

CONSULTATION PAPER ON THE USE OF INTERPRETERS IN PUBLICLY FUNDED IMMIGRATION AND ASYLUM CASES

INTRODUCTION

1. The services of interpreters form an essential role in facilitating the provision of advice by legal representatives in immigration and asylum cases. The General Civil Contract provides that suppliers may claim for the cost of using an interpreter where necessary.

2. However, at present, the Commission does not offer detailed national guidance on the use of interpreters in immigration and asylum cases. It is proposed that such guidance be introduced to address problems that have arisen around the use of interpreters in practice

The Key Problems

Quality Assurance:

3. Interpreters are not currently subject to quality assurance. This has resulted in lawyers in publicly funded immigration and asylum cases frequently instructing unqualified and sometimes inadequate interpreters.

4. There is not a fully effective independent accreditation scheme and register for interpreters working in this area. As a result it can be difficult to find and instruct an interpreter who can guarantee the knowledge and skills required to interpret effectively in immigration and asylum cases, particularly in certain regions and languages.

Fees:

5. There is a lack of control over the fees paid to interpreters in immigration and asylum cases, the cost of which make up a substantial proportion of overall case costs. We are particularly concerned by the high costs routinely claimed for travelling and waiting time.

Procedures:

6. Uncertainty exists over what is required of the lawyer when instructing an interpreter and throughout the appointment and also who is responsible for the loss should fees be reduced on assessment or if appointments are cancelled.

7. There is a lack of conformity in the way that the payment of interpreters is recorded on files making it very difficult for LSC auditors to see exactly what arrangements are in place.

8. Interpreters often complain that there can be significant delays between an appointment being completed and the instructing lawyer paying them.

9. In light of these problems it is recommended that guidance be introduced that will initially meet the following three key aims:

- a) to guarantee that only qualified interpreters are instructed and to improve the quality of interpreters that may be instructed in publicly funded cases
- b) to facilitate greater control over the fees paid to and the cost of interpreters
- c) to introduce standard Terms of Appointment to clarify and simplify the procedures relating to the instruction of and payment for interpreters and to regulate the processes by which suppliers record payments to interpreters

10. This paper contains some proposals on how the above aims may be achieved in practice. The LSC invites comments on the proposals from practitioners and linguists (through their representative bodies), as well as other organisations that promote quality interpreting and departments involved in the immigration and asylum application processes.

11. These initial proposals set out one possible approach in order to promote discussion and gather information and opinion. We subsequently intend to thoroughly investigate any alternative approaches suggested in the responses to this consultation before reaching a final decision. This could involve a second consultation paper in which much firmer proposals would be presented.

12. The LSC also aims to engage interested bodies in further developing the systems and processes required to establish a pool of identifiably competent and independent interpreters, who have all pledged to follow any established best practice and work at approved rates. This could include initiatives for the LSC to directly employ interpreters, especially those interpreting in the less common languages or in shortage areas.

13. In the period before the deadline for the return of responses to this paper, the LSC is willing to meet with interested bodies to discuss our proposals and hear their views.

IMPACT ASSESSMENT

14. The proposals within this consultation paper impact on the providers of interpreting services, suppliers of publicly funded legal services, and on asylum and immigration clients seeking assistance from those suppliers. By definition those seeking assistance are generally not nationals of the United Kingdom and are frequently drawn from black and minority ethnic communities.

15. Defective interpreting can detrimentally affect the chance of success of individual cases funded by the LSC. By requiring the use of only qualified interpreters these proposals should remove this potential barrier to the equality of decision making for those whose first language is not English. Our provisional assessment is that this will generate a greater assurance that the service that clients receive is competent and will have a positive effect on race relations.

16. There is a risk that the proposals may have a negative effect on clients should the introduction of minimum quality requirements cause any serious reduction in the numbers of eligible interpreters. The proposals encourage the use of interpreters whose suitability can be proven by belonging to an appropriate register or panel, membership of which is subject to an assessment of competence and agreement to abide by a clear code of conduct. However, we are aware that most such panels cannot currently meet the national need for interpreters. Therefore at this point we are only proposing that it should be mandatory that any interpreter used must possess a recognised professional interpreting qualification.

