

## UK Court Interpreters Subject to Minimum Qualifications Review

by [Asif Afzal](#) | May 27, 2022 |

The House of Lords have ruled that the Ministry of Justice (MoJ) should conduct a full review of minimum qualifications for court interpreters in a bid to assess the existing status of the [language services](#) provision available within the UK's justice system and to ensure it meets the projected needs of those who use the services.

In November 2021, Baroness Coussins, pushed to legislate for minimum qualifications for spoken-word interpreters by amending the "Police, Crime, Sentencing and Courts Bill", and while there was much support, some members expressed concerns about the impact this legislation might have upon the justice system and those who require [interpretation services](#).

The proposed amendments required that interpreters, appointed to a court or tribunal, be:

- Registered on the National Register of Public Service Interpreters (NRPSI)
- Possess a Level 6 Diploma in Public Service Interpreting or comply with NRPSI Rare Language Status protocols
- Have completed the requisite number of hours' experience of court interpreting according to the complexity of a case, as agreed by the Secretary of State and professional bodies.

Lord Keith Stewart of Dirleton, initially proposed that the motion be withdrawn until a "full and objective assessment" was completed as it was impossible to tell what impact this might have on the overall justice system.

However, when the motion was renewed at the start of this year (January 2022), Lord Wolfson of Tredegar ordered a full review of interpreter qualifications.

According to House of Lords records Lord Wolfson states that the purpose of the review is to "establish a detailed framework of the standards and qualifications required for all assignments covered by the contracts, with clear explanations and justifications for each."

He also noted his concern regarding a "one-size-fits-all approach" stating that "even within a court setting, interpreting in a criminal court is quite different from interpreting, for example, in the family jurisdiction...all the options we consider will need to be fully costed in accordance with government policy for large government procurements to ensure value for money for the taxpayer."

It is proposed that the review could be completed in time for the retendering of MoJ contracts in 2023. The review is a positive step towards improving provision for interpreting services within the UK's justice system and should help create a solution which enables protection for both the public and professional interpreters.

More information and guidance regarding interpreters within the UK justice system

## **Introduction**

The right to an interpreter is an integral part of the right to a fair trial. It is a principle of English common law that the Defendant must be able to understand the charges made against them and be able to properly defend themselves.

The right is also enshrined in the European Convention on Human Rights.

Translation services are currently being provided within police stations and the Courts by 'The Big Word', who are contracted by the Ministry of Justice. Sign language interpretation is provided by Clarion UK. Interpreters working within the Criminal Justice System should be registered on the [National Register of Public Service Interpreters \(NRPSI\)](#). NRPSI is the independent, voluntary public interest body and its core role is to ensure that standards within the profession are maintained for the benefit of the public and interpreters.

## **Interpreters at the Police Station**

The role of the interpreter at the Police Station is governed by Code C of the Police and Criminal Evidence (PACE) 1984. If a suspect or a witness requires an interpreter for interview or the taking of a statement, the police must arrange for one to be present.

The interpretation arrangements must comply with the minimum requirements set out in Directive 2010/64/EU of the European Parliament: *“the quality of the interpretation and translation provided shall be sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the cases against them and are able to exercise their rights of defence.”*

13.2 dictates that a suspect must not be interviewed unless arrangements are made for a person capable of interpreting to assist the suspect to understand and communicate.

In the case of a person making a statement under caution, 13.4 states that *“the interpreter shall record the statement in the language it is made, the person shall be invited to sign it and official English translation shall be made in due course.”*

Code C also applies to suspects who are hard of hearing or have speech impediments and require interpreters or other appropriate assistance to enable effective communication.

Code F deals with the interview of suspects who are deaf, blind or have a speech impediment. It states that it might be appropriate to make a visual recording of the interview if the suspect is deaf, blind or in the case of a speech impaired person who uses sign language to communicate.

Any witness statement taken from a person who has difficulty in speaking or understanding English should be recorded in the foreign language and signed by the witness. It should include the declaration prescribed in Section 9(2)(b) Criminal Justice Act 1967. Witness statements for the purpose of Section 5A(3)(a) and 5B of the Magistrates' Court Act 1980, must be the statement of the witness and not a translation of what was said by the interpreter – *R v Raynor*, Times Law Reports, 19 September 2000. Where an interpreter is required to translate at the interview between the police and a witness to record the witness's statement, a Superintendent may authorise an extension to the period of detention

to enable the transcript to be prepared before charging – *R (on the application of Wiles) v Chief Constable of the Hertfordshire Constabulary* [2002] All ER (D) 263 Feb.

