**

Peter Handcock says in his reply that 120 interpreters were contacted to take part in mandatory workshops scheduled during May and that nine interpreters will no longer be contacted by ALS for future work though whether this is over one month or four months is not stated. In relation to comparative figures he says “the total number of interpreters struck off the (NRPSI) register have never been made available to the MOJ”. In fact since the reform of the NRPSI register in April 2011 this information has been available on their website. The reply also forgets that the Tribunals Interpreting Service which has a list of NRPSI and other less trained interpreters will have regularly collected this data. The MoJ need to ask the Tribunals Interpreting Service:

- How many interpreters a year, over the last five years, have they had to dismiss due to poor performance?
- How many complaints about interpreters have they received per year for the last five years?

**What records do you and/or ALS hold on the number of cases which are adjourned or otherwise postponed as a result of inadequate or non-existent interpretation? Do you have an estimate of the costs incurred as a result of such delays? Are comparable figures available for the pre-ALS contract period?**

Peter Handcock mentions there is no centrally collected information on adjournments of criminal courts but he fails to mention that the Tribunals Interpreter Service has for many years collected data centrally and, as
they have more fixed time slots than courts, there may well also be estimates of the cost of a no-show. They need to be asked:

— What percentage of each kind of tribunals were adjourned or postponed each year for the last five years due to inadequate or non-existent interpreting?

— What is the estimated cost incurred for each kind of tribunal if it has to be postponed due to a no-show by a party to the tribunal?

From this last question the estimated cost so far of ALS’s interpreters failing to attend tribunals could be easily estimated. The only proviso is that it is possible ALS has manipulated some of the data so that some cases where the interpreter has arrived too late for the case to proceed and which should be labelled “supplier did not attend” have been labelled as “cancelled by customer” (see Reply to Iain Bell sent previously). This can be easily checked by asking the Tribunals Interpreter Service for the percentage of Immigration and Asylum tribunals over the last few years (ie prior to the ALS contract) where the interpreter’s job was cancelled by the Tribunals Service. If this is several percentage points less than 16% it would suggest that cases have been wrongly allocated.

It is not at all clear how comparing the data on cracked trials, as is done in the answer, helps answer the above questions. “Cracked Trial” is defined in the Bulletin on Statistics on the use of Language Services as “cracked trials are usually the result of an acceptable plea being entered by the defendant on the day, or where the prosecution offers no evidence against the defendant”. How this relates to the number of interpreters not turning up is not clear as most trials have been rescheduled if there was no interpreter.

I hope this commentary on Peter Handcock’s answers helps give a fuller picture of how the contract with ALS is actually performing. I also hope that that you will consider requesting the extra information indicated in red from the MoJ as this will give clear evidence as to whether ALS is complying with the quality standards of the contract or not.

Yours sincerely,
Dr Francis Beresford

Annex C

REPLY TO IAIN BELL, CHIEF STATISTICIAN AT THE MINISTRY OF JUSTICE, ABOUT ANOMALIES IN THE PUBLICATION “STATISTICS IN THE USE OF LANGUAGE SERVICES IN COURTS AND TRIBUNALS 30 JANUARY 2012 TO 30 APRIL 2012

18 July 2012

Dear Iain Bell,

Thank you very much for your reply to my queries sent via Farida Uddin. I am particularly pleased that you have answered my email as all the other queries I, and other ordinary members of the public I know, have sent to the MoJ about the Framework Agreement (FWA) in the last eight months have remained unanswered and unacknowledged.

Thank you for the assurance that “Code of practice for Official Statistics” ensures that for official statistics “the public interest should prevail over organisational, political or personal interests” and that “those producing statistical reports are protected from any political pressures that might influence the production or presentation of the statistics”. It may well be that you are not aware of the controversy and difficulties around the FWA and have therefore unwittingly both included highly controversial statements in your report and have also unwittingly not published the data that could be potentially most damaging in assessing the Framework Agreement.

I would like initially therefore to give you some background information that is of relevance to the statistical data and then look in detail at your answers to some of my questions some of which I would like to challenge or otherwise respond to.

You may not be aware but the outsourcing of Language Services has been exceptionally difficult and controversial for the MoJ and has received almost universally negative coverage in the press. Despite widespread criticism from judges, magistrates, barristers and solicitors the official line of the MoJ has been to deny that there are significant problems with the contract or the chosen supplier and that all the difficulties are simply related to the settling in of the new contract. Part of the difficulty for the MoJ has been that it has been very slow to realise that ALS, the relatively small company who won the contract, did not have the levels of probity and corporate governance that the government is used to in larger firms involved in official contracts. In particular their use of words and statistics can be extremely misleading for the unwary.

For example in its Tender Response (page 114 in the Framework Agreement Contract document). ALS states that “approximately 2,500 of our 4,500 registered freelance interpreters are suitably experienced and qualified for Authority assignments”. What ALS fails to mention is that this number is almost entirely made up of the database of NRPSI interpreters which it had purchased and that the vast majority of these 2,500 interpreters had not actually agreed to work for them. This fact became painfully obvious to the MoJ in the first months
of the contract. You will note that ALS’s statement is very carefully phrased so as to lead most people into assuming that it has 2,500 interpreters ready to work, while avoiding an outright lie. It may well be there are similar statements in documentation you have received from ALS which you may or may not have picked up on.

For those of your answers that have needed a response I have for simplicity included both my original question (in italics), your answer (non-italics) and my response (italics).

Question 1:

On page 8 of the report you publish details of the Tiers of interpreters in a form which has not previously appeared on official documents. May I ask where the wording for this form of the Tiering requirements came from? Was it provided by the MoJ or ALS? F.B.

Answer

The description of tiers is based upon those which are included within the Framework Agreement. The Framework is available on the Contracts Finder website at:


Reply

For clarification I attach a sheet to this email with the description of tiers of interpreters as it appears in the contract and the description as it appears in your report. You do not actually answer my question as to who wrote the paraphrase you publish. If it comes from your department it would help to remove doubt in the minds of the reader if this were acknowledged.

The paraphrase used in your report completely removes all the precise quality standards required for different levels of interpreters under the contract which are so vital for good interpreting in court. Legal terminology is highly precise, and often carries a wealth of specific detail in a single word so that interpreters with fluent conversational English but no legal training are likely to make major mistakes in interpreting in court. In trying to fulfil the contract ALS has chosen to largely ignore these quality standards as most trained interpreters will not work for them for the pay rates they are offering. Your inclusion therefore of a list of tiers which includes no standards and suspiciously fits with what ALS has been doing in practice, and what they would undoubtedly prefer, is therefore highly contentious! If this is not the official policy of the MoJ it needs to be corrected. F.B.

Question 2:

You say that there have been requests for interpreters in 142 languages but only provide data on the success rate for the twenty most popular. Furthermore many of the entries in the raw data file have the language blocked by “Not disclosed” so it is not possible to produce this additional information from the file. The reason for the “Not disclosed” label is given as “to protect the privacy of individuals” and it has been done for any record where there is a single record for a particular court and particular language in a single month. If this is to protect an interpreter’s identity this makes little sense since knowing that a Latvian interpreter attended Plymouth Magistrates Court in March gives no useful information about the interpreter’s identity. Even if one somehow believed it was true then it is not clear how knowing that a Latvian interpreter attended Plymouth Magistrates Court on two occasions in March discloses any less than knowing that one attended. F.B.

Answer

The reason for not disclosing some languages is not to protect the privacy of those who are interpreting. Interpretation is provided for juveniles, vulnerable witnesses and others where we must prevent the inadvertent disclosure of identity. To protect the privacy of interpreters, we have decided not to publish details of individual complaints, which might possibly be linked to an individual. I.B.

Reply

Thank you for letting me know the suppression of language data is to provide inadvertent disclosure of identity for juveniles and vulnerable witnesses. If this is so your method of trying to carry this out unfortunately still makes no sense at all. Your policy means that if Juvenile A appears once with an interpreter in July in a particular court the language will not be disclosed but if he appears twice in July in that court, which could easily happen, then it will be. If you truly believe there is a risk of disclosure by this data, though that seems highly unlikely, the chances of guessing are likely to be the same whether Juvenile A appears once or twice in the court in the month, making your method of protection invalid. F.B.
Question 3

As you may be aware it is for minority languages that ALS is likely to have the lowest success rate, possible 0% for some. This is because for these languages there are usually very few NRPSI interpreters and they would be hard to replace as there is by definition a reduced pool of bilingual speakers. The only reasonable conclusion from the data as presented is that this information is being deliberately withheld as it shows the performance of the contract in a negative light. It is however exactly the sort of information that is needed by the MoJ to judge whether the contract is viable long term long term for all languages. F.B.

Answer

The success rate was published for languages where a reasonable number of requests have been made. This was a decision made purely on statistical grounds. For example, a language with two requests, the success rate can only be 100%, 50% or 0%, none of which is particularly meaningful. It is not good statistical practice to report calculations based on a limited number of observations, which can imply there has been vast improvements or deterioration in performance from one period to the next.

The only reason data has been deliberately withheld has been to protect the identity of individuals. The details of these restrictions have been fully explained in the publications.

The purpose of publishing the statistical bulletin was to inform the public; it does not form part of the ongoing monitoring of ALS’s contract. I.B.

Reply

I am very surprised at your reply suggesting you cannot publish the data on minority languages as there are low numbers of requests, as in your report Table 20 (complaints, page 22) consists mainly of noughts and ones and you presumably considered this to be valid. Furthermore the Northern Ireland Courts and Tribunals service has for some years published data on the number of minority language cases even if there is only one case. http://www.courtsni.gov.uk/en-GB/Services/Interpretation-Services/Quarterly-Bulletins/Pages/default.aspx. The usual statistical procedure in such situations appears to be to give only absolute numbers and not percentages and to add a caution about interpreting these figures between time periods. This is certainly the approach the EU statistics agency takes in publishing the data for homicides, instead of not including some groups as you have done. http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Crime_trends_in_detail (see data sources and availability)

Furthermore if the purpose of the statistical bulletin is to inform the public then the information about minority languages is, of all your data, probably of the greatest public importance. For instance, if a Georgian is about to appear in Court he will want to know if a Georgian interpreter will be provided for him. If he sees there have been 3 cases in the last 6 months where a Georgian interpreter was required, none of which have been fulfilled, he may well decide to try and find a knowledgeable friend who can interpret for him rather than endlessly have his case cancelled as has happened to some defendants recently. Having such data in the public domain might also encourage more Georgians to train as interpreters! F.B.

Question 4

Has the success rate for the other 142 languages been calculated and fed back to the MoJ?

Answer

The overall success rate as published in table 1 of the statistical bulletin covers all languages.

Reply

I think you have misunderstood my question. Has the individual success data for each of the 142 languages not mentioned actually been tabulated and if so has this information been passed to the MoJ? If this data has not been calculated by your department it seems unlikely that those in charge of the contract at the MoJ will know either. F.B.

Question 8

Cancelled Customer rates: this is defined on page 25 as “the court or tribunal no longer requires an interpreter and has cancelled the request”. As you may be aware there is no reason in this contract to record prior cancellation as there is no charge for this. There is a charge for cancellation once the interpreter has arrived but this is covered in “DNA customer”. F.B.

Answer

Once a request has been made, it is automatically registered on the management system, and is ready for an interpreter to be assigned to that job. If the court or tribunal cancels the request, the cancellation is also recorded so that an interpreter who may have been assigned to that job knows that it has been cancelled. ALS record information for their internal management purposes which may not be associated with charges made to the department. I.B.
Reply

Thank you. That is helpful in explaining how the system works if the court or tribunal cancels the request and means that at least some of the “Cancelled by customer” entries will be genuine. F.B.

Question 9

In March Cancelled Customer accounted for 18% of all Immigration Tribunals though an experienced interpreter reports that these assignments are almost never cancelled. It has been noticed by observers since Feb 2012 that when court staff phone up ALS because an interpreter has not arrived, ALS give an excuse for the lateness and ask if the court now wishes to cancel (ie as there is no longer sufficient time). It appears that this group represents the cases where court staff say they do wish to cancel. This is partially acknowledged by on page 10 “requests may also fail because…..the interpreter arrives so late the job is cancelled”, though there is no indication where these cases appear. F.B.

Answer

The terms used within the publication are defined in Annex A.’ Annex A makes the meaning of these terms clearer and does not support your interpretation. Any requests that fail because the interpreter fails to attend or is late are counted as “Not fulfilled—Supplier”; any requests that fail because the customer (specifically the person for whom interpretation has been request by the court or tribunal) fails to attend or is late are counted as “Did not attend—Customer”. I.B.