17. This risk of potential under-supply is also addressed through specific questions in the consultation paper, responses to which will help inform us of the severity of this risk and whether further measures are required.

18. In respect of suppliers of legally aided services, the majority of organisations with immigration contracts are solicitors' firms with a significant minority being Not for Profit agencies. Therefore, the proposals will impact on those businesses, charities and the voluntary sector, that supply legal services. The LSC's suppliers will be affected by a reduced choice of interpreters to instruct. They will have to alter their existing procedures for instructing interpreters to ensure those they instruct hold the prescribed qualifications and who agree to charge no more than the maximum rates prescribed by the LSC. However, this should not incur a cost. The requirements and connected processes can be disseminated within the supplier relatively easily.

19. There may be additional costs for subscribing to registers or panels of interpreters who have had their competence assessed. However, as stated earlier, the current proposals do not go so far as to make it mandatory for an interpreter belonging to such a panel or register to be instructed.

20. The above issues could impact on small businesses and advice agencies in particular. The interests of such bodies are represented through the Law Society, the Advice Services Alliance, the Legal Aid Practitioners Group and the Immigration Legal Practitioners Association with whom the Commission will consult in respect of its proposed amendments.

21. Interpreters currently being instructed by LSC immigration contract holders are by nature also predominantly drawn from black and minority ethnic communities and most work on a self-employed and freelance basis, either independently or in partnership with a language provider agency. The

livelihood of a number of these interpreters who do not hold a suitable interpreting qualification could be significantly affected by the LSC proposals as such interpreters would become ineligible to undertake any work funded under an LSC immigration contract.

22. However, again, the benefits of ensuring that minimum quality requirements exist and a consistent service is provided far outweigh any resulting negative impact on client numbers for some interpreters. Furthermore, it is proposed that interpreters must hold recognised interpreting qualifications, the testing for and awarding of which will remain totally independent of the LSC. The opportunities for interpreters who meet these requirements will be increased and public confidence in them will improve.

23. The views of interpreter representative bodies and language providers themselves will be sought. This paper contains questions about whether the specified qualifications are the right ones and whether transitional arrangements should be included to allow for interpreters working in this field who do not currently hold appropriate qualifications to obtain them.

24. Interpreters will incur costs in obtaining interpreting qualifications (and obtaining register or panel membership, if they choose to do so). However, these will go hand in hand with increased opportunities for qualified interpreters.

25. Finally, it should be noted that the proposals are intended to apply to all suppliers who hold an immigration contract with the LSC and to all providers of interpreter services funded by the LSC. Therefore, the preliminary assessment is that the proposals will have a neutral impact on the promotion of equal opportunities and fairness; by improving the quality of service to those who do not have English as a first language, race relations will be improved.

26. We welcome comments on the proposals set out in this paper and in particular to the questions raised at the end of each section. We also seek views on the following issues:

- a) What impact would the proposals have on businesses (including solicitors), charities and the voluntary sector?
- b) What impact would the proposed criteria have on equalities and the provision of legal services to different groups?
- c) Do you think that any other proposals should be included?

27. We invite your comments on the proposals, which should be made no later than **30 September 2004**. All responses should be sent to: Emma Warran, Immigration Services Team, Legal Services Commission, 3rd Floor, 85 Gray's Inn Road, London, WC8X 8TX or by e-mail: emma.warran@legalservices.gov.uk.

28. Please note that unless you ask the Commission to keep your name or the contents of your response confidential, your name and the general contents of

your response may be made public, in response to questions under the Open Government initiative. Please ensure that your response is marked clearly if you wish your name to be kept confidential. Confidential responses will be included in any statistical summary of the comments received and views expressed.

29. Once all comments are received a full impact assessment will be undertaken before any decisions are made.

A: QUALITY ASSURANCE

30. Interpreters instructed in publicly funded immigration and asylum contract work are not currently subject to any quality assurance. This means that the LSC is funding individuals to provide interpreting services to clients irrespective of whether they have been proven to be qualified to undertake such work. This is especially salient as those who need interpreters are by definition unable to properly assess the interpreter's ability for themselves.

