

# THE USE OF INTERPRETERS IN PUBLICLY FUNDED IMMIGRATION AND ASYLUM CASES: RESPONSES TO LEGAL SERVICES COMMISSION CONSULTATION 2004

---

## Contents

	Page
Background	2
Submissions Received	3
Summary of consultation responses by category and question:	5
➤ Quality Assurance	5
➤ Fees	9
➤ Procedures	13
Summary of key points raised by consultation responses	14
The Commission's response	15
<b>Appendices</b>	
<b>Annex A</b> - Acceptable qualifications for interpreters instructed in publicly funded immigration and asylum cases	17
<b>Annex B</b> - Legal Services Commission Draft Terms of Appointment – Interpreters in immigration and asylum cases	18
<b>Annex C</b> - Consultation respondents	20

## Background

1. The Legal Services Commission (LSC) undertook a consultation in September 2004 with relevant external stakeholders, to address some of the issues surrounding the use of interpreters in publicly funded immigration and asylum cases. A consultation paper was issued highlighting key problems and proposing the introduction of national guidance as a means of overcoming these. Stakeholders were invited to offer comments, guided by a series of consultation questions.
2. 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.
3. At present, however, 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.
4. It was recommended that guidance be introduced to meet three key aims in response to problems identified relating to Quality Assurance, Fees, and Procedures. The consultation paper circulated offered proposals on how this might be achieved in practice:

### **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
5. Questions around these three key areas, addressing the issues of Quality Assurance, Fees, and Procedures, formed the basis of the Commission's consultation. Some respondents replied specifically to the questions asked, whilst others adopted a more thematic approach.
  6. All responses received have been considered carefully, and the views of all those making a representation taken into account. The issues surrounding the use of interpreters in immigration and asylum cases are, however, complex, and particularly in light of the wide range of opinions expressed by respondents during the course of this consultation it is felt that further investigation and research is required before any decisions may be taken by the Commission on the introduction of detailed national guidance.
  7. The Legal Services Commission acknowledges that the pool of interpreters working in publicly funded immigration and asylum cases is already small, particularly outside of London and in more rarely spoken languages. Therefore, the potential for reducing this pool further by introducing mandatory requirements to use only qualified interpreters,

and paid at fixed hourly rates, at this time appears untenable, and certainly without the utilisation of significant transitional arrangements.

8. Access to the services of interpreters in the regions, and also in more unusual languages, will therefore be considered in greater detail to determine more specifically the feasibility of introducing mandatory qualification requirements and a fixed hourly rate for applicable to work in publicly funded immigration and asylum cases.
9. Many of the issues raised would also seem to apply to other areas of law, or more generally across the public sector. We will therefore consider responses to a wider Legal Services Commission consultation being undertaken currently 'The Use of Experts: Quality, Price and Procedures in Publicly Funded Cases' before any action is taken. This consultation document is available on the Commission's website (<http://www.legalservices.gov.uk/aboutus/consultations/civil.asp#experts>) with a closing date for responses of 25 February 2005. We may also wish to consult further with other public sector organisations.

## **Submissions Received**

10. The Commission received 26 submissions in relation to the use of interpreters in publicly funded immigration and asylum cases. We are grateful to all those who gave us their views during the consultation period. Respondents are listed alphabetically at Annex C.
11. Table 1 summarises the key issues around which the consultation process was based.

*Table 1: Key issues surrounding the use of interpreters in publicly funded immigration and asylum cases*

---

<b>Key Problems</b>	<b>Background</b>
<b>Quality Assurance</b>	<ul style="list-style-type: none"><li>• 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.</li><li>• 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.</li></ul>
<b>Fees</b>	<ul style="list-style-type: none"><li>• 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.</li></ul>
<b>Procedures</b>	<ul style="list-style-type: none"><li>• 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.</li><li>• There is a lack of conformity in the way that the payment of interpreters is recorded on files making it is very difficult for LSC auditors to see exactly what arrangements are in place.</li><li>• Interpreters often complain that there can be significant delays between an appointment being completed and the instructing lawyer paying them.</li></ul>

---

12. Annex A ,“Acceptable Qualifications for Interpreters Instructed in Publicly Funded Immigration and Asylum Cases”, and Annex B, “Legal Services Commission Draft Terms of Appointment – Interpreters in Immigration and Asylum Cases”, from the original consultation paper, are at Annexes A & B of this response paper.