Reply

I entirely agree that one would expect that cases where the interpreter is late would be counted as “Not fulfilled by supplier”. However on careful reading of Annex A, which I assume contains definitions supplied by ALS, I can find no mention of the situation where a request fails as the interpreter is late or of which category it falls into. Under the contract (page 137) cancellation by the customer without charge is generously allowed by ALS up to the point where the interpreter arrives.

From the information I gave above I am still concerned that ALS has inflated the “Cancelled customer” figures by the method above so as to improve its performance and reduce its penalties. The degree to which they would have managed to do this is likely to have varied between courts. As the Tribunals Interpreter Services team previously kept statistics of cancellations, which you will have easy access to, it should be possible to compare the number of cancelled Tribunal cases from 2011 or before with the figures in your report. If the percentage of cancelled cases for Immigration or other Tribunals is significantly more in your report than it has been before, it would, pending any other obvious explanation, support my allegation. This could be checked out further by independent questioning of the clerks at the Immigration Tribunal Courts who were dealing with cases in February and March. F.B.

Question 10

Once these figures are added as “DNA supplier”, where they should be, rather than being excluded, the fulfilment rates over the three months drop to 58%, 73%, 80% (average 72%) ie around 10% worse. This is obviously highly significant because as you may be aware in the contract there are penalties attached to each percentage point less than 98% fulfilment. F.B.

Answer

The bulletin was published to provide the public with information about the use of language services in courts and tribunals, and is independent of the contract monitoring. The success rate as defined in the bulletin is a reasonable measure of the proportion of those requests that could possibly have been fulfilled.

You may also find the following information helpful on processes in place to ensure that the information the MoJ has on language services in court and tribunals is as complete and as accurate as possible:

— Court and tribunal staff have been given clear guidance on the circumstances in which cases they should ask for a booking to be cancelled and circumstances in which a booking should be closed unfilled. HMCTS staff and MOJ procurement have full access to the portal to ensure jobs are closed down properly.
— The contractor has demonstrated that their staff have a clear set of operating procedures to ensure cases are properly marked as cancelled or unfilled.
— Detailed analyses have been conducted by MoJ Contract Managers on cancelled bookings which confirmed that cases are being correctly closed down. I.B.

Reply

Though the bulletin may not officially be part of the contract monitoring exactly the same data will be used for contract monitoring and therefore any alterations to the bulletin data will also alter the contract penalties.

I am pleased that things have now been checked as per your three bullet points. However I am sure that to start with there would have been no procedure for what court staff should do if an interpreter arrived so late
that the hearing could not go ahead, as under the old system this was not a significant problem. This, along with the fact that court staff would have been getting used to new procedures and the chaos caused by lack of interpreters, could have easily allowed ALS to misclassify these cases in the first few months of the contract. F.B

SUMMARY OF FURTHER QUESTIONS ARISING FROM YOUR REPLIES

(a) If the controversial and incorrect paraphrasing of the Tiering of interpreters has arisen from your department will you acknowledge this and add a Corrigenda to the report explaining that this is not intended to represent a policy change from the standards for Tiers of interpreters as stated in the original contract?

(b) Given that it is clearly in the public interest, and other reputable official statistics departments have published similar data, will you now publish a table of completed language service requests for all courts and tribunals by outcome for all 142 languages?

(c) Will you check the Cancellation Rate for Immigration and Asylum Tribunals prior to the FWA and compare these with the figures in your report and let the parties below receiving a copy of this letter know the result?

(d) If this Cancellation rate has consistently been more than 2% points lower than the 16% which is the lowest monthly figure so far for Immigration and Asylum Tribunals will you also compare current and past Cancellation rates for other tribunals and request further investigation to check why this has arisen as suggested above? (If the cancellation rate in the past for Immigration and Asylum Tribunals has been 14% or more I will happily accept that there has been no inflation of the figures by ALS).

(e) The other outcome of ALS interpreter assignments that is not covered by your statistics are the not infrequent occasions where the ALS interpreter is unable to stay to complete the case as they have another job to go to and so the case cannot be heard. Can you tell me what protocol has been agreed with court staff and ALS as to how this is classified and entered on the data system and what penalties accrue for such poor performance?

October 2012

Supplementary written evidence from Dr Francis Beresford

I would like to inform you of a very significant error in the recent National Audit Office (NAO) report on the Language Services Contract (the Contract). The NAO modelling gave reduction in interpreter pay as initially 20% dropping to 8% after alterations to the terms. This is unfortunately a gross underestimate and the actual figures are a reduction in 28–73% for court work and 33–43% for tribunal work depending on the length of the assignment and the amount of travel, details are given in the Appendix below. Part of the explanation for the inaccurate figures is clear from the Appendix to the NAO report which shows that they have been given incorrect rates to work on as they exclude travel time, travel expenses and parking all of which were paid routinely prior to the Contract. I believe their modelling was also done on police work and not court work which is likely to have had an effect. The NAO have been informed of the error.

This reduction in pay above explains why 87% of interpreters on the National Register of Public Service Interpreters (NRPSI) have refused to work under the new contract, and I believe this percentage has now risen further. The above reduction also explains where the 20–30% savings (£12 million–£18 million on a £60 million spend) expected by the Ministry of Justice have come from since these estimates did not include any savings on administration and excluded agency administration and profits.

These reductions also have very significant implications for the ability of the Contract to provide the standard of interpreting required. The Runciman Royal Commission on Criminal Justice recommended in 1993 that only trained and qualified interpreters be used in court and in response the NRPSI was established in 1994 along with the Diploma in Public Service Interpreting (DPSI). In 1998 the Trials Issues Group recommended the exclusive use of National Register Interpreters for criminal investigations and court proceedings and this was confirmed by the Auld Report in 2001 which recommended “there should be a review of the levels of payment to interpreters with a view to encouraging more and the best qualified to undertake this work and to establishing a national scale of pay”. These reports effectively created two tiers of interpreters in this country: those with the linguistic and academic ability to study and master the interpreting of complex legal discourse who could therefore pass the demanding DPSI; and those who could not. The latter tend to do medical or other less demanding interpreting work at a much lower rate of pay.

From this it can be seen that by dramatically reducing pay as above and by removing the DPSI as a requirement for most court interpreting the Contract has saved money by simply downgrading the standard of legal interpreting, employing mostly untrained and lower skilled interpreters who are willing to work for a concomitantly lower rate of pay. Unfortunately this has also reversed the recommendations of three previous reports into interpreting in the Justice system and puts back standards of justice for non-English speakers by
20 years. This state of affairs cannot be reversed under the Contract as skilled linguists can get better paid work elsewhere.

November 2012

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Written evidence from Rt Hon Lord Justice Goldring, former Senior Presiding Judge for England and Wales

Thank you for your letter of 29 November in which you requested my assistance with the Justice Committee’s current inquiry on interpreting and translation services and the Applied Language Solutions (ALS) contract.

In particular, you asked for my assessment of the quality of service provided by those interpreters that have been booked recently under the ALS contract, and my view on whether those service levels gave any cause for concern in the ability of the judiciary and the courts to service the interests of justice.

My overall impression is that, in both the courts and tribunals, there has been substantial improvement from when the contract first came into force. There is no doubt that a great deal of work has been done by HMCTS to improve the situation. That is reflected by the fact I have recently agreed that all bookings in all magistrates’ courts in the North West and Midlands should be done through ALS. I understand that the First Tier Tribunal (Immigration and Asylum Chamber) has made similar arrangements in two of its centres.

The following areas of concern have been brought to my attention.

**Courts**

1. Under the scheme, interpreters are booked and paid for only from the moment that the case is listed. This means that they no longer arrive early to assist in pre-hearing conferences and there is often a delay whilst final instructions are taken. There have also been several complaints about interpreters arriving late to court.

2. I have received comments that the quality of the ALS interpreters is variable. On a handful of occasions, juries at XXXX Crown Court have been discharged due to the inadequacy of the interpreter. More common is a lack of understanding of court procedures. When, as sometimes happens, judges have noted no interpretation taking place in the dock, the interpreters have responded either that they will tell the defendant everything at the end of the case, or that they did not want to make a noise. That of course is something that, once noticed, can immediately be rectified.

3. There are reported difficulties in obtaining an interpreter at short notice. For some less frequently spoken languages, ALS has not been able to confirm that they will provide an interpreter when required. XXXX Crown Court List Office has had to find an interpreter from the national register.

4. There is a lack of continuity in the system. For example, when a troubled defendant has built up a rapport with an interpreter, it would be helpful if there were a means of ensuring that the same interpreter attends subsequent hearings.

**Tribunals**

1. From the information I have, I believe performance in the tribunals may be less consistent than in courts. While many tribunals fill all their bookings with ALS successfully, there are some where performance is significantly worse.

2. As in the courts, there are still concerns about quality.

3. There are complaints from the Social Security and Child Support Tribunal about the late attendance of interpreters.

4. The general view of the tribunals is that the new arrangements are not yet as reliable as the old arrangements (which were through a Tribunals Interpreters Panel rather than the National Agreement as in the courts).

In short, there has been a significant improvement in the provision of interpreting services from the early days of the ALS contract. That said, there are still some issues to be resolved. There is now an HMCTS Interpreters’ Contract Project Board which is working to manage the contract. There are two judicial representatives on it.

December 2012
Written evidence from the Professional Interpreters for Justice

This submission is made on behalf of the Professional Interpreters for Justice Steering Committee and the members of all the interpreter organisations represented. (APCI, ITI, NRPSI, NUPIT, PIA, SOMI, SPSI, CIOL) See http://tiny.cc/proterps4justice.

The interpreting profession welcomes the JSC Inquiry into the Framework Agreement, having long sought open and transparent discussion of the Ministry of Justice’s outsourcing of interpreting services to a sole commercial supplier.

Other Documents

The JSC has already received a copy of the representations that Professional Interpreters for Justice made to the National Audit Office Investigation (18 June 2012). The JSC has also published (in the report on the Budget and Structure of the MoJ) a short briefing document prepared by our member PIA. We aim to avoid repetition by referring to earlier documents where possible.

Abstract

— The contract is not supported by experienced and professionally qualified Registered Public Service Interpreters who served the courts previously. Hence the quality of interpreting in the courts is not the same as before.

— This written submission is not just critical of the MoJ’s policy decisions and procurement practice, but also highly sceptical of the extent to which the contracted functions and safeguarding procedures are actually being followed by the contractor ALS Ltd.

— We have grave concerns for the delivery of justice to non-English speakers and the general functioning of HMCTS if the courts continue to be served by the less competent ALS Ltd workers engaged under the Framework Agreement.

— We respectfully submit that a proper audit should be carried out of ALS Ltd’s internal verification checks and its worker database.

This document is structured to follow the six published terms of reference. Where possible, reference is made to existing documents. In addition, we include four case studies in appendix.

Background

Professional Interpreters for Justice represents the interpreters who previously served the Criminal Justice Service including H.M. Courts and Tribunals Service. They are independent self-employed freelancers who invested in their profession by obtaining the appropriate qualifications, experience, vetting and registrations, as required by the National Agreement on Arrangements for the use of Interpreters, Translators and Language Service Professionals in Investigations and Proceedings within the Criminal Justice System, which had been put in place following a two-year review in 2001.

Our profession repeatedly warned the Ministry of Justice that replacing independent professionals with lower qualified or unqualified agency workers would endanger equal access to Justice for non-English speakers. The Ministry was left in no doubt that professional interpreters who previously worked in the CJS would no longer be available to it under the new regime. Correspondence and numerous petitions submitted since early 2009 demonstrate that interpreters made their position clear and asked to be properly consulted. The MoJ pressed ahead with its contract with Applied Language Solutions Ltd despite the sure knowledge that it was not supported by professional interpreters, and never would be.

The HMCTS contract with ALS Ltd went live nationally on 30 January 2012. Most RPSIs decided to boycott ALS Ltd. When, mid-February, HMCTS resorted back to booking interpreters directly alongside the ALS Ltd contract, most of those who reject ALS Ltd resolved to boycott bookings made directly by HMCTS as well.

The ongoing boycott is a grass-roots action by professional interpreters as individuals; each self-employed freelancer has autonomously decided his or her stance towards working for ALS Ltd, and to working for the courts directly, while the Framework Agreement is still in place. Some have elected to leave the United Kingdom, altogether. In other words, the boycott action is not an industrial dispute driven by unions or organisations; instead independent self-employed freelancers are demonstrating the power of market forces because they are under no obligation to work for unsustainable pay rates or unacceptable terms.