31. Evidence suggests that the quality of service provided by interpreters in some publicly funded immigration and asylum cases is unacceptably poor. For example, solicitors have approached the LSC with complaints of interpreters giving instructions to the client rather than vice versa.

32. The LSC's Immigration Specification, produced following the DCA consultation paper and ministerial decisions made last year on publicly funded immigration and asylum work, provides that: "The Commission may from time to time specifyany accreditation, membership of a particular organisation or qualification required of interpreters and experts to be instructed by you".

33. It is proposed that, as a minimum requirement any interpreter instructed in a publicly funded immigration or asylum case must hold an appropriate and recognised interpreting qualification. A list of qualifications that the LSC considers appropriate can be found at **Annex A**. The onus should be on the contracted supplier to check that the interpreter holds such a qualification, and evidence of this, such as a photocopy of the relevant certificate, should be retained on file.

34. There are organisations that maintain registers or panels of interpreters who have been assessed as competent to provide interpretation in particular sectors. In order for an interpreter to qualify for inclusion on such a register or panel the applicant would normally be assessed on his or her qualifications, professional skill and experience.

35. Furthermore, in most instances, recognised registers and panels of interpreters will have an approved code of conduct which binds the registered interpreters to agreed standards for competence, procedure and ethical and professional skills. The code of conduct is likely to be supported by a clear disciplinary process.

36. It is widely accepted that membership of an appropriate register or panel provides the most comprehensive guarantee that an interpreter is suitably competent. The LSC recommends that suppliers instruct an interpreter who is a member of such a register or panel whenever it is practicable to do so.

37. Moreover, the LSC would like to prescribe that the services of interpreters in publicly funded immigration and asylum cases will only be funded when an interpreter who is a member of an appropriate register or panel, is used. Due to a shortage of registered interpreters in certain languages and geographical areas and the sometimes high cost of subscription and registration this is not currently possible. However, this remains our long- term aim which we will work towards in partnership with relevant language providers.

38. In order to improve access to services for those for whom English is not a first language and allow for continuity of interpretation through a case, the LSC would like to encourage suppliers to employ bilingual staff and for these staff to obtain recognised interpreting qualifications. This should be especially encouraged for suppliers whose client base is predominantly made up of a particular minority ethnic community. This practice would also reduce the cost of interpreting to the LSC.

39. It might be possible to access interpreting services provided by a suitably qualified interpreter over the telephone. Such services should only be utilised if the fees charged are within the rates detailed in **Section B** or the need to use the services at a higher rate can be clearly justified e.g. in a fast-track case when the speed of the process makes it impossible to find an interpreter by another means or when an interpreter is only required for a very short period of time.

40. It is hoped that the proposals requiring that only qualified interpreters are instructed by lawyers and that interpreters are instructed on standard terms, will drive out of the market the few unscrupulous interpreters who according to anecdotal evidence manipulate clients for financial gain especially by “touting” clients and referring them to a particular supplier as part of a business arrangement.

41. Finally, research indicates that the use of different interpreters at different stages of a case can lead to inconsistencies in translation which may undermine the perceived credibility of the client and have a potentially detrimental effect on their application. For this reason, it is recommended that, whenever practicable, suppliers should use the same interpreter throughout the case.

QUESTION A1: Are the qualifications listed at **Annex A**, the appropriate ones for this purpose and if not what alternatives may be considered appropriate?

QUESTION A2: Are there enough qualified interpreters to meet current demand without the provision of transitional arrangements?

QUESTION A3: Are there exceptional circumstances where an interpreter who did not hold a listed qualification would have to be used, for example may a language be so rare that the opportunity to obtain formal qualifications in that language does not exist?

QUESTION A4: Which registers and panels, including those maintained by any regional or local language providers, most comprehensively guarantee that an interpreter is suitably competent to undertake work in immigration and asylum cases?

QUESTION A5: What initiatives could be introduced by the LSC to improve access to such registers or panels?

QUESTION A6: Are there circumstances where it may be appropriate for an unqualified interpreter who is for example a family member, friend or member of the applicant's local community, to provide interpreting services between the applicant and their representative (or indeed not to use an interpreter if the representative is fluent in the client's mother tongue) in an informal setting where no critical decision about the application is to be made e.g. at the supplier's office when initial instructions are taken?