## Summary of consultation responses by category and question

### General comments

13. Many respondents expressed support for the Commission's initiatives to address quality standards in interpreting for immigration matters, and to standardise provision across cases, supporting the concept of national guidance and agreeing that such steps will help enable better decision-making.
14. Five submissions, however, commented upon the potential devaluation of the proposals by a lack of equivalent checks on Home Office and Immigration Appellate Authority interpreters, and the likelihood of this creating a market imbalance. It was suggested that levelling fees across the sector would reduce the risk of the Legal Services Commission losing supply. Suggestion was also made that if standards are to be applied it should be consistently with other major users of interpreters, as problems are not restricted to immigration cases; for example, the same issues affect the police, courts and local authorities.
15. An overriding theme of the consultation responses received was the need for flexibility in the introduction of guidance, particularly in relation to qualification requirements, to allow for the differing situations of supply between regions and between languages, in order to prevent access issues. There are not currently enough interpreters holding formal qualifications to implement the proposals without a considerable transitional period, if at all, and this is particularly so in rarer languages and in regions outside of London and the South East. A flexible approach would be needed, maybe with different standards in the regions, and it still appears to be the case that in some languages it is unlikely there will ever be enough speakers to make the proposals realistic.

### Quality Assurance

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

16. 19 submissions commented specifically upon this issue.
17. Three submissions agreed without reservation that the qualifications listed at Annex A of the consultation paper would be appropriate for the accreditation of interpreters working on immigration and asylum matters. Five further respondents expressed broad agreement with the qualifications listed whilst issuing caveats regarding the suitability of certain of these.
18. The key theme of responses received in relation to quality requirements was, however, the need for sufficient flexibility to ensure that varying supply of interpretation services between languages and regions could be addressed appropriately. Nine respondents specifically discussed the issue of such flexibility, suggesting that a less qualified interpreter will always be preferable to a gap in interpretation supply. Rigid qualification requirements may not always be practicable where supply is limited.

19. Three respondents also commented that the listed qualifications are too restrictive in terms of availability, cost and location, and suggested the Open College Network as a more accessible alternative that could offer an intermediate qualification.

20. Four respondents suggested further alternatives to formal qualification, including:

- a practical skills course
- a model dividing languages into three core bands – those widely spoken, those spoken minimally in the UK, and those arising suddenly amongst minority ethnic communities, with differing requirements ranging from formal qualifications in the widely spoken languages to short skills courses in the case of rarer languages
- a quality control measure of recommendations from other legal advice suppliers, with local partnerships developing joint regional databases of approved interpreters

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

21. 16 submissions commented specifically upon this issue.

22. All submissions received commenting specifically upon the issue of transition agreed that there are not enough formally qualified interpreters to meet current demand and to enable implementation of the Legal Services Commission's proposals without a significant transition period, if at all.

23. As in discussion of which qualifications might be appropriate as mandatory requirements for interpreters in publicly funded immigration and asylum cases, the issue of flexibility across regions and languages was also a key theme in relation to whether a sufficient supply of those suitably qualified exists at present, with the risk highlighted of interpreter shortages in areas where the existing pool is too small to cope with added pressure. Six submissions specifically discussed such flexibility with reference to a potential transition to mandatory qualification.

24. A number of respondents expressed the view that, in conjunction with a fixed hourly rate, strict qualification requirements for interpreters in publicly funded immigration and asylum cases could lead to serious access problems.