This submission is made on behalf of the following representative bodies which are partners in the Professional Interpreters for Justice campaign: Association of Police and Court Interpreters (APCI), Institute of Translation and Interpreting (ITI), National Register of Public Service Interpreters (NRPSI), National Union of Professional Interpreters and Translators (NUPIT)/UNITE the Union, Professional Interpreters’ Alliance (PIA), Society of Official Metropolitan Interpreters (SOMI UK), Society for Public Service Interpreting (SPSI). Additionally, the Chartered Institute of Linguists (CIoL) is a participant in the Campaign’s Steering Committee as an observer, and in common with several of the above bodies will also be submitting evidence in its own right.
Therefore, a distinction should be drawn between the 2,300 Registered Public Service Interpreters who were previously engaged, and the workforce currently used by ALS Ltd which includes just 301 RPSIs. By and large, Registered Public Service Interpreters are not working in courts at present.

In view of the evidence to follow, we do not feel the workers engaged by ALS Ltd to service the contract can properly be termed “interpreters”.

ALS Ltd has manifestly failed adequately to service the HMCTS contract in all respects: procedural, administrative and logistical failures on the part of ALS Ltd and serious interpreting failures by its workers.

The costs incurred by ALS Ltd’s failings are both human and material.

1. The rationale for changing arrangements for the provision of interpreter services

1.1 Professional Interpreters for Justice made extensive submissions on this subject in written evidence provided to the National Audit Office, concluding irrational behaviour and arbitrary decision-making on the part of the MoJ. We respectfully refer the committee to Section 2 of our earlier submissions to the National Audit Office investigation.

1.2 The MoJ’s actions in awarding the Framework Agreement are in direct opposition to all policy development—both in the UK and the EU—over past decades. The National Agreement on Arrangements for the use of Interpreters, Translators and Language Service Professionals in Investigations and Proceedings within the Criminal Justice System, was put in place a decade ago as a result of the recommendations of the comprehensive two year Review of the Criminal Courts by Lord Justice Auld in 2001. No comparable prior study was carried out on this occasion (NAO 2.7–2.13).

1.3 Among the MoJ’s stated aims was to save money by freeing up court and police staff from booking interpreters and processing their pay claims. Nonetheless, the MoJ did not look into outsourcing the discrete functions of booking and payroll while continuing to use approved lists (NRPSI etc.).

1.4 The MoJ has referred to “shortcomings” in the previous system without ever articulating what they were. The MoJ’s “Letter to stakeholders” (July 2011) cites “anecdotal evidence” as the reason for introducing the ALS Ltd assessment. The MoJ claimed that “collaborative authorities” had “concerns that NRPSI registration does not necessarily guarantee quality. The evidence for this is anecdotal, but has been consistent enough to warrant action” (Letter to Stakeholders, 6 July 2011). Decisions were based on anecdote.

1.5 The MoJ did not attempt to remedy the perceived shortcomings by providing support or funding to improve the existing system.

1.6 A further rationale was a perceived shortage of interpreters in certain languages in certain areas of the UK. Nonetheless, no prior study to quantify existing expenditure or to map existing supply and demand was ever carried out by the MoJ. The Framework Agreement undertakings with regard to local availability of all languages are unrealistic.

1.7 When the MoJ sought “comments from stakeholders” and carried out an Equality Impact Assessment in April 2011, it did so belatedly and under threat of Judicial Review proceedings. This was no more than a box-ticking exercise.

1.8 No consideration was given by the MoJ to sustainability: the long-term consequences for established best practice, the retention of highly experienced and specialised interpreters within the profession, their ability to make a living with interpreting as one’s sole or main professional specialism, or saturation of a niche sector by allowing unqualified persons to practise at a lower rate of pay.

1.9 Early on, an arbitrary decision was taken by the MoJ that the high standards previously set for CJS interpreters could be lowered, with a view to increasing the pool of available interpreters. The Tier system was the consequence of this decision. The decision to lower minimum standards does not appear based on any rational study, nor does the perceived need to increase the pool of interpreters.

1.10 It seems that the MoJ made a policy decision (to lower professional standards for interpreters working in courts) with far-reaching ramifications, on the say-so of its preferred commercial supplier ALS Ltd. Did any other bidder’s proposal envisage lowering minimum standards?

1.11 Whatever the MoJ’s rationale for lowering standards of qualifications and experience for interpreters used by H.M. courts service, it did not grasp the complex dynamics of freelance interpreting in the Criminal Justice System, and failed to appreciate how difficult, specialised, and crucial to Justice is the work of legal interpreters.

1.12 We agree with the view expressed by the Justice Select Committee in the Report on the Budget and Structure of the MoJ that in some cases the MoJ lacks the appropriate expertise to commission effectively. Both in terms of how the interpreting profession is organised and how freelance professional interpreters operate, the MoJ lacked the appropriate understanding and did not consult those in the know (see NAO 2.31).

We refer to the assertion by thebigword in evidence provided to the JSC (Budget & Structure of MoJ, p.162), that “A visit to the Courts and Probation services to see interpreters in action to enable information gathering...
and to inform solutions took place half way through the tendering process when some companies had already been rejected.”

1.13 Neither did the MoJ’s civil servants understand the actual practice of court interpreting, and consequently appreciate the extremely high calibre of skills required for this demanding and challenging occupation. Simultaneous court interpreting requires the accurate transferral of difficult language into another language, in real time. The professional interpreter is able to listen to information in one language, process information into another language, and speak in that other language, all at the same time.

1.14 There was insufficient understanding of the consequences for Justice of using unskilled or lower qualified workers whose main occupation is not interpreting.

1.15 The costs to Justice are:

   (a) loss of safeguards for Equal Access to Justice for non-English speakers;
   (b) human cost of unlawful detention and other Human Rights breaches;
   (c) failed prosecutions;
   (d) failure to recover criminal assets;
   (e) miscarriages of justice;
   (f) loss of skilled workforce: experienced interpreters are leaving CJS interpreting;
   (g) loss of professional best practice: the system is designed by a commercial entity instead of by professional institutes and associations;
   (h) embarrassment to British Justice in the national and international arena; and
   (i) loss of faith in the Justice System;

2. The nature and appropriateness of the procurement process

2.1 We respectfully refer the committee to Sections 2 and 4 of Professional Interpreters for Justice’s earlier submissions to the National Audit Office investigation.

2.2 As was noted by JSC witnesses (Budget & Structure of MoJ, p.60, 200) the MoJ uses the competitive dialogue approach inappropriately. In this instance it resulted in the MoJ allowing itself to be sold the Tier system “solution” by contractor ALS Ltd: lower qualified, lower paid workers, promised to be in more plentiful local supply.

2.3 Contemporaneous correspondence with the MoJ (including the pre-action protocol for Judicial Review) identified and challenged procedural and substantive issues, EU Directive issues, public procurement issues and Equality issues, summarised below.

2.4 Procedurally, procurement process was flawed by the following:

   (a) No prior study (NAO 2.7–2.13);
   (b) No engagement with interpreters during the procurement exercise (NAO 2.14–2.17; 4.1–4.14);
   (c) Not engaging in meaningful and effective consultation (NAO 2.18–2.26; 4.1–4.14);
   (d) Not carrying out the Equality Impact Assessment in good time and then doing it retrospectively (NAO 2.27–2.30);
   (e) MoJ staff is not familiar with the day to day realities of providing interpreting to CJS and have little, if any, understanding of the way the interpreting profession operates. (NAO 2.31); and
   (f) Not taking into account information about the performance of ALS in the North West and the interpreting profession’s conflict with ALS (NAO 2.32–2.33).

2.5 Substantively, the decision to make a sole provider responsible for all aspects of delivery was irrational. In the MoJ Framework model the contractor (ALS Ltd) is to be the sole provider of language services to CJS bodies and performs the functions of:

   — work provider (to interpreters);
   — supplier (to the CJS bodies);
   — regulator (including disciplinary function);
   — assessor of qualifications and competence; and
   — registrar of suitably qualified and competent interpreters.

   Every one of the above functions is in direct conflict of interest with all the others and each should be exercised independently, as they were previously (NAO 2.34–2.35).

2.6 The deadline for transposition of the EU directive on the rights to interpreting and translation during the criminal justice process is 27 October 2013. The MoJ claims that the Framework model is a means of implementing the EU directive in the UK. Whilst the CJS bodies under the MoJ can be made to sign up to the Framework Agreement, for other CJS bodies (i.e. those under the Home Office) participation is optional. It follows from this that the Framework Agreement which is supposed to implement the EU directive is, in fact,
2.7 The “non-regression” principle of EU directives requires Member States not to do anything that would be a departure from Directive principles prior to the Directive’s implementation. We hold that the Framework Agreement deteriorates and erodes the present position on the provision of qualified competent interpreters to the CJEU (NAO 2.41). With regard to the UK’s obligations under the EU directive and the Framework Agreement’s inability to fulfil them, we refer to the submissions made to this Inquiry by EULITA on behalf of its UK members APCI and ITI and associate member CIOL.

2.8 The turnover of ALS in 2011 was under £6.5 million pounds per annum, yet the MoJ awarded ALS the contract valued at £300 million (NAO 2.45). The published accounts by ALS show that the company had substantial debts (c. £1.3 million) and in 2010 “meets its day to day working capital requirements through a mezzanine funding arrangements”. The mezzanine funding was provided from the Capital for Enterprise Fund by Maven Capital Partners:

“The prequalifying questionnaire clearly did not do its job. It should have weeded out on financial robustness, ensuring that only those suppliers with the ability to deliver the service went forward” (oral evidence, Budget & Structure, p 52).

The overall PQQ award criterion was “the most economically advantageous tender”, with the assessment of all non-price criteria done by the contractor’s self-certification. No objective data is provided and no financial information to gauge the contractor’s capacity to deliver such a large contract was included in the PQQ (NAO 2.56–2.58).

2.10 The final round of the procurement process left only ALS Ltd in the running for the contract. It was remarked upon in oral evidence (Budget & Structure of the MoJ) that a final round with just one bidder was rather curious. It was during this final stage, when plans for the Tier System and the ALS assessments were fully formed, that the MoJ invited comment from stakeholders in April 2011 (NAO 2.56–2.58).

2.11 In December 2011, within months of the award of the Framework Agreement worth £300 million, ALS Ltd was bought by Capita Plc for £7.5 million. Maven, manager of the Capital for Enterprise Fund A, realised an initial return of 40% IRR on its £1.5m mezzanine investment in Applied Language Solutions following the sale of ALS to the Capita Group.

2.12 We hold that the MoJ did not fulfil its public procurement Equality Duty in that it treated foreign language interpreters differently from British Sign Language interpreters, and did not take into account the ethnic composition of the interpreting profession (NAO 2.52–2.55).

2.13 We contend that the MoJ took the undertakings given by ALS Ltd during the procurement process at face value and made no effort to verify ALS Ltd’s claims (NAO 2.59–2.63). For example, ALS claimed in its Risk Evaluation document (Bidding documents file 2.1) that it had fully mitigated against the opposition by registered NRPSI interpreters to the contract. This is manifestly untrue.

2.14 It is not known how many interpreters ALS claimed were registered with it in order to persuade the MoJ it had the capacity to service the Framework Agreement.

Page 114 of the Framework Agreement dated 19 August 2011 states “Approximately 2500 of our 4,500 registered freelance interpreters are suitably experienced and qualified for Authority”. This claim has since been discredited. At other times since the start of the contract ALS has cited wildly varying numbers of workers. For example, by 6 March 2012 it had “over 1,800 interpreters at Tier 1 or 2 actively working on the contract” (ALS Newsletter 6 March 2012).

2.15 We believe it is likely that ALS Ltd breached section 55 of the Data Protection Act, a criminal offence. ALS Ltd systemically harvested the personal data of interpreters and translators and created worker profiles without their consent. ALS Ltd has publicly admitted it had retained personal data from its 2009 subscription to the NRPSI register (listing over 2000 individuals): “ALS said it bought some interpreters’ details three years ago from the Institute of Linguists. It claims this is the only historic data held and information is immediately deleted when requested” (BBC News, 21 March 2012). In fact, the license expressly forbade copying or processing the data.

Around 80 cases of data theft were referred to the Information Commissioner’s Office for investigation. The ICO concluded that DMA compliance by ALS Ltd was unlikely, and the Commissioner now requires ALS to

2.9 We agree with the JSC witness thebigword that: “The prequalifying questionnaire clearly did not do its job. It should have weeded out on financial robustness, ensuring that only those suppliers with the ability to deliver the service went forward” (oral evidence, Budget & Structure, p 52).

The contract was not awarded until 19 August 2011.

2.10 The final round of the procurement process left only ALS Ltd in the running for the contract. It was remarked upon in oral evidence (Budget & Structure of the MoJ) that a final round with just one bidder was rather curious. It was during this final stage, when plans for the Tier System and the ALS assessments were fully formed, that the MoJ invited comment from stakeholders in April 2011 (NAO 4.1–4.14).