QUESTION A7: Are there any circumstances in which an interpreter may require special skills which have not been dealt with by these proposals?

QUESTION A8: What could the LSC do to encourage bilingual in-house staff to work towards obtaining a formal interpreting qualification?

QUESTION A9: Are these proposals, combined with the proposal that interpreters must be instructed on standard terms as outlined in **Section C**, sufficient to discourage the practice of "touting"?

B: FEES

42. The LSC's Immigration Specification, which came into effect on 1 April 2004, provides that: "The Commission may from time to time issue guidance as to the maximum rates that it will pay for the services of interpreters".

43. In our view, interpreters' fees in LSC funded immigration and asylum cases should, like lawyers' fees, be controlled. The pressures on the legal aid budget are such that no element of legal aid expenditure can go without scrutiny.

44. Information suggests that there is currently wide inconsistency across cases, both in terms of the rates charged and the total cost of interpretation.

45. Of particular concern is the high cost of travelling and waiting fees charged by interpreters, costs which are not of direct benefit to the client and can be out of all proportion to the service that is provided.

46. Feedback from cost compliance and peer review audits has revealed excessively high claims for travelling, London interpreters being unnecessarily instructed to attend clients at locations outside of London and routine claims being made for waiting time when attending a client at the solicitor's office.

Maximum Rates

47. The maximum hourly rate must be set at a level that will enable services of good quality interpreters to be purchased.

48. Information from comparable public organisations and other sources¹ shows that the typical rate that a professional interpreter can expect to receive for work undertaken in the public sector is between £25 and £29 per hour.

49. If the LSC sets its maximum rates considerably below this level it is feared that LSC suppliers will be unable to compete with other organisations in obtaining the services of qualified interpreters.

50. However, in London a vast majority of suppliers instruct interpreters charging a rate of £15 pounds per hour (excluding travelling and waiting time) and as London accounts for a majority of immigration and asylum matter starts setting the maximum rate considerably higher than £15 may result in a significant and unmanageable increase to the average case cost of immigration and asylum cases.

51. It is therefore recommended that the maximum rate is set at £25 per hour but that additional fees for time spent travelling will no longer be funded. This is broadly equivalent to the rates paid by the Immigration and Nationality Directorate of the Home Office (IND), Immigration Appellate Authority (IAA), and the Crown Prosecution Service (CPS).

¹ The most comprehensive industry analysis of current payment rates for interpreters available is the Institute of Interpreters and Translators (ITI) Rates and Salaries Survey 2001 (latest year available). This survey shows that the average daily rate for public service interpreting is £218. A working day is considered to be eight hours, thus the approximate average hourly rate can be considered to be approximately £27. The survey does not differentiate between actual interpreting time and travel and waiting time.

The IAA pays interpreters £26 pounds an hour. The Home Office pays its interpreters at a rate of £48 for the first hour and £16 per subsequent hour during office hours. The first 3 hours each way of travelling time is not paid for.

The rates paid to interpreters by most police authorities, all of which are committed to using fully qualified interpreters, are in line with the Metropolitan Police rates, the base rate of which is currently £29 per hour.

The rates paid by the Crown Prosecution Service are set between £25 and £28 per hour. These rates are the same as the guideline rates contained in Appendix 2 to the LSC's Costs in Criminal Cases (General) Regulations 1986.

52. It is envisaged that this approach would provide a rate that would allow for the instruction of qualified interpreters whilst also controlling the costs incurred for interpreters' travelling time.

53. It is anticipated that savings made from controlling travelling costs would help balance the proposed increase to the hourly rate currently paid to interpreters in London in terms of the total cost.

54. The approach of restricting payments for time spent travelling is used by the Home Office, and organisations such as the City of Liverpool's Translation and Interpreting Service.²

55. It is accepted that there may be exceptional circumstances, such as when the language is particularly rare, especially in fast-track cases, in which it may not be possible to find an interpreter within the prescribed rates. Higher rates will be allowed in such instances provided that the need to pay higher rates can be clearly justified.