**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?**

25. 11 submissions commented specifically upon this issue.

26. Six respondents stated that when a rare language is needed, for example with a new immigrant group, and those qualified are likely to be few due to access to courses and the costs of qualification, that it may be appropriate to use an interpreter without a listed qualification. It was agreed, however, that special mechanisms are needed to ensure a minimum standard, such as references being secured from a reliable source, or use of a preparation such as that of the Refugee Legal Centre, involving testing, assessment, induction and training.

27. Three submissions expressed the view that qualified interpreters must always be used, with the caveat that this be subject to appropriate accreditation requirements.
28. One respondent stressed that local and community interpreters play a vital role and must not be cost-prohibited from continuing by expensive assessment and accreditation.

**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?**

29. 11 submissions commented specifically upon this issue.
30. Five respondents expressed a preference for registration with the National Register of Public Service Interpreters (NRPSI) as the most comprehensive guarantee of interpreters in publicly funded immigration and asylum cases meeting an appropriate standard of competence. Comments were made additionally, however, that this would not be possible at present so must remain a long-term goal, and that regional variations should be explored. A further submission supported registration with the NRPSI, Immigration Appellate Authority or the Home Office Immigration and Nationality Directorate but stated that ideally the Legal Services Commission should have its own panel, supported by the NRPSI. The NRPSI itself suggested that as the qualifications listed at Annex A of the consultation paper are based on NRPSI membership, this should be made a requirement.
31. Two submissions suggested multi-agency regional panels as a means of quality assurance, while another suggested local council registers. Registration with the Institute of Translation or the Institute of Linguists was put forward by a further respondent, and by another the requirement of an interpreter holding Legal Indemnity Insurance, which will not be granted without adequate qualification.

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

32. 13 submissions commented specifically upon this issue.
33. Eight respondents discussed the use of financial incentives to improve access to interpretation registers, with suggestions that the Legal Services Commission should offer funding and support for interpreters to achieve recognised qualifications, refund those qualifying for registration, or increase remuneration for panel members to encourage registration. Two respondents commented in addition that regional courses to improve accessibility, perhaps run through the Learning and Skills Council, could be offered alongside such financial incentives.
34. Three submissions suggested publicity co-ordinated by the Legal Services Commission to promote to interpreters registration with a recognised register or panel, perhaps specifically targeting key groups such as minority ethnic communities.

**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?**

35. 17 submissions commented specifically upon this issue.

36. Five respondents stated outright that there are no circumstances in which an unqualified community member may be acceptably used as an interpreter. Reasons given for this included issues of neutrality and blame, fears of hampering disclosure, and concerns about the potential impact on children used to provide interpretation services.

37. Six respondents stated that the use of community interpreters may be appropriate in some circumstances if they are screened first, and if the both the client and supplier are happy to use them. Emphasis was placed by three of these respondents, however, upon the fact that this refers to adult community members only, and strictly not to relatives of the client or to children. Two of the respondents also stressed that community interpreters are not suitable for use in adversarial legal proceedings because of the likely advocacy on behalf of the client.

38. Three further submissions expressed the view that there are instances in which community interpreters may sometimes be used, for example in emergency situations or for initial instructions when clients are least likely to attend and so interpreters are frequently secured and paid unnecessarily. One respondent stated that in light of political, religious and cultural sensitivities community interpreters are sometimes preferred.

39. Two representations raised the issue that as unqualified community interpreters are frequently used at present and may work free of charge, to insist upon replacement with a qualified interpreter in all cases would have clear budget implications.

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

40. 16 submissions commented specifically upon this issue.

41. Six respondents expressed the opinion that interpreters should be gender appropriate as supported by IAA guidelines and proposed by the European Union, and considerate of political, cultural and religious sensitivities. Three further submissions related to skills in dealing with children or clients with special needs such as mental or medical problems, or victims of torture.