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Around 80 cases of data theft were referred to the Information Commissioner’s Office for investigation. The ICO concluded that DMA compliance by ALS Ltd was unlikely, and the Commissioner now requires ALS to
take certain steps to demonstrate that it is bringing its processing of personal data into compliance with its obligations under the DPA.

2.16 No checks have been carried out by the MoJ to verify that the worker records held by ALS and the total numbers cited during the tender process are bona fide registrations, i.e. that each person consents not only to ALS Ltd holding his/her personal data, but has also signed in agreement with the ALS Terms and Conditions.

2.17 We strongly believe that the contractor’s bid was so low that delivery of the contract is unviable. Under the NA rates previously in force interpreters were paid a minimum of £85 for the first three hours at court, and £30 per hour thereafter, with travel time paid at £15 per hour and public transport travel expenses in full, or mileage at £0.25. There had been no change in these rates since 2007.

By contrast, ALS Ltd’s bid was based on hourly rates of £22 (Tier 1), £20 (Tier 2) and £16 (Tier 3) with a minimum fee of just one hour and no payment of public transport charges, just a paltry mileage rate that does not apply locally (contradicting Government policy to encourage the use of public transport).

2.18 The above gross hourly rates are unsustainable for freelance self-employed professionals.

3. The experience of courts and prisons in receiving interpretation services that meet their needs

3.1 We have compelling evidence that ALS Ltd is not providing workers in compliance with the Framework Agreement:

— Tier 3 workers and other inexperienced workers sent to Court bookings.
— Workers with no formal language qualifications but, for example, a university degree from a foreign university in a non-language subject.
— Workers assigned jobs in the wrong language, i.e Russian for Latvians and Lithuanians; Czech for Slovakiains.
— Workers assigned jobs without prior verification of their identity.
— Workers assigned jobs without prior verification of their qualifications.
— Workers assigned jobs without prior verification of their Criminal Record status.
— Workers assigned jobs without prior verification of their vetting status.
— Workers assigned jobs without prior verification of their right to work in the UK.
— Workers assigned jobs in languages where they have no qualifications.

3.2 It is a truism that an interpreter’s performance is difficult for others, who do not master both languages, to assess. Similarly, it may not be understood by all that a very high level of skill is required in order to interpret faithfully. End users of CJS interpreting services are, understandably, accepting ALS workers in good faith.

3.3 In some cases, an interpreter’s inadequate performance and the ensuing consequences may never come to light. Interpreters are involved throughout the entire proceedings: from arrest and interview, charge, prison visits, assisting solicitors taking instructions, Magistrates’ Court hearings, Crown Court hearings and trial, sentencing, probation reports, through to post-trial proceedings such as POCA.

3.4 The reliance on interpreters in cases involving non-English speaking defendants, victims or witnesses is considerable. The scope for damage to be caused by an incompetent interpreter is very large.

3.5 Information provided by the MoJ pursuant to the FOI Act indicates that the guidance issued to court staff on how to book the appropriate tier of interpreter was scant.

On 20 January 2012, court managers were sent an extract of the Framework Agreement which also stated: “In most instances the courts should request a tier two interpreter and the ALS portal has been set to default to a tier two interpreter. However, in some cases it may still be appropriate because of the nature of the case to book a tier one interpreter.” This was the full extent of the training and guidance provided for HMCTS staff on using the new system.

3.6 Since the inception of the ALS Ltd contract, our interpreter members have been attending courts across the UK to monitor the attendance and performance of ALS workers. The log of ALS defaults maintained by interpreter organisations has been communicated to the MoJ at several points in time but received no formal acknowledgement.

3.7 Reports collated centrally resulted in a formal complaint sent to ALS Ltd/Capita and copied it to Justice Ministers on 22 May 2012, which logged 250 instances of non-attendance or late attendance by ALS workers causing delays and 70 instances where ALS workers were incompetent, for the first quarter (February to April) alone. A copy of this complaint was already sent to the Committee. A further complaint logging 100 incidents was sent to ALS on 29 August 2012.  

3.8 Figures published by the MoJ conceded that 2232 complaints were received in the first quarter.\(^{21}\) 13\% of ALS assignments resulted in complaint. It appears the MoJ intends to publish no further figures until December 2012.\(^{22}\)

3.9 Official figures for 2006 to 2011 show that the percentage of ineffective trials caused by interpreters not being available had never risen above 1\% in Magistrates courts and 0.5\% in Crown Courts. In Q1 of 2012, those figures rose to 3\% and 0.7\% respectively. ALS Ltd was the provider for only two of those three months, making the increase even more striking. The figures relate to ineffective trials only, not to adjournments or collapsed trials. Moreover, they relate to “interpreter availability” only and not to quality issues.

Nick Herbert MP asserted in an adjournment debate on 10 October 2011:

“We already have the unacceptable position that approximately 400 magistrates court trials and a number of considerably more expensive Crown court trials cannot go ahead as listed because the interpreter does not attend court.” In fact, the official figures for 2011 are nowhere near 400: 327 ineffective trials in Magistrates courts and 17 in Crown courts. Compare those annual figures to the ineffective trials clocked up by ALS Ltd (in two months of operation): 182 and 10 respectively for the first quarter of 2012.\(^{23}\)

3.10 The scant data published by the MoJ on 24 May 2012 provides no information on the different Tiers of interpreters assigned to Magistrates’ Court and Crown Court assignments. We have evidence of tier 3 ALS workers being sent to work in courts.

3.11 Cases are being adjourned multiple times by ALS Ltd failing to provide a worker (see PIA complaints). After the fourth or fifth adjournment, many cases are discontinued.

3.12 Defendants are prevented from making bail applications because their solicitors cannot take instructions and are remanded in custody more frequently and for longer than necessary.

3.13 At the other end of the scale, suspects and defendants are bailed or released when ALS Ltd has failed to provide before the custody time limit expires.

3.14 Courts seem no longer to expect interpreters to be capable of simultaneous interpreting and counsel are routinely allowing extra time and a bigger budget where interpreters are involved. Simplified vocabulary is used to assist ALS workers who have never interpreted in court before.

3.15 In many reported cases, ALS workers sit in the dock mute and do not interpret a word throughout the entire proceedings.

3.16 In some reported cases the defendant for whom interpreting was being provided remarked that the ALS worker was incompetent but was ignored. In one such case, the judge threatened to have the defendant removed from court.\(^{24}\)

3.17 The reaction by court staff, counsel, and members of the judiciary varies enormously. Judges and magistrates have summoned ALS representatives before them many times. On occasion, a wasted costs order is made against ALS Ltd. Sometimes the ALS worker is sent away and a complaint is logged. Yet, in too many instances the court decides to muddle on with an incompetent ALS worker or proceeds with no interpreter at all (See PIA complaints to ALS Ltd).

4. The nature and effectiveness of the complaints process

4.1 The complaints procedure was unpublished and unpublicised. It was not in the public domain until 22 June when the JSC published Peter Handcock’s letter of 31 May 2012 as written evidence.\(^{25}\)

4.2 There is simply no publicised facility for solicitors and barristers to complain about ALS workers. Only those with access to the ALS Ltd portal appear able to complain. This denies end users of interpreting services such as defendants and witnesses, as well as members of the public, the right of complaint.

4.3 Complaints are dealt with in-house by ALS Ltd. There is no published undertaking of what the complainant can expect.

4.4 There is no published disciplinary framework and procedure. This is a breach of the Employment Act 2003 and a breach of Natural Justice, best practice and accepted industry standards. There is no transparency of process: a published undertaking of what an ALS worker who is the subject of a complaint can expect.

4.5 Where the same entity is responsible for the conflicting functions of work provider, supplier, regulator, assessor, registrar as well as disciplinarian, there can be no natural justice.

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\(^{22}\) http://www.justice.gov.uk/statistics/statistics-publication-schedule#december12


\(^{24}\) Manchester Evening News, 19 April 2012 Court official left in tears after outburst at Rochdale sex gang trial

\(^{25}\) Letter from Peter Handcock to Justice Select Committee, 31 May 2012 http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/courtinterpreters.pdf
4.6 The ALS Ltd “Code of Conduct” is flimsy and falls far short of accepted professional ethics. Better professional codes already exist.

4.7 The 250 complaints relating to attendance and 70 complaints relating to quality (22 May 2012) have not been formally addressed by ALS Ltd to the best of our knowledge. In any event, the complainant has not been informed of any outcome.

4.8 There is no evidence that ALS Ltd workers whose incompetence has caused trials to collapse are actually removed from the ALS list (see case studies in appendix).

4.9 Crispin Blunt MP has stated that ALS Ltd workers are covered by ALS Ltd’s professional indemnity insurance. However, we cannot envisage how any insurance underwriter could insure against the risk of using unqualified, non-vetted workers as court interpreters, and suspect the underwriter may not be in full possession of the facts. It has yet to be tested whether the cost of collapsed trials caused by ALS workers professional negligence can be recovered through ALS Ltd’s insurers.

4.10 The figures published in May show there were 2,232 complaints over the quarter, of which 177 had not been resolved by 8 May (p.7). However, the Key Performance Indicator in the Framework Agreement states that complaints should be resolved within three working days.

Also, how are the figures provided by ALS Ltd to the MoJ independently verified?

5. The steps that have been taken to rectify under-performance and the extent to which they have been effective

5.1 It is unclear what measures, if any, were taken by the MoJ at any stage to verify:

(a) how many workers had registered with ALS Ltd;
(b) how many had been through the “compulsory” ALS assessment;
(c) what qualifications they hold and whether these were verified;
(d) how many had been allocated to each Tier;
(e) how many had been successfully vetted by Warwickshire Police;
(f) how many had actually consented to ALS Ltd’s T&Cs;
(g) how many were false profiles; and
(h) how many were registered with HMRC as self-employed.

5.2 It is clear that ALS Ltd is not meeting the unrealistic KPI it set itself, to have 95% of all languages catered for within a 25 mile radius of all sites. From the media reports alone, it is known that ALS Ltd workers have travelled from Newcastle to Ipswich, Stirling to Truro, Liverpool to Boston. In some cases the expense will be borne by ALS Ltd/Capita Plc, and at other times by the ALS worker, depending on what he or she has negotiated.

5.3 Where assignments are fulfilled, quality is questionable.

5.4 The new guidance issued in mid-February stated:

“With immediate effect HMCTS will revert to the previous arrangements for all bookings due within 24 hours at the Magistrates’ Courts. Magistrates’ Courts bookings should be made direct with the interpreter under the terms of the National Agreement. It has also been decided that we will revert to previous arrangements for urgent bookings required for bail applications, deportations and fast track applications in the First Tier Tribunal Immigration and Asylum and urgent bookings in the Asylum Support Tribunal.”

5.5 The MoJ was fully aware that professional interpreters were not engaging with ALS but allowed itself to be persuaded by ALS that this was not a problem. Peter Handcock, CEO of HMCTS, told the Justice Committee (in March 2012): “The contractor overestimated the willingness of interpreters to sign up”. Consequently, the MoJ and ALS proceeded in the knowledge that the contract would not be serviced by experienced professional interpreters.

5.6 The MoJ has not availed itself of the sanctions built into the contract. Peter Handcock told the Justice Committee in oral evidence on 6 March 2012: “I made it very clear right from the outset that step one was to revert to our old arrangements, simply to roll back. Step two, if the level of performance did not improve very rapidly, would be to withdraw from the contract.”

The Asylum and Immigration Tribunals (AIT) booking centre is still handling short notice bookings to prop up ALS Ltd (step one), ALS Ltd’s performance has not improved, yet no steps have been taken to withdraw from the contract (step two).

5.7 The MoJ appears improperly biased towards the contractor and is not making use of the sanctions included in the Framework Agreement. Under clause 12 of the Framework Agreement, the MoJ is able to

unilaterally deduct from the contract price being paid to ALS the additional costs to the public purse occasioned by ALS’s failings. As at 12 March 2012 the MoJ had not done so.

5.8 The Framework Agreement (p 173) outlines that Service Credits will be applied where the KPIs (98%) of “Fulfilment of all assignments” and “On time delivery of all assignments” are not met: “For every % outside of the 98% a % charge will be credited to that collaborative partner at month end against the combined unfulfilled/late bookings 1st hour value”.

Significantly, the KPI of 98% fulfilment of all assignments is with the exclusion of “cancellation by the collaborative partner”. In cases where the ALS worker arrives too late to be of use, turns out to speak the wrong language or is otherwise found to be unsuitable, this is not logged as a failure by ALS but as “collaborative partner/client did not attend” and is effectively logged as a cancellation and charged for even if the fault lay with ALS Ltd (Framework Agreement, p. 137). A disproportionately large proportion of bookings, 11%, were logged as cancellations27.

