

Language barriers in the criminal justice system

Good practice guidance for Probation
Service staff and interpreters

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Purpose of this guidance

The aim of this document is to provide guidance to probation officers for working with interpreters, both in court and community settings. This guidance may also be useful for interpreters working with probation officers, and provide both professions with a better insight into the work of the other. Please note that this document does not cover the procedures for how to book an interpreter. Instructions for booking interpreters should be available via the Probation Service intranet.

This guidance has been developed in consultation with both probation practitioners and interpreters. Probation officers and interpreters were interviewed as part of the wider research project and attended a workshop to inform its focus and content.

Background to the guidance

Wider research

Every person who comes into contact with the criminal justice system (CJS), whether they are a witness, victim, defendant or convicted of an offence, has the right to fair and equal justice. Individuals eligible to receive support, supervision or intervention from criminal justice agencies should be able to access those services, regardless of their proficiency in English. However, without access to suitable language support, individuals who speak English as a second or additional language (ESL) face a number of barriers to engagement.

This guidance is part of the series Language barriers in the criminal justice system from the Institute for Crime & Justice Policy Research, Victim Support, and the Centre for Justice Innovation, funded by The Bell Foundation. The series was produced following a wide-ranging research project exploring the impact of language barriers on individuals' experiences of the criminal justice system, whether as victims, witnesses, suspects, defendants, or people with convictions. The series aims to strengthen the evidence base around the impact of language barriers as well as provide practical tools to allow practitioners to improve their practice in working with individuals who speak English as a second or additional language. For more information and to view the whole series, please go to <http://www.bell-foundation.org.uk/criminal-justice-programme>

As part of this project, it was identified in interviews with practitioners from across the CJS that practitioners, in both the statutory and voluntary sectors, were lacking guidance for working effectively with individuals who speak ESL, and specifically, good practice when working with a service user through an interpreter.

Current probation practice

The priority of the Probation Service is “to protect the public by the effective rehabilitation of offenders, by reducing the causes which contribute to offending and enabling offenders to turn their lives around.”¹ The relationship between probation officers and people on probation is an important one, we know that strong collaboration and co-production between practitioners and service users supports both engagement and positive outcomes.² Therefore, it is key that service users who speak ESL and the probation officers who are supervising them are able to communicate effectively with the support of an interpreter.

Based on the research, probation practitioners identified a number of challenges with current practice, including:

- A lack of defined methods for assessing English proficiency, with the decision of whether to use an interpreter often left to the discretion of the practitioner;
- The use of complex language by criminal justice practitioners which requires more advanced language skills than ‘conversational’ English;
- The monolingualism³ of service provision resulting in limited assessment of needs (not just those relating to language) and limited access to rehabilitative interventions, information and guidance for those who speak ESL;
- Probation workloads not allowing for the additional time and work needed to work through an interpreter;
- Limited understanding or training in how to work effectively with interpreters;
- Being unable to book the same interpreter for multiple supervision sessions, resulting in a lack of consistency which impacts upon the ability of the probation officer to build rapport with a service user;
- Variations in the professionalism of interpreters;
- Misunderstandings about the role of interpreters, such as expectations that interpreters should provide more than just translation but also cultural context or mediation during interactions.

Many of these challenges were noted by interpreters as well, with broad agreement that there could be a better understanding of the role of the interpreter and how best to accommodate the interpreter in CJS processes. For more information about the research and its findings, please see the full research report, or the executive summary for an overview of the project.

1. <https://www.gov.uk/government/organisations/national-probation-service/about>

2. <https://www.justiceinspectors.gov.uk/hmiprobation/research/the-evidence-base-probation/models-and-principles/supervision-skills>

3. Monolingualism refers to the provision of services in only one single language, in this circumstance English

Good practice guidance

Appoint a lead/specialist for ESL

The Probation Service (PS) has long appointed local leads or Single Point of Contacts (SPOCs) to share best practice and provide support to colleagues on particular specialisms. In some areas, those who are the Foreign Offender Lead will also have responsibility for individuals who speak ESL. In areas where there is not a lead, it is recommended that one is appointed for ESL service users to ensure that best practice is embedded. Suggested responsibilities for this ESL lead could include:

- Briefing teams on this guidance and sharing local good practice examples;
- Finding out what are the most commonly spoken languages in your local area;
- Translating frequently used documents (induction packs, standard licence conditions, etc.) in those commonly spoken languages. (Note: it would not be feasible to do this for every language so this is a good place to start);
- Work together with the Stakeholder and Engagement Lead to map local service provision that support particular communities. This will ensure you know what third sector/voluntary sector support is available for your service users and where the gaps in provision are.