42. Three representations cited the importance of an understanding of the asylum process and its relevant terminology and context, two discussed an understanding of the issues of impartiality and independence, and one stated the frequent need for some legal and medical vocabulary. Two representations raised the issue of special skills with

reference to sign language and conference interpreting.

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

43. 14 submissions commented specifically upon this issue.

44. Six submissions suggested the introduction of financial and career development incentives to encourage bilingual in-house staff to work towards obtaining a formal interpreting qualification. A further submission stated that funding should be offered to encourage staff to work towards an interpreting qualification.

45. Three representations, however, indicated that bi-lingual staff should not be used for reasons of neutrality and impartiality, and another stated that they should only be used without an interpreter if they can meet the requirements of a language test and comply with a specified code of conduct.

46. One respondent expressed the view that it is not practical to use bi-lingual staff as existing workloads prevent it, and there are also no resources available to enable staff to obtain formal qualifications, while two others viewed the proposal as a positive long-term strategy for advice staff.

**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”?**

47. 4 submissions commented specifically upon this issue.

48. Three submissions did not foresee the Commission’s proposals as being sufficient to discourage the practice of “touting”, while a fourth stated that whilst it may diminish, as the practice is not disapproved of in many other cultures education would be needed to curtail it. One representation suggested an option to deal with the practice could be a system of sanctioning suppliers and the removal of accreditation from interpreters.

## **Fees**

### **General comments**

49. A number of respondents made the point that raising standards will generally involve raising costs and it will be impossible to improve quality of supply without incurring additional expense.

50. An overriding theme of consultation responses received in relation to fees was the view that if interpreters are not paid for time spent travelling and waiting in which they cannot earn other income then they will not work on Commission cases, and that existing supply is not currently sufficient to accommodate further losses. Comparison was made to such bodies as the Police and the Court Service, who generally make payment for both.

51. Submissions acknowledged that the issue of travel is not so great in London where there is a concentrated pool of interpreters, but that in the regions outside of London and the South East where supply is more limited, more travel is frequently required meaning that the loss of income is greater for interpreters taking on such cases.

**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?**

52. 18 submissions commented specifically upon this issue.

53. In total 16 respondents suggested that, in some if not all locations, setting the maximum rate of pay for interpreters at £25 per hour, without paying for the time spent travelling to and from appointments, would not enable suppliers to instruct qualified interpreters. 10 of these respondents commented generally, while six referred to the need for a regional pricing structure as opposed to a one-size-fits-all model. A single fixed rate was described as London-centric and based on the assumption of a supply of interpreters with no need for significant travel. In some cases, however, opinions varied on whether travel must be paid, either at all, in full or at a lower rate.

54. Three respondents expressed the view that interpreters working via agencies would be particularly difficult to secure at the prescribed rates. It was suggested that the proposals would leave interpreters worse off than they are at present and so exacerbate shortages, especially amongst those formally qualified. Two representations stated that a higher rate should be paid to interpreters with a preferred qualification.

55. One supplier submission indicated that a fee of £25 an hour has enabled interpreters to be secured, used in conjunction with reduced rate travel paid in some circumstances if an interpreter is travelling from outside the region.

56. Three representations highlighted that as multiple jobs at one site are often available with other organisations such as government departments, a higher overall fee can be earned in a day and travel is not such an issue, whereas work funded by the Legal Services Commission is usually single-client and often with significant travelling times, meaning the situation is different.

**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?**

57. In addition to the 16 respondents suggesting that, in some if not all locations, setting the maximum rate of pay for interpreters at £25 per hour, without paying for the time spent travelling to and from appointments, would not enable suppliers to instruct qualified interpreters, two further submissions commented specifically upon the issue of whether this approach is the right one to bring the cost of interpreting in immigration and asylum cases under control.