5.9 The MoJ’s published performance figures are not to be taken at face value. They have been collated by ALS Ltd, with no independent verification, and are presented in a skewed fashion. ALS Ltd still does not service 100% of the HMCTS requirement and is being propped up by the AIT bookings centre, and HMCTS staff making direct bookings, tying up HMCTS resources and budget. Many small agencies are now involved in the delivery of interpreters to the courts, either subcontracted to ALS Ltd or used ad-hoc by HMCTS.

Hence ALS Ltd’s fulfilment rate of 81% does not represent a percentage of the whole, but of the proportion of bookings entrusted to ALS Ltd, minus the instances logged as “collaborative partner did not attend” (see 5.8).

Our information and inference from the MoJ’s own figures is that approximately 50% of demand is going through ALS, ie 400 requests a day, as opposed to the actual total of around 800 per day nationally (Lord McNally, House of Lords, 9 July 2012). The percentages calculated relate only to the requests made to ALS, and are therefore to be considered in that light. If ALS say they service around 81% of calls they take, that represents around 40% of the total.

5.10 As noted elsewhere, HMCTS continues to book interpreters directly and through a variety of local agencies as ALS Ltd is unable to provide the required service level. This continued “mixed economy” undermines the operation of the Framework Agreement, which was intended to create a “one stop shop” for HMCTS and police staff to use. Instead, they are duplicating the work of ALS Ltd. Expense to the taxpayer cannot be less than previously.

6. The appropriateness of arrangements for monitoring the management of the contract, including the quality and cost-effectiveness of the service delivered.

6.1 Under this Framework Agreement the entire control environment has been outsourced to the contractor ALS Ltd. ALS Ltd is responsible for all checks, recruitment, provision of management information and quality control through it complaints handling and disciplinary procedures. There is no mechanism for independent verification.

6.2 The vaunted £18 million in projected savings has been revised to £12 million and the MoJ has admitted that even the revised figure is unlikely to be achieved (Lord McNally, House of Lords, 9 July 2012). The continuation of other arrangements alongside the ALS Framework Agreement and the costs of that from other budgets are not taken into account.

6.3 Initiatives by our interpreter members seeking to find out more about the ALS Ltd registration procedures, terms and conditions of engagement, and online bookings portal have revealed a variety of shortcomings in ALS Ltd’s systems, checks and internal procedures vis-à-vis what the company has contracted to do.

6.4 Users who created experimental profiles were immediately offered assignments through the automated portal and by text message, even though:

— they had not provided proof of address or identity;
— they had not signed in agreement to the ALS Ltd T&Cs;
— they had not provided proof of qualifications;
— they had not undergone the “compulsory” ALS assessment;
— they had not provided proof of eligibility to work in the UK;
— they had not provided proof of a CRB check or higher levels of vetting; and
— they were profiles in the names of household pets who were signed up offering rare animal languages such as “rabbit” and “cat”.

6.5 Similarly, bona fide workers registered with ALS Ltd as Tier 3 interpreters were offered Tier 2 court assignments including trials.

6.6 Bona fide workers registered with ALS Ltd were offered assignments in languages they have no qualifications in and had not been assessed in.

6.7 A large number of NRPSI registered interpreters found that ALS Ltd had unlawfully created profiles in their names. Around 80 of the following types of cases have been referred to the Information Commissioner’s Office for investigation:

— profile created without consent, recording wrong gender or fictitious date of birth;
— request to delete details pursuant to DPA 2000 ignored and profile found still to exist; and
— profile still in existence with the express note “Do not contact”.

The ICO investigation concluded that compliance with the Data Protection Act was unlikely and the Commissioner now requires ALS to take certain steps to demonstrate that it is bringing its processing of personal data into compliance with its obligations under the DPA.

6.8 Information obtained pursuant to the Freedom of Information Act in July 2012 revealed that since February 2012, Warwickshire Police had handled just 720 Non Police Personnel Vetting 3 (NPPV 3) applications for ALS Ltd of which 574 passed vetting.28

6.9 Crispin Blunt MP confirmed in a letter to John Leech MP on 13 July 2012 that just 301 of the workers on the ALS Ltd database were Registered Public Service Interpreters registered with NRPSI.29

6.10 Lord McNally explained (House of Lords, 9 July 2012) the bizarre counting practice whereby one person who works in two different foreign languages equates to two “interpreter persons”. He said: “At the moment, there are about 1,500 interpreters under contract and they are equivalent to about 3,000 interpreter persons, which means that many of them speak two or more languages.” This is nonsensical as all interpreters speak two or more languages. Furthermore, they can only operate in a single location at any given time.

6.11 It should be clear that the claims made by ALS Ltd about the number of workers contracted to it and the checks it is contractually obliged to carry out invite closer scrutiny.

Page 114 of the Framework Agreement dated 19 August 2011 states “Approximately 2,500 of our 4,500 registered freelance interpreters are suitably experienced and qualified for Authority”.

Just months later, ALS Ltd claimed on its website: “Over 3,500 linguists have already registered since August 2011 and all linguists working on MoJ assignments must complete their assessment as soon as possible”.

In March 2012, ALS Ltd had “over 1,800 interpreters at Tier 1 or 2 actively working on the contract” (ALS Newsletter 6 March 2012).

Now, according to Lord McNally, it has 1,500 workers who are equivalent to 3,000 “interpreter persons”.

The more ALS Ltd has been challenged as practices were revealed in media reports on data theft (BBC News, 21 March), household pets registered with ALS (Birmingham Mail, 9 March and BBC News, 9 August) and criminal record checks (BBC News, 9 August), the fewer workers it claims to have registered with it.

6.12 Our case studies show that the contractual undertakings by ALS Ltd only to use competent, qualified interpreters are not being met. Selected case studies are in appendix.

6.13 With regard to many areas of the delivery of the contract, what was promised on paper—in itself woefully inadequate to provide safeguards—is not even what is happening in practice. There is a vast difference between contract and reality.

6.14 The figures provided by ALS Ltd were presented so as to favourably distort them, whilst 90% of the management information allowing proper scrutiny has not been published.

6.15 The Solicitor General stated in Written Answers on 15 March 2012:

“The CPS has no central records on the number of court delays or adjournments which are caused by the late attendance or non-attendance of interpreters. In order to provide an estimate of additional costs incurred because of a shortage of interpreters, if any, extensive inquiries would need to be made in relation to each court list since the new interpreter contract was implemented on 1 February 2012 and this would incur disproportionate cost”.

It is to be hoped that the National Audit Office was able to establish the ancillary costs, which include the costs of detention, transport, repeated adjournments and broken trials.

6.16 A multitude of letters and emails to a number of contacts within the Ministry of Justice have been ignored: This includes contacts with Ministers by interpreting organisations and others including EULITA, FIT, FIT-Europe and Involve; on behalf of Interpreters for Justice.

6.17 Money saved by not engaging interpreters when required is not a saving. It is exposure to future expense by way of appeals or other litigation for breach of human rights legislation.

CONCLUSION & RECOMMENDATIONS

Conclusion

In our submission the Framework Agreement is a failure and is unsalvageable:

— It fails to deliver any savings.
— It exposes Justice to considerable extra expense.
— It denies access to justice to parties who have inadequate English.
— Contractual obligations are disregarded.
— There is little or no transparency of process or management, and no serious attempt to protect Justice or public funds.
— The PQQ and “competitive dialogue” processes were gravely flawed.
— There are clear breaches of the European Directive, coupled with a serious misunderstanding as to the Directive’s legal force.

Recommendations

In our respectful submission the Framework Agreement should be set aside without delay.

We suggest that the previous system then be reintroduced across the board, and that a period of 24 months be set for the development of a feasible alternative which has the chance of delivering to Justice a service which improves the previous system and delivers savings. This may be achieved by a proper consultation with interpreters’ organisations as well as the National Register of Public Service Interpreters.

Failure to address the problem can only lead to unacceptable consequences and enormous ancillary costs.

September 2012

APPENDIX

CASE STUDIES

CASE STUDY #1

T20111497 The trial of Mandra Rostas at Snaresbrook Crown Court

The trial began on Tuesday 10 April 2012 and ended on Friday 13 April when Mr Recorder King discharged the jury and ordered a retrial. He did so when under cross examination it became apparent that the defendant, who was having the benefit of interpretation in Romanian—English, had had a crucial part of the evidence misinterpreted. The word “beaten” had been wrongly interpreted into English as “bitten”. The centrality of the word to the defence case meant that the judge was obliged to take the described course of action.

The court interpreter was provided by Applied Language Solutions. The ALS worker’s name was Ms A.

The jury having been discharged, the trial Judge Mr Recorder King directed that the “interpreter” be the subject of disciplinary proceedings.

The subsequent preliminary hearing on Wednesday 18 April, to fix a date for retrial, was attended by the person reporting.

The replacement ALS worker was spoken to. Her name was Ms Cristina SHUTU12–07–2012 For Mention (Defendant To Attend)—Case Adjourned Until 14:00—11–07–2012 For Execution Of Bench Warrant—Case Adjourned Until 10:00—18–04–2012 For Mention (Defendant To Attend)—Hearing Finished For MANDRA ROSTAS—10:49—13–04–2012 Trial (Part Heard)—Case Adjourned Until 00:00—12:14—12–04–2012 Trial (Part Heard)—Case Released Until 09:30—16:13—11–04–2012 Trial (Part Heard)—Court Closed—15:24—10–04–2012 For Trial—Case Adjourned Until 16:15–17:30. She confirmed that she has no qualifications, nor any experience of Crown Court work, and works usually as a teacher of English and French. The judge at this hearing, HHJ Bing, reminded all parties that the trial judge, Mr Recorder King, had directed that the interpreter during the trial be the subject of disciplinary proceedings. Both prosecution and defence counsel said in open court that they were minded to make a wasted costs application against the interpreter.

Points to note

— Since the incident, the original interpreter has been observed at a large number of hearings in the London area, including Isleworth Crown Court. Claims of robust disciplinary procedures ring hollow, and it is not known whether any proceedings have been commenced.
An article in the Law Society Gazette the following week quoted an ALS spokesman as saying, “all interpreters are qualified to the minimum standard required to work in court”. Given that Ms SHUTU confirmed she had no qualifications at all for legal interpreting, it is clear that the company’s official spokesman’s statement was mendacious.

As far as is known, no application for wasted costs has been made. Counsel estimated costs totalling £25,000 to £30,000 pounds.

Had Ms A been frank at the moment of making the error then there would have been little problem. Interpreters make mistakes, and professionals own up immediately. Ms A did not. Indeed it took Counsel’s questions to reveal that the mistake had been made, and Ms A admitted she had known she had made the mistake at the beginning of the trial. It was this failure which led directly to the trial being abandoned.

**CASE STUDY #2**

*Miss Z is a Chinese national, and has been studying law in the UK for over four years*

Miss Z is a student in the UK with no right of abode here. She has been studying law under the terms of a student visa, subsequently renewed.

In 2012 it was suggested to her that she work as a freelance interpreter for a company called Applied Language Solutions, and she made an application to do so.

She has no security clearance, police vetting or Criminal Records Bureau check, although she was told to make an application for a Criminal Records Bureau check by way of a third party company, since ALS was unable to make such an application on her behalf.

She has received no advice from ALS as to registration for self-employment nor have they advised her to register with the UK authorities for Income Tax purposes, nor has she done so.

She has attended a language assessment at the invitation of ALS, but has not been advised of the result.

She has been offered and accepted fourteen assignments at a range of Courts.

She alleges she was explicitly told by ALS that working on a student visa would not be a problem and was allowed.

More recently she was informed by a friend that working in a self-employed or freelance capacity was expressly forbidden under the terms of her student visa, and from that date has not accepted any further assignment from ALS.

Points to note

— Here we have an unqualified an inexperienced young student, “interpreting” at a highly demanding level.

— She has had no CRB check, and her evidence is that the company told her to get it done by a third party as ALS was not able to do it.

— This person was sent to do freelance work on a non-EU student visa. That is illegal and renders her potentially liable to instant deportation and ALS to a fine not exceeding £10,000 per event.

— How many more individuals are working illegally for ALS, and who have not registered as self-employed for tax and national insurance purposes?

— There has been a wilful disregard not only to imposing the conditions of the Framework Agreement, but also for the law.

