

Language barriers in the criminal justice system

Initial research findings relating to victims and witnesses

About the research project

In April 2019, a research project was launched by Victim Support (VS), The Institute for Crime & Justice Policy Research (ICPR) at Birkbeck, University of London and The Centre for Justice Innovation to look at language barriers in the criminal justice system (CJS). Supported by The Bell Foundation, the project poses the following questions:

- How does having limited English language skills affect individuals' willingness to report crime?
- How do language barriers impact individuals' experiences of the CJS – whether as victims, witnesses, arrestees/detainees, defendants or offenders?

Since the project began, VS has:

- Reviewed existing policies and research on victims' experiences and their rights and entitlements to language support.
- Interviewed 25 frontline professionals from a range of criminal justice agencies; services for migrants, refugees and minority ethnic communities; victims' services; and language support services.
- Surveyed 163 VS staff members and volunteers, 95% of whom had supported victims who had English as an additional language.

Next stages of the research include interviews with victims, witnesses, defendants, arrestees/detainees and offenders who have limited English language skills, with Victim Support focusing on interviewing victims and witnesses. A final report is expected to be published within 12 months alongside a practitioner toolkit.

This briefing sets out some of VS's initial findings from the research relating to victims and witnesses from the first stage of this pioneering research project.

Initial findings – victims and witnesses

Current provision of translation and interpretation services is patchy, and not always offered to victims and witnesses

The initial stages of the research have identified that there is an inconsistent translation and interpretation service provided to victims and witnesses who have no or limited English language skills. Some practitioners reported that they do not have access to language support at all, often due to a lack of resources or funding restrictions.

Even where services do provide language support, there is no guarantee that service users will be able to access them. In many cases it comes down to an individual judgement call made by a staff member that too often results in the service not being offered at all. In particular, victims who may have some limited English language skills are likely to not be provided with the option of an interpreter. Criminal justice staff who took part in the research also reported that they feared “someone would find it offensive” if it was suggested to them that they could benefit from additional language support, which made them reluctant to make the offer.

An additional barrier to the offering and take-up of language support highlighted in the research is that language services are often not available in a way that is practical for staff working in a challenging and fast-moving environment. Police and other criminal justice staff face many constraints on their time, and as the internal process was reported to be laborious and time consuming, it was suggested that staff are discouraged to secure language support.

“As a frontline officer you have got other calls to attend. The interpreter might be able to come out in four hours’ time, but your shift might have finished. Equally, you are not going to be allowed to stay at that job for four hours just waiting for an interpreter.”

(Police officer)

Staff told us that they can be “waiting for days, weeks” before getting the right interpreter, this was more evident in voluntary sector organisations. Additionally, some languages and dialects are harder to accommodate than others, and the speed of the interpreter provision is often dependent on which language support is required. In some instances, interpreters who do not speak the right language are used. In one case, a service user who needed a Portuguese interpreter was provided with a Spanish interpreter who had limited Portuguese language skills.

Written communication is also a particular challenge, with both the police and the CPS telling us that they will on occasion send letters out in English to people that they know don’t speak it. We found that shortcuts are also taken where practitioners have no access to an interpreter, with written communications being put through Google translate rather than an actual translator. Problems with written communications are attributed largely to a lack of time and resources.

The unique and complex nature of the CJS makes interpretation challenging

It is not just patchy services that create problems for individuals within CJS, but the nature of the criminal justice process itself. The adversarial nature of the justice system, the requirement to give oral evidence and a process that can be challenging for the layperson to understand all contributes to the challenges faced by those with English as an additional language.

There is no guarantee that the interpreter provided will be a specialist within the field of criminal justice. The language used in the criminal justice system can be very technical and the requirements very specific, making it difficult to be interpreted by someone who is not familiar with the process.

Criminal justice participants will need time and patience to ensure that proceedings are fully explained to the interpreter so that they can translate that for the service user. Even with the best will in the world, there is a strong possibility that some of the process will get lost in translation. This is particularly a concern for some high-harm specialist cases, such as rape and sexual assault, which require a specialism that many interpreters will not be equipped with.

“Even when we use the interpreting service, unless it’s a skilled interpreter within the field that we’re talking about. If they’re not well versed within the sexual abuse or they don’t know much about the criminal justice system, it kind of gets lost in the interpretation.”