58. The general consensus amongst respondents was that the suggested hourly rate was too low to secure interpretation services, particularly in the regions where supply is

more limited, and that it is unfair to impose non-payment for time spent travelling in all cases. Therefore, although costs may in theory be brought under control by these proposals, they would in effect render it very difficult for the Commission to access essential services and therefore they are not feasible.

59. Alternative suggestions made by respondents included:

- an assessment of cases on a regional or individual basis to determine suitable fees
- payment of travelling time
- a minimum guarantee of a half-day payment or a minimum number of hours booking if travelling time is not to be paid
- front-loaded payment, for example of £50 for the first hour and £24 for subsequent hours
- a two-tier system with higher rates for interpreters with a preferred qualification

**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)?**

60. 16 submissions commented specifically upon this issue.

61. Nine respondents commented that interpreters might 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. It was highlighted that travel time is more of an issue in the regions than in London, and that failure to pay for time travelling could lead to real access issues. One respondent commented that the issue of travel could be particularly prevalent for those working with detainees.

62. In discussion of incentives that could be offered to allow the Commission to secure interpretation services whilst controlling the cost of travelling time, six respondents indicated that front-loaded payment might help. Four submissions, however, commented on the potential problems associated with front-loading, that it may increase costs for shorter jobs, encouraging interpreters to work only locally and to book numerous short assignments.

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

63. 13 submissions commented specifically upon this issue.

64. 10 respondents commented that in the case of a rare language it might be necessary to exceed a maximum hourly rate for interpretation work. Other suggestions of circumstances in which an increase may be needed were in dealing with victims of torture, in emergency situations, when sign language is used, when an interpreter must travel a significant distance, or if booking an interpreter through an agency, where rates are generally higher.

65. One respondent expressed the view that there are no circumstances at all in which a maximum hourly rate might be exceeded.

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

66. 17 submissions commented specifically upon this issue.

67. 13 representations stated that waiting time at a solicitor's office must be funded if the wait is not the fault of the interpreter, and if there is no alternative remuneration structure in place such as a guaranteed half-day payment. Consensus amongst these respondents was that interpreters should be paid for time devoted to a job regardless of if this is spent waiting.

68. Two respondents indicated that it is reasonable that waiting time is not funded, while another suggested a scale of rates for waiting could be used rather than no payment at all. Comment was also made that, in practice, interpreters of a rare language can dictate their own terms for such as waiting and travelling, as their services are essential and alternative supply is limited.

**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?**

69. 7 submissions commented specifically upon this issue.

70. Five respondents stated that there are circumstances arising regularly in which an interpreter is unpreventably required to wait for considerable periods of time at the solicitor's office, citing as reasons clients running late or not attending, or in the event of emergencies that delay interpretation sessions.

71. Two respondents, on the other hand, commented that as all clients have fixed appointment slots waiting time for interpreters should usually be minimal.

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

72. 13 submissions commented specifically upon this issue.

73. Six respondents believed that it would be reasonable to set a maximum rate of one half of the rate paid for interpreting for waiting time. One further respondent indicated that it could possibly be acceptable, and another that it could only be reasonable in the circumstance of a supplier wishing an interpreter to stay on between appointments, with all other waiting to be paid in full.

74. Five representations disagreed with the idea of a maximum set rate of one half of the rate paid for interpreting for waiting time, with two believing that the full hourly rate should be paid, two that at least 75% of it should be paid, and one suggesting that it would only be reasonable not to fund waiting if an alternative remuneration structure, such as a guaranteed half-day payment, was in place.