**CASE STUDY #3**

*T20117043 The trial for murder of Rajvinder Kaur at Winchester Crown Court on 13 July 2012*

Mr Mubarrak LONE arrived late. His wife was the ALS worker previously sent to interpret in this case. She sent Mr Mubarrak Lone in her stead, in breach of the ALS “Code of Conduct”.

Junior Defence Counsel, Mr. Sukhdev GARCHA speaks the language of the witness, and so was able to make the following observations: 1) When interpreting the oath Mr Lone said “swear by Allah” instead of “Waheguru”, thereby changing the religion of the witness from Sikh to Muslim; 2) Several parts of the evidence were omitted; 3) He interpreted “bitter” instead of saying “irritable” in answer to a fairly crucial piece of evidence; 4) Witness evidence was constantly having to be interrupted and gone over again.

Counsel requested a break and discussed the position with the Judge, Mr. Justice Burnett. Mr. Lone was then recalled to the witness box and asked if he was registered with ALS. He said he had sat the assessment a few weeks ago and was still awaiting an interpreter number. He was asked how he came to be at court and replied that his wife, Mrs. Sabiha LONE, had been contacted by ALS but as she had another commitment she had sent him in her place. The Judge released the interpreter and adjourned the case until Monday 16 July thereby wasting an entire court day.
Points to note

— Without the court’s knowledge or consent a relative of the ALS worker was sent as a replacement.
— The replacement was apparently unqualified, not vetted and unregistered.
— The replacement was unable to interpret legal terms at even a basic level.

**CASE STUDY #4**

*T20117043 The trial for murder of Rajvinder Kaur at Winchester Crown Court on 16 July 2012*

The case was listed for 11.30 but no ALS worker arrived until 13.30. She was a nervous lady called Sangeeta, who said she was a beautician in Southampton, the location of the murder, and that her clients had been discussing the case with her. She had interpreted in hospitals before and this was her 5th or 6th ALS job. She still had no ALS ID card.

During the course of interpreting it became evident that she had a very poor knowledge of English. She did not know the meaning of the words “friction” and “deterioration”, both being central to the evidence. After the witness (the same witness as Friday 13 July where the problem with another unqualified interpreter Mr. Lone resulted in an adjournment and the witness Mr. S. having to return on Monday) finished his evidence, counsel were discussing her inadequate level of interpreting. Sangeeta approached an NRPSI interpreter who was present, and in the presence of Punjabi speaking Junior Defence Counsel, Mr. Sukhdev GARCHA, admitted she did not know what “deterioration” meant and asked the NRPSI interpreter to explain the meaning to her. After that, two witnesses had been lined up to give evidence via video link from India. Sangeeta said she had never done this before and it was suggested that the NRPSI interpreter take her place. In open court, with the discussion being recorded, the judge, Mr. Justice Burnett asked if the NRPSI interpreter would be willing to do so. The NRPSI interpreter declined, saying it was the responsibility of ALS to provide competent interpreters.

This was observed by Punjabi speaking Junior Defence Counsel Mr. Sukhdev GARCHA. When Sangeeta was required to interpret for the video link Mr. GARCHA sat next to her to check her interpreting and to prompt her whenever she made a mistake or omission.

Points to note

— One and a half days of court time was lost.
— The quality of interpreting was recognised by all parties present to be very poor.
— It is not known whether Sangeeta had any legal interpreting qualification.
— By her own admission, Sangeeta had no experience of legal interpreting.
— It has to be questioned whether it is acceptable practice for counsel to act as “interpreter support” for a worker who is wholly unable to discharge her duties according to the interpreters’ oath.

**Supplementary evidence from the Professional Interpreters for Justice following the evidence session on 23 October 2012**

In addition to the Justice Select Committee inquiry, the Public Accounts Committee is holding a parallel inquiry into Ministry of Justice Language Services, to which inquiry officers of the Association of Police and Court Interpreters gave oral evidence on behalf of Professional Interpreters for Justice on 15 October 2012.

Given the overlap between the two inquiries, I feel that pragmatism dictates I should provide information to both committees and with reference to the evidence under consideration by both committees.

1. **Professional Interpreters for Justice**

Eight membership organisations are united in the Professional Interpreters for Justice Campaign, along with non-membership organisations. Figure 1 in appendix 1 shows there is overlap between our respective membership, and between us we represent upwards of 2,320 registered and qualified interpreters.

2. **National Agreement**

Figure 2 in appendix 2 shows that the professional linguists we represent are those who were approved for use in the Criminal Justice System under the terms of the National Agreement on the Arrangements for the use of Interpreters and Translators in the Criminal Justice System in England and Wales (1997; revised 2002; 2007; 2011).

3. **References to Shortcomings of the “Old System”**

As stated during evidence on 23 October, interpreters and their professional organisations wanted the Ministry of Justice to work with the profession to build on what had already been achieved by the establishment
of a National Register and the associated professional qualifications, and the decades of policy development that had led to the National Agreement.

3.1 Lack of enforcement of the National Agreement

The “old system” consisted of the guidance set out in the National Agreement, which was insufficiently implemented by CJS agencies and not at all enforced by the Ministry of Justice. Interpreters wanted the National Agreement to be properly enforced.

3.2 Diversity of arrangements in practice under the “old system”

Alongside adherence to the National Agreement and its high standards of professional qualifications and registrations, CJS agencies used diverse local arrangements ranging from local lists and smaller commercial agencies offering no safeguards. This perceived shortcoming was also the result of the MoJ failing to enforce the National Agreement. This has not changed under the Framework Agreement.

3.3 Complaints procedure under the “old system”

Where an interpreter was drawn from the sources recommended by the National Agreement they were subject to a code of conduct and to disciplinary procedures. NRPSI, CIOL, APCI and ITI all have codes of professional conduct and transparent, published procedures including an appeals procedure. Conversely, where an interpreter was not drawn from National Agreement sources, there was indeed no recourse to any disciplinary procedure.

It has been stated that the NRPSI complaints procedure was too slow and did not allow for the suspension of an interpreter pending investigation. The fact is that interpreters complained about could not be suspended before they had had a proper hearing. The outcome of complaints received is now published online by the NRPSI.

Co-operation overseen by the MoJ could have resulted in more stringent implementation of the National Agreement, greater incentive to become professionally registered, and the ability for organisations to share information about disciplinary hearings.

4. Lack of Past Management Information

It has been repeatedly stated that there was no audit trail for the use of, and cost of interpreters and translators by HMCTS. Reports by the Runciman Commission (1993) and Lord Justice Auld (2001) had recommended an audit trail be kept, but neither HMCTS nor the MoJ acted on this recommendation.

However, good records on the use of interpreters were kept by many police forces and these had been collated by interpreter organisations over the years. It is not true that the proportion of short-term bookings was an unknown quantity.

5. Reduction and Restructuring of Fees

Under the Framework Agreement, fees due to interpreters were reduced and restructured to such an extent that ALS workers are taking home less than the minimum wage.

For reasons that were set out in a thorough response to my Freedom of Information request (not included), the National Audit Office concedes that its report relied on financial information that was not the relevant information, and consequently made certain errors in its modelling of the losses suffered by professional interpreters.

Professional Interpreters for Justice has made a comparison between the previous National Agreement rates and the current ALS/Capita rates, showing that ALS/Capita workers are taking home less than the minimum wage in many cases. Please see the comparison tables with commentary in Appendix 3 for the true scale of the losses suffered by interpreters.

6. Access to the NRPSI and who Funds it

It was incorrectly stated in the NAO report, and repeated in oral evidence, that the registration fee for interpreters registered with NRPSI had been abolished in April 2011 when the NRPSI was reconstituted (NAO p.9, 1.5).

Prior to 2011, NRPSI was funded by subscription fees from end users (police forces, HMCTS, local government organisations, NHS Trusts) as well as by interpreters’ registration fees (around £90). When the NRPSI became independent of the CIOL in April 2011, access to the register was made free of charge for users, whereas interpreters now have to pay a £130 registration fee to fund the NRPSI’s running costs. Interpreters do this because they care about professional standards and an independent regulator. The NRPSI register is now freely accessible online to all.
7. LEVEL OF QUALIFICATIONS REQUIRED UNDER THE FWA

7.1 Tier 1

The new top tier, Tier 1, effectively mimics the previous minimum standards under the National Agreement. The qualifications are at Level 6. Tier 1 interpreters must also sit the “compulsory” (yet non-existent) ALS assessment.

We doubt that these criteria have been met and verified for all 677 Tier 1 workers Capita currently uses.

Now, the default setting for HMCTS bookings is for Tier 2 interpreters (compared with T1 as the minimum standard across the board under the National Agreement). A Tier 1 interpreter may accept a Tier 2 assignment but will only be paid at Tier 2 rates.

7.2 Tier 2

Previously, those placed in Tier 2 would not have qualified to work in CJS interpreting. Tier 2 workers must have:

(a) “Partial DPSI” (English Law option) ie the interpreter must have passed all modules with the exception of component 3b (written translation from English);

Comment: Interpreters are often required to provide (sight) translation of documents in both languages in the course of their CJS work. The DPSI is only awarded to those who successfully complete all components of the examination; the notions of a “partial DPSI” or a CJS interpreter without proven written skills are risible.

(b) A degree in linguistics, English philology, Modern Languages or MA in Teaching of English, or other language related diplomas where English figures as part of the course completed.

Comment: None of the above degree subjects, (with the exception of a degree level qualification with at least two interpreting components and two translation components, including consecutive and simultaneous interpreting and sight translation30) are recognised interpreting qualifications. Neither philology (the study of language in written historical sources; a combination of literary studies, history and linguistics), nor linguistics (the scientific study of language), nor English language teaching, have any relevance to legal interpreting.

In addition, Tier 2 workers must have (in all cases):

— Previous or current employment in criminal justice services in their countries 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

— A pass at the assessment centre to the tier two standard.

Comment: In other words, according to the Framework Agreement a “partial DPSI” by itself is not enough and must be supplemented by a degree, experience in criminal justice and public service interpreting, references, and the “compulsory” (yet non-existent) ALS assessment.

We doubt that these criteria have been met and verified for all 303 Tier 2 workers Capita currently uses.

7.3 Tier Three

The interpreter must have one or more of the following:

— Demonstrable experience in the public sector with appropriate linguistic background; plus

— Formalised basic interpreter training including one of the following:

(a) the Workers Educational Association (WEA) programmes.

Comment: This is a Level 3 Award (Foundation/A-Level standard).

(b) Bi-Lingual Skills Certificates.

Comment: The Institute of Linguists Educational Trust Certificate in Bilingual Skills (CBS) is NQF accredited to Level 3 (Foundation/A-Level standard). It is not an interpreting qualification.

(c) Community Level Interpreting Degrees under the NVQ certification system.

Comment: There is no community interpreting qualification at degree level. NVQs in interpreting only exist for sign language interpreting.

30 According to the NRPSI entry requirements, published at http://www.nrpsi.co.uk/pdf/CriteriaforEntry.pdf
The Certificate in Community interpreting and Level 3 Award in Introduction to Community Interpreting Skills are QCF accredited to Level 3 (Foundation/A-Level standard) whereas the Award in Understanding Community Interpreting (QCF) is just Level 1.

Together with:
- References; and
- A pass at the assessment centre to the tier three standard;

It is also desirable for tier three interpreters to have at least 100 hours public sector interpreting experience.

We doubt that these criteria have been met and verified for all 132 Tier 3 workers Capita currently uses.

8. Number of Registered & Checked Interpreters

8.1 National Register of Public Service Interpreters

The National Register of Public Service Interpreters offers free and open access to over 2,200 interpreters listed in 101 languages. Interpreters registered with National Register are qualified, have agreed to abide by a Code of Professional Conduct and can be held accountable if they break that code. In addition, they have proven experience and have an enhanced CRB check as a minimum—many have higher levels of clearance such as a Counter-Terrorist check or Home Office Security Check. Re-registration is annual and subject to certain criteria and payment by the interpreter of a registration fee.

8.2 Number of NRPSI interpreters registered with Capita/ALS

It was established by the NAO report in September 2012 that ALS only had 301 NRPSI registered interpreters. In oral evidence, Capita employees stated there were now 400 NRPSI interpreters signed up to ALS. The best qualified refuse to service this contract, both out of principle and because they cannot afford to work for the low rates.

It was established by the media and by an investigation by the Information Commissioner’s Office that ALS had unlawfully harvested the personal details of NRPSI interpreters and created profiles in their names and without their consent, in breach of the Data Protection Act.

8.3 Number of workers signed up to Capita/ALS

The charts and tables in appendix 4 show the numbers of workers Capita/ALS now says it has in each Tier and, by comparison, the number of those who were demonstrably vetted and checked at different points in time.