This would work best as a nationally co-ordinated approach. If possible, ensure that the ESL leads for each region meet regularly to share practice.

Identifying when an interpreter is required

Everyone supervised by the Probation Service has the right to an interpreter, should they require one. It's important to make this entitlement known to service users. Always check with a service user if they require an interpreter – they know best. Do not assume to know their language proficiency. Whilst some may present as proficient speakers of English, their reading and writing proficiency may be very different, so do not assume that a person can understand written English to the same degree that they can understand spoken English. It is common that proficiency in speaking and listening skills varies from a person's proficiency in reading and writing. For example, a person may be able to hold a conversation in English but may not be able to read or write in English (or perhaps in their first language). It is important to remember that documents that use complex legal jargon, commonly found, for example, in court orders or licence conditions, use language that is complex and specific to the criminal justice system, so may be particularly difficult to understand for people who speak ESL.

You can use the **Language Identification Sheet** ([page 12 of this guidance](#)) to help you to identify what interpreter you need to book.

Probation officers should determine a service user's preferred language of communication (spoken and written) and capture this on the Diversity Information Form, found on NDelius. Review any previous NDelius records, and speak with relevant partner agencies, for further information about individual language requirements.

Effective communication when an interpreter is not present

It is strongly advised that all efforts should be made to ensure an interpreter is available for most, if not all, communications between you and the service user. However, we know this is not always possible as not all contact is pre-planned. Here are some tips on effective communication when an interpreter is not present:

- **Use plain English.** This means you should:
 - Avoid using colloquialisms, specific regional phrases or slang (e.g. bloke).
 - Avoid using idiomatic language, that is language which is not literal e.g. “every cloud has a silver lining”. Use short sentences to convey information in meaningful chunks.
 - Avoid complex vocabulary and long, complex sentences.
 - Spell out any acronyms or titles of organisations, including saying the full word that each letter of the acronym stands for.
- **Pause frequently to allow the individual time to process what you are saying.** They may also need time to process a response, so be patient when asking questions. When giving instructions, use words like ‘first’, ‘second’, ‘then’, ‘after that’ to help the individual understand that you are giving a list of different instructions.
- **Check their understanding.** Asking ‘do you understand’ is not always a good way to check understanding for two reasons: 1) individuals might think they have understood but they haven’t, so they may say yes, which means you won’t know whether or not further clarification is needed; 2) they may not understand but they are embarrassed or don’t feel safe to say that they don’t understand, so may say ‘yes’.
 - It is also not useful to ask someone to repeat back to you what you want them to do. This is because the person who speaks ESL may not have the language to explain, especially if the information they need to explain is long or complex. It’s important to note that individuals may have understood the instructions, but may not have the oracy skills yet to explain this, so this is sometimes an unreliable way to check understanding. Instead, to check understanding, ask questions that will give you evidence that the service user has understood, but which require little verbal output from the service user.
 - To do this, use short answer questions, yes/no questions, or closed questions (a closed question is where the answer is selected from a limited set number, e.g. Do you need to take your ID, your proof of address or a bill?).
 - Here is an example in practice: if you give instructions to an individual about how to sign up for ESOL lessons, this may require several steps. Ensure you check each step. You could, for example ask the short answer question ‘What time is the school/office/wing open?’. This only requires a small amount of language (e.g. a time) for the individual to respond, so is sufficiently linguistically ‘light’. You could also ask ‘Ok, do you need to take your ID with you?’ In this case, individuals answer yes or no, which also requires little of the individual, whilst also giving you evidence of whether they have understood.
 - Some people who speak ESL may be more proficient in speaking and listening, so you may be able to ask open-ended questions. However, if you ask an open-ended question and you can’t be sure from the individual’s response whether or not they have understood, then adapt your questioning, e.g. by using closed, or short answer questions, in order to effectively check understanding that is appropriate for the proficiency level of the service user.