## Procedures

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

75. 13 submissions commented specifically upon this issue.
76. None of the 13 submissions received that made reference to the Commission's Draft Terms of Appointment objected to the Terms overall, with 12 commenting that they were broadly right. 12 respondents did, however, comment on areas for potential modification or clarification.
77. Five respondents suggested clarification of the term "*The interpreter will advise the appointer if: "They consider that any work is unnecessary and of any other material issues in connection with their appointment"*" stating that interpreters should not be commenting on whether work is considered necessary as this compromises neutrality. Two respondents highlighted the term *permitting "the interpreter's fees [to be] reduced because the work has not been performed as required, or if it is of an inadequate standard"* as unacceptable, suggesting that an agreed fee should not be reduced.
78. Four submissions made suggestion of a clause relating to rounding up interpreters' fees, three stating that this should be up to the nearest half an hour, and another to the nearest quarter of an hour.
79. Other comments made by respondents in reference to the Commission's Draft Terms of Appointment included that mandatory terms should be developed through professional bodies rather than by the Legal Services Commission itself; the need for the terms to have a degree of flexibility rather than be laid down as strictly non-negotiable; and the observation that a detailed recording of fees goes against the fixed fee approach being taken in other areas.

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

80. 8 submissions commented specifically upon this issue.
81. Three respondents expressed the view that the Draft Terms of Appointment would lead to a general administrative burden that the Commission should be willing to compensate for, while a further respondent commented that the more detailed regulations are the more difficulty is experienced in complying as resources are used in contractual administration. Three submissions commented that the Terms would not clarify and control payment procedures in a non-bureaucratic manner, referring specifically to the Assessment and Determination term "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" as too vague.
82. One respondent believed that the terms would 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?**

83. In addition to the 12 respondents suggesting modification to the Commission's Draft Terms as outlined at **Question C1 "Are the Draft Terms of Appointment at Annex B the right ones?"** two further submissions commented specifically upon this issue, and five further suggestions were made.
84. Five respondents cited a mutual code of conduct as a suggested provision for inclusion in the Commission's Draft terms, setting out what the interpreter can expect from the supplier as well as setting out what the supplier expects from the interpreter. It was also suggested that this should detail a disciplinary procedure for breaches of the code, and guidance around issues of equality and diversity.
85. Three submissions stated that a confidentiality agreement should be included, and three that the Terms should contain guidance on cancellation. Other suggestions made included an invoice template so interpreters know what is expected, detail of a security vetting procedure, and a list of the most common circumstances in which rates may need to be exceeded.

**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?**

86. 3 submissions commented specifically upon this issue.
87. One respondent believed that it would be practical to extend the Commission's requirements so that the interpreter's costs at different stages of a case were recorded in the running costs record for that case.
88. Two respondents did not think it necessary to extend the requirements as such, however, as a running disbursement record is available.

**Summary of key points raised by consultation responses**

89. Many consultation responses expressed support for the Commission's initiatives to address quality standards in interpreting for immigration matters, and to standardise provision across cases, supporting the concept of national guidance and agreeing that such steps will help enable better decision-making. Key themes to arise from the consultation were:
- a) The potential devaluation of the proposals by a lack of equivalent checks on interpreters performing other publicly funded work, particularly across immigration cases with the Home Office and Immigration Appellate Authority. It was suggested that levelling fees across the sector would reduce the risk of the Legal Services Commission losing supply and would guarantee consistency across the decision making bodies.
  - b) The need for flexibility in the introduction of guidance, particularly in relation to qualification requirements, to allow for the differing situations of supply between regions and between languages, in order to prevent access issues. Respondents

commented that formal qualifications and courses might not be accessible to all, in terms of availability, location or cost. This was the most prominent theme of the consultation responses. Even with a flexible approach, however, it appears to be the case that in some languages it is unlikely there will ever be enough speakers to make the proposals realistic, and certainly not without a significant transition period.