Total numbers of workers registered with Capita are compared with the wildly exaggerated numbers claimed at various times to have signed up. The same misrepresentations were included in the tender documents, where ALS claimed to have 3,500 linguists registered with it.

8.4 Checks currently being carried out by Capita/ALS

The company was not able to give firm numbers or assurances about the number of workers whose qualifications and references had actually been checked. Nor was it able to assure the Public Accounts Committee that all of its Tier 2 workers hold a degree.

Since the oral evidence hearing took place, on 1 November, Capita-TI sent emails to some workers registered with it, asking them to provide proof. It is clear that the contractual terms regarding the appropriate qualifications and CRB checks for those servicing the contract have been flagrantly disregarded until now. Among those receiving the email, despite ALS/Capita stating that such profiles had been removed or can’t be found, was the infamous Masha the cat. Jajo the rabbit is still able to change his password but his account has been disabled and he no longer receives emails from ALS/Capita.

Where proof of qualifications or experience is received from abroad, it is not clear what procedure Capita has in place to verify the equivalency of qualifications or veracity of references.

8.5 Ratio of interpreters to language listings

According to Capita’s own figures, the number of languages spoken by ALS workers in different tiers is as follows:

<table>
<thead>
<tr>
<th>Tier</th>
<th>Workers</th>
<th>Language listings</th>
<th>ALS Worker to Language Ratio in October 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>677</td>
<td>1,332</td>
<td>1.97</td>
</tr>
<tr>
<td>2</td>
<td>303</td>
<td>604</td>
<td>1.99</td>
</tr>
<tr>
<td>3</td>
<td>132</td>
<td>281</td>
<td>2.13</td>
</tr>
<tr>
<td>Total</td>
<td>1,112</td>
<td>2,217</td>
<td>1.99</td>
</tr>
</tbody>
</table>
A very large proportion of Capita/ALS workers work in two or more foreign languages, and this tendency has increased since May. Compare the above ratios to the ratio of professionally qualified NRPSI interpreters working in more than one foreign language:

<table>
<thead>
<tr>
<th>Tier</th>
<th>Workers</th>
<th>Language listings</th>
<th>ALS Worker to Language Ratio in October 2012</th>
<th>ALS Worker to Language Ratio in May 2012 (NAO report)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>ALS Worker to Language Ratio</td>
<td>1.74</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>in May 2012 (NAO report)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>1,340</td>
<td>2,332</td>
<td></td>
<td></td>
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</tbody>
</table>

There are strong grounds to suspect that ALS workers are working in languages in which they possess no qualifications. An independent audit of the ALS database is urged.

9. **QUALITY OF INTERPRETING PROVIDED UNDER THE FRAMEWORK AGREEMENT**

Despite the contractual obligation for ALS to provide data on the different Tiers of workers used for HMCTS assignments, the MoJ claims that it does not hold this data. Given that Tiers 1, 2 and 3 are paid at different rates, how can the MoJ audit whether it was correctly invoiced by the contractor if it is not in possession of this information?

With Tier 1 being the equivalent of the National Agreement’s minimum standards, it should be clear that quality has been affected by the introduction of tiering.

Failure to provide this information as specified in J2 of the Framework Agreement places Capita in breach of contract.

10. **THE TIERING SYSTEM**

It was established by the NAO report and the oral evidence hearings that the Tiering system was in fact approved by nobody and was unanimously rejected by professional experts. The NAO report made the recommendation (in 3.16), for the Ministry and Capita/ALS to seek, and publish, independent advice about the adequacy of the new tiering and assessment regime as a high priority.

We contend that overwhelming advice has already been received by the various inquiries and by the Ministry of Justice, from independent associations and professional institutes of considerable standing, which has unanimously rejected the tiering and assessment as wholly inappropriate and inadequate.

Since the tiering and assessment are such integral aspects of the delivery of the Framework Agreement, the contract rests on false premises.

Here, a procurement decision was taken by people who lacked the appropriate expertise, resulting in undesirable changes to Justice policy and sidelining of the existing professional structures.

11. **THE “COMPELsORY” ASSESSMENTS**

It was a key feature of the Framework Agreement that ALS would assess all interpreters, without exception. Initially, a fee was payable for the “compulsory” assessment. According to a Freedom of Information response by Middlesex University, no contract was yet in place by 16 September 2012. Yet, according to other evidence, Middlesex University gave notice that it wished to suspend its contract with ALS as early as 10 October 2011 and the contract was subsequently suspended on 17 February 2012. Clearly, the contract cannot have been in existence for long before it was found to be unworkable.

No ALS workers have been assessed since February, even though assessment is an essential criterion for working on the contract. This places ALS/Capita in material breach of the Framework Agreement.

The tender documents and the Framework Agreement not only specified that assessments would be carried out, but that they would be carried out by Middlesex University.

The collapse of the contract between Middlesex University and ALS/Capita places ALS/Capita in material breach of the Framework Agreement.

12. **Ancillary Costs**

The contract’s penalty provisions, of which the MoJ has only recently availed itself, fall far short of giving financial recompense for the chaos caused to human lives and the resulting additional cost to the tax-payer.
12.1 "Off-contract spend"

The MoJ have provided estimates of the ancillary costs borne by tax-payers as a consequence of ALS/ Capita’s failings. The “off-contract spend”, ie the cost of HMCTS continuing to engage interpreters directly at the old National Agreement rates and thereby bypassing ALS/Capita, is estimated by the MoJ at £4 million. Compared with the projected “New contract spend” of £10 million, this shows the volume of bookings anticipated to be dealt with directly is around 30% of the total.

The only evidence provided with regard to the volume of HMCTS interpreter bookings bypassing ALS was a figure of 20% provided by Peter Handcock. As has been noted repeatedly, the ALS performance figures do not reflect the company’s fulfilment against 100% of the entire HMCTS requirement, but against somewhere between 70% and 80% of the total requirement.

If the contract were to be rolled out in full, including its use by CPS trusts, it will collapse within a matter of days because ALS/Capita cannot cope with the demand and cannot cope with short notice bookings.

12.2 “Cost of ineffective trial increase”

The cost of ineffective trial increase in Magistrates’ Courts is estimated at £60k; the cost to other jurisdictions is unavailable.

It should be clear that the estimated cost of £60k is unrealistically low. The definition of an “ineffective trial” in official statistics does not account for (repeated) case adjournments or remands due to an inability to grant bail and the broader associated costs of detention, transport, relisting, attendance of all parties. Evidence has been submitted of hundreds of cases before the courts that were (repeatedly) adjourned due to ALS/Capita’s inability to provide an interpreter, with defendants unable to apply for bail remanded in custody in the interim.

Ancillary costs caused by inadequate interpreting services also stretch to post-trial proceedings such as the recovery of Proceeds of Crime. Potential losses in terms of irrecoverable proceeds of crime where a prosecution collapses due to interpreter error are considerable. Damages claims and appeals by those denied a qualified interpreter are sure to follow.

The cost of one collapsed Crown Court trial will easily overshadow the £60k projection made by the MoJ. It remains to be tested whether the professional indemnity insurance arrangements—if there are any—that cover Capita/ALS workers will be adequate to meet the damages in the event of a trial collapsing due to interpreter error.

13. Alleged “Interpreter Intimidation Campaign”

In his evidence before the Justice Select Committee, Gavin Wheeldon alleged that professional interpreters who opposed the Framework Agreement had orchestrated a campaign of intimidation, but he was unable to offer concrete proof of the incidents he cited. Similar allegations were already published by Wheeldon on 15 February 2012, both online and sent to ALS workers by email.

Both committees have heard that some professional interpreters who are not working under the Framework Agreement have been attending courts to observe cases involving an interpreter. Observing other interpreters at work is a recommended practice for Continuous Professional Development. We accept that it may well be intimidating to an unqualified, inexperienced novice who is fully out of their depth interpreting in court, to be observed and monitored by a qualified, experienced, registered professional interpreter. It goes without saying that professional interpreters monitoring cases in court did so discreetly, unobtrusively and courteously.

The Professional Interpreters for Justice campaign by united interpreter organisations has, from the start, acknowledged colleagues’ right, as independent freelancers, to choose to whom they will or will not provide their services. The role of professional organisations has been to provide information to our members and put them in contact with one another; the widespread boycott of ALS and substantial boycott of direct HMCTS bookings are the actions of members at grass-roots level. We fully refute Mr Wheeldon’s allegations of organised intimidation.

14. Provision of Translation Services under the Framework Agreement

The matter of translation services provided to the courts and other CJS agencies by Applied Language Solutions has not been considered by either committee, and in actual fact could warrant an inquiry of its own. Under the same Framework Agreement, ALS/Capita now provides translation (ie written) services to the Criminal Justice System and presumably deals with evidential documents, transcripts of interviews under caution, and incoming and outgoing Letters of Request for International Legal Assistance.

Not much is known by our organisations about the functioning of this side of the contract, except that is heavily reliant on computer-assisted translation using ALS/Capita’s bespoke software. A recent recruitment email sent by Capita-TI to translators offered the same rate of £60 per 1000 words for all languages, which rate is well below accepted market rates, even in the CJS sector.

All the concerns that have been raised in respect of ALS/Capita’s suitability to provide appropriately qualified and experienced interpreters to the Criminal Justice System are equally valid regarding the company’s ability
to provide high quality professional translators to the Criminal Justice System. The more CPS work is entrusted to ALS/Capita, the more acute these problems will become.

**Conclusions**

- The contractor has been in material breach all along.
- The adoption of the Tiering system was based on lies and misrepresentation.
- The contractor has not been carrying out checks on workers; a breach of contract.
- The contractor currently has no assessment system in place; a breach of contract.
- The contractor is unable to reconcile its conflicting functions.
- The MoJ has not yet undertaken the necessary steps to independently audit its contractor’s worker database, self-reported performance figures and invoicing.
- The MoJ and the contractor sought to bully professional interpreters into conforming.
- The MoJ and the contractor knowingly allowed unchecked amateurs to interpret in the courts; a breach of contract.
- The consequences of the MoJ’s refusal to engage with the profession have been disastrous.
- The Framework Agreement is unsalvageable.