- **Use gestures or point to concrete objects where you can.** For example, if you are talking about the time, point at a clock or a watch. If you are telling someone to sit down, point to a chair (this is mostly appropriate for those who are new to English or in the early stages of English language acquisition).
- **Use pictorial resources to aid understanding,** e.g. a picture timetable.
- **Use translated materials where appropriate,** to aide communication and improve understanding. Be aware that translation tools are limited and not a replacement for interpretation of more complex or important information.
- **Avoid cultural references.**
- **Speak slowly, but not too slowly.** Your speech should be slow enough to understand but not so slow that you sound patronising or unnatural (This is particularly important for those who are new to English or in the early stages of English language acquisition).
- **Be aware of your body language.** Open body language, such as eye contact, nodding and positioning your body towards the service user, can help demonstrate that you are listening and understanding what they are saying.
- **Follow up with a letter, text or email.** Ask the recipient which language they would prefer written communication in, as a person may prefer written communication in a different language to their preferred spoken language. Where the letter, text or email needs to be in English:
 - Use plain English (follow the guidance above on use of 'plain English').
 - Ensure that information is separated out on the page, making use of blank space and bullet points to ensure the text is more accessible.
 - Use short sentences, and avoid long or complex sentences.
 - Explain any specific or complex vocabulary in plain English. You may want to use a glossary to do this.
 - Make use of pictures to assist understanding.
 - Check understanding of the document by arranging a follow-up conversation, using the advice above on checking understanding.
- **Avoid asking anyone without formal training in interpretation to act as an interpreter.** A colleague who speaks the same language as the service user may be able to support the translation of documents. However, their lack of interpretation qualifications and their own experience as a probation officer may influence the information conveyed, which can have significant implications, for e.g., risk assessments, which the supervising officer is responsible for.
- **Refrain from asking friends and family of a service user to support with interpretation** as there is no guarantee that information will be translated accurately or that it will be treated sensitively and confidentially.
- **If you are unsure if the service user can understand what you are saying, end the conversation and re-arrange for a time when an interpreter can be present.**

Working with an interpreter

Below are some pointers to support a successful meeting between you, the service user and an interpreter.

Covid-19 and the use of virtual meetings: Since the Covid-19 pandemic began, there has been a huge shift towards the use of virtual meetings to minimise in-person contact, including in the Probation Service. Given the gradual return of face-to-face meetings and supervision, this guidance has been developed with in-person meetings in mind. These guidelines will also be useful for probation officers, interpreters and service users taking part in virtual meetings, however, some small adjustments may be required. Interpreters can work remotely with probation officers and service users via Microsoft Teams. However, it's important to ensure that you have a good internet connection.

Before the meeting

Keep the service user informed that an interpreter will be present: It is important to ensure that service users are aware that an interpreter will be available to support communication at your meeting. It allows time for you to check that they understand what will happen at the appointment, and that you have booked an interpreter who speaks the correct language.

Check if the service user has a preference regarding the gender of the interpreter: Some service users may only feel comfortable to disclose personal and sensitive information to someone of a particular gender, for example a male service user with a history of domestic abuse may be unwilling to speak about his offence through a female interpreter. Accommodating this preference may help the probation officer to gather the relevant information required.

Environmental considerations: To ensure you get the most out of these sessions, try and hold them in an interview room or space that is quieter and free from external distractions. You may need to book a bigger room to accommodate an extra person, with the probation officer and service user sitting opposite one another, and the interpreter between them. You will also need to allocate additional time for the meeting – it is important that you don't underestimate the extra time you need. Communicating through an interpreter is always going to take more time than a standard meeting.

Explain terminology: This is not just for the benefit of the service user but also the interpreter. Do not assume interpreters have an in-depth understanding and knowledge of the criminal justice system. Many interpreters work across a number of agencies and are not hired exclusively by the Probation Service. Provide detailed explanations for any acronyms that you use, for example, Drug Rehabilitation Requirement (DRR) and Alcohol Treatment Requirement (ATR). These are complex terms and interpreters will need to fully understand what they mean to be able to accurately interpret them to service users.

Consider other available resources that can support service users: It is common practice in probation for officers to adapt how they communicate with service users to improve communication. You can use the same creativity in engaging service users with an interpreter. Think about how pictorial resources and other translated materials might aid communication and improve understanding.

Prepare the interpreter for sensitive subject matter: Some meetings will require discussions about sensitive and distressing topics. Where possible, try and prepare the interpreter for this – providing brief details about the type of offence or behaviour you are hoping to discuss will be sufficient.

Awareness of professional standards/expectations of interpreters: Interpreters are professionals and receive training and accreditation to do their job. They are happy to answer any questions or provide clarifications about their role –just ask. Confidentiality and impartiality should be preserved at all times, and the assistance of an interpreter should be conducted within a safe environment, provided and monitored by the justice system. You can find more details about these professional standards on [page 12](#) of this guidance.