(Not-for-profit organisation)

It may also be the case that certain words or phrases, particularly those specific to the CJS, are not able to be directly translated into the service user’s language. Interpreters and CJS practitioners also need to have understanding of the victim and witness’s culture. Some words, particularly those referring to domestic abuse, sexual abuse and rape, do not exist or may be considered taboos in specific cultures. This adds an additional challenge to interpretation.

“Sometimes they [Interpreters] have difficulty in finding the words... sometimes they find certain words difficult, it could be something cultural. To give you an example, if it is a sexual offence and they can’t [say it]... It could be something like that.”

(CPS)

Additionally, in many cases an interpreter will work with the client over the phone rather than be physically present with them. As a result the non-verbal cues and mannerisms that are such an essential part of how people communicate, such as facial expressions and body language, will be lost.

“It is better to have an interpreter physically present in court... because when you use [over the phone interpreting], it is very difficult to communicate because sometimes facial expressions say a lot.”

(CPS)

Finally, some concerns were raised about the quality of interpretation provided. An interview participant from a not-for-profit organisation identified instances where interpreters had answered questions on behalf of the client without asking them, or heavily curtailed the client’s answer. It is vital that victims are able to accurately describe their experience and the impact it has had.

Lack of training and guidelines

A number of research participants highlighted the lack of training available to practitioners as a key issue. Some participants from both from the statutory and voluntary sector did not recall having had any specific training on working with those who have English as an additional language.

“I can’t recall any specific training that I have had, working with victims or suspects of crimes that don’t have English as their first language... When I go to an incident, if somebody seems to be struggling with the communication, between myself and that individual, it is then my own judgement call as to whether I then use an interpreter. Which again, I have not had any training in saying that I should be using an interpreter.”

(Police officer)

How to help victims to overcome language barriers often comes down to individual judgement, rather than skills that have been established through training. As a result, good practice is developed bottom-up rather than top-down, with staff learning from their own experience as opposed to from training or guidelines.

Impact

The research suggests that barriers identified in the initial findings are having two impacts: on the support received by the victim, and on justice outcomes.

Impact on support for the victim

The use of interpreters has a significant impact on the relationship between the victim and support workers. Staff and volunteers told us that it can be challenging to convey a sense of empathy and emotion through an interpreter, and that it can be difficult to build trust with the victim. Not being able to communicate directly with the victim makes this challenging. There is also potential for misunderstandings and inaccuracies through the use of interpreters, which can also make establishing and sustaining a support relationship that bit harder. However, it must also be emphasised that having access to an interpreter also enables victims who do not speak English to access support that they might not otherwise have been able to.

“When the interpreter is in the room, the relationship is not the same. The outcome of the job is not the same, because all the information is going through a third party. The client, they said that they cannot feel relaxed enough to share information or to share their emotions through the interpreter, even though they tried.”

(Not-for-profit organisation)

Impact on access to justice

This initial research with criminal justice practitioners and support services has identified a number of barriers to engaging with the CJS. These present challenges for victims to report to the police, give evidence and attend court. In the worst cases, practitioners are concerned that challenges may be contributing to victim attrition and an unwillingness to support the justice process.

“[Because of long wait for interpreters] the whole process then draws out... I have had victims that haven't turned up for statements.”

(Police officer)

“It does happen quite regularly that an interpreter has been booked and then the interpreter, for some reason, hasn't turned up, or there has been some miscommunication... So, they would have to adjourn it on to another trial date... But one of the things that you have to be quite wary about is that [the victim] might not want to come back again.”

(CPS)

Overcoming barriers

It is clear that having English as an additional language presents a number of barriers to victims and witnesses engaging with the CJS and has a significant impact on individuals' experiences. The next stage of the project will focus on how these barriers can be overcome and furthering our understanding of victims' and witnesses' experiences. It will build on the following ways of potentially increasing the engagement of victims with English as an additional language already identified in the project to date, including:

- Improving access to interpretation and information on rights
- Increased police engagement with diverse communities
- Encouraging culturally diverse support services
- Better training on language and cultural needs for both statutory and non-statutory agencies.

Next steps

The project continues and Victim Support is now undertaking research directly with victims and survivors who have English as an additional language. These interviews with victims will provide crucial insight into the issues and challenges they face and help us to identify ways in which improvements can be made. The final report will be published late 2021.

For more information about these initial findings and the wider project please contact the VS research and policy team: policyteam@victimsupport.org.uk

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