*November 2012*
Summary of key issues made in responses

<table>
<thead>
<tr>
<th>Issues raised by consultees</th>
<th>Our response</th>
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<tbody>
<tr>
<td><strong>Consultation exercise</strong></td>
<td>Ministers have been kept informed of progress throughout the lifetime of the project, but have not been asked to make a decision until all the responses to the consultation exercise had been considered by the project team. The responses have formed part of the advice to Ministers. We do not accept the proposals as set out in the consultation package did not give sufficient opportunity for consideration and comment. Our package set out the essential features of the model, quality standards, proposals for the content of a Code of Conduct, the management information proposed to be collected and equality impacts. We believe that we undertook this consultation exercise at the most appropriate point in the process; ie at the stage at which it was clear what a final model might look like and on which there was something particularly useful to consult. We have continually engaged with the interpreter community before and throughout the life of the project.</td>
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<tr>
<td>Respondents considered that the consultation was not meaningful. They asserted that:</td>
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<td>• Insufficient time had been allowed for consideration of and comment upon the proposals;</td>
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<td>• The proposals were not set out in enough detail for respondents to properly consider and comment on them;</td>
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<td>• Consultation should have taken place earlier in the process not once a model had been developed;</td>
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<td>• Not all interpreters had been informed of the proposals; and</td>
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<td>• The MoJ had already taken a decision on the way forward.</td>
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<td><strong>The competitive dialogue process</strong></td>
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<td>Several respondents suggested that the MoJ should not have utilised the competitive dialogue process. They argued that it allowed bidders to put proposals to the MoJ which were purely in the commercial interests of the bidders and not in the interests of justice and the taxpayer. A number of respondents also claimed that the charity and not for profit sector had not been allowed to submit bids.</td>
<td></td>
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<td>An advertisement placed in the Official Journal of the European Union (OJEU) initiating the Competitive Dialogue (CD) process in August 2010 enabled companies, organisations or groups in all sectors to consider whether they wished to participate in dialogue and, if so, to submit a pre-qualification questionnaire. CD was used because the participating authorities were unsure how best their requirements could be expressed or indeed, how the interpretation and translation sector would respond to such a requirements. It was considered that dialogue was the most appropriate means of exploring the market, to correctly</td>
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<tr>
<td><strong>Issues raised by consultees</strong></td>
<td><strong>Our response</strong></td>
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<tr>
<td><strong>The proposed model</strong></td>
<td>Identify both the potential requirements and how they may be satisfied. The process has complied with all OJEU requirements.</td>
</tr>
<tr>
<td>Most respondents objected to the proposal that interpretation and translation services should be outsourced and to a single commercial supplier. Particular concerns were that:</td>
<td>Many goods and services are provided successfully across the justice sector by commercial entities and in many cases this ensures a continued improvement in quality and standards. Opportunity for and creation of profit can be a useful tool in the establishment of greater quality standards. The collaborating authorities involved in the process, led by the Ministry of Justice, have set the standards for the services and means of delivery. The supplier will operate within the prescribed standards. The UK market for language services is around £940m. The justice sector currently represents around 7% of that market; the new framework agreement will be valued at much less and as such is not a monopoly. In the unlikely event that the supplier ceased to trade or to be unable to provide the services, authorities would resort to their current mechanisms or utilise the services of competing companies. It should be noted, however, that the MoJ will have ownership of the register. At key stages of the competitive dialogue process appropriate steps have been taken to establish the financial, professional and technical capacity of the supplier to meet our requirements. We remain satisfied that they will perform as expected.</td>
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<td>• A commercial supplier would use unqualified interpreters, leading to a decline in quality;</td>
<td></td>
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<tr>
<td>• Commercial suppliers are motivated by profit and not professionalism or the consequence to end users, which will lead to a decline in quality;</td>
<td></td>
</tr>
<tr>
<td>• The commercial supplier would act as both regulator and a supplier, creating a conflict of interest;</td>
<td></td>
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<tr>
<td>• A framework agreement with a single supplier would create a monopoly which would, in the longer term, lead to an increased cost to the taxpayer; and</td>
<td></td>
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<tr>
<td>• If the supplier ceased to operate, the justice sector would be left without interpretation and translation services.</td>
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<tr>
<td>The name of the remaining bidder in the process had not been released. However, several respondents indicated that ‘reliable sources’ had confirmed the name of the bidder as ALS. The respondents highlighted a number of issues which, they claimed, indicated that ALS was not an appropriate choice of supplier</td>
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<tr>
<td><strong>Tiering, Qualifications and Assessment</strong></td>
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</tr>
<tr>
<td>Most respondents expressed concerns about the proposals for a tier structure for face to face foreign language interpreters, including:</td>
<td>Tiers have been introduced as a result of advice from experts in the field, the experience of a number of suppliers operating under similar frameworks and the need to expand the pool of experienced and skilled interpreters in some languages and some areas of England and Wales. The tiers</td>
</tr>
<tr>
<td>• The introduction of tiers 2 and 3 allows unqualified</td>
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<tr>
<td>Issues raised by consultees</td>
<td>Our response</td>
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<tr>
<td>interpreters to undertake assignments in the justice sector;</td>
<td>will enable better management of resources and provide opportunities for aspiring interpreters to target their learning and qualifying efforts. Collaborating authorities will need to determine and define protocols for which tier is required for any given circumstance, following which it will become a requirement that the contractor provides interpreters to that standard for each assignment.</td>
</tr>
<tr>
<td>• The examples of types of assignment tier 1 and 3 interpreters might undertake were not accurate;</td>
<td>Where doubt exists as to which tier is required, the higher standard will apply and an interpreter who meets the higher standard will be assigned. Tier 1 interpreters will receive as many assignments as are required to satisfy the needs of the requesting organisations and are not prevented from carrying out tier 2 assignments.</td>
</tr>
<tr>
<td>• There is very little scope to use tier 3 interpreters in the justice sector;</td>
<td>There will be no confusion, the operational staff will indicate the type of assignment and the provider will use technology to match the assignment to the agreed tier and identify the appropriate interpreter. Protocols will have set out which type of assignment requires which tiers in advance.</td>
</tr>
<tr>
<td>• It won’t be possible to determine at the outset of a case which tier of interpreter would be required and this will cause confusion for operational staff requesting interpreters and delay;</td>
<td>We have made changes to the qualification requirements based on the comments made by respondents. We hope this move will go some way to address those concerns.</td>
</tr>
<tr>
<td>• The introduction of tiers will mean that the best qualified interpreters (ie tier 1) will not receive as much work. Most assignments will go to tier 2 interpreters; and</td>
<td>We are satisfied that assessments will be conducted objectively and that this is a precursor to ensuring that interpreters’ skills have been appropriately identified so that we may use them more effectively than has previously been the case.</td>
</tr>
<tr>
<td>• The 3 tier structure does not match the 4 tier structure provided for in the OCG Buying Solutions framework agreement and could cause further confusion.</td>
<td>We accept that some interpreters may refuse to be re-assessed. We hope in practice this will not be the case. It is a one-off assessment at the start of the contract, not annual as some respondents considered. It is not intended to insult. We just want to assure ourselves on quality and would not want to see competent existing interpreters leaving the</td>
</tr>
</tbody>
</table>

Respondents made a number of detailed comments about the qualifications proposals for all elements of the proposed framework agreement. There was particular concern about the qualifications for tier 2 face to face foreign language interpreters with the suggestion that some of the qualifications merely demonstrate that a person is bilingual, not that a person can interpret and has the legal understanding and vocabulary to interpret in the justice sector.

Almost all respondents who commented on this aspect opposed the introduction of assessment centres for face to face foreign language interpreters. Respondents said:

• Assessment centres were unnecessary, costly (and
<table>
<thead>
<tr>
<th>Issues raised by consultees</th>
<th>Costs and rates of pay</th>
<th>Equality issues</th>
</tr>
</thead>
<tbody>
<tr>
<td>insulting) given the qualifications interpreters already possess; They would refuse to be reassessed; and</td>
<td>Commercial agencies would not have the expertise or objectivity to carry out assessments properly. Many respondents suggested that the proposed model would lead to increased costs for the justice sector. Most respondents also expressed concern that proposals would lead to a decrease in the rates paid to interpreters, with the result that many would be unable or unwilling to continue working in the criminal justice sector.</td>
<td>Language Service Professionals for the deaf and deafblind would be treated more favourably than foreign language interpreters, as they would not be subject to reassessment or tiering. In addition some respondents suspected that foreign language interpreters would receive lower rates of pay than language service professionals for the deaf and deafblind.</td>
</tr>
<tr>
<td>A number of respondents asked that information of rates of pay be published.</td>
<td></td>
<td>The CILT data quoted in the EIA was flawed and that the supplier to address collaborative partners’ concerns about NRPSI registration. The evidence is anecdotal but consistent enough to warrant action. There has been no such evidence in respect of Language Service Professionals for the deaf and deafblind.</td>
</tr>
<tr>
<td>These issues have been reflected in the final version of the Equality Impact Assessment.</td>
<td></td>
<td>The key issue is the different treatment of Foreign Language Interpreters who will be assessed and placed in tiers and Language Service Professionals for the deaf and deafblind who will not.</td>
</tr>
<tr>
<td>The introduction of an initial assessment is a direct response to the concern that NRPSI registration does not necessarily guarantee quality. The evidence is anecdotal but consistent enough to warrant action. There has been no such evidence in respect of Language Service Professionals for the deaf and deafblind.</td>
<td></td>
<td>The evidence is anecdotal but consistent enough to warrant action. There has been no such evidence in respect of Language Service Professionals for the deaf and deafblind.</td>
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- The data quoted in the EIA was flawed and that the supplier to address collaborative partners’ concerns about NRPSI registration. The evidence is anecdotal but consistent enough to warrant action. There has been no such evidence in respect of Language Service Professionals for the deaf and deafblind.
<table>
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<th>Issues raised by consultees</th>
<th>Our response</th>
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<tbody>
<tr>
<td>About 80% of foreign language interpreters were foreign nationals.</td>
<td>Statements will be in English. The supplier already has some experience of dealing with the language requirements of the deaf and deafblind and has indicated that in practice most language service professionals for the deaf and deafblind will be subcontracted to specialist agencies.</td>
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<tr>
<td>Other issues</td>
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<td>A number of other issues were raised by respondents:</td>
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<tr>
<td>• There were concerns about how the complaints procedure would operate, and whether this gave interpreters and translators an adequate route of redress against the supplier;</td>
<td>As with any service contract, internal complaints or disciplinary processes are a matter between the prime contractor and any individual subcontractor. Individuals have the right to complain to the MoJ or a collaborative partner but the level of response, if any, would depend upon a number of factors. All collaborative partners have a duty of care for anyone working on their premises and each of the collaborative partners will have particular procedures that will need to be adhered to.</td>
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<tr>
<td>• There were concerns that health and safety issues were not mentioned in the documentation particularly in relation to the safety of face to face interpreters.</td>
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<td>• The interpreter community were looking at various ways to challenge the proposals should they be introduced;</td>
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<tr>
<td>Alternative approaches</td>
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<tr>
<td>A number of respondents wanted to maintain the status quo with reliance on the National Agreement and NRPSI to allow direct booking of an interpreter/translator by the justice organisation. Several wanted the National Agreement to be strengthened and use of NRPSI registered interpreters to be made compulsory. However, many respondents understood the need to make savings. A number of alternative approaches were suggested:</td>
<td>The solutions proposed by respondents to the consultation exercise have been considered; they do not offer the same efficiency savings combined with the ability to enforce quality standards as the proposed framework agreement. Further details are set out in annex C.</td>
</tr>
<tr>
<td>• Job matching and invoicing processes could be (separately) outsourced.</td>
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<td>• The Tribunal Service booking centre could be expanded to provide a service for the whole of the justice sector;</td>
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<td>• A new government department should be established to deliver the service;</td>
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<tr>
<td>Issues raised by consultees</td>
<td>Our response</td>
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<tr>
<td>• Savings could be made in better utilisation of interpreters (ie better planning to reduce interpreter waiting times and mechanisms in place to prevent the booking of two interpreters for the same assignment).</td>
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<td>• Parties to some hearings could be made to pay for their interpreters;</td>
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<td>• Immigration policies should be revised to reduce the need for interpretation and translation services; and</td>
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<tr>
<td>• Justice organisations should implement green policies to make financial savings, so that savings in the provision of interpretation and translation services were not required.</td>
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</table>
Reforming the provision of interpretation and translation services

On 9 August last year I wrote to interested parties about the Government’s plans for reforming the provision of interpretation and translation services across the justice sector. You may also have seen the Justice Minister, Crispin Blunt’s, Written Ministerial Statement to the House of Commons on 15 September\(^1\) which set out further details of the plans, including the intention to undertake a competitive dialogue procurement process and see where that process ended up.

The Ministry of Justice, working with colleagues in the Home Office and elsewhere, began looking at this subject under the previous administration because it was recognised that there was room for improvement in the existing arrangements. A project was established in February 2010 overseen by a board which included representatives from HMCS, ACPO and the other justice agencies. The project board reported to Coalition Government ministers last summer and since then has continued to oversee the project and the competitive dialogue process. Maintaining appropriate quality standards and ensuring that the interests of justice are met have been fundamental to the project from the outset. Since it began - and indeed before it began - we have welcomed and taken account of the views of stakeholders. Their views and concerns have helped inform our thinking and the competitive dialogue process and reinforced the importance both of requiring detailed and meaningful management information from any contractor and of proactive contract management.

We are nearing the end of the competitive dialogue and will need to take a decision on whether to enter into the proposed arrangements. I am now in a position to seek your views to further inform that decision. The following attachments are being issued with this letter:

1. A summary of our expectations of what a framework agreement would deliver.
2. Proposed quality standards which would apply to interpreters and translators under reformed arrangements.
3. A proposed Code of Conduct which all interpreters and translators would be required to abide by under reformed arrangements.
4. Management information and key performance indicators which we propose should be required as part of a framework agreement.
5. A draft equality impact assessment.

\(^{1}\)http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm100915/wmstext/100915m0001.htm#10091520000008
Recipients of this letter may want to know more about costs and levels of remuneration. Current estimates are that annual spending on interpretation and translation services in England and Wales is in the region of £60m across the civil and criminal justice system, with the police and courts accounting for the bulk of this spend. Those justice organisations already moving to contracts have indicated that they expect significant financial savings. Our starting assumption is that we should be looking for savings of at least 10% on current spend. We cannot release information on the pricing models we have been discussing with bidders as this information is commercially confidential. However, throughout the competitive dialogue process we have tested bidders to ensure that rates of pay to interpreters and translators will be sufficient to ensure that they can attract and retain suitably qualified linguists.

The purpose of this letter is to seek your views on the proposed arrangements generally and in particular the contents of the documents attached. Please send your comments to…

interpretationproject@justice.gsi.gov.uk

… by Wednesday 27 April 2011. It may not be possible to take account of comments received after that date. If anything about this letter or the enclosed documents is unclear you are welcome to put questions to the same email address and we will endeavour to answer them promptly.

After the end of this period Ministers will take a decision about the way forward, taking account of the comments received. Their decision will be announced in due course.

Richard Mason
Head of Better Trials Unit