During the session

Provide service user with guidance document: At the beginning of the session, provide the service user with the one-page guidance ‘**What to expect when communicating with an interpreter**’ on [page 11](#) of this guidance. This document can either be translated into different languages ahead of time or translated by the interpreter during the session, and is intended to provide further information to the service user about how the probation appointment will run and what to expect of the interpreter.

Ensure the interpreter and service user do not know each other: Given that some languages are spoken much less commonly than others in the UK, service users and interpreters who speak these languages may come from small communities. As a result, it is important to ensure at the beginning of a session that the interpreter and the service user do not know one another, either directly or indirectly (for example, through friends/family). This is particularly important for probation appointments given the confidential and potentially distressing subject matter. If there is a pre-existing relationship, terminate the session and advise the service user that you will need to re-book the appointment with a different interpreter.

Re-iterate the boundaries of confidentiality: Probation appointments between an individual and their probation officer often include sensitive information and it is important to reassure the service user that the interpreter must adhere to professional standards. They are bound by confidentiality and cannot share with anyone what is discussed in the session. Everything that a service user says will be translated by the interpreter, including if the service user discloses information relating to a breach of licence, further offending or safeguarding concerns. It is the responsibility of the probation officer to take any further actions necessary, including safeguarding referrals or breach proceedings.

Ensure direct communication: When conducting an appointment through an interpreter, be sure to speak directly to the service user at all times rather than the interpreter. Address the service user in the first person, (for example “Where do you live?”), rather than the interpreter (e.g., “Ask him where he lives”). Similarly, you should direct any non-verbal cues, such as eye contact, body positioning and hand gestures towards the service user.

Use clear and concise language: Use plain English and avoid the use of criminal justice jargon where possible. Where the use of complex language or legal terminology is required, for example when providing details of a court order or licence conditions, explain the meaning of each term and ensure that the service user fully understands. During the discussion, make sure to pause after speaking to provide an opportunity for the interpreter to translate and for the service user to respond.

Be mindful of the limits of interpretation: Some interpreters may have an awareness of relevant cultural and political circumstances enabling them to provide some cultural context to the conversation, however, they cannot provide an assessment of the individual based on an awareness of their cultural background.

Check understanding regularly: Throughout the session, ask both the interpreter and service user if they are happy with the pace of the discussion and check that they can understand and follow the conversation. It is of particular importance to ensure understanding as the consequences of not fully understanding their sentence or licence conditions may be severe and lead to breach of licence.

Provide breaks: The sensitive and sometimes complex subject matter may be challenging for the interpreter to translate, and as such, it's important to consider the comfort of the interpreter. For shorter sessions (approx. 1 hour), provide the interpreter with the opportunity to use the facilities before and after the session, and ensure that they have access to water. For longer appointments, offer short breaks at various points in the session. This ensures that the interpreter will be able to continue to provide a good service throughout the session.

Ending the session

Summarise the discussion and check understanding: As you draw the session to a close, outline the main points of the discussion, as well any actions for the service user to complete before their next probation appointment, such as attending other appointments or assessments. Check that the service user understands and is in agreement. Ensure that there is sufficient time at the end of a session to ask the service user if they have any questions or need clarification about anything before ending the session, including in relation to the use of the interpreter.

Ask for feedback: It's useful to ask the interpreter and the service user if they feel anything could be done differently to improve the effectiveness of communication during the appointment. Making small adjustments to how the session is run that cater to individual needs and preferences, within reason, may help to develop relationships and improve the effectiveness of the sessions.

Include reflections on the use of an interpreter in case records: In your notes of the session on NDelius, ensure to include any reflections regarding the impact of using an interpreter in developing rapport, sentence planning etc., and anything you did to mitigate this impact during the appointment. This may help to improve the effectiveness of future appointments, as well as help other probation officers who may be required to provide supervision to the service user.

Clarify complaints process: It is important that the probation officer, interpreter and service user are satisfied with how the session was run in accordance with the code of conduct ([please see page 12](#)). If anyone raises a concern during the session, make every attempt to resolve this immediately. However, if this cannot be resolved during the meeting, check your local guidance for raising a complaint regarding an interpreter. For issues regarding Big Word, please send your feedback to MoJFeedback@thebigword.com. Similarly, ensure the interpreter is aware of the process for reporting any issue that may have occurred during the session.