56. In all instances, an interpreter may only claim for the actual time spent interpreting and may not round up the fee to, for example the nearest hour / half hour, unless LSC guidance specifically allows this in expressed circumstances.

57. The LSC will continue to pay reasonable travel expenses (e.g. for train tickets) for interpreters provided that the claim can be justified and receipts are supplied and kept on file.

QUESTION B1: Will setting the maximum rate for interpreters at £25 an hour, without paying for the time spent travelling to and from appointments, enable suppliers in all locations to instruct qualified interpreters as per the proposals in **Section A** of this paper?

QUESTION B2: Do you think that this approach is the right one to bring the cost of interpreting in immigration and asylum cases under control, especially the cost of fees paid for the travelling time of interpreters?

QUESTION B3: Are interpreters likely to refuse instructions if there was a risk that they would have to travel to the attendance location unpaid and then only be instructed for a short time? If so, what incentives could be offered that would still allow the LSC to control the cost of travelling time (for example a front loaded payment of £45 for the first hour and £15 per subsequent hour)

QUESTION B4: In what circumstances may it be necessary to exceed the maximum rate?

Waiting costs

² The IND do not pay for the first 3 hours each way of an interpreters' travelling time and the City of Liverpool's Translation and Interpreting Services do not pay for travelling time within Liverpool itself.

58. At present, the LSC pays for the time that an interpreter spends waiting. It is proposed that if the attendance is at the instructing solicitors' office, the LSC will not pay for any time spent waiting.

59. The LSC will continue to pay for time spent waiting by an interpreter:

- a) where the client is in detention
- b) at the hearing before the IAA and
- c) at the IND interview (in exceptional cases that fall within scope)

60. In circumstances where the LSC will pay for waiting time, the maximum rate allowed would be one half of the rate paid for the interpreting.

QUESTION B5: Is it reasonable that waiting time at a solicitor's office is not funded?

QUESTION B6: Are there circumstances arising regularly in which an interpreter is unpreventably required to wait for considerable periods of time at the solicitor's office?

QUESTION B7: Is it reasonable to set a maximum rate of one half of the rate paid for interpreting for waiting time?

PART C: PROCEDURES

61. We propose to specify Standard Terms of Appointment that must apply in the agreement between the solicitor and the interpreter. Draft terms are set out at **Annex B**

62. These draft terms should make clear what each party can expect of the other both before and during an appointment.

63. The draft terms will also require a prior agreement concerning fees and expenses and will provide for the allocation of risk if the interpreter's fees are not allowed in full or are disallowed. The supplier will be required to make the interpreter aware of the LSC's guideline payment rate and connected guidance.

64. The draft terms will set out payment procedures including the requirement for timely payment of the interpreter by the supplier.

65. Furthermore, to make it easier for the LSC auditors to monitor payments made to interpreters it is suggested that suppliers should be required to use a recognised standard invoicing system and that cash payment will not be allowed.

66. Suppliers should be required to keep copies of all invoices from interpreters and the Standard Terms of Appointment will require interpreters to submit invoices containing full details of the work that they have done. This will include the total amount charged broken down by the length of time spent interpreting and the rate charged per hour plus any other costs claimed for,

such as travelling expenses. The name of the client (and their Unique Client Number if known) and the time, date and location of the appointment must also be included in the invoice.

QUESTION C1: Are the Draft Terms of Appointment at **Annex B** the right ones?

QUESTION C2: Do these terms clarify, simplify and control the procedures relating to the instruction of and payment for interpreters without creating unnecessary bureaucracy?

QUESTION C3: What other provisions, if any, should be included in the draft terms?

QUESTION C4: Would it be practical to extend the requirements so that the interpreter's costs at different stages of a case are recorded in the running costs record for that case?