- c) The possibility of registration for all interpreters working in publicly funded immigration and asylum cases, with membership of the National Register of Public Service Interpreters broadly considered the ideal situation to offer a comprehensive guarantee of an appropriate standard of competence. Respondents commented, however, that this would not be possible at the present time so must remain a long-term goal, and that regional variations should be explored.
- d) The need to pay interpreters for time spent travelling and waiting in which they cannot earn other income, to ensure that supply remains sufficient for Commission cases. Submissions acknowledged that the issue of travel is not so great in London where there is a concentrated pool of interpreters, but that in the regions outside of London and the South East where supply is more limited, more travel is frequently required meaning that the loss of income is greater for interpreters taking on such cases.
- e) The maximum rate of pay for interpreters being set at £25 per hour, without payment for time spent travelling to and from appointments, being insufficient to enable suppliers to instruct qualified interpreters. Again, this model was seen to be focussed on supply in London and not regionally, and a regional pricing structure was suggested. The financial rewards proposed were not considered sufficient to encourage interpreters to seek formal qualification.
- f) The suggestion that the Legal Services Commission is not the correct organisation to be the gatekeeper of quality amongst interpreters, and that more appropriate would be for the Commission to work strategically with other public sector agencies.
- g) A number of respondents made the point that raising standards will generally involve raising costs and it will be impossible to improve quality of supply without incurring additional expense.

## The Commission's response

90. Following careful consideration of all the submissions received during the course of this consultation process, it is clear that the issues surrounding the use of interpreters in immigration and asylum cases are complex and varied. As such, the Commission feels that further investigation and research is required before any decision may be taken on the introduction of detailed national guidance.

91. Many of the issues raised would also seem to apply to other areas of law, or more generally across the public sector. We will therefore consider responses to the wider Legal Services Commission consultation 'The Use of Experts: Quality, Price and Procedures in Publicly Funded Cases' before any action is taken. This consultation document is available on the Commission's website (<http://www.legalservices.gov.uk/aboutus/consultations/civil.asp#experts>) with a closing

date for responses of 25 February 2005. Following consideration and analysis of responses received, the teams involved in each of the consultations will liaise to ensure that common themes are identified. Decisions as to how the Commission will take forward the issues surrounding the use of interpreters in publicly funded immigration and asylum cases will be taken in light of this.

92. Further investigation around supply, fees and practice in other areas of the public sector will also be undertaken before any further action is decided upon.

**Immigration Services Team  
January 2005**

## Annex A

### *Consultation paper Annex A:*

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

---

- Membership of the National Register of Public Service Interpreters (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
- Immigration Appellate Authority Assessment
- Immigration and Nationality Directorate Assessment (Home Office)
- Diploma in Public Service Interpreting (DPSI) [ORAL ONLY – all oral components must have been passed]
- NVQ/ SVQ level 3 or higher

## Annex B

### *Consultation paper Annex B:*

#### **LEGAL SERVICES COMMISSION DRAFT 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).

## Annex C

### CONSULTATION RESPONDENTS

---

- 1) Brasshouse Translation and Interpreting Services (Birmingham City Council)
- 2) Citizens' Advice Bureau
- 3) Crown Office and Procurator Fiscal Service
- 4) Crown Prosecution Service
- 5) Evangelical Alliance
- 6) Howells Solicitors
- 7) Immigration Advisory Service
- 8) Immigration Appellate Authority
- 9) Immigration Law Practitioners' Association
- 10) Institute of Linguists and Institute of Translations and Interpreting
- 11) Interpreter Working Group (multi-agency) / Association of Sign Language Interpreters
- 12) Legal Aid Practitioner's Group
- 13) Leicestershire and Leicester City Learning Partnership
- 14) Medical Foundation for the Care of Victims of Torture
- 15) National Register of Public Service Interpreters
- 16) North of England Refugee Service
- 17) Penny Maclachlan (InterpNet@yahoo.com)
- 18) Refugee Action
- 19) Refugee Council
- 20) Refugee Legal Centre
- 21) Sharrow Citizens' Advice Bureau / Sheffield Community Access & Interpreting Service
- 22) The Law Centres of Greater Manchester and Warrington

23)The Law Society

24)The National Centre for Languages

25)Trafford Law Centre

26)White Ryland Solicitors