Check in with the Interpreter: Allow a couple of minutes once the session has ended and the service user has left to check in with the interpreter, and ask if there is anything they want to say that they didn't feel comfortable saying in the presence of the service user; for example, if a service user has made inappropriate comments in their first language towards the interpreter without the knowledge of the probation officer. Having the service user and interpreter leave at slightly different times following the appointment reduces the risk of the service user approaching the interpreter outside the appointment venue to discuss anything without the presence of their probation officer.

Helpsheet

What to expect when communicating through an interpreter

This document is intended to provide the service user with greater clarity around the role of the interpreter during their probation appointment. Please ensure that the following information is provided and understood before beginning the session (the document can either be translated and given as a handout or it can be translated by the interpreter at the start of the session):

- This probation appointment will be carried out through an interpreter to support you to understand everything that is said during the session as well as for you to be understood.
- As your probation officer, I will work with you to manage your needs and supervise you during your sentence/licence.
- The role of the interpreter is to explain exactly what I say to you and exactly what you say to me. Please do not say anything to the interpreter that you would not like translated to me.
- Although the interpreter is here to support us to communicate, the conversation is between the two of us. I will direct the conversation towards you and I hope that you will do the same with me.
- We will discuss your offence and anything else that may be relevant to your risk of offending. It's important to note that interpreters must adhere to professional guidelines, including confidentiality, which means that they cannot repeat anything that you say during the appointment to anyone outside of this session.
- Although we may need to discuss sensitive topics, the interpreter will be non-judgemental, and is completely independent from probation. They are not probation officers and do not work for the probation service.
- If the interpreter says anything that you don't understand during the session, please let me know. It is very important that you understand everything that we discuss today.
- If you know the interpreter, please let me know before we begin. Given that we will be discussing sensitive personal information; it is essential that the interpreter is not someone known to you. If you do know the interpreter, we will find an alternative interpreter and rearrange the session for you.
- Finally, if at any point you wish to stop the session and not have the interpreter present or you don't feel that the interpreter is communicating accurately what you said, please let me know.

Useful resources

Other outputs from this project

For more information and to view the whole *Language barriers in the criminal justice system* series, please go to www.bell-foundation.org.uk

Language Identification Sheet

The Language Identification Sheet is available online from the Refugee Council (and is also included in the practitioner guidance from Victim Support on working with victims and witnesses who speak ESL). You can access it at:

http://www.refugeecouncil.org.uk/wp-content/uploads/2020/01/Language_ID_chart.pdf

Links to existing resources

The National Register of Public Service Interpreters (NRPSI) sets out the Code of Professional Conduct, which is intended to regulate the professional conduct of all registrants on the NRPSI, in regards to their duties, responsibilities and conduct. More information about the Code of Professional Conduct can be found on the NRPSI website:

<https://www.nrpsi.org.uk/for-clients-of-interpreters/code-of-professional-conduct.html>

The Association of Police and Court Interpreters (APCI) outlines their Code of Conduct for all currently registered members of the Association. Full details of the Code of Conduct is available on their website:

<https://apciinterpreters.org.uk/about-us/code-of-conduct/>

The Chartered Institute of Linguists (CIOL) has published helpful guidance for public service interpreters: Police. This includes the documentation released by National Police Chiefs Council (NPCC), in consultation with interpreters on the launch of the new Dynamic Purchasing System for Language Services. In an effort to make public sector interpreting as transparent as possible, the documents show what has been published in regards to the new Police Approved Interpreters/ Translators (PAIT) scheme, alongside the guidance published by the College of Policing to police officers on the use of interpreters and translators. This guidance can be found on the CIOL website at the following link:

<https://www.ciol.org.uk/guidance-public-service-interpreters-police>

The Inns of Court College of Advocacy website contains useful material, including video examples, that outlines what one can look for to make assessments about the quality and professionalism of an interpreter without needing to speak the language. This can be found here:

<https://www.icca.ac.uk/interpreters/>

The Bell Foundation provides a number of resources which are designed to develop the knowledge and skills of everyone who works with English language learners, including an ESL screening tool for prison, independent learning worksheets, and a tutor resource pack. These documents can be accessed from their website here:

<https://www.bell-foundation.org.uk/resources/programme/criminal-justice-programme/>

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For more information and to view the whole series, please go to www.bell-foundation.org.uk

The Bell Foundation is a charity which aims to overcome exclusion for individuals who speak English as a second or additional language by working with partners on innovation, research, training, and practical interventions.

About the Centre for Justice Innovation

The Centre for Justice Innovation seek to build a justice system which all of its citizens believe is fair and effective. We champion practice innovation and evidence-led policy reform in the UK's justice systems. We are a registered UK charity.

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