Any potential breaches of PACE or the Codes may mean the evidence could be excluded under Section 78 of PACE – see [Confession, Unfairly Obtained Evidence and Breaches of Pace](#).

The interpreter is bound by a duty of confidentiality not to disclose what was said in consultation between the suspect and their legal representative. In the case of *Bozkurt v South Thames Magistrates' Court* [2002] R.T.R.15, the Divisional Court held that “*legal professional privilege attached to an interpreter who was present between a client and his solicitor.*”

### **Court Papers**

When preparing papers for court, the foreign language statement should be placed in the bundle of witness statements either immediately before or after the translation.

### **Interpreter as a Witness in Court**

If a defendant has been interviewed through an interpreter and there is any contention as to what was said during that interview, evidence will be required from interpreter. Evidence from the Police Officer in this regard amounts to hearsay – *Attard* 43.Cr.App.R.90. If the interpreter used at the Police Station is to be called as a prosecution witness, a separate interpreter is to be used for court.

If an interpreter is required to give evidence, he or she should be given an opportunity to confirm the accuracy of any record of interview at which they were present.

The CPS is responsible for the payment of expenses of an interpreter who attends court to give evidence about what took place at the defendant's interview.

### **Interpreter for a Witness at Court**

A witness who has difficulty in speaking or understanding English may give evidence at court through an interpreter. It is the responsibility of the prosecution and defence to arrange interpreters for their own witnesses at court.

The decision as to whether an interpreter should be allowed to assist a witness is a matter of discretion for the judge. They are not bound by the witness asserting that they require an interpreter, nor does the judge need to conduct specific inquiries as to their command of English – *R v Sharma* [2006] 2 Cr.App.R.(S.) 63, CA.

If an interpreter is required for a trial within the magistrates' court then this should be noted on the Preparation of Effective Trial form at case management. In the Crown Court, this should be recorded on the PTPH form on the CCDCS system.

If the question of competence of the interpreter is raised, the hearing should be adjourned, so that it can be resolved. In *R (on the application of Gashi) v Chief Adjudicator* [2001] All ER (D) 262 (Nov), the Administrative Court held that “*the failure to provide G with a competent interpreter had constituted a procedural error, given that it was related to the means by which evidence might be communicated.*”

The interpreter must be someone who is impartial. In *Mitchell* (1970) 114 S.J. 86, the Court of Appeal held that the employment of an interpreter who was a waiter at the restaurant where offences were alleged to have taken place was inappropriate.

The CPS is responsible for ensuring that the interpreter is appropriately qualified to carry out the assignment and that terms and conditions have been agreed before the assignment is undertaken.

### **Interpreter for a Defendant at Court**

The Defendant's right to an interpreter at Court is enshrined within Article 6 of the European Convention on Human Rights: "(3) everyone charged with a criminal offence has the following minimum rights - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court." The right is not subject to qualification.

Article 6(3)(e) applies only where the accused does not understand or speak the language used in court. It does not provide the defendant the right to conduct proceedings in the language of their choosing - *K v France* (1984) 35 DR 203 at [8] — applicant who understood French wanted to conduct his defence in the Breton language.

If a defendant requires an interpreter to interpret the proceedings, it is the responsibility of the court to arrange for the attendance and payment of an independent interpreter. Where there is more than one defendant, each should have a separate interpreter.

It is important that the CPS liaise with the court and the police to ensure that the court is aware of the need for an independent interpreter and any other relevant information, in order that an appropriate interpreter can be selected. When a defendant is remanded in custody from the police station to the Magistrates' Court, it is the police who are responsible for organising an interpreter.

It is important that the interpreter used at the police station or in the course of investigations by other investigating agencies is not engaged to interpret in the courtroom for the same case. If, however, it is not possible to find another interpreter (for example, where the language is rare) the Court and all parties must be notified of the intention to use the same interpreter for the court proceedings, (see Note for Guidance C13 A in PACE Code C) See also: *Regina (Bozturk) v Thames Magistrates' Court*, Times Law Reports 26 June 2001.

'Double translation' is permissible at both interview and trial, where it proves impossible to find an interpreter who is fluent in both English and the language in which the Defendant is fluent. Both interpreters must be suitably skilled in the interpretation of their particular part of the process. Each must be fluent in their common language as well as the language used by the Defendant or in English — *R v West London Youth Court*, ex p. N. [2000] 1 W.L.R. 2368, DC