ANNEX A

ACCEPTABLE QUALIFICATIONS FOR INTERPRETERS INSTRUCTED IN PUBLICLY FUNDED IMMIGRATION AND ASYLUM CASES

- Membership of NRPSI
- Diploma in Public Service Interpreting
- Metropolitan Police Test
- Certificate in Community Interpreting, Institute of Linguists
- MA in Translating & Interpreting
- Postgraduate Diploma in Interpreting & translation, University of Bradford
- Diploma in Legal Interpreting & Translation, Higher Institute of Interpreters & Translators, Belgium
- Diploma in Legal Interpreting, Orlando Language Studies, USA
- Postgraduate Diploma in Conference Interpreting, University of Westminster / Polytechnic of Central London
- A degree from a recognised university partly studied in English (or whatever is their second language) with an interpreting and translation component
- IAA Assessment
- IND Assessment
- DPSI (ORAL ONLY – all oral components must have been passed)
- NVQ/ SVQ level 3 or higher

ANNEX B

Legal Services Commission

DRAFT Required Terms of Appointment – Interpreters in immigration and asylum cases

Overriding Duty

In cases of all types, the interpreter must act with impartiality.

At the Start

The appointer will confirm to the interpreter:

- The client's name
- The languages and dialects in which interpretation is required
- Capacity and purpose of appointment e.g. to interpret for a 15 year old asylum seeker at the Home Office substantive interview
- Special features e.g. mentally disordered client, victim of rape or torture
- The client's objectives
- The type of case, including an outline of the subject matter so that if there is time, the interpreter can find out about any terminology in advance and consider any linguistic challenges.
- The date and time the interpreter is needed and the building and room at which they are required
- The name and telephone number of the person that the interpreter should contact upon arrival
- The appointer will provide the interpreter with copies of any relevant protocols, practice directions etc., which both the Appointer and the Interpreter shall comply with.
- The appointer will ensure that the interpreter is aware of the Legal Services Commission's guideline rates for interpreters, and associated guidance, and will agree fees with the Interpreter.

The interpreter will advise the appointer if:

- There is any reason why their impartiality may be at risk or a cause of conflict or tension between the client and interpreter may exist
- They are not qualified to interpret in the language and dialect required
- They consider that any work is unnecessary and of any other material issues in connection with their appointment
- They become unavailable for the assignment

Throughout the Appointment

The appointer will promptly:

- Notify the interpreter if there has been any relevant change to any information they provided
- Provide the interpreter with all relevant information
- So far as they can, comply with the interpreter's reasonable requests for further information

The interpreter will promptly advise the appointer if:

- The work that they are asked to do is beyond their competence
- Any conflict of interest arises or any issue that would compromise the interpreter's ability to act with impartiality and/or confidentiality
- They consider that any work is unnecessary and of any other material issues in connection with their appointment.

The Interpreter will perform all work with all the skill, care, diligence and accuracy reasonably expected.

Payment

The appointer acknowledges that they, alone, are responsible for payment of the interpreter's fees.

The appointer will pay the Interpreter's invoices within 30 working days of receipt.

The Interpreter must provide the appointer with a standard written invoice for the work done. This must include details of: the length of time spent interpreting, the rate that has been charged, any other costs claimed such as travelling expenses. The invoice must also include the name of the client, their Unique Client Number (if known), and the time, date and location of the appointment.

Assessment and Determination

If the interpreter's fees are not allowed in full on assessment or determination then:

- If the appointer has instructed the interpreter to carry out unnecessary or non-permitted work, the appointer will stand the loss.
- If the interpreter's fees are reduced because the work has not been performed as required, or if it is of an inadequate standard, the interpreter will stand the loss.
- If the interpreter's rates are assessed as too high, the interpreter will stand the loss (and the interpreter shall repay, to the appointer, any overpayment that they may have received from them).
- If the interpreter has charged a cancellation fee (e.g. because a hearing or meeting has been cancelled or postponed at short notice) which is not allowed on assessment or determination, the party causing the cancellation shall stand the loss. If neither party has caused the cancellation, they shall share the loss equally and if both have caused the cancellation, they shall share it in proportion to their fault. Where the client has caused the cancellation, the appointer shall be deemed to have caused it. It should be noted that term does not change the current LSC position of accepting a reasonable cancellation fee on assessment in certain circumstances where late cancellation cannot be avoided.
- The interpreter may charge for the time actually spent interpreting, fees may not be rounded up for example to the nearest hour or half hour (subject to any exemptions allowed for in the LSC guidance).